

21079
65

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.

ONE HUNDRED COPIES ORDERED PRINTED.



SAINT PAUL:

FREDERICK DRISCOLL, STATE PRINTER.

(PRESS PRINTING COMPANY.)

1865.

27

D

MINNESOTA STATUTES 1863

670 ACTIONS BY OR AGAINST EXECUTORS. [CHAP. LXXVII.]

5 pointing any receiver, to ascertain the respective liabilities
6 of such directors and stockholders, and enforce the same by
7 its judgment as in other cases.

c67

C. S. p. 608, Sect. 18.
Amended.

1 SECT. 20. Upon a final judgment in any such action, to
2 restrain a corporation, or against directors or stockholders,
3 the court shall cause a just and fair distribution of the prop-
4 erty of such corporation, and of the proceeds thereof to be
5 made among its creditors.

C. S. p. 608, Sect. 19.

1 SECT. 21. In all cases in which the directors or other
2 officers of a corporation, or the stockholders thereof, are made
3 parties to an action in which a judgment is rendered, if the
4 property of such corporation is insufficient to discharge its
5 debts, the court shall proceed to compel each stockholder to
6 pay in the amount due and remaining unpaid on the shares
7 of stock held by him, or so much thereof as is necessary to
8 satisfy the debts of the company.

C. S. p. 609, Sect. 20.

1 SECT. 22. If the debts of the company remain unsatis-
2 fied, the court shall proceed to ascertain the respective lia-
3 bilities of the directors or other officers, and of the stock-
4 holders, and to adjudge the amount payable by each, and
5 enforce the judgment as in other cases.

C. S. p. 609, Sect. 25.
Amended.

1 SECT. 23. Whenever any action is brought against any
2 corporation, its directors or other superintending officers
3 or stockholders, according to the provisions of this chapter,
4 the court, whenever it appears necessary or proper, may or-
5 der notice to be published, in such manner as it shall direct,
6 requiring all the creditors of such corporation to exhibit
7 their claims and become parties to the action within a rea-
8 sonable time, not less than six months from the first publi-
9 cation of such order, and in default thereof to be precluded
10 from all benefit of the judgment which shall be rendered in
11 such action, and from any distribution which shall be made
12 under such judgment.

CHAPTER LXXVII.

ACTIONS BY OR AGAINST EXECUTORS, ADMINIS- TRATORS, AND HEIRS.

c68

C. S. p. 610, Sects. 1
& 2, combined &
amended.

1 SECTION 1. A cause of action arising out of an injury to
2 the person, dies with the person of either party, except as
3 provided in the next section. All other causes of action,

CHAP. LXXVII.] ACTIONS BY OR AGAINST EXECUTORS. 671

4 by one against another, whether arising on contract or not,
 5 survive to the personal representatives of the former, and
 6 against the personal representatives of the latter.

1 SECT. 2. When death is caused by the wrongful act or
 2 omission of any party, the personal representatives of the
 3 deceased may maintain an action, if he might have main- C. S. p. 610, Sect. 3.
 4 tained an action, had he lived, for an injury caused by the
 5 same act or omission; but the action shall be commenced
 6 within two years after the act or omission, by which the
 7 death was caused; the damages thereon cannot exceed five
 8 thousand dollars, and the amount recovered, is to be for
 9 the exclusive benefit of the widow and next of kin, to be
 10 distributed to them in the same proportions, as the personal
 11 property of the deceased person.

c 68

1 SECT. 3. When a judgment is taken against an admin- C. S. p. 610, Sect. 5.
 2 istrator or executor, upon failure to answer, it is not to be
 3 deemed evidence of assets in his hands, unless it appears
 4 that the complaint alleged assets, and was personally served
 5 on him.

1 SECT. 4. The real property which belonged to a deceased C. S. p. 611, Sect. 8.
 2 person, is not bound or in any way affected by a judgment
 3 against his executors or administrators, nor liable to be
 4 sold, by virtue of an execution issued upon such judgment.

1 SECT. 5. No person is liable to an action as executor of C. S. p. 611, Sect. 10.
 2 his own wrong, for having taken, received, or interfered
 3 with the property of a deceased person; but is responsible
 4 to the executor, as general or special administrator of such
 5 deceased person, for the value of all property so taken or
 6 received, and for all damages caused by his acts, to the es-
 7 tate of the deceased.

