

every county in this Territory, for the purpose of trying and sealing the weights and measures, used in their counties.

SEC. 2. As soon as the several courts of county commissioners shall have finished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door, for one month, and any person who shall thereafter buy, or sell, any commodity whatsoever, by measure, or weights, that shall not correspond with county weights, and measures, shall, for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county.

Notice, when, where, and by whom given, and for what length of time.

Penalty, how, and by whom incurred. Jurisdiction and costs.

SEC. 3. Every person desirous of having their weights and measures tried, by the county standard, shall apply to the clerk of the county commissioners, and, if he find it corresponds with the county standard, shall seal the same, with the seal provided for that purpose, and said clerk shall be allowed to demand and receive such fees, as now, or hereafter may be, allowed by law.

Comparison of weights and measures, with the county standards. Seal, and fees.

SEC. 4. This act to take effect and be in force, from and after its passage.

When this act to take effect.

APPROVED, January 4, 1839.

## · WILLS AND ADMINISTRATIONS.

AN ACT relative to Wills and Testaments, Executors and Administrators, and the settlement of estates.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That any person having an estate in any lands, tenements, or hereditaments, or any annuity or rent charged upon or issuing out of the same, or any goods, or chattels, rights, credits, and choses in action, or in possession, and property of every description, whatever, may give or devise the same to any person by last will and testament by him or her lawfully executed.

Property may be devised by will legally executed.

SEC. 2. That every such last will and testament shall be reduced to writing, and signed by the testator or testatrix, or by some person in his or her presence, and by his or her direction, and attested

In what manner will to be attested.

- in the presence of the testator or testatrix by two or more credible witnesses, two of whom declaring on oath or affirmation, before the court of probate for the proper county, that they were present and saw the testator or testatrix sign said will, testament, or codicil, in their presence, or acknowledged the same to be his or her act and deed, and that they believe the testator or testatrix to be of sound mind and memory at the time of signing or acknowledging the same, shall be sufficient proof of the execution of said will, testament, or codicil, to admit the same to record: *Provided*, That no proof of fraud, compulsion, or other improper conduct be exhibited, which in the opinion of the court of probate shall be deemed sufficient to invalidate or destroy the same; and every will, testament, or codicil, when thus proven to the satisfaction of the court of probate, shall be recorded by the judge thereof in a book to be provided by him for that purpose, and shall be good and available in law for the granting, conveying, and assuring the lands, tenements, and hereditaments, annuities, rents, goods, and chattels therein, and thereby given, granted and bequeathed.
- To be recorded in probate office.** SEC. 3. That no last will and testament made by any infant, idiot, or person of insane memory, shall be valid in law.
- Will by infant, &c., not valid.** SEC. 4. It shall be the duty of each and every witness to any will, testament, or codicil, made and executed in this Territory as aforesaid, to be and appear before the court of probate, on the regular day for the probate of such will, testament, or codicil, to testify of and concerning the execution and validity of the same; and the said court of probate shall have power and authority to attach and punish by fine and imprisonment, or either, any witness who shall, without a reasonable excuse, fail to appear when duly summoned for the purpose aforesaid: *Provided*, The said punishment, by imprisonment, shall in no case exceed the space of twenty days, nor shall a greater fine be assessed for any such default than the sum of fifty dollars.
- Witnesses to appear and testify.** SEC. 5. When any will, testament, or codicil, shall be produced to the court of probate for probate of the same, and any witness attesting such will, testament, or codicil, shall reside without the limits of this Territory, it shall be lawful for the judge of probate to issue a *dedimus potestatem*, or commission annexed to such will, testament, or codicil, di-
- Failing to do so, may be fined, &c.**
- In what case dedimus may issue.**

rected to some judge, justice of the peace, mayor, or other chief magistrate of the city, town, corporation, or county, where such witness may be found, authorizing the taking and certifying of his or her attestation in due form of law. And if the person, to whom any such commission shall be directed, shall certify, in the manner that such acts are usually authenticated, that the witness personally appeared before him and made oath or affirmation that the testator or testatrix signed and published the writing annexed to such commission as his or her last will and testament, or that some other person signed it by his or her direction, that he or she was of sound mind and memory, and that he or she subscribed his or her name as a witness thereto in the presence of the testator or testatrix, and at his or her request, such oath or affirmation shall have the same operation, and the will shall be admitted to probate in like manner as if such oath or affirmation had been made in the court of probate from whence such commission issued.

