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Reference to settle claims. 16 Wen. 479; 6 Hill 388; 1 Barb. 519.

SEC. 15. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge, upon filing the agreement and approval of the probate judge in the office of the clerk of the district court, for the county in which the letters testamentary or of administration were granted, and the clerk shall, either in term time or vacation, enter a rule referring the matter in controversy to the person so selected.

Proceedings. 7 Wen 522; 10 do. 601.

SEC. 16. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the court in which the rule for his appointment shall have been entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, and be entitled to the same compensation, and subject to the same control as if the reference had been made in an action in which such court might by law direct a reference. The court may set aside the referee, and appoint another in his place, or may set aside or confirm the report and adjudge costs as in actions against executors and administrators; and the judgment of the court thereon, shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by the ordinary process.

Claim of executor, how allowed.

SEC. 17. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection, to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

Penalty for neglecting to give notice.

SEC. 18. If any executor or administrator shall neglect for two months after his appointment, to give notice to creditors as prescribed by this chapter, it shall be the duty of the court to revoke his letters.

Return of statement of claims.

SEC. 19. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate, which shall have been presented to him when required by the court, and from time to time hereafter, shall present a statement of claims subsequently presented to him, and in all such statements he shall designate the names of the creditors; the nature of each claim; when it did or will become due; and whether it was allowed or rejected by him.

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CHAPTER V.

SALE OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

SEC. 1. No sale valid unless made by order of court.
2. Application for order of sale; and objections thereto.
3. Application for order of sale by executor when to be made, notice of sale.
4. Order of sale.
5. Sales of personal property, when and how made.
6. Private sales when allowed.
7. When sale of real estate may be made.
8. Proceedings to obtain order for such sale.
9. When probate judge to grant order to show cause.
10. Order how and when to be served or published.
11. When judge of probate to hear proof and allegation of parties.
12. Copy of order to be served on guardian; appointment of guardian.
13. Examination of witnesses.
14. When all of real estate may be sold.
15. Order of sale.
16. Order what to specify.
17. When others than executors may apply for order of sale.
18. Copy of order in such case to be delivered to executor.
19. Notice of sale how given and what to contain.
20. Sale when and where to be made; when and how long executors may postpone sale.
21. Notice of adjournment, how given.
22. If on credit, executor to take certain security.
23. Proceedings to be returned; when sale may be vacated.
24. Who may object to confirmation of sale and how.
25. When order confirming sale and directing conveyances to be made.
26. Contents of conveyance and effect thereof.
27. Order of confirmation when given, and what to state.
28. Order for sale of incumbered real estate, how obtained.
29. Estate of testator to be disposed of according to will.
30. Proceedings by executor if sale be directed by will.
31. Further sale to be made, if appropriation be insufficient.
32. Estate of legatees liable for debts, &c.
33. Contributions among legatees when estate of legatee has been sold.
34 & 35. Interests of deceased in contract for purchase of lands, how to be sold.
36. Bond required of purchaser.
37. Executor when to assign such contract to purchaser; rights of purchaser.
38. When executor may be ordered to redeem mortgaged property.
39. Order of sale, instead of redemption.
40. Liability of executor for neglect relative to sales.
41. Ib. In case of fraudulent sales.
42. Action for recovery of estate sold by executor when to be brought.
43. Preceding section not to apply to person under disability to sue.
44. Executor to return to probate court a verified account of sales.
45. Executor or administrator not to purchase.

Sale must be by order.

SEC. 1. No sale of any property of an estate shall be valid unless made under order of the probate court.

Application for order of sale.

SEC. 2. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary, and upon the hearing any person interested in the estate, may file his written objections which shall be heard and determined.

Ib. Perishable property; sale to satisfy claims; notice.

SEC. 3. At the term of the court at which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold to pay the allowance made to the family of the deceased. If claims against the estate have been

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allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, he shall also apply for an order to sell so much of the personal estate as shall be necessary. He shall make a similar application, giving at least two weeks previous notice in a newspaper in general circulation in the county where letters were granted, or by posting written or printed notices thereof, in ten of the most public places in the county from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

Order of sale

SEC. 4. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed to be first sold.

Sales of personal property.

SEC. 5. Sales of personal property shall be made at public auction, and after notice given for at least two weeks, which notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

Private sale.

SEC. 6. If it be made to appear to the satisfaction of the probate court that it will be for the interest of the estate to allow the executor or administrator to sell some portion, or the whole of the personal estate at private sale, the court may so order.

Real estate.

SEC. 7. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family; and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the judge of probate.

Order, how obtained.

SEC. 8. To obtain such order, he shall present a petition to the probate court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of; a list and the amounts of the debts outstanding against the deceased as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seised; the condition and value of the respective lots and portions; the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

Order to show cause.

SEC. 9. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration; and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the probate judge shall thereupon make an order, directing all persons interested to appear before him at a time and place specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased, as shall be requisite to pay such allowance, charges and debts.

Ib. How served; proviso.

SEC. 10. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court

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shall order; *provided, however*, if all persons interested in the estate, shall signify in writing their assent to such sale, the notice may be dispensed with.

Hearing petition, &c.

SEC. 11. The probate judge, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

Copy of order to be served on guardian.

SEC. 12. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian; if they have no such guardian, the court shall, before proceeding to act upon the petition, appoint some disinterested person their guardian for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

Witnesses.

SEC. 13. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process to compel their attendance and testimony, may be issued by the probate judge in the same manner, and with like effect as in other causes.

Sale. 10 Wen. 441.

SEC. 14. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned.

Order to sell.

SEC. 15. If the probate judge shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of the allowance to the family, and all valid claims against the estate, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale authorizing the executor or administrator to sell the whole or so much and such parts of the real estate described in the petition, as he shall judge necessary or beneficial.

Ib. What to contain.

SEC. 16. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash or on credit, not exceeding six months, as the court may direct. If it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold before that so devised.

When other than executors may apply for order of sale.

SEC. 17. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

Copy of order to executor.

SEC. 18. Upon making such order, a certified copy thereof shall be delivered by the probate judge to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

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Notice of sale.

SEC. 19. When a sale is ordered, notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with common certainty.

Sale.

SEC. 20. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning, and the setting of the sun, the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

Adjournment of sale.

Ib. Notice of.

SEC. 21. In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing as the time and circumstances may admit.

If on credit.

SEC. 22. The executor or administrator, shall, when the sale is on credit, take the note or notes of the purchaser for the purchase-money, with a mortgage on the property to secure their payment.

When sale may be vacated. 13 Wen. 469; 3 Comst. 303.

SEC. 23. The executor or administrator making any sale of real estate shall, at the next term of the court thereafter, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent. exclusive of expenses of a new sale may be obtained, he shall vacate such sale, and order another to be had, of which notice shall be given, and the sale shall be conducted in all respects as if no previous sale had taken place.

Who may object to confirmation.

SEC. 24. When the return of the sale is made, any person interested in the estate, may file written objections to the confirmation of the sale; and may be heard, and produce witnesses in support of his objections.

When to be confirmed. 3 Comst. 303; 10 Paige 602.

SEC. 25. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale from that time shall be confirmed and valid.

Conveyances 3 Barb. 342; 4 do. 139; 3 Barb. Ch. 611; 2 Comst. 245.

SEC. 26. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator; they shall contain and set forth at large the original order authorizing a sale, and the order confirming the same and directing the conveyances, and they shall be deemed to convey all the estate, rights and interest of the testator or intestate in the premises at the time of his death.

Order confirming, when given.

SEC. 27. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate judge, that notice of the sale was given as herein prescribed, and the order of confirmation shall state that such proof was made.

Sale of incumbered estates.

SEC. 28. When a testator shall have given any legacy by will

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that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or administrator with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner, and upon the same terms and conditions as are prescribed in this chapter, in case of a sale for the payment of debts.

Estates appropriated.

SEC. 29. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Ib.

SEC. 30. When such provision has been made, or any property directed by the will to be sold, the executor or administrator with the will annexed, may proceed to sell without the order of the probate court, but he shall be bound as an administrator, to give notice of the sale, and return accounts thereof to the court, and to proceed in making the sale, in all respects as if it were made under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions.

If appropriation, be insufficient.

SEC. 31. If the provision made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this act.

Estates to legatees liable for debts, &c.

SEC. 32. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and of the family, in proportion to the value or amount of the several devises or legacies; except that specific devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Contributio &c.

SEC. 33. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of the debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

Contract of lands to be sold.

SEC. 34. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seised of such lands; and the same proceedings may be had for that purpose, as are prescribed in this chapter in respect to lands of which he died seised, except as hereinafter provided.

Ib.

SEC. 35. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons

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Bond of purchaser.

SEC. 36. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, and charges and expenses by reason of any covenant or agreement contained in such contract, but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

Assignment of contract to purchaser.

SEC. 37. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interests of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands, as the deceased would have had if he were living.

Redemption by executor.

SEC. 38. If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors.

Sale instead of redemption.

SEC. 39. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner as is required in other cases of sales of real estate provided for in this chapter; and the executor or administrator shall execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title and interest, which the deceased would have had in the property, had not the same been mortgaged by him; and the purchase-money, after paying the expenses of sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration.

Executor liable for neglect.

SEC. 40. If there shall be any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise as the case may require.

Ib. Fraudulent sales. 2 Barb. Ch. 87.

SEC. 41. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages to be recovered in an action by the person or persons having an estate of inheritance therein.

Certain actions when to be brought

SEC. 42. No action for the recovery of any estate sold by any executor under the provisions of this chapter, shall be maintained by any person, claiming under the testator or intestate, unless it be commenced within three years next after the sale.

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Exceptions to prior section.

SEC. 43. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability.

Account of sale.

SEC. 44. Whenever a sale shall have been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court at its next term thereafter, an account of sales, verified by his affidavit.

Executor, &c., not to purchase.

SEC. 45. No executor or administrator shall directly or indirectly, purchase any property of the estate.

CHAPTER VI.

OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SEC. 1. Duty of executor.
2, 3, 4 & 5. Actions by and against executors and administrators.
6. When executor may with consent of probate judge compound with creditors.
7 Fraudulent conveyances by deceased may be voided by executor.
8. But not bound to do so unless on application and security for costs given.
9. Sale and distribution of proceeds of such estate recovered.

Duties of.

SEC. 1. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

Actions by and against. 5 Wen 313; 8 do. 530; 4 Hill 492.

SEC. 2. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

Ib. 5 Cow. 267.

SEC. 3. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted to his own use, the goods of their testator or intestate in his lifetime; also may maintain actions for trespass committed on the real estate of the deceased in his lifetime.

Ib.

SEC. 4. Any person or his personal representatives shall have an action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Ib.

SEC. 5. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Compounding with creditors.

SEC. 6. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the probate judge, compound with him, and give him a discharge upon receiving a fair and just dividend of his effects.

Fraudulent conveyances by deceased,

SEC. 7. When there shall be a deficiency of assets in the hands of an executor or administrator; and when the deceased shall in

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may be avoided by executors.

his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person; or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence, and prosecute to final judgment, any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Ib.

SEC. 8. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased; nor unless the creditors, making such application, shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate judge shall direct.

Ib. Sale and distribution of proceeds thereof.

SEC. 9. The real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seised thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

CHAPTER VII.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 1. When court may decree conveyance by executor.
2. Petition for specific performance, and proceedings thereon.
2. Hearing of petition.
4. Decree for conveyance when to be made.
5. Appeal from decree; executing conveyance, &c.
6. When petition to be dismissed without prejudice.
7. Effect of such conveyance.
8. Certified copy of decree may be recorded; effect thereof.
9. Decree so recorded, may be enforced by other process.
10. In case of death of person entitled, his heirs, &c., may commence or prosecute proceedings, &c.

Contracts of deceased to convey.

SEC. 1. When any person who is bound by contract in writing, to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

Petition to enforce such contract.

SEC. 2. On presentation of a petition of any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall

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order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

Hearing of petition.

SEC. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine on oath the petitioner, and all who may be produced before him for that purpose.

Decree for conveyance.

SEC. 4. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the probate judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree, authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

Appeal.

SEC. 5. Any person interested may appeal from such decree to the district court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law; or if such decree be confirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the recorder of the county where the lands lie, and shall be evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

Dismissal without prejudice.

