

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

IN FORCE

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WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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***§ 77. Notice.**

Before such order is made, notice of the time and place of the hearing upon the petition shall be given as now provided by law for the hearing upon the petition of executors and administrators for the sale of lands. (*Id.* § 2.)

CHAPTER 59.

GUARDIANS AND WARDS.*

OF MINORS.

See *Davis v. Hudson*, 29 Minn. 27, 31, 11 N. W. Rep. 136.

§ 2. Who are minors.

It is legally competent for a *feme sole*, 18 years of age, to make and execute within this state a valid deed of lands belonging to her, and situate therein. *Cogel v. Raph*, 24 Minn. 194.

§ 5. Powers of guardians.

A guardian may sell to a *bona fide* purchaser the personal property of his ward without any leave of court. *Humphrey v. Buisson*, 19 Minn. 221, (Gil. 132.)

When funds are held as executor and when as guardian in case of same person acting in both capacities. *Conkey v. Dickinson*, 13 Metc. 51. And see *Bennett v. Overing*, 16 Gray, 267.

OF INSANE PERSONS AND SPENDTHRIFTS.

§ 8. Appointment of guardian—Petition.

The jurisdiction of probate courts in the matter of the guardianship of insane persons is as indisputable as its jurisdiction in the matter of the guardianship of minors or any other class. *State v. Wilcox*, 24 Minn. 148.

A petition alleging that the party for whom the guardian is desired "is mentally incompetent," "and has been for some time past," is sufficient to give the court jurisdiction. *Norton v. Sherman*, (Mich.) 25 N. W. Rep. 510.

§ 10. Hearing—Appointment.

As to a finding of the jury sufficient to sustain the appointment of a guardian, see *Norton v. Sherman*, (Mich.) 25 N. W. Rep. 510.

***§ 12a. Inebriates under guardianship—Commitment to hospital.**

That when any person is, or hereafter shall be, under guardianship on account of excessive drinking, and a verified petition by the guardian of such person, or by the chairman of the board of county commissioners of the county in which such person resides, or any relative of such person, showing that such person is a proper subject for medical treatment on account of excessive drinking, shall be presented to the probate court appointing such guardian, then such probate court shall cause the person so alleged to be a proper subject for medical treatment to be examined by a jury consisting of three reputable physicians, to ascertain the fact whether said person is a proper subject for medical treatment on account of excessive drinking; and if such person is

*Orphan asylums as guardians, see *ante*, c. 34, § 181.

found to be such proper subject for medical treatment on account of excessive drinking, upon a written certificate of the probate judge, directed by a majority of the jury, the probate judge shall issue duplicate warrants committing such person to the special department for the treatment of inebriates of the second hospital for the insane, in care and custody of the superintendent of said hospital, and shall place the warrants in the hands of the sheriff, or some other suitable person, whom he shall authorize to convey said person, so found to be a proper subject for medical treatment, to said hospital.

Such warrant may be in the following language:

State of Minnesota, County of _____, ss.:

To superintendent of second hospital for insane at Rochester, Minnesota: _____ having been, upon examination, found to be a proper subject for medical treatment on account of excessive drinking, you are therefore required to receive _____ into the special department of said hospital for the treatment of inebriates, and keep _____ there until legally discharged.

In witness whereof I have hereunto set my hand and affixed the seal of the probate court this _____ day of _____, 18—.

[Seal.] _____, Judge of Probate.

The duplicate warrant shall be filed in the office of the superintendent, and the original shall be returned with the superintendent's indorsement to the judge of probate and filed in his office: *provided*, that in all cases when the application shall be made as aforesaid by any person other than the guardian, such guardian shall have such reasonable notice of the hearing upon such application as in the judgment of the judge of probate the justice of the case requires. (1883, c. 126, § 1.)

***§ 12b. Same—Discharge from hospital.**

Patients committed under this act may be discharged from the hospital in the same manner as persons committed to the insane hospital. (*Id.* § 2.)

***§ 13. Schedule of ward's property.**

That when any person has been, or hereafter is, appointed guardian of any person, said guardian shall, within three months after the passage of this act, if already appointed, and within three months after his appointment, if hereafter appointed, make and file in the probate court by which the appointment is made a schedule of all the property belonging to the estate of such person. (1876, c. 77, § 1, *as amended* 1885, c. 105, § 1.)

***§ 14. Claims—Hearing—Notice.**

Upon the filing of such schedule, the probate judge shall make an order appointing a time and place when and where he will hear, examine, and allow claims against the estate of such person, which have vested at and prior to the appointment of such guardian, which time shall be not less than six, nor more than twelve, months from the time of making said order in the first instance, and shall cause a copy of said order to be served upon the next of kin of such person by posting it in four public places in said county, and a publication thereof for a period of four weeks in some newspaper printed and published in the county where such person resides, or by personal service of the said order upon them at least ten days before the day appointed for such examination, as the judge shall determine. (1876, c. 77, § 2, *as amended* 1885, c. 105, § 1.)

***§ 17. Same—Presentment—Limitation.**

Every person having a claim against any person proper to be allowed, as hereinbefore provided, who shall not, after the publication of notice as hereinbefore required, present his claim to the court within the time limited by

the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever. (1876, c. 77, § 5, as amended 1885, c. 105, § 1.)

***§ 18. Action against guardian.**

No action shall be instituted against the guardian of any person except for the recovery of real estate or the possession of personal property; nor any attachment or execution be issued against the estate of any person under guardianship until after the expiration of the time allowed for the payment by the guardian of claims allowed by the court, as aforesaid. (1876, c. 77, § 6, as amended 1885, c. 105, § 1.)

