

the same may have been brought; any miller so offending, shall forfeit and pay the sum of five dollars as before directed.

Forfeiture.
This act, when to take effect.

SEC. 15. This act to be in force from and after the first day of May next.

APPROVED, January 25, 1839.

MINORS, ORPHANS, AND GUARDIANS.

AN ACT concerning Minors, Orphans, and Guardians.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the courts of probate, in their respective counties, shall admit orphans, minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years, in all cases where such minor shall be possessed of, or entitled to, real or personal estate.

Orphan minors may choose guardians.
Neglecting to do so, probate court to appoint.

SEC. 2. Whenever it shall be represented to said court that any orphan minor, above the age of fourteen years, has not a guardian, it shall be the duty of said court to issue a notification to such minor to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or, on appearing, shall neglect to choose a guardian, the court shall appoint one for such minor, as if said minor were under the age of fourteen years.

In what case the father may be appointed guardian.

SEC. 3. Where a minor, having a father living, shall be entitled to, or possessed of any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor should not be appointed; if sufficient reason be not shown, may appoint the father, if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose; if such minor neglect or refuse, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor. And when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

SEC. 4. If the father of a minor be insane, or be incapable from want of understanding to take care of and provide for such minor, the court of probate shall appoint a guardian as though such father were dead, such insanity or incapacity to be ascertained by inquest, in the district court, as in other cases.

SEC. 5. Guardians, by virtue of their office as such, shall be allowed, in all cases, to prosecute and defend for their wards.

SEC. 6. The court of probate shall take, of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows:

"The condition of this obligation is such, that if the above bound A. B. who has been appointed guardian for C. D. shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship to the court of probate for the county of _____, from time to time, as he shall thereto be required by said court, and comply with all orders of said court, lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods, and chattels, title papers, and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall thereto be entitled, or to any subsequent guardian, should such court so direct, this obligation shall be void, or otherwise to remain in full force and virtue:" which bond shall be taken to the people of the Territory of Iowa, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all, or any one or more of the obligors, in the name, and to the use and benefit, of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 7. Courts of probate shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianships, to said courts for adjustment; and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof to remove such guardian.

Probate court
may remove
guardians.

SEC. 8. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this act; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian to deliver up to such successor all goods, chattels, moneys, title papers, or other effects, belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she, or they comply with the order of the court.

Powers of guar-
dians.

SEC. 9. Guardians shall have power to demand, sue for, and receive all moneys belonging to their wards, from executors and administrators, as soon as the same may be collected, or of any other person or persons in whose hands or possession the same may be: and it shall moreover be their duty to put to interest the moneys of their wards, upon mortgage security, to be approved of by the court; which letting shall always be for one year, and at the end of each year the interest shall be added to, and made part of the principal. And said guardians shall also have power to lease the real estate of the ward, upon such terms, and for such length of time, as the court of probate may direct: *Provided*, That such leasing shall never be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

Education of
ward.

SEC. 10. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward; and, for that purpose, may pay out such portions of the ward's money as the court of probate shall from time to time, by order, direct: *Provided*, That the rents and profits arising from his real estate, and next the interest on the ward's money, shall always be first resorted to for the education and nurture of the ward.

District court
may order sale
of real estate.

SEC. 11. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application

of the guardian, by petition in writing, stating the facts, and having given notice to all persons concerned of such intended application, in some public newspaper printed in this Territory, or setting up written notices, in three of the most public places in the county, at least three weeks before the sitting of the court. Such order may enable the guardians to sell and convey the real estate, for the support and education of the ward, or to invest the proceeds in other real estate. The court in such order shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security of the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchaser or purchasers all the interest the ward had in the estate so sold. Application for the sale of such real estate shall be made in the county where the ward shall reside, although the estate may lie in a different county; but if the ward do not reside in the Territory, such application shall be made to the court of the county where the whole or any part of the estate shall be situated.

SEC. 12. An account of all moneys received by any guardian for the sale of real estate of any minor, as aforesaid, shall be returned, on oath, by said guardian to the court of probate of the county where letters of guardianship were obtained; and such moneys shall be accounted for, and shall be subject to the order of the court of probate, in like manner as other moneys belonging to such minor.

Account of moneys to be returned to probate court.

SEC. 13. Appeals shall be allowed, in all cases, from the order or judgment of the court of probate, to the district court, in the same manner as is provided by an act relative to wills and testaments, executors and administrators, and the settlement of estates.

Appeals allowed to district court.

SEC. 14. Guardians, on final settlement, shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are or shall be allowed by law to administrators.

Compensation to guardians.

APPROVED, January 25, 1839.