

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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COMPILED BY  
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be deemed a contempt of court, and the said judge making such order, is hereby authorized and required to compel the delivery of said records, by attachment or otherwise, according to law.

Unfinished business before supreme judges imposing special duties to be transferred to judge in district where trust is situated.

(65.) SEC. V. That any unfinished business or proceedings now remaining or pending before the late supreme court judges of the territory of Minnesota, or either of them, as judge or judges of the district court of said territory or otherwise, under any general law of the United States or of the territory of Minnesota, or both, or under any other act or granting special powers or imposing special duties or trusts upon said judge or judges, be and the same is hereby transferred to the district judge of the state of the district in which such business or proceedings originated or the subject of the trust is situated, to be proceeded in, finished, decided or executed, in the same manner provided for by the law; and the said district judge of the state shall have, exercise and possess the same rights, powers and duties which have been possessed or exercised by the said judges of the said territory, so far as may be necessary to enable him to determine, execute and finish any such matter, business, trust or proceeding so pending and unexecuted, or undetermined as aforesaid; any law of said territory to the contrary notwithstanding.

Take effect when.

(66.) SEC. VI. This act shall take effect and be in force from and after its passage.

CHAPTER 58.

PROBATE COURTS.

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3. Jurisdiction of probate court.
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21. Judge to appoint time and place for hearing.
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28. Appointment of guardian how made and what to contain.
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40. Judge how to proceed upon application to remove guardian.

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- 44. Who may take an appeal.
- 45. Appeals on questions of law or fact how taken.

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- 47. Judge of probate may appoint clerk.
- 48. Appointment to be in writing.
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- 50. Bond of clerk.
- 51. Clerk may be sued for violation of duty.
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✓ [Chapter 69, Revised Statutes, Article 3.]

(1.) SEC. I. There is established in each organized county in this territory, a probate court, with the jurisdiction conferred by this article, but nothing contained in this article shall affect the proceedings now in said courts. Courts of probate established.

(2.) SEC. II. The said probate courts have exclusive jurisdiction, in the first instance, in the county to take the proof of wills. Jurisdiction of probate courts.

1. When the testator at or immediately before his death, was an inhabitant of the county, in whatever place he may have died;

2. When the testator not being an inhabitant of this territory; shall have died in the county, leaving assets therein;

3. When the testator not being an inhabitant of this territory, shall have died out of the territory, leaving assets in the county;

4. When the testator not being a resident of this territory, shall have died out of the territory, not leaving assets therein, but when assets thereafter come into the county;

5. When real property devised by the testator is situated in the county, and no other probate court has gained jurisdiction under either of the preceding subdivisions of this section.

(3.) SEC. III. The probate court has jurisdiction also:

1. To take proof of a will relating to real property situated in the county, when the testator shall have died out of this territory, not being an inhabitant thereof, and not leaving assets therein; Jurisdiction of probate courts.

2. To grant and revoke letters testamentary and of administration;

3. To direct and control the conduct, and settle the accounts of executors and administrators;

4. To enforce the payment of debts and legacies and the distribution of the estates of intestates;

5. To order the sale, and dispose of the real property of deceased persons;

6. To appoint and remove guardians, to direct and control their conduct and to settle their accounts;

7. To take the care and custody of the person and estate of a lunatic or habitual drunkard, residing in the county, and to appoint and remove guardians, to direct and control their conduct, and to settle their accounts;

8. To direct the admeasurement of dower;

9. To exercise the powers and duties conferred upon it by law.

(4.) SEC. IV. The jurisdiction acquired by any probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law, and when a guardian is appointed, or any other proceeding is commenced in the probate court of a particular county, all further proceedings in respect to the same, must be continued in that court. Jurisdiction acquired by one Judge of probate exclusive.

(5.) SEC. V. The probate court of each county must be held by the judge of probate court; and in case the judge of probate is unable to act, or if the office be vacant, then the said court must be held by the district attorney of the county. Probate court to be held by the judge, in his absence by the district attorney.

(6.) SEC. VI. The probate court is always open for the transaction Probate court is always open.

of business within its jurisdiction; but it is the especial duty of the judge of probate to attend at his office on the first Monday of each month, and then hold a probate court.

PROCEEDINGS IN PROBATE COURTS.

Proceedings in probate court.