***§ 19. Application of laws.**

The right of appeal, the time for the payment of claims allowed by the court, and contingent claims and the distribution of assets among the creditors of any person under guardianship, shall be governed by the same rules applicable in proceedings for the payment of debts of a deceased person, substituting the probate court for the commissioners, and the guardian for the executor and administrator: *provided*, that the provisions of said sections fourteen, seventeen, eighteen, and nineteen shall not apply to minors under guardianship. (1876, c. 77, § 7, as amended 1885, c. 105, § 1.)

OF PERSONS OUT OF THE STATE.

§ 21. (Sec. 13.) Petition—Notice—Hearing.

The notice is jurisdictional, and it is only upon notice that the judge of probate is authorized to appoint. *Davis v. Hudson*, 29 Minn. 27; 11 N. W. Rep. 136.

A probate court of this state may properly appoint a guardian for a non-resident minor, as respects any estate which the minor may have in the county where such probate court is established. If a general guardian be appointed in such circumstances, the appointment is good to the extent of the minor's estate within the jurisdiction in which it is made. *Id.*

§ 22. (Sec. 14.) Powers and duties.

See *Davis v. Hudson*, *supra*.

GENERAL PROVISIONS.

§ 27. (Sec. 17.) Guardian's bond.

Where the guardian is also administrator, he may charge himself as guardian with the funds to which the heir is entitled on distribution, though without an order of the probate court, and will thereby bind his sureties upon his guardian's bond. *Scott's Account*, 36 Vt. 297.

The theory of the law of guardianship is that the guardian shall settle with the judge of probate, or with the ward, if of full age, or with his legal representatives, and, upon settlement, pay over and deliver all the property in his hands belonging to the ward, including all moneys due; or that the ward shall have his action upon his guardian's bond for breach of the condition to settle and pay over and deliver. *Jacobs v. Fouse*, 23 Minn. 51.

§ 28. (Sec. 18.) Inventory—Appraisal—Accounting.

As to correction of inventory, see *Martin v. Sheridan*, (Mich.) 8 N. W. Rep. 822.

A guardian may sell to a *bona fide* purchaser the personal property of his ward without any leave of court. *Humphrey v. Buisson*, 19 Minn. 221, (Gil. 132.)

See *Jacobs v. Fouse*, *supra*.

§ 29. (Sec. 19.) Payment of debts.

A creditor of a spendthrift, under guardianship, has a right to be heard in the matter of allowing the guardian's account, and, if aggrieved, has a right to appeal from the judgment of the probate court upon such accounting. No previous allowance of his claim by the probate judge or by commissioners is required in order to give him the status of creditor. *In re Hause*, 32 Minn. 155, 19 N. W. Rep. 973.

§ 30. (Sec. 20.) Ward's estate — Powers and duties of guardian.

As to discretion of the guardian in respect to board for, and education of, the ward, see *Gott v. Culp*, (Mich.) 7 N. W. Rep. 767. See, also, *In re Mellis*, (Iowa,) 20 N. W. Rep. 486.

As to a charge by a guardian for the support of the ward whom he had taken into his family, see *Moyer v. Fletcher*, (Mich.) 23 N. W. Rep. 198; *Latham v. Myers*, (Iowa,) 10 N. W. Rep. 924; *In re Besondy*, 32 Minn. 385, 20 N. W. Rep. 366.

***§ 46. Accounting.**

Guardians of minor children, spendthrifts, insane persons, and all persons under guardianship, shall be required to render an account, on oath, of the property, money, and effects in their hands, or which shall have come to their hands, as such guardian, and all proceeds and interest derived therefrom, and the management and disposition thereof, within one year after their appointment, or within one year from the passage of this act, and at such other times as the judge of probate of the county having jurisdiction of the person and estate of their said wards, may require. (1875, c. 38, § 1, *as amended* 1885, c. 32.)

***§ 47. Order for examination of account — Service—Publication.**

An order appointing a time and place for examining an account filed by a guardian is sufficiently served on him by publication under this section. If it is procured by him, he must take notice of its contents. *Brown v. Huntsman*, 32 Minn. 466, 21 N. W. Rep. 555.

The failure of the probate court to appoint guardians *ad litem* for the infant legatees is not fatal to the validity and conclusiveness of the judgment upon accounting. The statute does not require this. *Balch v. Hooper*, 32 Minn. 162, 20 N. W. Rep. 124.

CHAPTER 61.

MARRIAGE.

§ 1. Marriage a civil contract.

A mutual agreement between competent parties, *per verba de presenti*, to take each other for husband and wife, deliberately made and acted upon by living together professedly in that relation, is sufficient, without any formal solemnization or ceremony, to give it validity in law. *State v. Worthingham*, 23 Minn. 529.

§ 4. Marriages, by whom solemnized.

Marriages may be solemnized by any justice of the peace in the county in which he is elected; and, throughout the state, by any judge of a court of record, the superintendent of the department for the deaf and dumb in the Minnesota Deaf, Dumb, and Blind Institute, or any ordained minister of the gospel, in regular communion with any religious society. (*As amended* 1885, c. 38.)

§ 11. Record and certificate of marriage.

Every person solemnizing a marriage shall make a record thereof, and within one month make and deliver to the clerk of the district court of the county where the marriage took place, or of the county to which said county is attached for judicial purposes, a certificate under his hand containing the particulars mentioned in the preceding section, which certificate shall be filed and