SEC. 6. If upon a hearing in the probate court as hereinbefore provided, the probate judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time within six months thereafter, proceed in to the district court to enforce a specific performance.

Effect of conveyance.

SEC. 7. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself were still living, and then executed the conveyance.

Effect of copy of decree recorded.

SEC. 8. A copy of the decree for the conveyance made by the probate court, and duly certified and recorded in the office of the recorder for the county where the lands lie, shall give the person entitled to the conveyance, a right to the possession of the lands contracted for, and of holding the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Enforcing decree.

SEC. 9. The recording of any decree as provided in the preceding section, shall not prevent the court making such decree, from enforcing the same by other process.

When representative entitled to conveyance.

SEC. 10. If the person to whom the conveyance was to be made, shall die before the commencement of the proceeding, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the exe-

CHAPTER 8. cutor or administrator of such deceased person for the benefit of the person entitled, may commence such proceedings, or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

CHAPTER VIII.

OF ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

SEC. 1. Executors, &c., not to be liable on certain promises, unless in writing.
2. How chargeable with all estate reduced by them to possession.
3. Not to profit by increase, or lose by decrease or destruction without his fault.
4. When not responsible for debts due deceased.
5. Compensation, &c., to executors and administrators.
6. Executor not to purchase claim against estate.
7. Commissions allowed executor.
8. Executor when to render exhibit to court; exhibit what to set forth.
9. Citation to issue if exhibit not rendered.
10. Petition before final settlement to compel executor to render exhibit.
11. Citation to render exhibit, when to issue.
12. Objection to exhibit, how made, and trial thereof.
13. Attachment may issue against executor if exhibit be not rendered after citation.
14. Account of executor to be rendered one year from appointment.
15. Citation to account at instance of successor.
16. Letters of executor, when to be revoked.
17. In rendering account executor to produce vouchers.
18. When and what allowance may be allowed without vouchers.
19. Notice of settlement of account, how given and what to contain.
20. Any persons interested in estate may file exceptions to the account.
21. Appointment of guardian to examine accounts.
22. Examination how conducted.
23. Allowance of account conclusive except on minors.
24. Account not to be allowed unless proof of notice be given.
25. Order of payment of debts.
26. How far mortgage preferred to other debts.
27. Proceedings when estate insufficient to pay all debts.
28. Funeral expenses, &c., to be paid as soon as executor has funds.
29. Order for payment, on settlement of accounts.
30. Debts not due or disputed how provided for.
31. Liability of executor to creditor after order of payment.
32. After settlement of executor's accounts, &c., creditor cannot call on other creditors, legatees, &c., to contribute; but executor liable if notice be not given.
33. Legacies, when to be paid; estate, when to be distributed.
34. Executor, &c., when to pray a settlement.
35. Proceeding against executor, if he neglect to render account.

Liability of executors, &c., on promises.

SEC. 1. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person, by him thereunto specially authorized.

Chargeable with estate of deceased.

SEC. 2. Every executor or administrator shall be chargeable in his account, with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

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Increase and decrease of property.

SEC. 3. He shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisement; and if any shall be sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

Uncollected debts.

SEC. 4. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected, without his fault.

Compensation.

SEC. 5. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services, such fees as the law provides; but when the deceased by his will shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

Not to purchase claims, &c.

SEC. 6. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account, so much as he shall have actually paid.

Commissions

SEC. 7. When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission upon the whole estate accounted for by him, as follows: for the first thousand dollars, at the rate of seven per cent; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent.; and the same commission shall be allowed to administrators. In all cases, such further allowance may be made as the probate judge shall deem just and reasonable for any extraordinary services not required of an executor or administrator in the common course of his duty; provided that the total amount of such allowance shall not exceed the amount of commission allowed by this section.

Petition for Exhibit.

SEC. 8. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render for the information of the court, an exhibit under oath, showing the amount of money received and expended by him; the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Ib. Failing to render.

SEC. 9. If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the probate judge to issue a citation, requiring him to appear and render it.

Petition for exhibit.

SEC. 10. Any person interested in the estate, may at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit should be made.

Citation to render exhibit.

SEC. 11. If the probate judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered,

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that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall issue a citation to the executor or administrator, requiring him to appear on some day named in the citation, which shall be during the term of the court, and render an exhibit as prayed for.

Objections to exhibit.

SEC. 12. When an exhibit is rendered by an executor or administrator, any person interested may appear and by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence, or wasted, embezzled or mismanaged the estate, his letters shall be revoked.

Attachment.

SEC. 13. If any executor or administrator, neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against, or his letters may be revoked, in the discretion of the court.

Account to be rendered one year from appointment.

SEC. 14. Every executor or administrator shall render a full account of his administration, at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the judge, to compel the rendering of such account by attachment; and any person interested in the estate, may apply for and obtain an attachment; but no attachment shall issue, unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

Citation to account at instance of successor.

SEC. 15. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate, during the time he was executor or administrator.

Revokement of letters, &c.

SEC. 16. If the executor or administrator resides without the county, absconds, or conceals himself so that citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after having been committed, when the attachment has been executed, his letters shall be revoked.

Vouchers of expenses.

SEC. 17. In rendering his account, the executor or administrator shall produce vouchers for all expenses and charges which he shall have paid; which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments; and also, touching any property and effects of the deceased, and the disposition thereof.

Allowance without vouchers.

SEC. 18. On the settlement of his account, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, if such oath be uncontradicted; but such allowances in the whole shall not exceed five hundred dollars for payment, in behalf of any one estate.

Notice of settlement.

SEC. 19. When the account is rendered for settlement, notice thereof shall be given by the probate judge, by causing notices to be posted in three of the most public places in the county. The

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notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of accounts, which shall be on some day of a term of court.

Exceptions to account.

SEC. 20. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate, may appear and file his exceptions, in writing, to the account, and contest the same.

Guardian for minor.

SEC. 21. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who on behalf of the minor, may contest the account as any other person interested might contest it; and who shall be allowed by the court a reasonable compensation for his services.

Examination of accounts.

SEC. 22. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the court may appoint one or more auditors to examine the accounts and make report thereon subject to confirmation, and may allow a reasonable compensation to such auditors, to be paid out of the estate of the deceased.

Allowance of account.

SEC. 23. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons, in any way interested in the estate; saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall have ceased; and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Ib.

SEC. 24. The account shall not be allowed by the court, until it be first proven that notice has been given as required by this chapter; and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

Order of payment of debts.

SEC. 25. The debts of the estate shall be paid in the following order:

1. Funeral expenses;
2. Expenses of the last sickness;
3. Debts having preference by the laws of the United States;
4. Public rates, taxes and excise duties due the territory;
5. Judgments rendered against the deceased in his lifetime, on which execution might have issued at the time of his death; and mortgages, in the order of the date of their filing in the recorder's office;
6. All other demands against the estate.

Preference to mortgage qualified.

SEC. 26. The preference given in the preceding section to a mortgage shall only extend to the proceeds of property mortgaged; if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

When estate is insufficient to pay debts.

SEC. 27. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment, until all those of the preceding class shall have been fully paid.

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Funeral, &c., expenses.

SEC. 28. It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration; but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed by this act, the payment has been ordered by the court.

Order for payment.

SEC. 29. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require; if there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid each creditor.

Debts not due or disputed.

SEC. 30. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established or absolute, shall be paid into the court, where it shall remain, to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require; provided, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Liability of executor after order.

SEC. 31. Whenever a decree shall have been made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree as upon a judgment in the district court, in favor of each creditor, and the same proceedings may be had under such execution, as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

Creditors, when not liable to contribute; but executor liable if no notice given.

SEC. 32. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor, whose claim was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees or devisees, to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed by this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed; provided, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Estate when to be distributed.

SEC. 33. If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable for the final settlement of the estate.

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When executor to pray a final settlement.

SEC. 34. At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account, and pray a settlement of his administration.

Proceedings if executor neglect to render account.

SEC. 35. If he neglect to render his account, the same proceedings may be had as are prescribed in this chapter, in regard to first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof shall apply to his account, presented for final settlement.

CHAPTER IX.

OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

SEC. 1. When legatees, &c., may petition court for legacy.
2. Notice of such application to be given all persons interested.
3. As to those who may oppose application.
4. Application when allowed and on what terms.
5. Such decree may order executor to deliver legacy.
6. Proceedings in case partition be necessary.
7. Costs of proceedings to be paid by applicant.
8. Petition by executor for order requiring payment of money secured; when court to grant order, nature thereof.
9. Distribution of proceeds.
10 & 11. Decree of distribution, what to contain, and when made.
12. Partition of undivided shares.
13. Proceedings when real estate lies in different counties.
14. Notice of application for partition.
15 Partition when shares have been conveyed.
16. Shares how set out.
17. When estates cannot be divided, court may assign the whole to one of parties.
18. When tract of greater value than either party's share and cannot be divided, may be set off to one of the parties.
19. When estate to be sold if partition impracticable.
20. Testator's estate in common to be first severed.
21. Guardians to be appointed for minors, &c., and agents for non-residents.
22. Report of commissioners and proceedings thereon.
23. When partition may be dispensed with.
24. Questions relating to advancement how determined.
25. When court may appoint agent to take charge of estate for non-resident.
26. Agent to give bond, and court may allow for his services.
27. Unclaimed estate to be sold: agent to take duplicate receipts from treasurer.
28. Liability of agent.
29. Claim of proceeds by absentee; when court to give certificate; payment by auditor.
30. When court to discharge executor from future liability.
31. When letters of administration granted after final settlement.

Petition for legacies, &c.

SEC. 1. At any time after six months after the time of issuing letters testamentary or of administration, any heir, legatee, or devisee may present his petition to the court, that the legacy or share of the estate to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

Notice of application, to whom given.

SEC. 2. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

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Opposing application.

SEC. 3. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee or devisee, may make a similar application for himself.

Allowance of application; proviso.

SEC. 4. If on the hearing it appear to the court that the estate is but little in debt, and that the share of the party or parties applying may be allowed, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants; provided, each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator; conditioned for the payment by the devisee or legatee whenever required, of his proportion of the debts due from the estate.

Order to deliver legacy.

SEC. 5. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

Partition.

SEC. 6. If in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

Costs of application.

SEC. 7. The costs of the proceedings, authorized by the preceding sections, shall be paid by the applicant, or if there be more than one, shall be apportioned among them.

Petition by executor for order requiring payment of money secured.

SEC. 8. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount, and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Distribution of residue.

SEC. 9. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

Decree.

SEC. 10. In the decree the court shall name the person and the portion or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

Ib. When made.

SEC. 11. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given, in the manner required, in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given, as it may deem proper.

Partition, &c. of undivided shares

SEC. 12. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons; to be appointed commissioners for that purpose, by the probate judge, who shall be duly sworn to the faithful discharge of their duties; and the court shall issue a warrant to them for that purpose.

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If in different counties.

SEC. 13. If the real estate be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county, and in such cases the estate in each county shall be divided separately as if there were no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within the territory.

Notice of partition. 11 Wen. 647; 17 do. 488; 1 Hill 141; 2 do. 267.

SEC. 14. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who shall reside in this territory, or to their guardians and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally, or by public notice, as the probate judge may direct.

Partition when shares have been conveyed.

SEC. 15. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees.

Shares how set out.

SEC. 16. The several shares in the real and personal estate, shall be set out to each individual in proportion to his right, by such metes, bounds or descriptions, that the same may be easily distinguished; unless two or more of the parties shall consent to have their shares set out, so as to be held by them in common and undivided.

Proceedings when partition impracticable.

SEC. 17. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger; provided the party so accepting the whole, shall pay to the other parties interested, their just proportion of the true value thereof, or secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

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SEC. 18. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed, to make partition to either of the parties who will accept it, giving preference as prescribed in the preceding sections; provided the party so accepting, shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be es-

CHAPTER 9. tablished by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Sale. SEC. 19. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by an agent appointed for the purpose, and distribute the proceeds.

Testator's estate in common. SEC. 20. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made and established by the probate court, shall be binding upon all the persons interested.

Guardians, when appointed. SEC. 21. Before any partition shall be made, or any estate divided as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Ib. Agents.

Report of commissioners. SEC. 22. The commissioners shall make a report of their proceedings to the probate court in writing, and the court may, for sufficient reasons, set aside such report, and remit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the probate court, and a copy thereof attested by the judge of probate under the seal of court, shall be recorded in the office of the recorder of the county where the land lies.

