

CHAPTER 158.

ESTATES OF DECEDENTS.

AN ACT to Amend Chapter 100 of the Revision of 1860, in relation APRIL 15.
to the Estates of Decedents.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That sections 2308, 2323, 2325, 2326, 2329, 2334, 2335, 2339, 2348, 2349, 2351, 2352, 2360, 2376, 2386, 2387, 2389, 2391, 2393, 2395, and 2399 of the Revision of 1860, be, and the same are hereby, repealed, and there is enacted in lieu thereof, and as such sections, the following: Rev.: ch. 100.

SEC. 2. (Sec. 2308.) That all bonds relating to probate matters shall be filed in the office of the clerk of the circuit court, and shall not be deemed sufficient until examined by the clerk, and his approval indorsed thereon. Bonds in probate matters, where filed.
Clerk's approval.

SEC. 3. (Sec. 2323.) Any person, having the custody of a will, shall, at the first stated term of the court after being informed of the death of the testator, bring the same into open court, when it shall be publicly read; or such will may be filed with and opened by the clerk in vacation. Reading of will;
in vacation.

SEC. 4. (Sec. 2325.) After being thus produced and read, a day shall be fixed by the court, or clerk, for proving the same, which day shall be during a term of court, and which hearing may be postponed, from time to time, in the discretion of the court. Probate.

SEC. 5. (Sec. 2326.) Notice of such hearing shall be given, which shall be signed by the clerk of the court and addressed to all whom it may concern, and be published in a weekly or daily newspaper, printed in the county where the will is filed, for three consecutive weeks, the last of which publications shall be at least ten days before the time fixed for such hearing. If, however, the court direct other or different kind of notice, it shall be such as by it prescribed. Notice;
to be printed.
Other notice.

SEC. 6. (Sec. 2329.) Wills shall not be carried into effect unless thus allowed, and such allowance is conclusive as to the due execution of the will, unless set aside by an original or appellate proceeding. Probate conclusive, unless, etc.

SEC. 7. (Sec. 2334.) They may in each case consist of one or more, and, if not designated by will, they may be appointed by the court in term, or in vacation by the clerk subject to the approval of the court. Executors.

Refusal to accept trust; or neglect to give bond, makes necessary; SEC. 8. (Sec. 2335.) If a person appointed executor refuse to accept the trust, or, if when duly notified of his appointment, he neglects to appear within thirty days and give bond as hereinafter prescribed, or when an executor removes from the State, a vacancy will be deemed to have occurred.

Provision in case of vacancy. SEC. 9. (Sec. 2339.) In case of vacancy the court may appoint a substitute, or it may allow another executor (if there is another) to proceed by himself in administering the estate. When such vacancy leaves the estate without an executor, the clerk may, in vacation, appoint such substitute subject to the approval of the court.

Executor to give bond. SEC. 10. (Sec. 2348.) Every executor, except as herein otherwise declared, before entering on the discharge of his duty, must give bond in such penalty as the clerk approves, conditioned for the faithful discharge of the duties imposed on him by law, according to the best of his abilities.

Oath. SEC. 11. (Sec. 2349.) He must also take and subscribe an oath, the same in substance as the condition of the bond aforesaid, which oath and bond must be filed with the clerk.

Commission. SEC. 12. (Sec. 2351.) After the filing of the bond aforesaid, the clerk shall issue a commission under the seal of the court, giving the executor the powers authorized by law.

Temporary executors. SEC. 13. (Sec. 2352.) When for any cause there is a necessary delay in granting such commission, the court in term, or the clerk in vacation, may, in their discretion, appoint one or more executors to collect and preserve the property of the deceased, who shall qualify as above required.

Inventory of personal effects. SEC. 14. (Sec. 2360.) Within thirty days after their appointment, unless for good cause an extension of that time is specially given by the court, or if in vacation by the clerk, the executors shall make and return to the clerk an inventory of all the personal effects of the deceased, of every description, which have come within their knowledge, embracing all book-accounts which appear by the books or papers of the deceased to be unsettled.

Notice of sale of real estate. SEC. 15. (Sec. 2376.) Before any order to that effect can be made, all persons interested in such real estate, shall be served with notice in the same manner as prescribed for the commencement of civil actions.