1 SECT. 6. Any administrator or executor duly appointed
 2 in any other state or country, may commence and prosecute
 3 any action in any court of this state, in his capacity of exe- C. S. p. 614, Sect. 34.
 4 cutor or administrator, in like manner and under like res-
 5 trictions as a resident may do; *provided*, that before com-
 6 mencing any action, an authenticated copy of his appoint-
 7 ment as such executor or administrator is filed in the pro-
 8 bate court of the county in which such action is to be com-
 9 menced.

1 SECT. 7. The next of kin of a deceased person, are liable C. S. p. 611, Sect. 11.
 2 to an action by a creditor of the estate, to recover the dis-
 3 tributive shares received out of such estate, or so much
 4 thereof as may be necessary to satisfy his debt; the action

672 ACTIONS BY OR AGAINST EXECUTORS. [CHAP. LXXVII]

5 may be against all the next of kin jointly, or against any one
6 or more of them.

c 68
C. S. p. 611, Sect. 12. 1 SECT. 8. In such action, the plaintiff may recover the
2 value of all the assets received by all the defendants in the
3 action, if necessary to satisfy his demand; and the amount
4 of the recovery shall be apportioned among the defendants,
5 in proportion to the value of the assets received by each;
6 and no allowance or deduction can be made from such
7 amount, on account of there being other relatives to whom
8 assets have also been delivered.

C. S. p. 611, Sect. 13. 1 SECT. 9. Any one of the next of kin, against whom a
2 recovery is had pursuant to the last section, may maintain
3 an action against all the other relatives of the testator, to
4 whom any such assets have been paid jointly, or any one or
5 more of them, for a just and equal contribution, and may
6 recover of each defendant such amount as bears the same
7 proportion to the whole sum collected of the plaintiff, as the
8 value of the assets delivered to such defendant, bears to the
9 value of all the assets delivered to all the relations of the de-
10 ceased.

C. S. p. 611, Sect. 14. 1 SECT. 10. Legatees are liable to an action by a creditor
2 of the testator, to recover the value of a legacy received by
3 them. The action may be brought against all, or any one or
4 more of the legatees. In such action, the plaintiff cannot
5 recover unless he shows:
6 *First.*—That no assets were delivered by the executor or
7 administrator of the deceased, to his heirs or next of kin; or,
8 *Second.*—That the value of such assets has been recover-
9 ed by some other creditor; or,
10 *Third.*—That such assets are not sufficient to satisfy the
11 demands of the plaintiff; and in the last case, he can re-
12 cover only the deficiency.
13 The whole amount which the plaintiff can recover, shall
14 be apportioned among all the legatees of the testator, in
15 proportion to the amount of their legacies respectively, and
16 his proportion can only be recovered of each legatee.

C. S. p. 612, Sect. 15. 1 SECT. 11. If an action is brought against several next of
2 kin jointly, or against several legatees jointly for assets de-
3 livered to them, and a recovery had against them, the costs
4 of such action shall be apportioned among the several de-
5 fendants, in proportion to the amount of the damages, re-
6 covered against each of them.

C. S. p. 612, Sect. 16. 1 SECT. 12. In case a judgment against several next of
2 kin of a testator, or against several legatees, the payment on
3 satisfaction of the amount recovered against any one of the

MINNESOTA STATUTES 1863

CHAP. LXXVII.] ACTIONS BY OR AGAINST EXECUTORS. 673

4 defendants, discharges such defendant, and exonerates him
5 and his property from the judgment.

1 SECT. 13. Heirs and devisees are liable to an action by C. S. p. 612, Sect. 17. c 68
2 a creditor of a deceased person, to recover the debt, to the
3 extent of the value of any real property inherited by, or de-
4 vised to them; if such action is against the heirs, all the
5 heirs who are liable shall be made parties to the action.

1 SECT. 14. But the heirs are not liable for the debt, un-
2 less it appears that the personal assets of the deceased were C. S. p. 612, Sect. 19.
3 not sufficient to discharge it, or that after due proceedings
4 before the probate court, the creditor is unable to collect
5 the debt, from the personal representatives of the deceased,
6 or from his next of kin, or legatee; if the personal assets
7 were sufficient to pay a part of the debt, or in case a part
8 thereof has been collected, as mentioned in the last section,
9 the heirs of such deceased person are liable for the residue.

1 SECT. 15. But the last section does not affect the lia-
2 bility of heirs for a debt, of their ancestors, where such C. S. p. 612, Sect. 19.
3 debt was by his will expressly charged exclusively on the
4 real property descended to such heirs, or where such debt
5 is by the will expressly directed to be paid out of the real
6 property descended before resorting to the personal prop-
7 erty.

