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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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C. S. p. 454, Sect. 8.
Amended.

2 such bond, brought for the benefit of any particular person,
3 shall be for the amount of the damages which he shows him-
4 self entitled to, in consequence of the breach of the condi-
5 tion of said bond; and successive actions may be brought
6 on said bond for the benefit of persons injured by any breach
7 thereof.

C. S. p. 454, Sect. 9.
Amended.

1 SECT. 8. If judgment is rendered for the plaintiff in any
2 action upon such bond for any breach thereof in not per-
3 forming any order or decree of the judge of probate, as
4 mentioned in the fifth section of this chapter, execution shall
5 be awarded for the full value of all the estate of the de-
6 ceased, or ward, that has come to the hands of such executor,
7 administrator or guardian, and for which he has not satis-
8 factorily accounted, and for all such damages as have been
9 occasioned by his neglect or mal-administration.

C. S. p. 454, Sect. 10.

1 SECT. 9. All moneys received on any execution issued on
2 a judgment in favor of the judge of probate, as mentioned
3 in the preceding section, shall be paid over to the co-execu-
4 tor or co-administrator, if there is any, or to such person
5 other than the defendant therein, as shall then be the right-
6 ful executor, administrator or guardian, and such moneys
7 shall be disposed of according to law.

C. S. p. 454, Sect. 12.

1 SECT. 10. Claims for damages on account of the breach
2 of the conditions of any bond, may be prosecuted by any
3 executor, administrator, or guardian, in behalf of those he
4 represents, in the same manner as by persons living and of
5 full age; and such claims may be prosecuted against the
6 representatives of deceased persons, in the same manner as
7 other claims against such deceased person.

CHAPTER LVI.

PARTITION AND DISTRIBUTION OF ESTATES.

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C. S. p. 450, Sect. 1.

1 SECTION 1. Before any partition or division of any es-
2 tate among the heirs, devisees or legatees, an allowance shall
3 be made for the necessary expenses of the support of the
4 children of the deceased, under seven years of age; and the
5 probate court may order the executor or administrator to re-
6 tain in his hands sufficient estate for that purpose; except
7 where some provision has been made by will for their
8 support.

1 SECT. 2. If, in case of intestate estates, after the pay-
 2 ment of debts and charges of administration, there is no
 3 personal estate, or not enough remaining in the hands of ^{New.}
 4 the administrator to maintain the minor children under
 5 seven years of age, as now provided by law, the probate
 6 court may, upon application of such administrator, and with
 7 the assent in writing, of all the heirs, by themselves or
 8 guardians, residing in this state, authorize and empower
 9 such administrator, to sell at public auction, or private sale,
 10 as he may find necessary, so much of the lands of such es-
 11 tate, as will raise a sum of money sufficient for the support
 12 of such minor children, till they arrive at the age of seven
 13 years, which sum of money so raised shall, under the order
 14 of the probate court, be retained in the hands of such ad-
 15 ministrator for the purpose aforesaid, and partition of the
 16 residue of such estate may be made in the same manner as
 17 now provided by law.

1 SECT. 3. In making such sale of lands as is by this ^{New.}
 2 chapter authorized, the administrator shall be sworn to the
 3 faithful discharge of his trust, and the rules and regulations,
 4 so far as applicable, relative to the sales of real estate by
 5 executors and administrators now by law established, shall
 6 be observed.

1 SECT. 4. After the payment of the debts, funeral charges
 2 and expenses, of administration, and after the allowances ^{C. S. p. 450, Sects. 2}
 3 made for the expenses of the maintenance of the family of ^{& 3, combined.} c 4/6
 4 the deceased, and for the support of the children under
 5 seven years of age, and after the assignment to the widow
 6 of her dower, and of her share in the personal estate, or
 7 when sufficient effects are reserved, in the hands of the ex-
 8 ecutor or administrator, for the above purposes, the pro-
 9 bate court shall, by a decree for that purpose, assign the
 10 residue of the estate, if any, to such other persons as are by
 11 law entitled to the same; and in such decree, the court
 12 shall name the persons, and the proportions or parts to
 13 which each is entitled; and such persons may demand and
 14 recover their respective shares from the executor or ad-
 15 ministrator, or any other person having the same.

1 SECT. 5. Such decree may be made on the application ^{C. S. p. 450, Sect. 4.}
 2 of the executor or administrator, or of any person interest-
 3 ed; but no heir, devisee, or legatee is entitled to a decree
 4 for his share, until payment of the debts and allowances and
 5 expenses, mentioned in the preceding section, is made or
 6 provided for, unless he gives a bond to the judge of pro-
 7 bate, with such sureties as the court directs, to secure the
 8 payment of his just proportion of such debts and expenses,

9 or such part thereof as shall remain unprovided for, and to
10 indemnify the executor or administrator against the same.