When partition may be dispensed with. SEC. 23. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them shall request that such partition be made.

Question of advancement how determined. SEC. 24. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the probate court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

Agent for absentee, when appointed. SEC. 25. When any estate shall have been assigned by decree of the court, or distributed by commissioners as provided in this chapter, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

His bond. SEC. 26. Such agent shall give a bond to the Territory of Oregon,

CHAP. 10. to be approved by the probate judge, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Sale of unclaimed estate. SEC. 27. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of sale, to be allowed by the court, shall be paid into the territorial treasury. When the payment is made, the agent shall take from the treasurer duplicate receipts, one of which he shall file in the office of the territorial auditor, and the other in the probate court.

Agent's liability on bond. SEC. 28. The agent shall be liable on his bond for the care and preservation of the estate, while in his hands, and for the payment of the proceeds of sale, as required by the preceding section; and may be sued thereon by any person interested.

Claim of proceeds by absentee. SEC. 29. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the auditor, he shall draw his warrant on the treasurer for the amount.

Discharge of executor. SEC. 30. When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers that he has paid all sums of money due from him, and delivered up under order of the court, all property of the estate to the persons entitled, the court shall make a decree discharging him from all liability to be incurred thereafter.

Letters of administration after final settlement. SEC. 31. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause, that letters should be again issued.

CHAPTER X.

MISCELLANEOUS PROVISIONS.

SEC. 1. All orders and decrees to be entered; judge, when to sign the minutes.
2. Notice when to be given by citation.
3 & 4. Citation how and when served; original to be returned.
5. Writs, &c., to be signed by judge, under seal of court.
6. Practice in district court how far applicable to probate court.

Entry of orders, &c. SEC. 1. All orders and decrees made by the probate court during its terms shall be entered at length on the records of the court; and also all orders which the judge is empowered to make out of term-time, and which are by this act specially required to be so entered; and upon the close of each term the judge shall sign the minutes of the proceedings.

Notice when given by citation. SEC. 2. Whenever personal notice is required by this act to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the court signed by the judge, and under the

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seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

How served.

SEC. 3. The officer to whom the citation is directed, shall serve it by delivering a copy to the person named therein, or to each of them if there be more than one; and shall return the original to the court, according to its direction, indorsing thereon the time and manner of service.

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SEC. 4. When no other time has been specially prescribed, citation shall be served at least five days before return day.

Requisites of writs, &c.

SEC. 5. All writs and processes issued from the probate court, shall be signed by the judge, and under the seal of the court.

Practice in district court, how far applicable to probate court.

SEC. 6. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act, or an act to provide for the appointment, and prescribe the duties of guardians.

CHAPTER XI.

DESCENT OF REAL ESTATE.

SEC. 1. Land, how to descend.
2. Illegitimate children, when to inherit.
3. Estate of illegitimate child, to whom to descend.
4. Bastards, legitimatized by intermarriage.
5. Degrees of kindred, how computed; half-blood to inherit.
6. Advancement, how to be considered.
7. When advancement to exclude heir from further portion.
8. Advancement, how estimated.
9. Gifts, when deemed advancements.
10. Value of advancement, how estimated.
11. In case of death of heir, advancement to be allowed by representatives.
12. Construction of this chapter.
13. Words, "issue," "real estate," "succession by right of representation," defined.

Land, how to descend.

SEC. 1. When any persons shall die seised of any lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, as follows:

1. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall have the estate equally, otherwise they shall take according to the right of representation;

2. If he shall leave no issue, his estate shall descend to his father;

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3. If he shall leave no issue, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister by right of representation; provided, that if he shall leave a mother also, she shall take an equal share with the brothers and sisters.

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4. If the intestate shall leave no issue, nor father, and no brother nor sister, living at his death, his estate shall descend to his mother to the exclusion of the issue of his deceased brothers or sisters;

5. If the intestate shall leave no issue, father, mother, brother nor sister, his estate shall descend to his next of kin in equal degree; excepting that, when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor, shall be preferred to those claiming through an ancestor more remote; *provided, however,*

6. If any person shall die leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

7. If at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the estate equally; otherwise, they shall take according to the right of representation.

8. If the intestate shall leave no kindred, his estate shall escheat to the territory.

Illegitimate children.

SEC. 2. Every illegitimate child shall be considered an heir of his mother, and shall inherit her estate in whole or in part as the case may be, in like manner as if he had been born in lawful wedlock: but such illegitimate child shall not be allowed to claim, as representing his mother, any part of the estate of her kindred, either lineal or collateral.

Estate of illegitimates.

SEC. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother; excepting in the case provided for in the following section.

Bastards legitimatized.

SEC. 4. When after the birth of an illegitimate child, his parents shall intermarry, such child shall be considered legitimate to all intents and purposes.

Degree of kindred; half-blood.

SEC. 5. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half-blood shall inherit equally with those of the whole blood in the same degree.

Advancement.

SEC. 6. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the intestate's estate.

Ib. When to exclude heir from further portion.

SEC. 7. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be

entitled to so much more as will give him his full share of the estate of the deceased.

Advancem't, how considered.

SEC. 8. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate respectively that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make the whole share equal to those of the other heirs who are in the same degree with him.

When gifts, &c., deemed advancement.

SEC. 9. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Value of advancement, how estimated.

SEC. 10. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

Advancement when to be allowed by representatives.

SEC. 11. If any child or lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

Constructions of this chapter.

SEC. 12. Nothing contained in this chapter shall affect the title of a husband as tenant by courtesy, nor that of a widow as tenant in dower.

"Issue," "real estate," "succession by right of representation," defined.

SEC. 13. The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the words "real estate" include all lands, tenements and hereditaments, and all rights thereto, and all interests therein possessed, and claimed in fee simple, or for the life of a third person. Inheritance or "succession by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

CHAPTER XII.

DISTRIBUTION OF PERSONAL ESTATE.

SEC. 1. Order of distribution and application of personal estate.
2. Widow entitled to one half of estate deducting advancement.
3. Act declaratory as to when these laws took effect.
4. Act when to take effect.

Order of distribution.

SEC. 1. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries for the use of herself and the family under her care, as shall be allowed and ordered in pursuance of the provisions of this act, and this allowance shall be made, as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate;

2. The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for his funeral and the settling of the estate;

3. The residue, if any, of the personal estate, shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion as there prescribed, excepting as is herein further provided;

4. If the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate;

5. If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue;

6. If there be no issue, the widow shall be entitled to the whole of said residue;

7. If there be no husband, widow or kindred of the intestate, the whole shall escheat to the territory.

Widow entitled to half, deducting advancements.

SEC. 2. If the intestate leave a widow and issue, and any of the issue shall have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow; but she shall be entitled to the one-half only of the said residue after deducting the value of the advancement.

Act declaratory as to when these laws took effect.

SEC. 3. Whereas doubts have arisen as to what has been the law in relation to the distribution of personal estate in this territory: the rule of distribution established by this chapter, is hereby declared to have been the law of the land, since the first session of the Legislative Assembly of this territory, begun and held at Oregon City, on the 16th day of July, A. D. 1849. *Provided*, that nothing in this section contained, shall be so construed as to disturb the settlement of any estate whereof administration is complete and distribution made.

Proviso.

Act when to take effect.

SEC. 4. This act shall take effect and be in force from and after the first day of May next.

Passed December 14th, 1853.

AN ACT RELATING TO WILLS.

CHAPTER I.

WILLS.

SEC. 1. As to who may devise real and personal estate by will.
2. Persons over eighteen may dispose of personal estate.
3. Married women may dispose of real estate subject to the curtesy.
4. Wills how to be executed.
5. Person signing testators name, what to state.
6. Written wills how to be revoked or cancelled.
7. Marriage and birth of issue when a revocation of prior will.
8. Will of unmarried woman revoked by subsequent marriage.
9. Bond, &c., to convey property devised, not a revocation, &c.
10. Charge or incumbrance not a revocation; property to pass subject thereto.
11. Children or their descendants if unprovided for, to have portion of estate.
12. Unless in case of advancement equal to their portion.
13. When issue of deceased devisee to take estate.
14. Cancelling of a second will, not to revive first will, unless, &c.
15. Probate court to take proof of wills.
16. Will where to be proved.
17. When court may grant certificate of probate or rejection.
18. Commission to examine witness when to issue.
19. Testimony of witness to have same force as if given in court.
20. Proceedings when only one attesting witness can be examined.
21. If all witnesses are dead or absent.
22. All testimony in support of will to be reduced to writing.
23. Nuncupative wills how made, &c.
24. How soldiers and mariners may dispose of wages, &c.
25. Nuncupative will, how and when to be proved.
26. Probate when to be granted.
27. Wills to be recorded, thirty days after probate.
28. Certified copy thereof evidence.
29. Effect of proof and of record.
30. Wills when to be recorded in different counties.
31. Proceedings on validity of will, where to be instituted.
32. Effect of verdict in such case.
33. If proceedings not instituted in five years, probate or rejection will be final except on persons under disability.
34. Oath of witness at time of probate, when admissible in subsequent proceedings.
35. Devise of real or personal property by non-resident.
36. Copies of foreign wills how recorded.
37. Foreign wills contested and annulled as other wills.
38. Devisee or legatee may witness wills, devise void as to him.
39. Share of estate, when to be saved to such witness.
40. If sufficient other witnesses, legacy to be valid.
41. Creditor attesting will may be witness.
42 & 43. Legatee how made competent to witness will; his credibility.
44. Legatee to be deemed legal witness in case he die during testator's lifetime.
45. Legatee when not entitled to legacy.
46. Estate for life, remainder in fee.
47. When fee simple passes "heirs and assign," &c., being omitted.
48. Contribution among other legatees, when a bequest is taken in execution for testator's debts.
49. Ib. In case legatees are required to refund.
50. Term "will" to include codicil.
51. Court how to execute directions of will.
52. Power of court to compel production of will.
53. Act when to take effect.

Who may will real and personal estate.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That every person of twenty-one years of age and upwards, of sound mind, may, by last will, devise all his estate, real and personal, saving to the widow her dower.

Persons over eighteen.

SEC. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels.

Married women.

SEC. 3. A married woman, may, by will, dispose of any real estate held in her own right, subject to any rights which her husband may have as tenant by the curtesy.

Will, how to be executed.

SEC. 4. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will, in the presence of the testator.

Persons signing testator's name

SEC. 5. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

Written wills how to be revoked or cancelled. 4 Barb. 28.

SEC. 6. No will in writing, except in cases hereinafter mentioned, nor any part thereof shall be revoked, except by a subsequent will in writing, or by burning, cancelling, tearing or obliterating the same by the testator, or in his presence, and by his consent and direction.

When revoked by marriage and birth of issue. 1 Denio 27; 7 Paige 97.

SEC. 7. If after making a will disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Will of unmarried woman.

SEC. 8. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

Bond, &c., to convey property devised not a revocation, &c.

SEC. 9. A bond, covenant or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant or agreement for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Charge or incumbrance not a revocation.

SEC. 10. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed; the devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

Children or descendants if unprovided for, to have portion of estate.

SEC. 11. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them; and

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all the other heirs, devisees and legatees shall refund their proportional part.

Unless in case of certain advancement.

SEC. 12. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

When issue of deceased, &c., to take estate. 4 Hill 139.

SEC. 13. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done, in case he had survived the testator.

Cancelling of second will, not to revive first, except, &c.

SEC. 14. If after making any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

SEC. 15. The probate court shall take proof of last wills.

Will where to be proved.

SEC. 16. If the testator have a mansion house or known place of abode in any county, his will shall be there proved; if he have no place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie; and if he have no residence, and there be no lands devised, the will shall be proved in the county in which the testator died; or if he died out of the territory, then in any county.

Certificate of probate, or rejection.

SEC. 17. When any will is exhibited to be proven, the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, grant a certificate of rejection.

Commission to examine witness.

SEC. 18. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness.

Affidavit of witness.

SEC. 19. If such witness appear before such officers, and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will; or that some other person signed it by his direction, and in his presence; that he was of sound mind; that the witness subscribed his name thereto in the presence of the testator; the testimony so taken shall have the same force as if taken before the court.

Proceedings when one witness only can be examined.