(7.) SEC. VII. [*As amended on pages 6 and 7 of the amendments of 1852, to the revised statutes.*] There are no pleadings in the probate courts of this territory. The proceedings are those prescribed by statute. The granting of letters of administration and testamentary may be known as the appointment of administrators or executors; the proceedings in these courts are upon the application of a party, verbal or written, and when verbal, entered in the minutes of the court, and when written they are to be filed. The powers of a judge of probate except as otherwise provided by law, are exercised by means of:

1. A citation to a party;
2. An affidavit, deposition, examination, or statement under oath of a party or witness, or other legal and competent evidence;
3. A subpoena to a witness, or attachment to compel his attendance, or commitment for refusal to testify;
4. Orders, judgments and decrees;
5. An execution, warrant, or other process to enforce them.

Power of judge of probate.

Judge of probate must keep office open at all hours.

(8.) SEC. VIII. The judge of probate must keep an office open at reasonable hours, suitable and convenient for the transaction of business, and for the deposit and safe keeping of the public books and papers under his charge. He may hold his court at any other place in his county, which he may from time to time appoint. He must also provide suitable cases for the books and papers of his office, the expense of which is a county charge; they belong to the county, and must be delivered by the judge of probate to his successor in office.

Books of record to be kept by judge of probate.

(9.) SEC. IX. The following books must be kept by the judge of probate:

1. A register in which must be entered a memorandum of all official business transacted by him, or in his office, appertaining to the estate of each person deceased, under the name of such person; that pertaining to the general guardian of an infant, under the name of such infant; that pertaining to an insane person or drunkard, under his name.
2. A record of wills, in which he must record all wills proven before him, with the certificate of probate thereof; and of all wills proven elsewhere upon which letters of administration are issued by him.
3. A record of appointment of administrators and executors, of general guardians of infants, of guardians of insane persons and drunkards, of the appointment of admeasurers of dower, with all orders relating to the same, and the admeasurers' reports.

Register what to contain.

(10.) SEC. X. The judge of probate must cause to be entered in the register, mentioned in the first subdivision of the preceding section, a summary balance sheet of the accounts of administrators, and guardians, and trustees before him, with his orders and judgments relating to the same, a memorandum of execution issued thereon, with a note of satisfaction when satisfied; also, all orders relating to the sale of real estate, and to the distribution of the proceeds thereof, all orders made by him in the discharge of his official duties.

Each book to contain an index of entries.

(11.) SEC. XI. To each of such books there must be attached an index referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page of the book where the entry is made.

(12.) SEC. XII. The successor in office of any judge of probate has power to complete any unfinished business commenced by his predecessor.

Successor may complete unfinished business.

(13.) SEC. XIII. A judge of probate cannot be council or attorney in any civil action for or against any executor, administrator, guardian, or minor, trustees, or other person over whom or whose accounts he would by law have jurisdiction, whether such action relates to the business of the estate or not.

Judge of probate cannot be attorney in certain cases.

(14.) SEC. XIV. Costs may be awarded in favor of one party against another, to be paid personally out of the estate or fund in any proceeding contested adversely before the judge of probate; but such costs shall not exceed those allowed in the district court for a trial in an action at law; witnesses' fees and other disbursements, equal to those allowed in the district court, may also be allowed.

Costs may be allowed by judge of probate.

(15.) SEC. XV. Orders for the payment of money may be enforced by execution, or otherwise, in the same manner as judgments for the payment of money in the district court; except in the probate court, all process is issued by the judge of probate.

Judge may issue execution as in district courts.

(16.) SEC. XVI. Executions, warrants, and other process issued by a judge of probate, must be executed by the sheriff or coroner of the county to which they are sent to be executed, in the same manner, and with the same powers and responsibilities and fees, as process issued from the district court.

Process by whom executed.

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PROCEEDINGS IN CASES OF INSANITY AND HABITUAL DRUNKENNESS.

(17.) SEC. XVII. The judge of probate of the county has the care and custody of the person and property of idiots, lunatics, and other persons of unsound mind; and of persons who, in consequence of habitual drunkenness, or for any other cause, are incapable of the proper care and management of their own property, all of whom are known in the statute, as insane persons or habitual drunkards.

Judge of probate to have custody of insane persons and drunkards.

(18.) SEC. XVIII. For the purpose of exercising these powers, the court may appoint one, two, or three guardians in each case, whose duty it is:

Guardians appointed; their powers and duties.

