

James C. Child
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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able out of the real property devised, before resorting to the personal property, or to any other real property descended or devised.

Devises subject to action same as heirs.

(31.) SEC. XXXI. The provisions of this chapter, with regard to heirs, and to proceedings by and against them, and to judgments and executions against them, are applicable to action and proceedings against devisees, and they must in like manner be jointly sued.

Child how after making will provided for.

(32.) SEC. XXXII. In cases where, by the provisions of any statute, a child, born after the making of a will, is entitled to succeed to a portion of the testator's real and personal property, such child shall have the same rights and remedies to compel a distribution of the personal property, and a partition of the real property, as are provided for next of kin, and for heirs, and shall in all respects, be liable in the same manner, and to the same extent, to the creditors of his ancestor, in respect to the personal property delivered to him, and the real property descended to him, as is herein prescribed in relation to next of kin, and heirs, and such child may recover of the legatees and devisees who may have received or taken any real or personal property of the testator, the share or portion thereof to which he may be entitled.

Witness to will who is devisee.

(33.) SEC. XXXIII. The provisions of the last two sections, relative to a child born after the making of a will, apply equally to every person, who being a witness to a will, is entitled, by the provisions of any statute, to recover a portion of the real or personal property of the testator from the legatees and devisees named in such will.

An Act authorizing Foreign Administrators or Executors to sue in the Courts of the State.

✓ [Passed February 27, 1858.] c. 12

Foreign administrators, &c., may sue on filing copy of their appointment.

(34.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That any administrator or executor duly appointed in any other state or county, may commence and prosecute any action or suit in law, or equity, in any court of the state, in his capacity of executor or administrator, in like manner and under like restrictions as a resident may be permitted to sue: *provided*, that before commencing any action or suit, an authenticated copy of his appointment as such executor or administrator must be filed in the probate court of the county, in which such action or suit shall be commenced.

Take effect when.

(35.) SEC. II. This act shall take effect from and after its passage.

CHAPTER 69.

ACTIONS ON OFFICIAL SECURITIES.

SECTION

1. Official bonds to the territory how construed.
2. Any person aggrieved may prosecute.
3. Leave of court must be obtained.

SECTION

4. A judgment in favor of one party, how to affect others.
5. Amount recovered not to exceed undertaking.

<p>SECTION</p> <p>6. Execution to be first enforced against principal.</p> <p>7. Amount collected to be limited by the undertaking.</p> <p>8. Fines and forfeitures how prosecuted.</p> <p>9. Amount to be recovered in certain cases.</p> <p>10. Effects of recovery by collusion.</p> <p>11. Fines when not provided for must be paid into the treasury.</p> <p>12. Who may sue in official capacity.</p> <p>13. In what cases official persons may sue.</p>	<p>SECTION</p> <p>14. When special department of organization sues.</p> <p>15. How action may be brought.</p> <p>16. How action may be brought.</p> <p>17. When judgment against county to be presented to commissioners.</p> <p>18. Judgment must be included in tax list.</p> <p>19. Treasurer must pay judgment against county.</p> <p>20. Execution not to issue except on leave of court.</p>
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[Chapter 79, Revised Statutes.]

(1.) SEC. I. The official bonds, or other security of a public officer, to the territory, or the United States, whether with or without securities, is to be construed as security to the territory, and also to all persons severally, for the official delinquencies against which it is intended to provide. If it be a county, city, village, or other municipal body, it is in like manner to be construed as security severally, to all persons intended to be secured, as well as to the body politic named therein.

Official bonds to the territory how construed.

(2.) SEC. II. When a public officer by official misconduct or neglect of duty, forfeits his official bonds, or renders his sureties liable upon an official security, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer and his sureties, to recover the amount to which he may be entitled by reason of the delinquency.

Any person aggrieved may prosecute.

(3.) SEC. III. Before an action can be brought by a plaintiff, other than the territory or body politic named in the security, leave must be obtained of the district court, or a judge thereof, within the district or county where the action is triable, and leave can only be granted on a production of a copy of the bond, and an affidavit showing the delinquency, and if the delinquency be such, as that if established on the trial, it would entitle the party applying to recover in the action, leave must be granted.

Leave of court must be obtained.

(4.) SEC. IV. A judgment in favor of a party for one delinquency, does not preclude the same or another party, from an action on the same security for another delinquency.

A judgment in favor of one party, how to effect others.

(5.) SEC. V. If it appears in an action against a surety, on an official security, that he has already been obliged, by reason of prior recoveries against him on the same, to pay amounts, which in the aggregate are equal to the extent of his undertaking, or that by reason of the insolvency of his principal, he will be obliged to pay to that extent, on judgments already recovered against the surety, the recovery against a surety must in all such cases be limited by the amount of his undertaking, except as otherwise provided by law.

Amount recovered not to exceed undertaking.

(6.) SEC. VI. Upon the execution issued on a judgment, recovered upon the official security of a public officer, against him and a surety, there must be indorsed a direction to the officer to whom the execution is delivered, to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

Execution to be first enforced against principal.

(7.) SEC. VII. If there be several judgments, on which executions are, at the same time, in the sheriff's hands, against a public officer, and his sureties, amounting in the aggregate to a sum greater than that for which the sureties are liable, the court must, on their application, limit the amount to be collected of them, to the amount of their respective liabilities, and may cause the same to be applied as the judgment or execution, in proportion to such amount.

