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# Summary Probate Proceedings

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## BENCH AND BAR

## SUMMARY PROBATE PROCEEDINGS

By ALBIN S. PEARSON\*

THE Minnesota Probate Code, Laws of 1935, Chapter 72, like practically every other important statute of general application, is a compromise of many divergent views. The revision committee did its best to express what it thought to be the considered opinion of a majority of the lawyers of the state and intended to make as few changes as possible in the fundamental law. As the revisers were instructed by the Minnesota State Bar Association to simplify, condense, clarify, and rearrange the probate statutes, it was necessary to change the phraseology in many instances. Therefore, it is apparent that the object of the revision cannot be achieved to its fullest extent except through a lapse of time, intense study by the lawyers, construction by the courts, and perhaps some experimentation.

Some of the confusion and uncertainty existing prior to the enactment of the Code has not been eliminated. Several old statutes which were unsatisfactory were incorporated into the Code for various reasons. Some of the sections which may present difficult problems are: (a) section 2 (4)<sup>1</sup> relating to the amendment of final orders;<sup>2</sup> (b) the last sentence of section 27c<sup>3</sup> relating to charges against the homestead; (3) section 67<sup>4</sup> relating to foreign representatives; (d) sections 101<sup>5</sup> and 107<sup>6</sup> relating to contingent claims;<sup>7</sup>

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<sup>1</sup>"To correct, modify, or amend its records to conform to the facts, and to correct its final decrees so as to include therein property omitted from the same or from administration."

<sup>2</sup>See *Re Simon's Estate*, (1932) 187 Minn. 399, 246 N. W. 31.

<sup>3</sup>"Where the homestead is disposed of by a will which does not otherwise provide, and in all cases where the homestead descends to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death. In all other cases, it shall be subject to the payment of the items mentioned in section 29. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce such lien or charge by an appropriate action in the district court."

<sup>4</sup>"Foreign Representative: Upon the filing for record in the office of the register of deeds of the proper county of an authenticated copy of his letters or other record of his authority and a certificate that the same are still in force, a representative appointed by a court of competent jurisdiction in another state or country may assign, extend, release, satisfy, or foreclose any mortgage, judgment, or lien, or collect any debt secured thereby belonging to the estate represented by him. Real estate acquired by a foreign representative on foreclosure or execution sale shall be held, sold, mortgaged, or leased pursuant to section 93."

<sup>5</sup>"Filing of Claims: All claims against a decedent arising upon contract, whether due or not due, shall be barred forever unless filed in court within the time limited. For cause shown and upon notice to the representative the court may receive, hear, and allow a claim presented before the final settlement and allowance of the representative's account and within one year after the date of the filing of the order to file claims.

"Contingent claims arising upon contract which do not become absolute

(e) section 105<sup>8</sup> relating to executions; (f) section 109<sup>9</sup> relating to secured debts; (g) section 119<sup>10</sup> relating to attorney's lien; and (h) section 125

and capable of liquidation within the time limited shall not be filed. Any such contingent claim which becomes absolute and capable of liquidation after the expiration of the time limited but before the settlement and allowance of the final account may be filed and heard on notice to the representative, if the court in its discretion shall so order, notwithstanding the provisions of section 107. If allowed it shall be paid as other claims, but only out of the assets with which the representative is chargeable at the time of the filing of such claim. No such claim shall be so filed or allowed unless administration of the estate was commenced within five years after the death of the decedent.

"Claims shall be itemized and verified and shall show the address of the claimant and all payments and offsets known to the claimant. Any such claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the representative. On or before the hearing on claims, the representative shall file a statement of all offsets claimed."

<sup>6</sup>"Actions Precluded: No action at law shall lie against a representative for the recovery of money upon any claim required to be filed by section 101. Except as provided in Section 101 with reference to contingent claims, no claim against a decedent shall be a charge upon his estate unless filed in the probate court within five years after his death and within the time limited under section 100, or extended under section 101. Nothing in this section shall be construed as preventing an action to enforce a lien existing at the date of decedent's death nor as affecting the rights of a creditor to recover from the next of kin, legatees, or devisees to the extent of the assets received, upon any claim not required to be filed by section 101, or upon any contingent claim arising upon contract which did not become absolute and capable of liquidation until after the time limited under section 100, or extended under section 101, or until five years after the death of the decedent."