1. To take possession of the property of the person, and manage the same in a manner proper to produce income, and to prevent its being wasted or destroyed.

2. To take the care and custody of such person, and so far hold him in restraint as may be necessary to prevent injury to the person or property of himself or others.

3. To provide out of his property for the maintenance of such person and his family, and the education of his children.

4. To make an inventory of his property, real and personal, and to file the same in the office of the judge of probate, immediately after the appointment of such guardian, and to keep, and annually file in the office of the judge of probate, an account of all sums received and expended for the year, verified by his oath.

(19.) SEC. XIX. The county commissioners of the county, or any justice of the peace therein, where the insane person or habitual drunkard resides, or any member of the family of such insane person or drunkard, or any person related to him by blood or marriage, may apply to the judge of probate for the appointment of the guardian.

County commissioners or justice may apply for the appointment of such guardian.

(20.) SEC. XX. Such application must be in writing, stating the facts upon which it is founded, and verified by the affidavit of the applicant, to the effect that he believes it to be true.

Application how to be made, and what to contain, &c.

Judge to appoint time and place for hearing.

(21.) SEC. XXI. Upon receiving the application, the judge of probate must immediately appoint a time and place in the county where the insane person or drunkard resides, to investigate the truth of the allegations made in the application, which time must not be less than eight, nor more than twenty days thereafter.

Judge to issue citation to such person; how served.

(22.) SEC. XXII. The judge of probate must also issue a citation to the insane person or drunkard, to appear at the time and place specified, and show cause, if any he have, against the application; such citation, with a copy of the application, must be served by the sheriff or coroner, at least six days before the time of appearance on the insane person or drunkard, and on some member of the family of such person, or of the family in which he resides, of suitable age and discretion other than the applicant.

Jury impaneled to try matters of the application.

(23.) SEC. XXIII. At the time and place appointed, or at such other time as the hearing may be adjourned to, for cause shown, the judge of probate must attend, and draw and impanel a jury of six persons, in the same manner as a jury is drawn and impaneled by a justice of the peace, for the trial of civil actions. When a jury is duly impaneled, it must be sworn by the judge of probate, to investigate the truth of the matters stated in the application, and to find a true inquisition thereon according to the evidence.

Judge of probate to preside at the trial, and decide questions of law as in civil action.

(24.) SEC. XXIV. The judge of probate must preside at the trial, and decide all questions of law arising therein; and the trial must be conducted in all respects like a trial in a civil action, except as otherwise provided in this chapter.

Party complained of may appear by counsel on the trial.

(25.) SEC. XXV. Upon such trial, the alleged insane person or drunkard may appear by counsel, and may produce witnesses on his part; but whether he appear or not, the applicant must prove the truth of the allegations made in his application.

Inquisition of the jury how made, and what to contain.

(26.) SEC. XXVI. The inquisition of the jury must be in writing, and subscribed by the jury, or the foreman thereof, and must declare that there exists no sufficient reason for the appointment of guardians, or that the person is in one of the conditions mentioned in section seventeen, specifying which of them; the judge of probate must instruct the jury as to the form of the inquisition, and it may be formed and subscribed in his presence; but he can take no part in the deliberation of the jury, nor advise them in respect to their decision, except on questions of law.

When the judge to appoint one or more guardians.

(27.) SEC. XXVII. If the jury find that the person is in one of the conditions mentioned in section seventeen, the judge of probate must immediately appoint one or more guardians (not exceeding three in number,) for him; when the application sets forth a cause other than habitual drunkenness, they must state in the inquisition, whether or not, in their opinion, the disability is likely to be permanent. If the jury find that there exists no sufficient reason for the appointment of guardians, the application must be dismissed.

Appointment of guardian how made and what to contain.

(28.) SEC. XXVIII. The appointment must be in writing, and must define the general duties of the guardians, as prescribed in section eighteen. It must be recorded in the office of the judge of probate, in the book kept by him for that purpose. The guardian must also give public notice of his appointment, by advertisement in a newspaper printed and published in the county; if there is no newspaper printed and published in the county, then such notice must be printed in a newspaper printed and published at the seat of government of the territory.

Guardian must be sworn, and give bond.