SEC. 20. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the hand-writing of the testator, and of the witnesses insane, dead, or residence unknown, and of such other circumstances as would be sufficient to prove such will on a trial at common law.

If all witnesses be dead, what, &c.

SEC. 21. If it shall appear to the satisfaction of the court, that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of

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such other facts and circumstances as would be sufficient to prove such will in a trial at law.

Testimony to be reduced to writing, &c.

SEC. 22. All the testimony adduced in support of any will, shall be reduced to writing, signed by the witnesses, and certified by the judge of probate.

Nuncupative wills, how made, &c.

SEC. 23. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars; nor unless the same be proven by two witnesses who were present at the making thereof; nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

Mariners and soldiers may dispose of wages, &c.

SEC. 24. Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property, as he might have done by common law, or by reducing the same to writing.

How proved.

SEC. 25. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof were reduced to writing within thirty days after they were spoken.

Probate when granted.

SEC. 26. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the will if they think proper.

Wills to be recorded, &c.

SEC. 27. All wills shall be recorded by the probate judge in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

When evidence.

SEC. 28. Every will proved according to the provisions of this act, recorded and certified by the judge of probate, and attested by his seal of office, may be read as evidence without any farther proof.

Effects of proof and record, &c. 2 Paige 429.

SEC. 29. The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven, and may in like manner be repelled by contrary proof.

When to be recorded in several counties.

SEC. 30. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the recorder's office in each county, within six months after probate.

Proceedings on validity of will when to be instituted.

SEC. 31. If any person interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and by petition to the district court for the county, contest the validity of the will, or pray to have the will proven, which has been rejected, an issue shall be made up, whether the writing produced be the will of the testator or not, which shall be tried by a jury, or if neither party require a jury, by the court.

Verdict in such case.

SEC. 32. The verdict of the jury, or the finding and judgment of

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the court shall be final, saving to the court the right of granting a new trial as in other cases, and to either party an appeal in matters of law to the supreme court.

If proceedings not instituted in five years.

SEC. 33. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of five years after their respective disabilities are removed.

Oath of witness at time of probate, when admissible in subsequent proceedings.

SEC. 34. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, shall be admitted as evidence, and shall have such weight as the court or jury may think it deserves.

Lex loci, when and when not to govern.

SEC. 35. Any person not an inhabitant, but owning property, real or personal in this territory, may devise or bequeath such property by last will, executed and proved (if real estate be devised) according to the laws of this territory, or (if personal estate be bequeathed) according to the laws of this territory, or of the country, state or territory in which the will shall be proved.

Copies of foreign wills, how recorded.

SEC. 36. Copies of such will, and the probate thereof, shall be recorded in the same manner as wills executed and proven in this territory, and shall be admitted in evidence in the same manner, and with like effect.

Ib. How contested.

SEC. 37. Any such will may be contested and annulled within the same time, and in the same manner as wills executed and proven in this territory.

Devisee and legatee may witness will, but devise to him void.

SEC. 38. If any person has attested or shall attest the execution of any will, to whom any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting any real or personal estate, other than or except charges in lands, tenements, or hereditaments, for the payment of any debt or debts, shall be thereby given or made; such devise, legacy, estate, gift, or appointment shall so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

When share of the estate to be saved to such witness.

SEC. 39. If any such witness would be entitled to any share in the testator's estate, in case the will should not be established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

Ib. If sufficient, other witnesses.

SEC. 40. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this act, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

Creditor, may witness.

SEC. 41. If, by any will, any real estate be charged with any debt, and any creditor, whose debt is so charged, has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Legatee, how made competent.

SEC. 42. If any person has attested, or shall attest the execution of any will, to whom any legacy or bequest is thereby given, and

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such person, before giving testimony concerning the execution of such will, shall have been paid, or have accepted or released, or shall refuse to accept such bequest or legacy upon tender thereof, such person shall be admitted as a witness to the execution of such will.

His credibility.

SEC. 43. The credit of such witness shall be subject to the consideration of the court or jury.

Ib. When deemed legal witness.

SEC. 44. If any legatee or devisee who has attested or shall attest the execution of any will, shall have died, or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

Legatee, when not entitled to legacy.

SEC. 45. No person to whom any estate, gift, or appointment shall be given or made, which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest on tender made; and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in the thirty-ninth section, any profit or benefit of, or from any such estate, interest, gift, or appointment so given or made to him, by any such will or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Estate for life, remainder in fee.

SEC. 46. If any person by last will, devise any real estate to any person for the term of such person's life, and after his or her death, his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

When fee simple passes, the words, "heirs and assigns" being omitted.

SEC. 47. In all devises of lands, or other estate in this territory, in which the words "heirs and assigns," or "heirs and assigns forever" are omitted, and no expressions are contained in such will, whereby it shall appear that such devise was intended to convey an estate for life only, and no further devise be made of the devised premises, to take effect after the death of the devisee, to whom the same shall be given; it shall be understood to be the intention of the testator thereby to devise an absolute estate in the same, and shall convey an estate in fee simple to the devisee for all such devised premises.

Contribution among, &c.

SEC. 48. When any testator, in his last will, shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Ib.

SEC. 49. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise, or legacy of any other devisee, legatee or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, shall order the same to be made according to equity, and enforce such order with like effect as decrees in courts of equity.

"Will," to include codicils.

SEC. 50. The term "will," as used in this act, shall be so construed as to include all codicils as well as wills.

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Construction of wills.

SEC. 51. All courts and others concerned in the execution of last wills, shall have due regard to the directions of the will, and the true interests and meaning of the testator in all matters brought before them.

Court can compel production of will.

SEC. 52. If the probate court shall be satisfactorily informed that any person has in his possession, the will of any testator, and refuses to produce the same for probate; such court shall have power to summon such person, and compel him by attachment to produce the same.

Act when to take effect.

SEC. 53. This act shall take effect and be in force from and after the first day of May next.

Passed December 15, 1853.

AN ACT RELATING TO PARENTS AND CHILDREN, GUARDIANS AND WARDS, AND TO MASTERS, APPRENTICES AND SERVANTS.

CHAPTER I.

OF PARENTS AND CHILDREN.

SEC. 1. Parents and children when liable for each other's support.
2. Minor's maintenance when may be chargeable on minor's estate.
3. Mother cannot bind, after marriage.

Parents and children, when liable for each other.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and children shall be bound to maintain their parents in the like circumstances.

Minor's maintenance when chargeable on minor's estate.

SEC. 2. If any minor who has a father living, have property, the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the probate court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Mother cannot bind after marriage.

SEC. 3. The power of the mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

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CHAPTER II.

OF GUARDIANS AND WARDS.

SEC. 1. Judge of probate may appoint guardians.
2. Who to nominate guardians: when judge to nominate.
3. Nomination when to be certified by justice of the peace.
4. Powers and duties of guardian: proviso.
5. Bond of guardian.
6. Father may appoint guardian by will.
7. Bond of guardian so appointed: proviso.
8. Powers of court to appoint guardian to defend or prosecute suits.
9. Application for guardian on behalf of insane persons: appointment.
10. Power and duties of such guardian.
11. When guardian may be appointed for spendthrift, &c.
12. Notice to spendthrift and appointment of guardian.
13. Copy of complaint, &c., to be filed with recorder of deeds, and its effects.
14. Judge to make allowance in such case for expenses of ward in defending himself.
15. Powers and duties of guardian for spendthrift.
16. Ib. In settling accounts and collecting debts.
17. How to manage estate of his ward.
18. Appraisal of estate of ward: disposal of personal estate.
19. Court may authorize transfer and investment of stock.
20. Removals and resignations of guardians.
21. Marriage of female ward terminates guardianship.
22. Power of court to require new bonds, and discharge sureties.
23. Action against sureties on bond when to be brought.
24. Proceedings against guardian in case of suspected embezzlement.
25. Appointment of guardian for non-resident minor.
26. Powers and duties of such guardian.
27. His bond.
28. Guardianship first granted, exclusive throughout territory.
29. Compensation of guardian.
30. Joint accounts may be allowed on oath of one guardian.
31. The words "insane person" and "spendthrift" defined.

Judge of probate may appoint guardians.

SEC. 1. The judge of probate for each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others being inhabitants or residents in such county, and also to such as shall reside without this territory, and have any estate within the same.

Who to nominate; judge.

SEC. 2. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and if he is above that age he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly; and if the guardian, nominated by such minor, shall not be approved by the judge, or if the minor shall reside without this territory, or if after having been cited by the judge, he shall neglect to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under fourteen years of age.

Nominations when to be certified by justice.

SEC. 3. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the probate court, his nomination of a guardian may be certified to the judge of probate by a justice of the peace, which shall have the same effect as if made in the presence of the judge.

Powers and duties of guardian; proviso.

SEC. 4. Every guardian so appointed, shall have the custody and tuition of the minor, and the care and management of his estate, and shall continue in office until the minor shall have arrived to

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the age of twenty-one years, or until the guardian shall have been discharged according to law; *provided, however*, that the father of the minor if living, and in case of his death, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor, and to the care of his education.

Bond of guardian.

SEC. 5. Every such guardian shall give bond, with surety or sureties to the Territory of Oregon, in such sum as the judge of probate may order, with conditions, as follows:

1. To make a true inventory of all the real estate, and of all the goods, chattels, rights and credits of the ward that shall come to his possession or knowledge, and to return the same into the probate court, at such time as the judge may order;

2. To dispose of and manage all such estate and effects according to law, and for the best interest of the ward; and faithfully to discharge his trust in relation thereto, and in relation to the custody, education and maintenance of the ward;

3. To render on oath an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the judge of probate shall direct;

4. At the expiration of his trust to settle his accounts with the probate judge, or with the ward, or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Appointment by will.

SEC. 6. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for a less time; and every such testamentary guardian shall have the same powers, and perform the same duties with regard to the person and estate of the ward, as a guardian appointed by the judge of probate.

Bond; proviso.

SEC. 7. Every such testamentary guardian shall give bond in like manner, and with like conditions as is before required of a guardian appointed by the judge of probate; provided that when the testator in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the judge of probate shall think proper to require it.

Guardian to defend and prosecute suits.

SEC. 8. Nothing contained in this chapter shall impair the power of the supreme court, the district court, probate court, or courts of a justice of the peace, to appoint a guardian to defend the interests of any minor impleaded in such courts, or interested in any suit or matter therein pending; nor their power to appoint or allow any person as next friend for a minor to commence, prosecute or defend any suit in his behalf.

Ib. For insane persons

SEC. 9. When the relations or friends of any insane person, or any other persons, inhabitants of the county in which such insane person resides, shall apply to the probate judge by petition in writing, to have a guardian appointed for him, the judge shall

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cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the probate judge that the person in question is incapable of taking care of himself, the judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

His power and duties.

SEC. 10. Every guardian so appointed for an insane person, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the Territory of Oregon, in like manner and with like conditions as is before prescribed with respect to the guardian of a minor, excepting that the provision relating to the education of the ward, shall be omitted in the condition of the bond.

When guardian appointed for spendthrift, &c.

SEC. 11. When any person by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate, as to expose himself or his family to want or suffering, or the county to charge and expense for the support of himself and family, the county commissioners for such county of which such spendthrift is a resident or an inhabitant, shall present a complaint to the probate judge, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

Notice to spendthrift.

SEC. 12. The probate judge shall cause notice to be given, to such supposed spendthrift, of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the probate judge that the person complained of comes within the description contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Appointment.

Copy of complaint, &c., to be filed.

SEC. 13. After the order of notice has been issued, the complainants shall cause a copy of the complaint, with the order of notice, to be filed in the office of the recorder of deeds for the county; and, if a guardian shall be appointed on such application, all contracts, excepting for necessaries, and all gifts, sales or transfers of real or personal estate made by such spendthrift, after such filing of the complaint in the recorder's office, and before the termination of the guardianship, shall be null and void.

Allowance in such case for ward defending, &c.

SEC. 14. When a guardian shall be appointed for an insane person, or spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Guardian for spendthrift, his powers and duties.

SEC. 15. Every guardian so appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged; and he shall give bond to the Territory of Oregon, in like manner and with like condition as is before directed with respect to the guardian of an insane person.

Ib. In settling accounts.

SEC. 16. Every guardian appointed under the provisions of this chapter, shall pay all just debts due from his ward, out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as provided by law; he shall

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also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, upon receiving a fair and just dividend of his estate and effects; and he shall appear for, and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

How to manage estate of ward.