<sup>7</sup>See *Re Simon's Estate*, (1934) 192 Minn. 43, 255 N. W. 241.

<sup>8</sup>"Execution on Offset: When a balance is allowed against a claimant, the court may issue execution for such balance, which shall be collected in the same manner as an execution issued out of the district court."

<sup>9</sup>"Secured Debts: When a claimant holds any security for his debt, he may file his claim, which may be allowed conditioned upon the claimant surrendering the security to the representative or exhausting the security. In either case, a report thereof shall be filed within the time fixed by the court. Upon his failure to comply with the order, the claim shall be disallowed. Upon his compliance with the order, the court shall make a final order on such claim, either allowing it in full if the security has been surrendered, or for any remaining amount found to be due on the debt if the security has been exhausted. The claim so allowed shall be paid as other debts duly proved."

<sup>10</sup>"Attorney's Lien: When any attorney at law has been retained to appear for any heir, devisee, or legatee, such attorney may perfect his lien upon the client's interest in the estate for compensation for such services as he may have rendered respecting such interest, by serving upon the representative before the decree of distribution is made, a notice of his intent to claim a lien for his agreed compensation, or the reasonable value of his services, and by filing such notice with proof of service thereof. The amount of such lien shall be determined on the hearing of the petition for partial or final distribution, and any property decreed therein to such heir, devisee, or legatee shall be subject to such lien. The representative shall satisfy such lien out of any property so decreed and by order of the court may sell so much of such property as will satisfy such claim and the expenses of sale."

relating to summary proceedings. Considerable doubt has been expressed as to the constitutionality of sections 105, 119, 191.<sup>11</sup> Because section 125 may be applied to so many estates, some observations on that section and suggestions as to the procedure thereunder may be of interest.

In most states the only purpose of appointing a special administrator is to conserve the estate until a general administrator has qualified; so his powers are extremely limited. He has no authority to sell real estate nor maintain any action to recover the same, to pay any claim, nor to settle or distribute the estate.<sup>12</sup> This appears to have been the theory of special administration in Minnesota as set forth in G.S., section 8778,<sup>13</sup> *Jones v. Minnesota Transfer Railway*,<sup>14</sup> until the enactment of Laws of 1917, chapter 251, G.S., section 8779,<sup>15</sup> which provided for distribution in special administration under extraordinary circumstances. Three days after the enactment of the latter statute and for the laudable purpose of saving time and expense but with the unfortunate result of confusion and uncertainty, Laws of 1917, chapter 289, G.S., sections 8891-8894, was enacted, setting up a new and independent procedure popularly known as "Summary Administration."

After a general administrator had qualified, there appeared to be no method whereby his discharge could be secured except by completing the administration in the regular way even though there was no property available for creditors or for distribution. If special or general administration had been commenced, summary administration, being a separate and different procedure, could not be had regardless of how necessary or expedient it might be. In the deliberations of the revision committee, no adequate

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<sup>11</sup>"Sec. 191. Disclosure Proceedings: Upon the filing of a petition by the representative or any person interested in the estate, alleging that any person has concealed, converted, embezzled, or disposed of any property belonging to the estate of a decedent or that any person has possession or knowledge of any will or codicil of such decedent or of any instruments in writing relating to such property, the court, upon such notice as it may direct, may order such person to appear before it for disclosure. Refusal to appear or submit to examination, or failure to obey any lawful order based thereon shall constitute contempt of court."

<sup>12</sup>11 R. C. L. 453, 456.

<sup>13</sup>"Special administrator.—Whenever the appointment of an executor or administrator is necessarily delayed, or for any reason the probate judge determines that it is necessary or expedient, he may, with or without notice, appoint a special administrator, to take charge of the estate so long as such judge deems it necessary, and no appeal shall be allowed from the appointment of such administrator."

<sup>14</sup>(1909) 108 Minn. 129, 121 N. W. 606.