Amount collected to be limited by the undertaking.

(8.) SEC. VIII. Actions for fines and forfeitures, may be prosecuted

Fines and for-

feitures how prosecuted.

by the officers or persons to whom they are by law given, or who, by special provision of law, are authorized to recover them; and whether prosecuted by public officers, or by private persons, are governed by the same rules as other civil actions, except as otherwise specified in this chapter.

Amount to be recovered in certain cases.

(9.) SEC. IX. When an action is brought for a penalty, which is limited by law, not to exceed a certain amount, the action may be brought for that amount, and upon trial, the amount recovered must be determined in proportion to the offense.

Effects of recovery by collusion.

(10.) SEC. X. A recovery of a judgment, for a penalty or forfeiture, by collusion between the parties, with intent to save the defendant from the consequences contemplated by law, in case where the penalty of forfeiture is given wholly or partly to the prosecutor, does not prevent the recovery of the same, by another person.

Fines when not provided for must be paid into the treasury.

(11.) SEC. XI. Fines and forfeitures, not specially granted or appropriated by law, must be paid into the treasury of the territory; and whenever, by the provision of law, any property, real or personal, is forfeited to the territory, or to any officer, for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer, in the district court of any county where such property may be.

ACTIONS BY AND AGAINST CERTAIN PUBLIC OFFICERS AND PUBLIC BODIES.

Who may sue in official capacity.

(12.) SEC. XII. The following officers may prosecute actions in their official capacity:

- The board of county commissioners of a county;
- The trustees of a school district;

Any organized department of a municipal corporation, having a board of officers in charge of a particular branch of public service, and specially authorized by statute to prosecute. In such action, the plaintiffs may be designated by their official name, or the action may be brought in the name of the body in whose behalf the action is brought.

In what cases official persons may sue.

(13.) SEC. XIII. Every such action be either,

1. On a contract made with them in their official capacity; or,
 2. To enforce a liability, or a duty enjoined by law in favor of such officers, or the body represented by them; or,
 3. To recover a penalty or forfeiture given to such officers or body;
- or,
4. To recover damages for an injury to their official rights or property.

When special department of organization sues.

(14.) SEC. XIV. When an organized department of a municipal corporation is authorized by statute to sue, it shall, for purposes of the action, be deemed the real party in interest, though the corporation of which it is the department be the party ultimately to be benefited by the action, or responsible for any loss incurred therein.

How action may be brought.

(15.) SEC. XV. An action may be brought against the officers mentioned in section twelve, in their official capacity, or against the body they represent, either upon a contract made by such officers in their official capacity, and within the scope of their authority, or for an injury to the rights of the plaintiff, arising from some act or omission of such officers, or of the body represented by them.

How action may be brought.

(16.) SEC. XVI. The actions authorized by this chapter, may be brought by or against the officers mentioned in section twelve, upon a cause of action which accrued during the term of their predecessors, as

well as during their own term of office, and when brought may be continued by or against the successors in office, of the parties whose names may for that purpose be substituted in the action.

(17.) SEC. XVII. If judgment for the recovery of money be rendered against a county, or the board of commissioners of a county, on account of the liability of such county, and the judgment be not satisfied, or proceedings thereon stayed by appeal or otherwise, before the next annual meeting of the board of commissioners of the county, a certified copy of the docket of the judgment may be presented to the board of commissioners at their annual meeting.

When judgment against county to be presented to commissioners.

(18.) SEC. XVIII. The board of commissioners must thereupon cause the amount due on the judgment, with interest from the time of the recovery until the first Monday in February after such meeting, to be added to the tax of the county for whose liability the same was recovered, and the same must be collected as other contingent charges of the county.

Commissioners must include it in the tax list.

(19.) SEC. XIX. The treasurer of a county against which or against whose officers a judgment has been recovered for a liability of the county, the execution of which has not been stayed upon appeal, must upon demand, and the delivery to him of the certified copy of the docket of the judgment, pay the amount due thereon, if there be sufficient money of the county in his hands not otherwise specifically appropriated. If he fail to do so, he shall be personally liable for the amount, unless the collection thereof be afterwards stayed upon appeal.

Treasurer must pay judgment against county.

(20.) SEC. XX. Execution cannot be issued on a judgment mentioned in sections seventeen and nineteen without leave of the court, nor must leave be granted until the court is satisfied that payment has been demanded of the proper county officers, as provided in the last two sections, and that the board of commissioners have wrongfully omitted to include the amount in the tax list, as provided in section eighteen; when execution is issued, the property of the county only is liable thereon.

Execution not to issue except on leave of court.

CHAPTER 70.

ACTIONS TO VACATE CHARTERS AND LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE.

SECTION

1. Scire facias and quo warranto abolished, action substituted.
2. Action to vacate charter of corporation.
3. In what cases action may be brought.
4. Leave to be first obtained from court.
5. Action for usurping office or franchise.
6. Action to vacate letters patent.
7. When private person may be joined as plaintiff.
8. When for usurping office and receiving fees defendant may be arrested.

SECTION

9. Judgment may determine right of claimant.
10. When claimant may enter upon office.
11. Punishment for refusal to deliver books.
12. Person entitled may recover damages.
13. When several claimants to office all may be included.
14. Judgments in actions under this chapter.
15. Corporation may be dissolved.
16. Costs may be ordered.
17. Injunction and receiver appointed.
18. Record when filed with secretary.