SEC. 17. The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

Appraisal of ward's estate.

SEC. 18. Upon the taking of any inventory as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward, in like manner as is directed with respect to executors and administrators.

Court may authorize transfer and investment of stock, &c.

SEC. 19. The judges of probate, in their respective counties, on the application of a guardian or of any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate, or effects held by him as guardian, and invest the proceeds of such sale, and also, all other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the probate court may make such further order, and give such directions as the case may require for managing, investing and disposing of the estate and effects in the hands of the guardian.

Removals and resignations of guardians.

SEC. 20. When any guardian, appointed either by a testator or by the judge of probate, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to such guardian, and to all others interested, may remove him; and every guardian, upon his request, may be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and also, upon the death of any guardian, the judge of probate may appoint another in his stead.

Marriage of female ward.

SEC. 21. The marriage of any female, who is under guardianship as a minor, shall operate as a discharge of her guardian; and the guardian of any insane person, or spendthrift, may be discharged by the probate judge, when it shall appear to him, on the application of the ward or otherwise, that such guardianship is no longer necessary.

New bonds.

SEC. 22. The probate court may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case, and upon the like terms as are prescribed with regard to executors or administrators.

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When action to be brought against sureties.

SEC. 23. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within three years from the time when this chapter shall take effect, or within three years from the time when such guardian shall be discharged; *provided*, that if at the time of such discharge, the person entitled to bring such action shall be out of the territory, the action may be commenced at any time within three years after his return to the territory.

Proceedings in case of suspected embezzlement.

SEC. 24. Upon complaint made to the probate judge by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided respecting persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Guardian for non-resident minors.

SEC. 25. When any minor or other person liable to be put under guardianship, according to the provisions of this chapter, shall reside without this territory, and shall have any estate therein, any friend of such person, or any one interested in his estate in expectancy or otherwise, may apply to the judge of probate for any county in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Ib. His powers and duties.

SEC. 26. Every guardian appointed according to the provisions of the preceding section, shall have the same powers and duties with respect to any estate of the ward that may be found within this territory, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Ib. Bond.

SEC. 27. Every such guardian shall give bond to the Territory of Oregon, in like manner and with like condition as is above provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate, and the account to be rendered by the guardian, shall be confined to such estate, and effects which shall come to his hands in this territory, and that the provisions respecting the custody of the ward shall not be applicable, unless the ward shall come to reside in this territory.

First guardianship to be exclusive.

SEC. 28. The guardianship, which shall first be lawfully granted of any person residing without this territory, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court of any other county.

Compensation, &c., of guardian.

SEC. 29. Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services, as the court in which his accounts are settled, shall consider just and reasonable.

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Joint account of, how allowed.

SEC. 30. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

"Insane person" and "spendthrift," defined.

SEC. 31. The words "insane person" are intended to include every idiot, every person not of sound mind, every lunatic and distracted person; and the word "spendthrift" is intended to include any one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery, and these words shall be so construed in all the provisions relating to guardians and wards, contained in this or any other statute.

CHAPTER III.

OF MASTERS, APPRENTICES, AND SERVANTS.

SEC. 1. Term of indenture.
2. Persons who may bind or be bound.
3. Minors over fourteen, how to be bound.
4. Indentures, how executed.
5. One part of indenture to be kept for minor.
6. Power of county commissioners to bind.
7. Term of indentures in such cases.
8. Indentures, how executed.
9. Certain moneys to be secured for apprentice.
10. Who to inquire into treatment of apprentices.
11. Complaint against master for misconduct.
12. When court may discharge minor, and award costs against master.
13. Costs when to be awarded against complainant.
14. Master liable for breach of indenture: action how brought: damages how awarded.
15. As to who may bring such action.
16. When not to abate.
17. Within what time action to be commenced.
18. If judgment be rendered for minor, he may be discharged.
19. Proceedings if apprentice leave service of master.
20. Warrant of justice in such case.
21. Who to pay costs.
22. Complaint against apprentice; proceedings thereon.
23. Discharge of master from indentures.
24. Death of master, to discharge apprentice.
25. Foregoing provisions applicable to females.
26. Common law right of father not to be affected.
27. Act when to take effect

Term of indenture;

SEC. 1. All children under the age of fourteen years, may be bound as apprentices or servants until that age; and all minors above the age of fourteen years, may be bound as apprentices or servants; females until the age of eighteen years or to the time of their marriage within that age, and males until the age of twenty-one years, in the manner prescribed in this chapter.

Who may bind or be bound.

SEC. 2. Children under the age of fourteen years, may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of the probate judge of the county where they reside.

Minors over fourteen.

SEC. 3. Minors above the age of fourteen years may be bound in the same manner; provided, that when they are bound by their

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parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same.

Indentures, how executed.

SEC. 4. No minor shall be bound as aforesaid, unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the probate judge, his approbation shall be certified in writing, signed by the judge on each part of the indenture.

One part to be kept for minor.

SEC. 5. One part of the indenture shall be kept for the use of the minor by his parent or guardian, when executed by them respectively; and when made with the approbation of the probate judge, it shall be deposited in the probate office, and safely kept for the use of the minor.

Power of county commissioners to bind.

SEC. 6. The county commissioners may bind as apprentices or servants, the minor children of any poor person who has become actually chargeable to their county, as having a lawful settlement therein, and also all minor children who are themselves chargeable to the county as having a legal settlement therein.

Term of indenture and provisions therein.

SEC. 7. Such children, whether under or over the age of fourteen years, may be bound, females to the age of eighteen, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read, write and cipher, and for such other instruction, benefit and allowance, either within or at the end of the term, as the county commissioners may think reasonable.

Ib. Indentures how executed.

SEC. 8. No minor shall be bound by the county commissioners, unless by an indenture of two parts, sealed and delivered by the county commissioners and by the master, one part of which shall be deposited with the probate judge for the county where such minor resides, and be safely kept by him for the use of the minor.

Moneys to be paid apprentice.

SEC. 9. All consideration of money or other things paid or allowed by the master upon any contract of service or apprenticeship made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound.

Who to inquire into treatment of apprentices.

SEC. 10. Parents, guardians, probate judges and county commissioners, shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of covenant, on the part of their masters.

Complaint against master.

SEC. 11. In case of any such misconduct or neglect of the master, a complaint may be filed by the parents, guardians, county commissioners, or other person in the probate court for the county in which the master resides, setting forth the facts and circumstances of the case; and the court, after having duly notified the master, shall proceed to hear and determine the cause, as the allegations of the parties may require.

Discharge of minor; costs against master.

SEC. 12. After a full hearing of the parties, or of the complainant alone, if the master shall neglect to appear, the court may render a judgment or decree that the minor be discharged from his apprenticeship or service, and for the costs of the suit against the master, and may award execution accordingly, and the minor may thereupon be bound out anew.

Costs, when

SEC. 13. If the complaint shall not be maintained, the court shall

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against complainant, &c.

award costs for the master against the complainant or complainants, and shall issue execution accordingly; excepting that in case of such a complaint by the county commissioners, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause.

Master liable for breach of indenture; damages how awarded.

SEC. 14. Every master shall moreover be liable, whether such complaint shall have been filed or not, to an action in the district court on the indenture, for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use, by the person who shall have recovered the same, and the residue, if any, shall be paid to the minor; if a male, at his age of twenty one years, and if a female, at her age of eighteen years, or at the time of her marriage within that age.

Who may bring action.

SEC. 15. Such action may be brought either by the parent or his executors or administrators, or by the guardian, or any one who shall succeed him in that trust, or by the county commissioners, or their successors in that office, or it may be brought in the name of the minor by his guardian or next friend, as the case may require, or by himself, after the expiration of the term of the apprenticeship or service.

Ib. When not to abate.

SEC. 16. If the action be brought by the county commissioners, it shall not abate by the death of any of them, or by their being succeeded in office, but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor, and the money recovered therein shall be deposited with the probate judge, to be applied and disposed of as provided in the fourteenth section.

When to be commenced.

SEC. 17. No such action shall be maintained by the apprentice or servant, unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

Judgment for minor.

SEC. 18. If judgment in such action, by whomsoever brought, shall be rendered for the plaintiff in the district court, the court may also, upon the motion of the plaintiff, discharge the minor from his apprenticeship or service, if it shall have not been already done in the manner before provided, and the minor may thereupon be bound out anew.

Proceedings if apprentice leave master

SEC. 19. If any apprentice or servant bound as aforesaid, shall unlawfully depart from the service of his master, any justice of the peace, upon complaint on oath made to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before said justice; and if the complaint shall be supported, the justice may order the offender to be returned to the master, or may commit him to the common jail of the county where the master resides, there to remain for a term not exceeding twenty days, unless sooner discharged by his master, or otherwise by due course of law.

When to be returned.

Warrant.

SEC. 20. The warrant of the justice when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, or to the jail of the county where the master resides, although it may be in any other county in this territory.

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Who to pay costs.

SEC. 21. All the costs incurred in any such process against a servant or apprentice, shall be paid in the first instance by the complainant; and if the complaint be supported, the amount of costs may be recovered by the master in an action on the indenture, if the same were executed by a parent or guardian, and if recovered against a guardian, the amount paid by him in such action, may be charged by him in his guardianship account; and if the indenture were executed by the county commissioners, or by the minor, with the approbation of the probate judge, the amount of such costs may be recovered in an action against the minor, after he shall arrive at full age.

Complaint against apprentice.

SEC. 22. If any such apprentice shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the probate court for the county in which he resides, setting forth the facts and circumstances of the case, and the court, after having duly notified the apprentice or servant, and all persons who have covenanted on his behalf, and also the county commissioners who shall have approved of the indenture, or their successors in that office, shall proceed to hear and determine the cause, as the allegations of the parties may require.

Discharge of master from indentures, &c.

SEC. 23. After a full hearing of the parties, or of the complainant alone, if the adverse party neglect to appear, the court may render a judgment or decree, that the master be discharged from the contract of apprenticeship or service, and for the costs of suit, such costs to be recovered of the parent or guardian of the minor, if there be any who executed the indenture, and execution therefor to be issued accordingly; and if there be no parent or guardian liable for such costs, the amount thereof may be recovered in an action against the minor after that he shall arrive at full age; and any minor discharged as aforesaid, may be bound out anew.

Death of master.

SEC. 24. No indenture of apprenticeship or service made in pursuance of this chapter, shall bind the minor after the death of his master; but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

Provisions of this chapter to apply to females.

SEC. 25. Any indenture of apprenticeship or service made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters.

Common law right of father not affected.

SEC. 26. Nothing contained in this chapter shall prevent or affect the right of a father, by the common law, to assign or contract for the service of his children for the term of their minority or any part thereof.

Act when to take effect.

SEC. 27. This act shall take effect and be in force from and after the first day of May.

Passed December 15th, 1853.

CHAPTER I.

AN ACT RELATING TO THE SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

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SALE OF LANDS OF MINORS AND OTHER PERSONS.

SEC. 1. When guardian may sell estate of a ward.
2. When guardian may sell and place proceeds at interest.
3. Application of proceeds.
4. Investment of proceeds.
5. Residue on final settlement, considered real estate.
6. Petition of guardian for license to sell.
7. Order to show cause.
8. Service thereof.
9. When certificate of county commissioners necessary.
10. Bond to be given by guardian before sale.
11. His oath.
12. Notice of sale, how given, evidence may be perpetuated.
13. As to how long a license to sell may continue.
14. When foreign guardian may file his appointment of guardian, after which he may be licensed to sell.
15. Manner of conducting sale by foreign guardian.
16. Where proceedings respecting sale may be instituted.
17. Residue on final settlement regarded as real estate; disposition thereof.
18. Persons objecting to license, when to pay costs.
19. Limitation of suits by ward, to recover estate sold by guardian.
20. Sale not to be avoided on account of certain irregularities.
21. Liability of guardian for misconduct.
22. When sale not held void in case of adverse claimants.
23. Act when to take effect.

When guardians may sell real estate.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That when the income of the estate of any person under guardianship, whether as a minor, insane person or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Proceeds to be placed on interest.

SEC. 2. When it shall appear upon the representation of any such guardian, that it would be for the benefit of his ward, that his real estate or any part thereof should be sold, and the proceeds thereof be put out on interest, or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

Application of proceeds.

SEC. 3. If the estate be sold for the maintenance of the ward and his family, as provided in the first section of this chapter, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been the personal estate of the ward.