(29.) SEC. XXIX. The guardian must be sworn to execute faithfully the duties of his trust, according to the best of his ability; he must also give security in the same manner and to the same effect as the general

guardian of an infant. The oath and undertaking must be filed in the office of the judge of probate.

(30.) SEC. XXX. The judge of probate must also appoint appraisers, and an inventory and appraisal of the personal property of the insane person or drunkard must be taken, verified and returned in the same manner and with the same effect, as in case of administration of the estate of a deceased person, except that it must contain a description of the real property, and a valuation by the appraisers, of the annual income thereof.

Judge must appoint appraisers to make inventory and appraisal of effects.

(31.) SEC. XXXI. The powers and responsibilities of guardians, in the execution of the trusts reposed in them by this article, are in all respects like those of a general guardian, in respect to an infant and his estate, except as in this article otherwise provided.

The powers and responsibilities of guardians

(32.) SEC. XXXII. In the payment of debts, the guardian must be governed by the same rules as those which regulate the conduct of administrators.

Guardians, how to pay the debts, &c., of ward.

(33.) SEC. XXXIII. When there is not personal property sufficient, with the income of the real property, for the payment of the debts, or for the proper maintenance of the insane person or drunkard, and his family, the judge of probate may upon a proper accounting by the guardian of the personal, and of the income of the real property, order the real property, or such part thereof, as he may deem necessary, to be sold or mortgaged to procure the necessary funds therefor.

When judge may order real property to be sold to pay debts.

(34.) SEC. XXXIV. When the inquisition does not state that the disability is likely to be permanent, the judge of probate must, before ordering a sale, ascertain the probable necessary expenditure over the annual income, for a period not exceeding three years in advance, and must limit the sale or mortgage to so much of the real property as can be sold or mortgaged separately, without material injury to the residue of the property, and as may be sufficient to raise such sum, and in all cases he must ascertain by evidence, the present condition of the person. Further sale or mortgage may be ordered from time to time as may be necessary.

When disability is not permanent how judge to proceed.

(35.) SEC. XXXV. The proceedings of a sale or mortgage, must be conducted in all respects in the same manner as for a sale by administrators, except as herein otherwise provided; but the proceeds of the sale, instead of being paid to the judge of probate, are to be placed in the hands of the guardian.

Sale or mortgage of real estate, how conducted.

(36.) SEC. XXXVI. The guardian may be required to give new or additional security, or to render an account, and may be removed by the judge of probate; he is also subject in all other respects to the control and direction of the judge of probate, in the same manner as a general guardian of an infant.

Guardian may be required to give bonds and may be removed.

(37.) SEC. XXXVII. The guardian has power, under the direction of a court of competent jurisdiction, to execute a conveyance of real property, or to do any other act in the specific performance of a contract made by the insane person or drunkard, when he was capable to contract.

Guardian may execute conveyance of property.

(38.) SEC. XXXVIII. The power of the guardian ceases upon the death of the insane person or drunkard, and also when the disability in respect to which he was appointed, has been adjudged by the judge of probate to have ceased; or when he has been removed for any cause, as provided in the next two sections.

When powers of guardian cease.

(39.) SEC. XXXIX. Upon the application, to the judge of probate, to remove a guardian, or revoke his appointment, made upon the affidavit of some respectable person, showing misconduct of the guardian, or that the disability in respect to which the guardian was appointed, has ceased, a citation must be issued to the guardian to the person upon whose application such guardian was appointed, if living within the county, and to

Judge how to proceed upon application to remove guardian.

the next of kin, if any within the county who are of full age, to show cause, if any they have, why the appointment of the guardian should not be removed, or his appointment revoked.

Judge how to proceed upon application to remove guardian.

(40.) SEC. XL. The citation must be served at least ten days before the time appointed for the hearing; upon its return duly served, or upon another day to which the hearing may be adjourned, the judge of probate must hear the evidence offered for and against the application; if sufficient cause for the continuance of the guardian be not shown, the judge of probate must by an order declare that the disability in respect to which the guardian was appointed has ceased, that the powers of the guardian are therefore revoked, and that the party for whom he was appointed is restored to his original rights. If misconduct of the guardian be established he must be removed, and another appointed in his place.

Fees of judge of probate in appointing guardian.

(41.) SEC. XLI. The fees of a judge of probate on appointing of a guardian are the same as in the proof of a will, and for his removal and the proceedings in relation thereto, the same as for similar services in case of administrators. Upon a trial before him, the judge of probate may order costs to be paid, either by a party or out of the funds of the estate, to any other party, not exceeding the costs allowed for the trial of a civil action.

