

GENERAL LAWS.

CHAPTER 1.

[Published January 22, 1870.]

AN ACT in relation to the settlement of accounts in certain cases.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. In case any sole or surviving executor or administrator has heretofore died or shall hereafter die, leaving his accounts as such executor or administrator unsettled, no action shall be entertained by any court, upon the administration bond of such deceased executor or administrator against the sureties in such bond or either of them, until such sureties or one of them shall have had an opportunity to apply for a settlement of the administration accounts of such deceased executor or administrator, as provided in this act; and in case any action shall have been heretofore commenced in any court of this state, against any surety or sureties upon the administration bond of such deceased executor or administrator, and such action shall be pending and undetermined at the time of the passage of this act, all proceedings in such action shall be stayed until the surety or sureties against whom such action has been commenced shall have had an opportunity to apply for and have a settlement of the administration accounts of such deceased executor or administrator, as provided in this act; but nothing contained in this act shall be so construed as to set aside or open any settlement of the administration accounts of any deceased executor or administrator which has been heretofore legally made.

No action on unsettled accounts of deceased executor.

Sureties may apply to county judge for final settlement.

Judge shall issue citation.

Notice to be given before accounts are allowed.

SECTION 2. In case any sole or surviving executor or administrator has heretofore died, leaving his administration accounts unsettled, it shall be lawful for the sureties in the administration bond of such deceased executor or administrator, or for either of such sureties within sixty days after the passage of this act, to apply to the judge of the county court having jurisdiction for a final settlement of the administration accounts of such deceased executor or administrator, and upon such application, if it shall appear to the satisfaction of such judge that neither of the principals in such bond is living, and that the person or persons so applying is a surety or are sureties (as the case may be) in such bond, and that no final settlement of the administration accounts of such deceased executor or administrator has ever been had in the county court having jurisdiction of the matter, such judge shall thereupon issue a citation which shall be served personally or by publication or both, as the said judge shall order, requiring the creditors next of kin, and legatees of the deceased person, (whose estate was being settled by such deceased executor or administrator) if there are any, to appear before him on some day therein specified to attend the settlement of such accounts. And upon the day mentioned in such citation, or such other time as the judge may appoint, such judge shall proceed with the settlement of the administration accounts of such deceased executor or administrator, in the manner provided by law for a final settlement of executors' or administrators' accounts, and when any sole or surviving executor or administrator shall hereafter die, leaving his administration accounts unsettled, the sureties in the administration bond of such deceased executor or administrator or either of such sureties may within sixty days after the death of such executor or administrator, apply to the judge of the county court having jurisdiction, for a final settlement of the administration accounts of such deceased executor or administrator, and upon such application, like proceedings shall be had as hereinbefore specified. Before the administration accounts of any such deceased executor or administrator shall be allowed, notice shall be given, as provided in section 14 of chapter 102 of the revised statutes: *provided*, that all orders made

under this act, by any county judge, shall be subject to be appealed from, the same as any other orders made by such judge, and that the proceedings in any action pending upon such administration bonds shall be stayed, pending such appeal, and until the final determination of the subject matter of such appeal.

SECTION 3. In case any action has been heretofore commenced upon the administration bond of any such deceased executor or administrator, against the sureties or either of them in such bond, and in case such action shall be pending and undetermined at the time of the passage of this act, and in case such sureties or surety against whom such action has been commenced shall apply to the judge of the county court for a final settlement of the administration accounts of such deceased executor or administrator, as provided in this act, the court in which such action is pending shall render judgment against such surety or sureties for the amount which such judge of the county court shall upon such final settlement, find to have been due upon the administration accounts of such deceased executor or administrator at the time of his death, and in case such judge of the county court, upon such final settlement shall find that nothing was due upon the administration accounts from such deceased executor or administrator, at the time of his death; then the court in which such action upon the administration bond is pending, shall dismiss such action.

If action has been commenced against sureties, they shall apply to judge for settlement.

SECTION 4. In case where any sole or surviving executor or administrator has heretofore died or shall hereafter die, leaving his administration accounts unsettled, and leaving books of account as such executor or administrator, appearing to have been kept in his own hand writing, such books of accounts shall be *prima facie* evidence of the receipts and disbursements therein entered.

Books of account to be *prima facie* evidence.

SECTION 5. All acts or parts of acts, so far as they conflict with the provisions of this act, are hereby repealed, and this act shall take effect and be in force from and after its passage and publication.

Approved January 21, 1870.