Investment of proceeds.

SEC. 4. If the estate is sold in order to put out and invest the proceeds, as provided in the second section, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the probate court relating thereto.

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Residue, when considered as real estate.

SEC. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same manner as the real estate would have been if it had not been sold.

Petition for license to sell.

SEC. 6. In order to obtain a license for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances under which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Order to show cause.

SEC. 7. If it shall appear to the court from such petition that it is necessary, or would be beneficial to the ward that such real estate, or some part of it, should be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place to be therein specified, not less than four, nor more than eight weeks, from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Service of order.

SEC. 8. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks, in such newspaper circulating in the county as the court shall specify in such order.

When certificate of commissioners necessary.

SEC. 9. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioners of the county of which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

Bond of guardian.

SEC. 10. Every guardian licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate for the county in which he was appointed, with sufficient surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors or administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

His oath.

SEC. 11. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the judge of probate, or some other officer competent to administer the same, in substance as follows: That in disposing of the estate which he is licensed to sell, he will use his best judgment in fixing on the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested therein.

Notice of sale.

SEC. 12. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed for executors and administrators, and the evidence of giving such notice may be perpetuated in the same manner, and with the same effect as is provided in the case of sales of real estate by executors and administrators.

License, how long in force.

SEC. 13. No license granted in pursuance of this chapter shall be in force for more than one year, after the time of granting the same.

When foreign guardian may file copy of his appointment

SEC. 14. When any minor, insane person, or spendthrift residing out of this territory, shall be put under guardianship in the state or county in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be real estate of the ward; after which he may be licensed by the probate court for the same county, to sell the real estate of the ward in any county, in the same manner and upon the same terms and conditions as are prescribed in this chapter, in the case of a guardian appointed in this territory, except in the particulars hereinafter mentioned.

Ib. May be licensed to sell.

SEC. 15. Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath in the like case of guardians appointed in this territory, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in this territory, and may perpetuate the evidence of the notice in the same manner.

Manner of conducting sale.

Where proceedings may be instituted.

SEC. 16. All the proceedings required to be had in any probate court in this territory, respecting such sale by a foreign guardian, shall be had in the court for the county in which the authenticated copy of his appointment is filed.

Disposition of residue.

SEC. 17. Upon every such sale by a foreign guardian, the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been according to the laws of this territory, if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond to the judge of probate, with sufficient surety or sureties, with condition to account for and dispose of the same according to law.

Costs, when to prevailing parties.

SEC. 18. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and if it shall appear to the court, that either the petition or the objection is unreasonable, the court may in its discretion award costs for the party prevailing in the case.

Limitation of suits to recover estate sold by guardian.

SEC. 19. No action for the recovery of any estate, sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only that persons out of the territory, and minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the territory.

Certain irregularities not to avoid sale.

SEC. 20. In case of an action relating to any estate, sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings—*Provided*, it shall appear:

1. That the guardian was licensed to make the sale, by a probate court of competent jurisdiction;

2. That he gave a bond that was approved by the probate judge;

3. That he took the oath prescribed in this chapter;

4. That he gave notice of the time and place of sale, as prescribed by law; and

5. That the premises were sold accordingly, at public auction, and are held by one who purchased them in good faith.

Liability of guardian for misconduct.

SEC. 21. If in relation to such sale, there should be any neglect, or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in a suit on the bond of such guardian, or otherwise as the case may require.

When sale not held void in case of adverse claimant.

SEC. 22. If the validity of any sale, made by a guardian under the provisions of this chapter, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void, on account of any irregularity in the proceedings—*Provided*, that the guardian was licensed to make the sale, by the proper probate court, and that he did accordingly execute, and acknowledge in legal form, a deed for the conveyance of the premises.

This act when to take effect.

SEC. 23. This act shall take effect and be in force from and after the first day of May next.

Passed December 16th, 1853.

AN ACT RELATING TO ESTATES IN DOWER, BY CURTESY AND GENERAL PROVISIONS, CONCERNING REAL ESTATES.

CHAPTER I.

ESTATES.

TITLE I. *Of Estates in Dower.*
TITLE II. *Of Estates by the Curtesy.*
TITLE III. *Of General Provisions.*

TITLE I.

Estates in Dower.

SEC. 1. Of what widows shall be endowed.
2. Dower in case of exchange of lands.
3. Dower in lands mortgaged before marriage.
4. In lands mortgaged after marriage to secure purchase-money.
5. Claim to one-third proceeds of sale in last two cases.
6. When widow entitled to dower after deducting amount paid on mortgage.
7. Dower in lands aliened by husband how estimated.
8. Assignment of dower by probate court when right thereto is not disputed.
9. Warrant of assignment.
10. Oath of commissioners.
11. When estate consists of mill, &c., dower how assigned.
12. Widow and heirs may occupy, &c., until objected to.
13. As to how dower may be barred.
14. Settlement of jointure before marriage, with her assent, to bar dower.
15. Her assent to jointure how evidenced.
16. Pecuniary provision in lieu of dower, when to bar it.

TITLE 1.

SEC. 17. If jointure, &c., be made without her assent, she to elect.
18. If provision or devise in lieu of dower be made by will, to elect.
19. Deemed to have elected unless she sue in one year.
20. To be endowed anew in case of eviction, &c.
21. Alien or non-resident may be endowed.
22. Tenant in dower not to commit waste; to keep houses in repair, &c.,
23. Widow entitled to remain in husband's house one year.
24. When to recover damages as well as dower.
25. Measure of damages, &c.
26. Not to be assessed on certain improvements.
27. Damages against heir for land aliened by him.
28. Assignment of dower in satisfaction, to bar further claim.
29. Infant heirs not to be prejudiced by collusive recovery of dower.

Widow entitled to dower. 10 Wen. 480; 1 Paige 634; 2 Denio 430; 1 Barb. 339; 5 do. 324; 11 do. 592;(a)

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the widow of every deceased person shall be entitled to dower, or the use during her natural life, of one third part of all the lands whereof her husband was seised of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

Dower in case of exchange. 7 Barb. 633.

SEC. 2. If a husband, seised of an estate of inheritance in lands, exchange them for other lands, his widow shall not have a dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the commencement of proceedings, to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Lands mortgaged before marriage. 1 Barb. 399; 8 do. 618.

SEC. 3. When a person seised of an estate of inheritance in lands, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

In lands mortgaged for purchase money. 15 J. R., 461; 10 Paige 67; 6 Cowen 317.

SEC. 4. When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands, to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

When widow entitled to dower after sale on mortgage. 8 Barb. 816.

SEC. 5. When in either of the cases mentioned in the two preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him, shall, after the death of her husband, cause the mortgaged premises to be sold by virtue of such mortgage, and if any surplus shall remain, after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest, or income of one third part of such surplus, for her life as dower.

Dower of residue, after deducting amount paid on mortgage

SEC. 6. If, in either of the cases above specified, the heir, or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out for her, for her dower in the mortgaged lands, the value of one third of the residue, after such deduction.

(a) 7 do. 260; 4 Comst. 95; 3 do. 219; 8 do. 401.

TITLE 1.

Dower in lands aliened by husband, how estimated.

SEC. 7. When a widow shall be entitled to dower out of any lands, which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated in setting forth the widow's dower, according to their value at the time they were so aliened.

When dower may be assigned by probate court.

SEC. 8. When a widow is entitled to dower in the lands of which her husband died seised, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them or either of them, it may be assigned to her in whatever counties the lands may lie, by the judge of probate for the county, in which the estate of the husband is settled, upon application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or other persons in such manner, as the judge of probate shall direct.

Warrant for resignment.

SEC. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Oath of commissioners.

SEC. 10. The commissioners shall be sworn by a judge of any court of record, or a justice of the peace, faithfully to discharge their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing to the probate court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the recorder of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed; costs on error or on appeal, and one half of the costs of such proceedings, shall be paid by the widow, and the other half by the adverse party.

When estate consists, of mill, &c., how dower assigned.

SEC. 11. When the estate, out of which dower is to be assigned, consists of a mill, or other tenement, which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow, as a tenant in common with the other owners of the estate.

When widow may occupy with heirs.

SEC. 12. When a widow is entitled to dower in the lands of which her husband died seised, she may continue to occupy the same, with the children or other heirs of the deceased, or may receive one-third part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

How dower may be barred.

SEC. 13. A married woman may bar her right of dower, in any estate conveyed by her husband, or by his guardian, if he be a minor, by joining in the deed of conveyance, and acknowledging the same, as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed acknowledged in like manner.

When barred by jointure.

SEC. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage—*Provided*, such jointure consists of a freehold

TITLE 1.

estate in lands, for the life of the wife at least, to take effect in possession, or profit, immediately on the death of her husband.

Evidence of her assent.

SEC. 15. Such assent shall be expressed if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age, by her joining with her father or guardian in such conveyance.

When barred by pecuniary provisions.

SEC. 16. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

When to elect between jointures, &c., and dower.

SEC. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband, but she shall not be entitled to both.

When between devise, &c., and dower. 5 Hill 206; 2 Denio, 430; 4 Barb. 20.

SEC. 18. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election, whether she will take the lands so devised, or the provisions so made, or whether she will be endowed by the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

When deemed to have elected.

SEC. 19. When a widow shall be entitled to an election, under either of the last two preceding sections, she shall be deemed to have elected to take such jointure, devise, or other provision, unless within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

When to be endowed anew.

SEC. 20. If a woman be lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or be deprived of the provision made for her by the will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

Alien or non-resident entitled to dower.

SEC. 21. A woman being an alien, shall not on that account be barred of her dower; and any woman residing out of the territory shall be entitled to dower of the lands of her deceased husband, lying in this territory, of which her husband died seised, and the same may be assigned to her, or recovered by her in like manner, as if she and her deceased husband had been residents within the territory, at the time of his death.

Woman not to commit waste; to keep houses, &c., in repair.

SEC. 22. No woman, who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman, so endowed, shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate inheritance therein, for all damages, occasioned by any waste committed, or suffered by her.

How long widow may remain in dwelling-house, &c. 10 Wen. 419.

SEC. 23. A widow may remain in the dwelling-house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate for one year.

When to recover damages.

SEC. 24. Whenever in any action, brought for the purpose, a widow shall recover her dower in lands, of which her husband died seised, she shall be entitled also to recover damages for the withholding of such dower.

TITLE 2 & 3.

Measure of damages, &c.

SEC. 25. Such damage shall be one third part of the annual value of the mesne profits of the lands, in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband from the time of his death, and in suits against other persons from the time of demanding her dower of such persons.

Not on improvements.

SEC. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

Damages against heirs alienating land, &c., to be deducted; &c. 2 Coms. 249.

SEC. 27. When a widow shall recover her dower in any lands, aliened by the heir of her husband, she shall be entitled to recover of such heir, in a civil action, her damages, for withholding such dower, from the time of the death of her husband, to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Claims when barred by assignment of dower. 2 Comst. 245.

SEC. 28. When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower, against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned as aforesaid.

Collusive recovery not to prejudice infant heirs, &c.

SEC. 29. When a widow, not having a right to dower, shall during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs or other person, such heir or other person so entitled, shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

TITLE II.

Estates by the Curtesy.

SEC. 30. When husband to hold as tenant by the curtesy.

When husband to hold as tenant by the curtesy.

SEC. 30. When any man and his wife shall be seised in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by curtesy, although such husband and wife may not have had issue born alive.

TITLE III.

General Provisions.

SEC. 31. Liability of person in possession of land, out of which rent is reserved.
32. Recovery of rent, deed evidence to prove amount due.
33. Construction of preceding sections.
34. Determination of estate at will and by sufferance.
35. Aliens may hold, convey, and demise land, &c.
36. Title of land heretofore conveyed, not to be questioned on account of alienage.
37. Reversioners may sue for injury done inheritance.
38. When joint-tenant may maintain action against co-tenant.
39. Act, when to take effect.

TITLE 3.

Liability of person in possession of land, out of which rent is reserved.

SEC. 31. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

How rent recovered.

SEC. 32. Such rent may be recovered in an action at law, and the deed of demise, or other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party, to prove the amount due from the defendant.

Construction of preceding sections.

SEC. 33. Nothing contained in the two preceding sections, shall deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases, or provided by law.

Determination of estate at will, and by sufferance.