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C. S. p. 450, Sect. 5.

1 SECT. 6. When the estate, real or personal, assigned to
2 two or more heirs, devisees, or legatees, is in common and
3 undivided, and the respective shares are not separated and
4 distinguished, partition and distribution may be made by
5 three discreet and disinterested persons, to be appointed
6 commissioners for that purpose, by the probate court,
7 who shall be duly sworn, and the judge of probate shall is-
8 sue a warrant to them for that purpose.

C. S. p. 450, Sect. 6.

1 SECT. 7. If the real estate lies in different counties, the
2 probate court may appoint different commissioners for each
3 county, and in such case the estate in each county shall be
4 divided separately, as if there was no other estate to be di-
5 vided; but the commissioners first appointed shall, unless
6 otherwise directed by the probate court, make divisions of
7 such real estate, wherever situated within this state.

C. S. p. 450, Sect. 7.

1 SECT. 8. Such partition and distribution may be order-
2 ed on the petition of any of the persons interested; but be-
3 fore any partition is ordered as directed in this chapter,
4 notice shall be given to all persons interested, who reside
5 in this state, or their guardians, and to the agents, attor-
6 neys or guardians, if there are any in this state, of such as
7 reside out of the state, either personally or by public no-
8 tice, as the probate court shall direct.

C. S. p. 451, Sect. 8.

1 SECT. 9. Partition of the real estate may be made as
2 provided in this chapter, although some of the original
3 heirs or devisees have conveyed their shares to other per-
4 sons; and such shares shall be set to the persons holding
5 the same in the same manner as they would have been to
6 such heirs or devisees.

C. S. p. 451, Sect. 9.

1 SECT. 10. The several shares in the real and personal
2 estate shall be set out to each individual in proportion to
3 his right, by such metes and bounds, or description, that
4 the same can be easily distinguished; unless any two or
5 more of the parties interested consent to have their shares
6 set out so as to be held by them in common and undivided.

C. S. p. 451, Sect. 10.

1 SECT. 11. When any such real estate can not be divid-
2 ed without prejudice or inconvenience to the owners, the
3 probate court may assign the whole to one or more of the
4 parties entitled to shares therein, who will accept it; al-
5 ways preferring the males to the females, and among chil-
6 dren, preferring the elder to the younger; *Provided*, the
7 party so accepting the whole, pays to the other parties in-

8 terested, their just proportion of the true value thereof, or
 9 secures the same to their satisfaction; the true value of the
 10 estate shall be ascertained by commissioners appointed by
 11 the probate court and sworn for that purpose.

1 SECT. 12. When any tract of land, messuage, or tene-
 2 ment, is of greater value than either party's share in the es- C. S. p. 451, Sect. 11. *c 46*
 3 tate to be divided, and cannot be divided without injury to
 4 the same, it may be set off by the commissioners appointed
 5 to make partition, to either of the parties who will accept
 6 it, giving preference as prescribed in the preceding section;
 7 *Provided*, the party accepting it pays or secures to one or
 8 more of the others, such sums as the commissioners award,
 9 to make the partition equal, and the commissioners shall
 10 make their award accordingly; but such partition shall not
 11 be established by the court until the sums so awarded are
 12 paid to the parties entitled to the same, or secured to their
 13 satisfaction.

1 SECT. 13. When partition of real estate among heirs,
 2 or devisees is required, or dower is to be assigned to a C. S. p. 451, Sect. 12.
 3 widow in the same, and such real estate lies in common,
 4 and undivided, with the real estate of any other person, the
 5 commissioners shall first divide and sever the estate of the
 6 deceased from the estate with which it lies in common; and
 7 such division so made and established by the probate court
 8 is binding on all persons interested.

1 SECT. 14. Before any partition is made, or any estate
 2 divided, as provided in this chapter, guardians shall be ap- C. S. p. 451, Sect. 13.
 3 pointed for all minors and insane persons, interested in the
 4 estate to be divided; and some discreet person shall be ap-
 5 pointed to act as agent for such parties as reside out of the
 6 state; and notice of the appointment of such agent shall be
 7 given to the commissioners in their warrant; and notice
 8 shall be given to all persons interested in the partition,
 9 their guardians or agents, by the commissioners, of the
 10 time when they will proceed to make partition.

1 SECT. 15. The commissioners shall make report of their
 2 proceedings to the probate court in writing, and the court C. S. p. 451, Sect. 14.
 3 may for sufficient reasons, set aside such report and commit
 4 the same to the same commissioners, or appoint others;
 5 and the report when finally accepted and established, shall
 6 be recorded in the records of the probate court, and a copy
 7 thereof attested by the judge of probate under the seal of
 8 the court, shall be recorded in the office of the register of
 9 deeds of the county where the lands lie.