<sup>15</sup>"Special administrator—Whenever it shall be made to appear satisfactorily to the judge of any probate court that the personal property of an intestate deceased person over the administration of whose estate said judge of probate would be entitled to jurisdiction under existing laws, consists only of such property as by existing law would be exempt from application towards the payment of debts and does not exceed in value six hundred and fifty dollars (\$650.00) such judge may appoint a special administrator, with or without notice, who shall proceed to speedily administer said estate according to the provisions of this chapter. Before entering upon his duties such special administrator shall file in the court appointing him his bond with sufficient sureties in such sum as the court may order and his oath to faithfully and lawfully administer said estate according to law."

reason was advanced to require general administration to proceed in the regular way when there was nothing to administer, nor to deny special administration if no application for general administration were pending, or if the property involved exceeded \$650.00 and could not be applied to the payment of debts under any circumstances. Therefore, the theory of distribution in special administration first adopted in Laws of 1917, chapter 251, G.S. 8779, was extended in sections 74<sup>16</sup> and 75,<sup>17</sup> and a summary administration of universal application was provided in section 125 for use in any kind of an administration at any time that a need arose.

It is stated definitely in section 74 that a special administrator may be appointed even if no petition for general administration or proof of will has been filed; while in section 75 the power of a special administrator is confined to the collection and conservation of the estate unless restricted or extended by specific order of the court. In a small estate, i.e., any estate consisting *only of personal property which in no event and under no circumstances* can be available for the payment of debts, complete administration including distribution may be had by an extension of the special administrator's powers with a minimum of expense, delay, and inconvenience; while in a very large estate, such powers may be restricted in the order of appointment and in the letters to the performance of inconsequential acts thereby avoiding the expense of the premium on a large bond which would be required if no restrictions had been imposed. When an appeal is taken from an order appointing a general administrator, the court by specific order under section 77<sup>18</sup> may prevent the termination of the power of a special administrator theretofore appointed. As many of the situations arising in special guardianships are analogous to those in special administrations, the language in section 141,<sup>19</sup> relating to the appointment, powers, and duties of a

<sup>16</sup>"Appointment: Upon a showing of necessity or expediency, the court with or without notice may appoint a special administrator whether a petition for general administration or proof of will has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special administrator."

<sup>17</sup>"Powers: A special administrator shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special administrator power to perform any or all acts in the administration of the estate, not exceeding the powers conferred by law upon general administrators."

<sup>18</sup>"Termination of Powers: Upon the granting of letters testamentary or of general administration, the power of a special administrator shall cease unless otherwise expressly ordered by the court."

<sup>19</sup>"Special Guardian: Upon a showing of necessity or expediency, the court with or without notice may appoint a special guardian of the person or estate or both of any person designated in Section 129, whether a petition for general guardianship has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special guardian. A special guardian of the person shall have charge of the person of the ward. A special guardian of the estate shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special guardian power to perform any or all acts in the

special guardian, is very similar to that concerning a special administrator.

Section 125 has been substituted for Laws of 1917, chapter 289, G.S., sections 8891-8894, for the reason that the latter was subject to the following objections: (a) no provision existed for the appointment of a representative, so that no one represented the estate, no collection could be made, nor any administration had; in fact, nothing except assignment was possible; (b) it applied only to "exempt" property, whereas there is no property which is exempt from everything at all times and under all circumstances except perhaps certain funds due from the federal government which funds under federal laws or regulations are generally payable only to a representative and not to distributees;<sup>20</sup> and (c) it was an independent and inflexible procedure. The provisions of the first paragraph of section 125 apply only if an executor, general administrator, administrator c.t.a., administrator d.b.n., or special administrator has been appointed and has qualified. In most cases administration without a representative is an impossibility; therefore, the section as originally presented to the Legislature contained nothing but the first paragraph. However, as there was considerable demand for summary proceedings without the appointment of a representative, the

administration of the guardianship, not exceeding the powers conferred by law upon general guardians.

"Within fourteen days after appointment, a special guardian of the estate shall file an inventory and appraisal of the personal property according to the requirements of article XII A. Upon the granting of letters of general guardianship, the power of a special guardian shall cease, and he shall proceed forthwith to a final accounting. Whenever a special guardian has been appointed to protect the ward's interest in any matter wherein the interest of the general guardian appears to conflict with that of the ward, or to protect the ward's interest, upon suspension of an order of removal of a general guardian by appeal, the power of such special guardian shall not cease until terminated by the court."