SEC. 34. All estates at will, or by sufferance, may be determined by either party, by three months' notice in writing, given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Alien may hold, convey, and demise land.

SEC. 35. Any alien may acquire and hold lands, or any right thereto, or interest therein by purchase, devise, or descent, and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this territory, or of the United States.

Former titles not to be questioned.

SEC. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected by reason of the alienage of any person, from or through whom such title may have been derived.

Remedies of reversioners, &c.

SEC. 37. A person, seised of an estate in remainder or reversion, may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Ib. Of joint-tenants against co-tenants.

SEC. 38. Joint tenant, or tenant in common, and his executors or administrators, may maintain an action against his co-tenant, for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants, or tenants in common.

Act when to take effect.

SEC. 39. This act shall take effect, and be in force from and after the first day of May next.

Passed January 16th, 1854.

CHAPTER 1.

AN ACT RELATING TO COUNTIES.

CHAPTER I.

OF COUNTIES.

SEC. 1. Each county to continue a body politic, and for what purposes.
2. Real estate and personal estate, when deemed property of county.
3. Agents to sell, how appointed; conveyances by.
4. Actions against county, where may be prosecuted.
5. Actions by inhabitants, where to be prosecuted.
6. Service of process.
7. Controversies, how determined.
8. Name by which county shall be sued.
9. Actions against counties that may be prosecuted before justice.
10. Costs recoverable, as in suits between individuals.
11. Execution against commissioners not to issue, except in certain cases.
12. Act when to take effect.

Each county a body politic.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That each county shall continue to be a body politic and corporate, for the following purposes; to wit: to sue and be sued; to purchase and hold for the use of the county, lands lying within its own limits, and any personal estate; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

Real, &c., estate, when property of county.

SEC. 2. All real or personal estate heretofore conveyed, or which shall hereafter be conveyed, by any form of conveyance, and duly acknowledged and recorded, to the inhabitants of any county, or to the county treasurer, or to any committee or other persons, for the use of such county, shall be deemed the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their corporate name.

Agents, to sell, how appointed.

SEC. 3. The county commissioners, or other public officers having the charge and management of the county lands, may by their order of record appoint agents to sell any of the real estate of their county; and all deeds made in behalf of the inhabitants of the county by such agent, under their proper hands and seals, and duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey all the right, title, and interest which the county may then have to such land so conveyed.

Actions against county.

SEC. 4. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment, in the district court of the county, against which suit is brought, or in an adjoining county at the plaintiff's election.

Ib. By inhabitants of county.

SEC. 5. All actions, whether local or transitory, brought by the inhabitants of a county, shall be brought either in the county in which the defendant lives, or in a county adjoining that by which the suit is brought; and when the defendant lives in a county adjoining that by which the action is brought, it shall be brought in an adjoining county.

Process, on whom served

SEC. 6. When any action shall be commenced against any county, service shall be made upon the clerk of the board of county

CHAPTER 1. commissioners, by leaving with him a copy of the summons and complaint or declaration, and such service shall be made at least thirty days before the return day. The inhabitants of any county so sued or suing, shall be competent jurors or witnesses, if otherwise competent or qualified according to law.

Controversies.

SEC. 7. Whenever any controversy or cause of action shall exist between any of the counties of this territory, or between any county and the territory, or an individual or individuals, such proceedings shall be had, for the purpose of finally trying and settling such controversy, and the same shall be conducted in like manner, and the judgment or decree shall have the same effect, as in suits or proceedings between individuals and corporations.

Name in which county shall be sued.

SEC. 8. In all suits or proceedings by or against the county, the name in which the county shall sue or be sued, shall be "the board of commissioners of the county of (the name of the county)": but this provision shall not prevent other county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

Actions against counties, where brought.

SEC. 9. Any action in favor of or against a county, prosecuted by or against an individual, could be prosecuted before a justice of the peace, may be prosecuted by or against such county, in like manner before a justice of the peace.

Costs, how recoverable.

SEC. 10. In all suits or proceedings prosecuted by or against counties, or by or against officers in their name of office, costs shall be recoverable as in suits between individuals.

Execution against commissioners not o issue, except in certain cases.

SEC. 11. When any judgment shall be recovered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, where the same should be paid by the county, no execution shall issue on such judgment, except as hereinafter provided; the same, unless reversed, shall be levied and collected as other county charges, and when so collected, shall be paid by the county treasurer, to the person in whose favor such judgment was rendered, upon the delivery to him of the proper vouchers therefor: but if payment be not made within thirty days after the time the collector of taxes is required by law to make his return of county taxes, next after the rendition of such judgment, then, and in that event, execution may be issued on such judgment: *Provided*, that if at the time of the rendition of such judgment, there shall be sufficient funds belonging to the county in the treasury, it shall be the duty of the treasurer to pay the same, upon application being made to him by the person in whose favor such judgment was rendered, his agent or attorney.

Proviso.

Act when to take effect.

SEC. 12. This act shall take effect and be in force from and after the first day of May next.

Passed January 24th, 1854.

CHAPTER 1.

AN ACT RELATING TO COUNTY COMMISSIONERS.

CHAPTER I.

COUNTY COMMISSIONERS.

SEC. 1. Commissioners, board of; their election, term of office, &c.
2. Division of county into districts; commissioner to be elected from each district: proviso.
3. Term of office of commissioner elected to fill vacancy.
4. Official oath of commissioner; certificate thereof to be filed.
5. Commissioners may bring and defend suits.
6. Commissioners to hold four sessions annually.
7. July session, what business to be transacted at.
8. Commissioners may hold extra sessions; sessions not to exceed three days.
9. Compensation of commissioners.
10. In case of division, question when to be postponed.
11. County auditor to be clerk of board; his duties.
12. Commissioners to use official seal.
13. General duties of county commissioners.
14. Election of chairman; effect of signature; documents how signed in his absence.
15. Commissioners to provide offices, stationery, &c., for county officers.
16. When to receive and inspect assessment roll.
17. Board of commissioners invested with superintendence of poor.
18. Power to compound debts.
19. Not to be interested in any contract for county under penalty.
20. Power to administer oaths.
21. To provide place for holding court.
22. Appeal from decision of commissioners, how and when taken.
23. Act when to take effect.

County commissioners, their number, election, &c.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be established in each organized county in this territory, a board of commissioners, to consist of three persons, having the qualifications of electors, any two of whom shall be competent to do business, to be elected by the qualified electors thereof, at the annual election, who shall hold their office for three years, except as hereinafter provided.

Division of county into districts.

SEC. 2. Each county shall be divided into three districts, numbered *one*, *two* and *three*, not subject to alteration oftener than every three years, and such districts shall be laid off by the board of commissioners of the respective counties, at their first session after the first day of May next, and in counties hereafter organized, within one year from the organization of the county; and hereafter, one commissioner shall be elected from the residents of each of such districts, by the voters of the whole county: *Provided*, that the commissioners first elected in any county in this territory, shall hold their office for the term of *one*, *two* and *three* years, and until their successors are elected and qualified, to be by them determined by lot at their first session: *Provided further*, that if any commissioner shall absent himself from the county in which he is elected for six months in succession, it shall be deemed a resignation of his office.

Commissioner to be elected from each district

Term of office of commissioner elected to fill vacancy.

SEC. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

CHAPTER 1.

Official oath.

SEC. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation, before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county, in which he resides; and deposit a certificate thereof with the clerk of the board of commissioners, of his county, to be by him filed in his office.

Commissioners may sue and be sued.

SEC. 5. The commissioners thus elected and qualified may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court, either in law or in equity, and do and transact all business on behalf of their respective counties, that may be assigned to them by law; and in all cases where their respective counties have been injured, or may hereafter be injured in their goods, chattels, lands, tenements, rights, credits, and effects, or contracts, such commissioners may in their name of office, without setting out their individual names, bring any suit or suits, either in law or equity, which may be best calculated to obtain redress for such injury, and may, in like manner, and by their name of office, be sued by any person or persons, having any claims against such county.

To hold four sessions annually.

SEC. 6. The board of commissioners shall hold four sessions annually, at the seat of justice of their respective counties, commencing on the first Mondays of April, July, September and December; at all of which they shall transact any business which may be required by law; *provided*, that if the district court be in session on any of the above mentioned days, the commissioners shall meet on the Monday preceding, but no session shall be continued for a longer period than six days.

July session.

SEC. 7. At the July session the commissioners shall examine and compare the accounts and vouchers of the county auditor and treasurer, count the funds in the treasury, and direct the auditor to publish an exhibit of the receipts and expenditures of the past year.

Extra sessions, not to exceed three days.

SEC. 8. The said board of county commissioners are hereby authorized to hold extra sessions, in case they may think the business of their county requires the same; and ten days notice from any two of the commissioners to the third, shall be considered a sufficient call for said extra sessions—*Provided*, that no such extra session shall exceed three days.

Compensation.

SEC. 9. The commissioners shall each receive three dollars per day, for each and every day they may be necessarily employed in transacting the county's business, and ten cents a mile for every mile travelled in going to, and returning from the meeting of said board, or in the discharge of any official duty, to be computed by the most usually travelled route.

Question postponed in certain cases

SEC. 10. When two only of the members shall be present, at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

Clerk of board.

SEC. 11. The county auditor shall be the clerk of the board of county commissioners, and shall attend the meetings of the board, and keep a record of the proceedings, and do such other business as he shall be required by law to do.

CHAPTER 1.

Official seal.

SEC. 12. The commissioners of each county shall have and use a seal for the purpose of sealing their proceedings; and copies of the same when signed and sealed by said commissioners, and attested by their clerk, shall be good evidence of such proceedings in the trial of any cause in any court of this territory.

County commissioners, general duties of.

SEC. 13. The several boards of county commissioners are authorized and required:

1. To provide for the erection and repairing of court-houses, jails, and other necessary public buildings for the use of the county;

2. To lay out, discontinue, or alter county roads and highways within their respective counties, and to do all other necessary acts relating thereto;

3. To license and fix the rates of ferriage; to grant grocery and other licenses, authorized by law to be by them granted;

4. To fix the amount of taxes to be assessed according to the provisions of law, and cause the same to be levied and collected;

5. To have the care of the county property and the management of the county funds, and business; except in cases otherwise provided for, and shall have no other powers, except such as are, or may be given by law.

To elect chairman.

SEC. 14. The commissioners aforesaid at their annual session in July, in each and every year, shall elect one of their members to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board; and the signature of such person, as chairman of the board of commissioners, shall be as legal and binding as if the entire board had affixed their names—*Provided*, that in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board, shall be signed by both members present.

To provide offices, &c., for county officers.

SEC. 15. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor, and clerk of the district court, and also provide all books, and stationery, necessary for the use of the board of county commissioners, the office of the county auditor, the clerk of the district court, the probate court, and county treasurer, and also provide convenient desks for the preservation and security of the books, and other documents in the several offices.

To receive and inspect assessment roll.

SEC. 16. The board of commissioners at their session in September in each year, shall receive and inspect the assessment roll, returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by the chairman and attested by the clerk, and cause the same to be filed in the office of the county auditor, where it shall remain as a matter of record, and shall be a guide for future assessors, so far as the same shall remain correct.

Superintendence of poor.

SEC. 17. The boards of commissioners of the several counties of this territory, are vested with the entire superintendence of the poor in their respective counties.

Power to compound debts.

SEC. 18. The county commissioners of their respective counties, shall have power to compound for a release in whole, or in part, of any debt due to their county, and for the use thereof, when in their opinion, the interests of the county will not be prejudiced

CHAPTER 1. thereby; except in cases when they, or either of them are personally interested.

No commissioner to be contractor.

SEC. 19. No county commissioner shall, directly, or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law, for the use of the county; and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

To administer oaths.

SEC. 20. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office.

To provide court-room.

SEC. 21. Until proper buildings are erected at a place fixed upon, for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

Appeal from decision of commissioners.

SEC. 22. Any person may appeal from the decision of the board of commissioners, to the next term of the district court, of the same county; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the auditor of the county; and the party appealing shall give a bond to the county, with one or more sureties, to be approved by the county auditor, conditioned to pay all the costs which shall be adjudged against him, on such appeal, in the said district court.

Act when to take effect.

SEC. 23. This act shall take effect, and be in force from and after the first day of May next.

Passed January 24th, 1854.

AN ACT RELATING TO ASSESSORS.