1 SECT. 16. When the heirs, devisees or legatees have re-
2 ceived real or personal estate, and are liable for any debts C. S. p. 446, Sect. 53. c 44
3 under the provisions of law, they shall be liable in propor-
4 tion to the estate they may have respectively received; and
5 a creditor shall have a right to recover his claim against a
6 part or all of such heirs, devisees or legatees, to the amount
7 of the estate they have respectively received; but no action
8 shall be maintained unless commenced within one year from
9 the time the claim is allowed or established.

1 SECT. 17. If by the will of the deceased any part of his
2 estate or any devisees or legatees shall be made exclusively C. S. p. 446, Sect. 54.
3 liable for the debt, the devisees or legatees shall be liable
4 to contribute among themselves only according to the will.

1 SECT. 18. If all the persons liable for the payment of
2 any such debt, shall not be included in the action as defend- C. S. p. 446, Sect. 55.
3 ants, the action shall not thereby be in any way dismissed
4 or barred, but the court before which it is pending, may
5 order any other parties brought in, by any proper process,
6 and may allow such amendments as may be necessary to
7 make them defendants, on such terms as the court shall
8 prescribe.

MINNESOTA STATUTES 1863

674 ACTIONS BY OR AGAINST EXECUTORS. [CHAP. LXXVII.]

c44

C. S. p. 447, Sect. 56. 1 SECT. 19. If more than one person is liable as aforesaid,
2 and the creditor brings an action against all or a part of the
3 persons so liable, and the persons liable dispute the debt or
4 the amount claimed, the district court may order an issue
5 to be formed, and direct that the amount may be ascertained
6 by a jury, and said court shall ascertain and determine how
7 much each is liable to pay, and may award execution there-
8 for.

C. S. p. 447, Sect. 57. 1 SECT. 20. If any of the heirs, devisees or legatees die
2 without having paid his just share of the debts, his estate
3 shall be liable therefor, as for his own debt, to the extent
4 to which he would have been liable if living.

C. S. p. 447, Sect. 58.
Amended. 1 SECT. 21. When any of the heirs, devisees or legatees
2 pays more than his share of such debt, the other persons
3 liable shall be holden and compelled to contribute their just
4 proportion of the same.

c68

C. S. p. 612, Sect. 20.
Amended. 1 SECT. 22. In cases where the next of kin, legatees, heirs
2 and devisees are liable for the debts of their ancestors, as
3 herein provided, they shall give preference in the payment
4 of the same, and are liable therefor, in the following order:
5 *First.*—Debts entitled to a preference under the laws of
6 the United States;
7 *Second.*—Judgments against the ancestor or testator, ac-
8 cording to the priority thereof, respectively;
9 *Third.*—Debts due to other creditors.

C. S. p. 612, Sect. 21. 1 SECT. 23. No preference can be given by any next of
2 kin, legatee, heir, or devisee, to one debt over another
3 of the same class, except one specified in the second subdi-
4 vision of the last section; nor is a debt, due and payable, en-
5 titled to a preference over a debt not due; nor does the com-
6 mencement of an action against any next of kin, legatee,
7 heir, or devisee, for the recovery of a debt, entitle it to
8 preference over others of the same class.

C. S. p. 612, Sect. 22. 1 SECT. 24. The next of kin, legatees, heirs and devisees
2 may show that there are debts of a prior class, unsatisfied;
3 or that there are unpaid debts of the same class with that
4 on which the action is brought; and if it appears that the
5 value of the personal property delivered to them, or of the
6 real estate descended or devised to them, does not exceed
7 the debts of a prior class, judgment shall be rendered in
8 their favor.

C. S. p. 613, Sect. 23. 1 SECT. 25. If the personal property delivered to such
2 next of kin or legatee, or if the real estate, descended or
3 devised to such heir, and devisee, exceeds the amount of

CHAP. LXXVII.] ACTIONS BY OR AGAINST EXECUTORS. 675

4 debts which are entitled to a preference over the debt for
5 which the action is brought, judgment shall be rendered
6 against them only for such a sum as bears a just proportion
7 to the other debts of the same class with that on which the
8 action is brought.