<sup>20</sup>U. S. C., page 1226, sec. 514: "If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award."

Paragraph 4128, Veterans Administration Regulations and Procedure. "Where an administrator has been appointed or where a will has been probated, the evidence for authorization of payment (with the exception of benefits or claims which are paid upon the authority of the decision of questions of fact and law) to the administrator or executor will be a certified copy of the letters of administration or letters testamentary accompanied by Standard Departmental Form 1055 completely executed. The certification of the copy of the letters of administration or letters testamentary will be made under the seal of the court which issued the letters of administration. Where there is no administrator or executor, and none contemplated, amounts not in excess of \$1,000 may be applied toward payment of the expenses of last illness and burial of payee or toward reimbursement of the person who paid such expenses. It may also be paid to the person or persons who would take under administration according to the law of the domicile of the deceased. Amounts in excess of \$1,000 will be paid only to an administrator or an executor."

second paragraph was inserted in order that an application for summary administration and distribution might be made in the first instance or while a proceeding for general or special administration was pending. All that was provided in G.S., sections 8891-8894 with some desirable additions is contained in:

"SECTION 125. SUMMARY PROCEEDINGS: In a special administration, general administration, or in the administration of the estate of a person dying testate, if the court has determined that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had therefor, or if there be no property except such as has been recovered for death by wrongful act, or such as is exempt from all debts and charges in the probate court, or such as may be appropriated for the payment of the allowances to the spouse and children mentioned in section 28, expenses of administration, funeral expenses, expenses of last illness, debts having preference under laws of the United States, and taxes, the representative by order of the court may pay the same in the order named, and file his final account with his petition for the settlement and allowance thereof. Thereupon the court with or without notice may adjust, correct, settle, allow, or disallow such account, and if the account be allowed, summarily determine the heirs, legatees, and devisees, in its final decree assigning to them their share or part of the property with which the representative is charged upon the allowance of his final account, and close the administration.

If upon the hearing of a petition for special administration, general administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate court, a final decree may be entered with or without notice, assigning the property to the persons entitled thereto pursuant to the terms of a will, or if there be none, pursuant to article III."

A most perplexing problem arises in the application of any statute on summary administration when real estate is involved. In some counties the procedure under G.S., sections 8891-8894 has been applied to an estate containing a homestead. Other courts have refused to allow it on the ground that the title to a homestead assigned by decree thereunder is defective until after the expiration of a period of five years from the date of death, because of the requirement of notice to creditors under section 100,<sup>21</sup> G.S., section 8809,<sup>22</sup> and of the barring of claims unless filed under section 101,<sup>23</sup> G.S.,

<sup>21</sup>"Notice to Creditors: In the order for hearing a petition for the probate of a will or for general administration or in a subsequent order, the court shall limit the time for creditors to file claims and fix the time and place for the hearing on such claims, notice of which shall be given pursuant to article XIX, section 188. The time so limited shall be four months from the date of the filing of such order. If it appears from the petition that the decedent left no property except such as may be allowed to the spouse and children under article III, section 28, or such as is exempt from the claims of creditors, or such as may be recovered in an action for death by wrongful act, or if more than five years have elapsed since the decedent's death, no order in respect to claims need be made."

<sup>22</sup>"Order limiting time to present claims.—Upon granting letters testamentary or of administration the court shall make an order limiting the time for creditors to present claims against the estate, and fixing the time and place when and where proofs will be heard and such claims examined and adjusted. The time so limited shall not be more than one year, nor less than six months, unless it shall appear by affidavit that there are no debts, in which case the limitation may be three months: Provided, that when it

section 8812.<sup>24</sup> Minnesota Constitution, article I, section 12;<sup>25</sup> *Lindberg v. Johnson*;<sup>26</sup> *Ranstadt v. Thunem*.<sup>27</sup> In the latter case it is said:

"The question is whether a plaintiff having such a debt and the sole property of the deceased being a homestead, it having been decreed to the heirs by the probate court and no order having been made limiting the time for presenting claims, can maintain an action against the heirs. We hold that he can. The question is one of statutory construction. We do not hold that a creditor may not present his excepted claim to the probate court and that the probate court may not subject the homestead to it. So far as we have noted them the cases hold either directly or by implication that the homestead may be reached and applied to the discharge of the excepted debt in the probate court. . . . We do not hold that if an order limiting time had been made the plaintiff need not have proceeded in the probate court. We are not favorably disposed to a rule which will permit laxity or delay in this class of claims. Our holding is limited to the precise situation presented."