Conveyances. SEC. 16. (Sec. 2386.) Where real estate is sold, conveyances thereof executed by the executors pass to the pur-

chaser all the interest of the decedent therein; but such conveyance shall not be valid until approved by the court.

SEC. 17. (Sec. 2387.) Such approval shall be entered of record. A certificate thereof must be indorsed upon the deed, with the signature of the clerk and the seal of the court affixed thereto, and the deed so indorsed shall be presumptive evidence of the validity of the sale, and of the regularity of all the proceedings connected therewith. Presumption.

SEC. 18. (Sec. 2389.) The executors shall, within thirty days after the receipt of their commission, publish notice of their appointment, either by posting, or by publication in a newspaper, in such manner as the court, or if in vacation, the clerk may direct; which direction shall be indorsed on the commission when issued. Executors' notice how published.

SEC. 19. (Sec. 2391.) Claims against the estate must be clearly stated, sworn to and filed, if the claim be less than one hundred dollars, ten days' notice of the hearing indorsed on a copy of the claim must be served upon one of the executors in the manner required for commencing actions in the district court. The executor may with the approbation of the court, admit claims with the correctness of which he is satisfied, but not until the claimant has sworn to their correctness, and the like rule shall be observed in relation to payments or set-offs to any demands due the estate. Claims. Executor may allow.

SEC. 20. (Sec. 2393.) Where claims are filed, and not allowed as provided in the preceding section, the claimant's remedy thereon shall be by action in the circuit court, if the claim exceeds one hundred dollars. Remedy where claims filed are not allowed.

SEC. 21. (Sec. 2395.) In matters of accounts of executors and guardians, the circuit court shall have authority to appoint one or more referees, who shall have all the powers, and perform all the duties, as now provided in relation to referees appointed by the district court under chapter 123 of the Revision of 1860. Circuit court may appoint referees, when: and their duties. Rev.: ch., 123.

SEC. 22. (Sec. 2399.) Unsatisfied judgments rendered prior to the death of the decedent, sworn to as provided in section 2391, shall be entered in the catalogue of claims, but possess no preference over other claims, except the lien allowed by law. And should the executor wish to make defense to said judgment, or establish a set-off thereto, or cross demand against the owner thereof, he may do so by action in the circuit court. Unsatisfied judgments. Set-off, etc.

SEC. 23. Sections 2392 and 2394 of Revision of 1860 are hereby repealed. Rev.: §2392 & 94 repealed.

Taking effect. SEC. 24. This act, being deemed by the General Assembly of immediate importance, shall take effect from and after its publication in the Iowa State Register and Des Moines Statesman, newspapers published in Des Moines, Iowa.

Approved, April 15, 1870.

I hereby certify that the foregoing act was published in *The Des Moines Daily Statesman*, April 25th, and in the *Daily Iowa State Register*, April 28, 1870.

ED WRIGHT, *Secretary of State.*

CHAPTER 159.

DRAINAGE ACT.

APRIL 15. AN ACT to Provide for the Draining of Land.

Mode of procedure where owners desire to drain lands by opening ditches through adjoining property.
Application to tp. trustees.
Questions relative to public health and cultivation of lands to be inquired into.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That any person owning or possessing any swamp, marsh, or wet land, who shall desire to drain the same, and when he shall deem it necessary, in order thereto, that a ditch or ditches should be opened through lands belonging to other persons, in case the owners of any such land shall refuse to permit the opening of such ditch, or ditches, through the same, or if the parties cannot agree upon the terms thereof, he may make application, in writing, to the township trustees of the township where such marsh or swamp lands shall be situated, to inquire and determine whether such marsh, swamp, or wet lands are a source of disease to the inhabitants, and whether the public health would be promoted by draining the same, and to inquire and determine whether such ditch or drain is necessary for the proper cultivation of the same, and whether the permanent assessed value of said lands will be increased by such drain. Said application shall be filed with the township clerk.

What application shall state.
 SEC. 2. Such application shall state through whose premises, if known, it is necessary for said ditch or ditches to pass, and shall also describe said lands. Ten days' notice shall be served upon the owners of said lands, in like manner as notices are required to be served in com-