1 SECT. 16. When the probate court makes a decree as-

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C. S. p. 452, Sect. 15. 2 signing the residue of any estate to one or more persons en-
3 titled to the same, it shall not be necessary to appoint com-
4 missioners to make partition or distribution of such estate,
5 unless the parties to whom the assignment is decreed, or
6 some of them, request that such partition be made.

C. S. p. 452, Sect. 16. 1 SECT. 17. All questions as to advancements made, or
2 alleged to be made by the deceased to any heirs, may be
3 heard and determined by the probate court, and shall be
4 specified in the decree assigning the estate and the warrant
5 to the commissioners; and the final decree of the probate
6 court, or in case of appeal, of the district or supreme court,
7 shall be binding on all persons interested in the estate.

C. S. p. 452, Sect. 17. 1 SECT. 18. Any person aggrieved by any order, de-
2 cree or denial of a probate court, in pursuance of the
3 provisions of this chapter, may appeal therefrom, as provi-
4 ded in other cases.

C. S. p. 452, Sect. 18. 1 SECT. 19 The partition when finally confirmed and
2 established, shall be conclusive on all the heirs and devi-
3 sees, and all persons claiming under them, and upon all
4 persons interested.

C. S. p. 452, Sect. 19. 1 SECT. 20. If at the time of the partition or distribution
2 of any estate, as provided in this chapter, the executor or
3 administrator has retained sufficient effects in his hands,
4 which may lawfully be applied for that purpose, the expen-
5 ses of such partition or distribution may be paid by such
6 executor or administrator, when it appears to the court just
7 and equitable, and not inconsistent with the intention of the
8 testator.

C. S. p. 452, Sect. 20. 1 SECT. 21. But if there are no effects in the hands of the
2 executor or administrator, which may be lawfully applied to
3 that purpose, the expenses and charges of the partition be-
4 ing ascertained by the probate court, shall be paid by all
5 the parties interested in the partition, in proportion to their
6 respective shares or interests in the premises; and the pro-
7 portion shall be settled and allowed by the probate court;
8 and if any one neglects to pay the sum assessed on him by
9 the court, an execution may be issued thereof against
10 him by such court, in favor of the person entitled to
11 the same.

C. S. p. 452, Sect. 21. 1 SECT. 22. When the term of a widow entitled to dower
2 or other life estate in the lands of a deceased person expires,
3 the reversion may be assigned to the person entitled to the
4 same, and the partition thereof be made in the manner pre-
5 scribed in this chapter in relation to other estates of de-
6 ceased persons.

1 SECT. 23. When any estate is assigned by decree of the
 2 court, or distributed by commissioners, as provided in this C. S. p. 452, Sect. 22. *c 46*
 3 chapter, to any person residing out of this state, and having
 4 no agent therein, and it is necessary that some person should
 5 be authorized to take possession and charge of the same,
 6 for the benefit of such absent person, the court may appoint
 7 an agent for that purpose, and authorize him to take charge
 8 of such estate, as well as to act for such absent person, in the
 9 partition and distribution.

1 SECT. 24. Such agent shall give a bond to the judge of
 2 probate, to be approved by him, faithfully to manage and C. S. p. 452, Sect. 23.
 3 account for such estate, before he is authorized to receive Amended.
 4 the same, and the court appointing such agent may exam-
 5 ine and allow his account, on application made by him or
 6 any person interested, and may allow a reasonable sum out
 7 of the estate for his services and expenses.

CHAPTER LVII.

SALES OF LANDS BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

SALES BY EXECUTORS AND ADMINISTRATORS.

1 SECTION 1. When the personal estate of a deceased per-
 2 son is insufficient to pay his debts, with the charges of ad- C. S. p. 418, Sect. 1. *c 39*
 3 ministration, his executor or administrator may sell his real Amended.
 4 estate for that purpose, upon obtaining a license therefor,
 5 and proceeding as herein provided.

1 SECT. 2. To obtain such license, the executor or ad-
 2 ministrator shall present a petition to the probate court,
 3 from which he received his appointment, setting forth the
 4 personal estate that has come to his hands, the disposition
 5 thereof, and how much if any, remains undisposed of; the
 6 debts outstanding against the deceased, as far as the same C. S. p. 418, Sect. 2.
 7 can be ascertained; a description of all the real estate of Amended.
 8 which the testator or intestate died seized, the condition
 9 and value of the respective portions or lots, the persons in-
 10 terested in said estate, with their residences if known, and
 11 if unknown that fact shall be stated; which petition shall
 12 be verified by the oath of the party presenting the same.

1 SECT. 3. If it appears by such petition, that there is C. S. p. 418, Sect. 3.
 2 not sufficient personal estate in the hands of the executor or