It is well established in this state that notice is not a jurisdictional requirement;<sup>28</sup> and that the proceedings being in rem,<sup>29</sup> jurisdiction is dependent only upon death, property, and the filing of a proper petition.<sup>30</sup> A final decree is not subject to collateral attack.<sup>31</sup> A final decree is free from direct attack after the expiration of a reasonable period of time after its entry, even though the basis of the attack be fraud, provided the owner of

shall appear from the petition for letters that the decedent left no property except his homestead and such personal estate as is allowed by law to the surviving spouse or minor children, no order in respect to claims need be made."

<sup>23</sup>See footnote 5.

<sup>24</sup>"Claims, how presented or barred.—All claims against the estate of a decedent, arising upon contract, whether due, not due, or contingent, must be presented to the court for allowance, within the time fixed by the order, or be forever barred: Provided, that contingent claims arising on contract, which do not become absolute and capable of liquidation before final settlement, need not be so presented or allowed. Claims presented for allowance shall be itemized, and be verified by an affidavit of the claimant or his agent or attorney showing the balance due, that no payments have been made thereon that are not credited, and that there are no offsets thereto known to the affiant. Any such claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the executor or administrator. If the claim presented be contingent, or not due, the particulars thereof shall be stated."

<sup>25</sup>"Imprisonment for debt.—Exemption from execution.—No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment, or holding to bail, persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair, or improvement of the same; and provided further, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed."

<sup>26</sup>(1904) 93 Minn. 267, 101 N.W. 74.

<sup>27</sup>(1917) 136 Minn. 222, 161 N.W. 413.

<sup>28</sup>Re Eklund's Estate, (1928) 174 Minn. 28, 218 N.W. 235.

<sup>29</sup>Fridley v. Farmers & M. Savings Bank, (1917) 136 Minn. 333, 162 N.W. 454, L.R.A. 1917E 544.

<sup>30</sup>Re Davidson's Estate, (1926) 168 Minn. 147, 210 N.W. 40.

<sup>31</sup>Murray v. Calkins, (1934) 191 Minn. 460, 254 N.W. 605.

the property did not participate in the fraud. In *St. Paul Gas Light Co. v. Kenny*,<sup>32</sup> a sister and sole heir, who had been omitted in the final decree by which real estate was erroneously assigned to her mother, applied to the probate court to vacate the decree within thirteen months after attaining majority and at the expiration of eleven years after the entry of the decree. The basis of the application was that the decree had been obtained by fraud. In substantiating the title of the Gas Light Company, a purchaser from the mother, the court said:

"As already suggested, the probate court, and the district court on appeal from its decision, had jurisdiction to vacate the decree for fraud; but it is clear that, to justify such action as against the gaslight company, it should be connected with the fraud. No fraud appears on the face of the record, and whatever fraud may have been committed by the mother in procuring the decree can effect the gaslight company only upon its being shown to have participated in it, or that it had actual or constructive notice thereof before its purchase of the property. Our examination of the record leads to the conclusion that there is no evidence in the case sufficient to charge the gaslight company with a participation in the alleged fraud, or that at the time of its purchase of the property it had either actual or constructive notice of the same. Such being the case, the court below should not have unconditionally vacated the decree as to the company. Whatever rights it may have to the property can only be determined by a court having full and complete jurisdiction in the premises. If not connected with the fraud, and it was otherwise a good-faith purchaser, its title will be protected."

Under the Minnesota constitution, article I, section 12, referred to above, a homestead is subject to claims for labor and service performed for the owner even though such labor or service be not performed at or upon the homestead;<sup>33</sup> and apparently under the language of *Ramstadt v. Thumen*, quoted above, the homestead could be subjected to payment in the probate court, although the creditor might not be paid if the spouse, as life tenant, refused to consent to the sale or mortgage as required by section 146,<sup>34</sup>

<sup>32</sup>(1906) 97 Minn. 150, 106 N. W. 344; see (1928) 12 MINNESOTA LAW REVIEW 768. According to Shepard's Minnesota Citations, this case has never been cited in any opinion of the Minnesota supreme court.