SEC. 1. Election of assessors; qualification and term of office.
2. Bond and oath of office.
3. County auditor to give assessors assessment roll; assessment when and how made; roll what to contain; to be delivered to commissioners; lands, &c., how valued.
4. Valuation of personal property.
5. Assessor to swear tax-payer; proceedings on refusing to be sworn.
6. Notice of examination of assessment roll; when and how to be given.
7. Assessor liable to penalty for neglecting to comply with such notice. Proviso.
8. Assessor to make duplicate of assessment roll; other duties of assessor.
9. Compensation of assessors.
10. Act when to take effect.

Election of assessor.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That at the time of holding the general election in each year, there shall be elected in each of the counties of this territory an assessor, who shall have the qualifications of a voter as prescribed by law; and said assessors shall hold their office for one year, and until their successors are elected and qualified.

Bond and oath.

SEC. 2. The said assessors shall, each, before entering on the discharge of the duties of his office, give a bond to the county for which he was elected, with two or more sureties to be approved

CHAPTER 1. by the board of county commissioners in such penal sum as such board shall direct, conditioned for the faithful performance of his duties according to law; and shall take and subscribe an oath, faithfully and impartially to discharge the duties of his office according to law, and to the best of his abilities.

Assessment-roll, &c.; assessment.

SEC. 3. The assessors, after qualifying as above prescribed, shall immediately receive from the county auditor a blank assessment roll, for their respective counties, and shall, in the months of July and August thereafter, assess all the taxable property within their respective counties, and shall deliver to the board of county commissioners, on or before their session in September, next following, a full and complete assessment roll, which roll shall set forth a full and precise description of the lands, or town lots, as owned by each person therein named, which description shall correspond with the plan or plot of the original survey, or the plan or plot of any town laid out and recorded; and said lands and town lots shall be valued at their true cash value, taking into consideration the improvements on the land, and in the surrounding country, the quality of the soil, its convenience to navigation, public roads, mill privileges, and other local advantages.

Lands, &c., how valued.

Ib. Personal property.

SEC. 4. All the personal property not exempt from taxation shall be valued at its true value in cash, and it shall be the duty of each assessor to value all improvements on claimed land within his county as personal property.

Assessor to swear tax-payer.

SEC. 5. It shall be the duty of every assessor to swear every person subject to taxation; to give a true account of his or her property according to the best of his or her knowledge and belief; and should any person or persons, when so required, refuse to testify as aforesaid, the assessor shall ascertain the taxable property of such person, or persons, from the best information to be derived from other sources.

Notice of examination of assessment-roll.

SEC. 6. Each assessor shall give three weeks public notice in some newspaper, printed in his respective county; if there be no such newspaper, then in some newspaper in general circulation in his county, or by posting up notices in six conspicuous places in his county, setting forth that, on the last Monday in August, the assessor will attend at the office of the county auditor of his county, and with the assistance of said auditor, will publicly examine the assessment rolls, and correct all errors in valuations, descriptions, or qualities of lands, lots, or other property, and it shall be the duty of persons interested to appear at the time and place appointed, and if it shall appear during such examination that there is any lands, lots or other property assessed twice, or assessed beyond its actual value, or assessed in the name of a person not the owner thereof, or any lands, lots, or other property not assessed, the auditor and assessor shall make the proper directions.

Ib. Penalty if assessor neglects to comply with notice.

SEC. 7. If any person shall wilfully neglect to attend at the time and place required, he shall be liable for a violation of his duty, and suffer such fine or imprisonment, or both, as the district court shall impose—*Provided*, that it may be competent for any assessor, in case of his being prevented by sickness, or any other unavoidable cause, as above prescribed, to appoint some suitable person, having the qualifications of a voter, his deputy, who shall perform

CHAPTER 1. all the duties of the assessor he represents, and for whose acts the said assessor shall be responsible, and said deputy shall, before he enters on the discharge of the duties of his office, take and subscribe before the county auditor an oath, faithfully and impartially to perform the duties devolving upon him, which oath shall be filed in the office of the county auditor.

Duplicate of assessment-roll; duties of assessor.

SEC. 8. It shall be the duty of the assessor in each county to make out and retain in his possession a duplicate of his assessment roll, and shall make the necessary corrections therein, so that such duplicate will correspond with the assessment roll on file, in the office of the county auditor, and also make a plot of the government survey, and town plots within his county, and note thereon the owner of each tract of land, and of each town lot, and deliver such duplicate assessment roll and plot, and other documents relating thereto to his successor in office.

Compensation.

SEC. 9. Each assessor shall receive a compensation of five dollars per day, for each day actually and necessarily employed in the discharge of the duties of his office, and such reasonable compensation for the copy of the assessment roll, and plot of the survey as the board of county commissioners may allow; which compensation shall be paid out of any moneys in the county treasury, not otherwise appropriated.

Act when to take effect.

SEC. 10. This act shall take effect and be in force from and after the first day of May next.

Passed January 26th, 1854.

AN ACT RELATING TO COUNTY AUDITORS.

SEC. 1. Election of auditor, term of office.
2. Auditor to be clerk of board of commissioners.
3. Election of, how conducted: proviso.
4. Oath of office to be indorsed on certificate of election: bond: duties of auditor.
5. Account current to be kept with treasurer.
6. May appoint deputy.
7. Auditor and deputy may administer oaths.
8. Not to practice as attorney before commissioners.
9. May cancel county orders and issue others in lieu.
10. In case of sickness, commissioners may appoint auditor *pro tem.*
11. Act not to apply to auditors now in office.
12. Appointment of deputy to be in writing; oath of: auditor responsible for deputy.
13. Auditor to attend meeting of board of county commissioners, as clerk.
14. Act, when to take effect.

Election of auditor; term of office.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That at the first general election in each and every county organized for county purposes, and every two years thereafter, there shall be elected a county auditor, who shall have the qualifications of a voter and shall continue in his office for the period of two years, and until his successor is duly elected and qualified.

Clerk of board of commissioners.

SEC. 2. The auditor shall also be clerk of the board of county commissioners, and recorder of deeds in the county for which he is elected.

Election how conducted.

SEC. 3. The election provided for by this act, shall be conducted and the returns made in the manner and form prescribed by the law regulating general elections: *Provided*, that the person or persons associated with the auditor in opening and examining the poll books, shall issue to the person duly elected under this act, his certificate of election.

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Bond and oath of office to be filed.

SEC. 4. Every auditor within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath before the clerk of the district court, or judge of probate of his proper county, faithfully and impartially to perform the duties of his office as prescribed by law, to the best of his abilities; which oath shall be indorsed on the back of his certificate of election, recorded in a book kept for the purpose in his office, and filed in the office of the clerk of the district court of the county, or if there be no such officer, with the clerk of the district court of the county to which his county may be attached for judicial purposes. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfil the duties of his office; which bond shall be filed in the office of the clerk of the district court of the proper county; he shall audit all accounts and demands chargeable against his county, (which are not directed to be settled and allowed by some other tribunal or person,) and present the same to the county commissioners for their inspection and allowance, and for all such sums of money allowed by the county commissioners, or such other tribunal or person, or where the same is fixed by law, he shall issue his order on the treasurer of the county, payable to the person entitled thereto, which orders shall be numbered according to the date of their issue; and the number, date, and amount of each, and to whom payable, and for what purpose drawn, shall, at the time of issuing the same, be entered in a book kept for that purpose.

To audit accounts against county, &c.

Account with treasurer.

SEC. 5. He shall keep an accurate account-current with the treasurer of the county, and when any person shall deposit with him any receipt given by the treasurer, for money paid into the treasury, he shall file such receipt, and charge the treasurer with the amount thereof.

Deputy.

SEC. 6. Auditors may appoint deputies to perform the duties of auditor, and shall be liable for the official acts of such deputies.

Auditor and deputy may administer oaths.

SEC. 7. Auditors and their deputies are authorized to administer oaths necessary in the performance of their duties; and in all other cases where oaths are required by law to be administered.

Where not to practice as attorney.

SEC. 8. No person doing the duties of auditor shall practice as an attorney before the court of county commissioners.

Cancelling orders, &c.

SEC. 9. Any person may have a county order cancelled by the auditor, and two or more new orders issued in lieu thereof, by paying to such auditor the fees allowed for such services.

Appointment of auditor *pro tem.*

SEC. 10. In case the auditor is unable to attend to the duties of his office, during the session of the board of county commissioners, and having no deputy able to attend, some person may be deputized by such board to perform the duties of auditor for the time being.

Auditors now in office.

SEC. 11. Nothing in this act shall be so construed as to prevent the persons now discharging the duties of county auditor in any county, from continuing to perform the duties of that office during the time he would otherwise have been entitled.

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Appointment of deputy.

SEC. 12. The county auditors in the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be indorsed on the appointment, and recorded in the office of the county auditor. The county auditors shall be responsible for the acts of their deputies, and may revoke their appointment at pleasure.

Auditor to attend meetings of board of county commissioners as clerk of board.

SEC. 13. The county auditor shall attend the meetings of the board of county commissioners of their respective counties, and do and perform all the duties imposed by law; and the clerk of said board shall keep fair books, wherein shall be entered the minutes of the proceedings of the board; shall copy into books the reports of the treasurer of the receipts and disbursements of the county, and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of the county auditor to send a statement of the same, wherewith such collector stands charged, to the county treasurer.

Duty as clerk.

Act when to take effect.

SEC. 14. This act shall take effect and be in force from and after the first day of May next.

Passed January 19th, 1854.

AN ACT RELATING TO COUNTY TREASURER.

SEC. 1. Treasurer how elected; his term of office.
2. Oath and bond to be filed.
3. As to receival and disbursement of county moneys.
4. May appoint or remove deputies.
5. Office where to be kept; treasurer and deputy may administer oaths.
6. Books how kept.
7. Books subject to inspection of commissioner.
8. When to pay auditor's order; proceedings if out of funds.
9. Redemption of order bearing interest; proceedings thereon.
10. Orders to be redeemed according to priority of presentment.
11. Order redeemed when and where to be deposited.
12. Removal of treasurer by county commissioners.
13. Annual settlements; books to be transferred to successor.
14. Compensation of treasurer.
15. Act when to take effect.

Treasurer, how elected; term of service.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected at the annual election in each county in this territory; by the qualified voters thereof, some suitable person, being a resident of the same county, to be the county treasurer, who shall continue in office for one year, and until his successor is elected and qualified.

Oath of office and bond.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office as prescribed by law: he shall also, before he shall enter upon the duties of his office, give a bond to the county, with at least four freeholders residing in the county, as sureties, in a penalty to be determined by the board of county commissioners, who shall also approve the sureties to the bond.

To receive and disburse money.

SEC. 3. He shall receive all moneys due and accruing to his

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county, and disburse the same on the proper orders, issued and attested by the county auditor.

Deputies.

SEC. 4. County treasurers may appoint one or more deputies, and may take from them bond with sureties; may remove such deputies at pleasure, and such treasurer and his sureties shall be liable for all official acts of such deputies.

Office where to be kept; Treasurer and deputy may administer oaths.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for the transaction of business during business hours; and he and his deputy are authorized to administer all oaths, necessary in the discharge of the duties of his office.

Books how kept.

SEC. 6. He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

Ib. Subject to inspection of commissioners.

SEC. 7. He shall at all times keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year.

When to pay auditor's orders.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order, the date of redemption and his signature. If there be no funds to pay such order when presented, he shall indorse thereon, "Not paid for want of funds," and the date of such presentment, over his signature, which shall entitle such order thenceforth to draw legal interest—*Provided*, that such interest shall cease from the date of notice by publication in some newspaper, printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case.

Redemption of orders barring interest.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order, the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

Ib. How redeemed.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment—*Provided*, such orders payable out of the county revenue shall be received in payment of county taxes, without any regard to priority of presentment, or number; but such treasurer shall not pay any balance thereon over and above such tax, when there are outstanding orders unpaid for want of funds.

Orders redeemed, where and when deposited.

SEC. 11. The treasurer shall, on the first Monday in December, March, June, and September, in each year, deposit with the county auditor, all county orders redeemed, who shall receipt therefor.

When treasurer may be removed.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

Settlements, books to be transferred to successor.

SEC. 13. The county treasurer shall annually make complete settlement with the board of county commissioners, at the regular July term thereof, and shall, at the expiration of his term, deliver to his successor all public money, books and papers in his possession.