Persons over whom guardians have been appointed incapable to contract.

(42.) SEC. XLII. Every insane person or habitual drunkard, for whom a guardian shall be appointed in accordance with the provisions of this article, is during the continuance of such appointment, incapable in law to make any civil contract by which the estate of such insane person or drunkard will be bound.

#### APPEALS FROM THE PROBATE COURTS.

Appeals from probate court, when and how taken.

(43.) SEC. XLIII. An appeal may be taken to the district court from a judgment or order in a probate court in the following cases:

1. An order admitting a will to record or probate, or refusing the same.

2. An order appointing a person administrator, executor, or guardian of an infant, or a trustee for an insane person or drunkard, or removing him, or refusing to make such appointment or removal.

3. An order directing real property to be sold, mortgaged or leased, or confirming the same.

Appeal, when allowed.

4. [*As amended on page 7 of the amendments of 1852 to the revised statutes.* <sup>C 13 10</sup>] An order or judgment by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or such allowance or direction refused, when the amount in controversy exceeds fifteen dollars.

5. Judgment upon an accounting by an executor, administrator, guardian or trustee, including an intermediate order involving the merits and necessarily affecting such judgment.

Who may take an appeal.

(44.) SEC. XLIV. The appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed the order or judgment appealed from, or who being entitled to be heard thereon, had due notice or opportunity to be heard, the latter fact to be shown by affidavit and filed and served with the notice.

Appeals on questions of law or act how taken.

(45.) SEC. XLV. The appeal may be taken upon questions of fact or law, and may be made by the service of a notice of the appeal on the adverse party, stating the appeal from the order or judgment, or some specified part thereof, and filing a copy of the said notice in the office of the judge of probate, together with a recognizance to be made by the

party appealing, with one or more sufficient sureties, to be approved by the judge of probate, conditioned that the party will prosecute his appeal with due diligence to a determination, and will pay all costs that may be adjudged against him in the district court.

(46.) SEC. XLVI. The appeal must be taken within thirty days after notice of the order or judgment appealed from.

Appeals to be taken within thirty days.

An Act to provide for the appointment of Clerks of the Probate Court, and to specify their Powers and Duties, and for other purposes.

✓ [Passed March 6, 1852.] C. 10

(47.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* The judges of the several probate courts, constituted and to be constituted in this territory, shall have power, and are hereby authorized, to appoint a clerk of their respective courts.

Clerks of probate courts.

(48.) SEC. II. Such appointment shall be in writing, and liable to be revoked at any time by said judge.

Appointment to be in writing.

(49.) SEC. III. Said clerk shall keep his office at the county seat.

Office where kept.

(50.) SEC. IV. Before entering upon the duties of his office, such clerk shall execute a bond to the county treasurer, with one or more securities, to be approved by him, in the penal sum of five hundred dollars, conditioned for the faithful discharge of his duties. The said clerk shall also take and subscribe an oath or affirmation, to support the constitution of the United States, and faithfully and honestly discharge the duties of the said office, according to the best of his abilities, which oath or affirmation shall be certified on the back of said bond, and filed with the said treasurer.

Bond of clerk.

(51.) SEC. V. For any violation of duty on the part of said clerk, the party aggrieved shall have an action against him in any court having competent jurisdiction.

Violation of duty.

(52.) SEC. VI. It shall be the duty of the clerk of the said courts, to perform all duties which are or may be assigned him by law or order of the court of which he is clerk.

Duty.

(53.) SEC. VII. Every probate court now organized or to be organized, shall be a court of record, and authorized to adopt such seal with such inscription and devices as the judge thereof may allow and direct.

Seal of probate court.

(54.) SEC. VIII. This act shall take effect immediately upon its passage.

Takes effect on passage

CHAPTER 59.

COURTS OF JUSTICES OF THE PEACE.

SECTION

1. Jurisdiction of justices of the peace.
2. Justice where to keep his office.
3. Justice not to hold his office with practicing attorney.
4. Powers and jurisdiction of justice of the peace.

SECTION

5. Powers and jurisdiction of justice of the peace.
6. Jurisdiction not to extend to civil actions in certain cases.
7. Justice to keep a docket, and what to contain.