<sup>33</sup>*Lindberg v. Johnson*, (1904) 93 Minn. 267, 101 N.W. 74.

<sup>34</sup>"Reasons for Sale, Mortgage, Lease: The court may direct a sale, mortgage, or lease of any real estate of a decedent whenever the personal property is insufficient to pay the allowances to the spouse and children, expenses of administration, funeral expenses, expenses of last illness, taxes, debts, and bequests, or whenever it shall determine such sale, mortgage, or lease to be for the best interests of the estate and of the persons interested in such real estate. The proceeds of any such sale, mortgage, or lease which may be available for distribution shall be distributed to the same persons and in the same shares as if it had remained real estate.

"The court may direct a sale, mortgage, or lease of any real estate of a ward whenever the personal property is insufficient to pay his debts and other charges against his estate, or to provide for the support, maintenance, and education of the ward, his wife, and children, or whenever it shall determine such sale, mortgage, or lease to be for the best interest of the ward.

"The homestead of a decedent when the spouse takes any interest therein or the homestead of a ward shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed. Unless the written consent of all persons who take any interest therein has been filed, the homestead of a decedent shall not be mortgaged except for the purpose of extending, renewing, or satisfying an existing mortgage and paying the taxes, assessments, liens, encumbrances, repairs, and incidental expenses or other items necessary to procure such mortgage."

G.S., sections 8834, 8836, or if the remaindermen refused to consent to the mortgage as required by G.S. 8836.<sup>35</sup> By section 101, G.S. section 8812, all non-contingent claims arising upon contract must be filed in the probate court or "be barred forever." In order to strengthen the position of those desiring summary administration of an estate containing a homestead under section 125, there was inserted in section 27c:

"No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce such lien or charge by an appropriate action in the district court."

The great number of competent and experienced lawyers who have considered the title to a homestead assigned by decree under G.S. sections 8891-8894 defective until the expiration of five years from the date of death and who have considered such title good after the expiration of such time because of the prohibition in section 107,<sup>36</sup> G.S. section 8815, might well argue that such prohibition gives no protection because of the language in section 27c quoted above, under which a judgment might be rendered in the district court after the expiration of such period in an action instituted within six years after the date on which the cause of action accrued, which date might have been the day immediately preceding the death of the decedent. If such reasoning be sound, section 27c introduces a dangerous, confusing and uncertain doctrine into our real property law.

Because of these difficulties it is suggested that no summary proceedings be had if the title to real estate is to be assigned by decree. If a decree of descent pursuant to sections 79-81 be inapplicable, the safest procedure seems to be general administration. In estates having only personal property of such amount or character that it cannot become available for general creditors under section 108(6),<sup>37</sup> application for the appointment of a special administrator may be made and the property disposed of by him in connection with selection, maintenance of the spouse and children, and the other items having priority under section 108 (1, 2, 3, 4, 5). After the property has been thus disposed of, the court may allow the special administrator's account and discharge him. A great deal of inconvenience in the offices of corporation transfer agents may be avoided by securing specific orders under section 75. Whenever it appears, after the granting of letters of administration or letters testamentary, that there is no property other than that which may be appropriated for the items having priority, the estate may be closed summarily. These two methods of procedure seem sufficient to take care of all situations except in a very limited number of cases where the

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<sup>35</sup>The requirement of the consent of remaindermen has been repealed by Laws of 1935, ch. 72, section 146 and section 196.

<sup>36</sup>See footnote 6.

<sup>37</sup>"Sec. 108. Priority of Debts: If the applicable assets of the estate be insufficient to pay the following in full, the representative shall make payment in this order:

1. Expenses of administration.
2. Funeral expenses.
3. Expenses of last illness.
4. Debts having preference by laws of the United States.
5. Taxes.
6. Other debts duly proved."

services of a representative are not necessary. If no representative is needed a petition for summary administration and distribution may be filed in the first instance and a decree of distribution entered thereon summarily; or such petition may be presented and heard at the time of the hearing on a petition for administration or proof of will theretofore filed on an erroneous assumption that a representative would be required, and, if granted, the petition for the appointment of a representative may be dismissed and the summary decree entered.