1 SECT. 26. If a debt of a class prior to that on which the
2 action is brought, or of the same class, is paid by any next
3 of kin, legatees, heirs, or devisees, they may prove such pay-
4 ment, and the amount of the debt so paid shall be estimated
5 in ascertaining the amount to be recovered, in the same
6 manner as if such debts were outstanding and unpaid, as
7 prescribed in the last two sections. c 68

1 SECT. 27. If it appears that the real property so de-
2 scended was not alienated by the heir at the time of the
3 commencement of the action, or if the heir confesses the
4 claims and shows what real property has descended to him,
5 the court shall order that the debt of the plaintiff, or the
6 proportion thereof which he is entitled to recover, be levied
7 of the real property so descended, and not otherwise; and
8 every judgment rendered in such action has preference as a
9 lien on the real property descended, to any judgment ob-
10 tained against such heir personally, for a debt on demand
11 in his own right. C. S. p. 613, Sect. 24.

1 SECT. 28. When it appears in the action, that before
2 the commencement thereof, the heir has claimed the real
3 property descended to him, or any part thereof, he shall be
4 personally liable for the value of the property so aliened,
5 and judgment may be rendered therefor, and execution
6 awarded, as in actions for his own debts. But no real pro-
7 perty, aliened in good faith by an heir, before action com-
8 menced against him, is liable to execution, or in any man-
9 ner affected by a judgment against him. C. S. p. 613, Sect. 25.

1 SECT. 29. In actions brought against several heirs joint-
2 ly, or several devisees jointly, the amount which the plain-
3 tiff recovers shall be apportioned among all the heirs of the
4 ancestor, or among all the devisees of the testator, in pro-
5 portion to the value of the real property descended or de-
6 vised, and such proportion only can be recovered of each
7 heir or legatee. C. S. p. 613, Sect. 27.

1 SECT. 30. Devisees made liable, by the foregoing pro-
2 visions of this chapter, to the creditor of their testator, are
3 not so liable, unless it appears that his personal assets, and
4 the real property of the testator descended to his heirs,
5 were insufficient to discharge the debt; or unless it appears
6 that after due proceedings before the probate court, the C. S. p. 613, Sect. 28.

676 ACTIONS BY OR AGAINST EXECUTORS. [CHAP. LXXVII.]

7 creditor has been unable to recover the debt, or any part
8 thereof; from the personal representatives of the testator,
9 or from his next of kin, or legatees, or from his heirs.

c 68

c. s. p. 613, Sect. 23.

1 SECT. 31. In either of the cases specified in the last sec-
2 tion, the amount of the deficiency of the personal assets,
3 and of the real property descended to satisfy the debt of the
4 plaintiff, and the amount which such plaintiff may have
5 failed to recover from the personal representatives of the
6 testator, his next of kin, legatees and heirs, may be recov-
7 ered of the devisees of such testator, to the extent of the
8 real property devised to them respectively.

c. s. p. 613, Sect. 23.

1 SECT. 32. But the last two sections do not affect the
2 liability of devisees, for a debt of their testator, where such
3 debt was, by his will, expressly charged exclusively upon
4 the real property devised, or by the terms of the will made
5 payable exclusively by such devisee, or made payable out of
6 the real property devised, before resorting to the personal
7 property, or to any other real property descended or de-
8 vised.

c. s. p. 614, Sect. 31.

1 SECT. 33. The provisions of this chapter, with regard
2 to heirs, and to proceedings by and against them, and to
3 judgments and executions against them, are applicable to
4 actions and proceedings against devisees, and they must in
5 like manner be jointly sued.

c. s. p. 614, Sect. 32.

1 SECT. 34. In cases where, by the provisions of any sta-
2 tute, a child, born after the making of a will, is entitled to
3 succeed to a portion of the testator's real and personal pro-
4 perty, such child shall have the same rights and remedies
5 to compel a distribution of the personal property, and a
6 partition of the real property, as are provided for next of
7 kin, and for heirs, and shall in all respects be liable in the
8 same manner, and to the same extent, to the creditors of
9 his ancestor, in respect to the personal property delivered
10 to him, and the real property descended to him, as is herein
11 prescribed in relation to next of kin, and heirs, and such
12 child may recover of the legatees and devisees who may
13 have received or taken any real or personal property of the
14 testator, the share or portion thereof to which he may be
15 entitled.

c. s. p. 614, Sect. 33.

1 SECT. 35. The provisions of the last two sections, rela-
2 tive to a child born after the making of a will, apply equally
3 to every person, who being a witness to a will, is entitled,
4 by the provisions of any statute, to recover a portion of the
5 real or personal property of the testator from the legatees
6 and devisees named in such will.