SEC. 6. When any will, testament, or codicil shall be exhibited in the court of probate for probate thereof as aforesaid, it shall be the duty of the court to receive probate of the same without delay, and to grant letters testamentary thereon to the person or persons entitled, and to do all other needful acts to enable the parties concerned to make settlement of the estate at as early a day as shall be consistent with the rights of the respective persons interested therein: *Provided*, however, That if any person interested shall, within five years after the probate of any such will, testament, or codicil, in the court of probate as aforesaid, appear, and by his or her bill in chancery, contest the validity of the same, an issue at law shall be made up whether the writing produced be the will of the testator or testatrix, or not, which shall be tried by a jury in the district court of the county wherein such will, testament, or codicil shall have been proven and recorded as aforesaid, according to the practice in our courts of chancery in similar cases; but if no such person shall appear within the time aforesaid, the probate, as aforesaid, shall be forever binding and conclusive on all the parties concerned, saving to infants, *femes covert*, persons absent from the Territory, or *non compos mentis*, the like period after the removal of their respective disabilities. And in all such trials by jury as aforesaid,

Letters testamentary to be granted.

Within what time will may be contested.

Rights of infants and others saved.

the certificate of the oath of the witness at the time of the first probate shall be admitted as evidence, and to have such weight as the jury shall think it may deserve.

**Hand writing of deceased or absent witness may be proved.**

SEC. 7. In all cases where any one or more of the witnesses to any will, testament, or codicil, as aforesaid, shall die, or remove to some distant country unknown to the parties concerned, so that his or her testimony cannot be procured, it shall be lawful for the judge of probate, or other court having jurisdiction of the subject matter, to admit proof of the handwriting of any such deceased or absent witness as aforesaid, and such other secondary evidence as is admissible in courts of justice to establish written contracts generally in similar cases, and may thereupon proceed to record the same as though such will, testament, or codicil, had been proved by such subscribing witness, or witnesses, in his, her, or their proper persons.

**Wills executed out of the Territory may be recorded.**

SEC. 8. All will, testaments, and codicils, or authenticated copies thereof, proven according to the laws of any of the United States, or Territories thereof, or of any country out of the limits of the United States, and touching and concerning estates within this Territory, accompanied with a certificate of the proper officer or officers that said will, testament, codicil, or copy thereof, was duly executed and proved agreeably to the laws and usages of that state or country in which the same was executed, shall be recorded as aforesaid, and shall be good and available in law in like manner as wills made and executed in this Territory.

**Nuncupative wills,**

SEC. 9. A nuncupative will shall be good and available in law for the conveyance of personal property thereby bequeathed, if committed to writing within twenty days, and proven before the court of probate by two or more credible disinterested witnesses who were present at the speaking and publishing thereof, who shall declare on oath or affirmation that they were present and heard the testator pronounce the said words, and that they believed him to be of sound mind and memory, and that he or she did at the same time desire the persons present, or some of them, to bear witness that such was his or her will, or words to that effect, and that such will was made in the time of the last sickness of the testator or testatrix, on a voyage at sea, or in field of battle, or under such other circumstances that it could not be

reduced to writing by the testator, and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the said will was committed to writing within twenty days after the death of the testator or testatrix, and no proof of fraud, compulsion, or other improper conduct exhibited which in the opinion of said court shall be sufficient to invalidate or destroy the same; and all such wills, when proven and authenticated as aforesaid, shall be recorded by the judge of probate in like manner as other wills are directed to be recorded by this act: *Provided*, That no letters testamentary shall be granted on such will, until the expiration of sixty days after the death of the testator or testatrix.

To be recorded.

Proviso.

SEC. 10. In all cases where a nuncupative will shall be proved and recorded as aforesaid, the court of probate shall issue a citation to the heirs and legal representatives of the testator or testatrix, if they reside in the county, if not, then said court shall cause an advertisement to be inserted in some one of the newspapers printed in this Territory, notifying the said heirs and legal representatives of the testator or testatrix at what time and place letters testamentary will be granted upon such will, requiring them and each of them to appear and show cause, if any they have, why such letters testamentary, should not be granted, and if no sufficient cause be shown, letters shall be granted thereon as in other cases.

Court to issue citation to heirs, &c.

SEC. 11. If any beneficial devise, legacy, or interest shall be made or given in any will, testament, or codicil, to any person subscribing such will, testament, or codicil as a witness to the execution thereof, such devise, legacy, or interest shall, as to such subscribing witness and all persons claiming under him, be null and void, unless such will, testament, or codicil be otherwise duly attested by a sufficient number of witnesses, exclusive of such person, according to this act, and he or she shall be compelled to appear and give testimony on the residue of such will, testament, or codicil in like manner as if no such bequest or devise had been made. But if such witness would have been entitled to any share of the testators' estate in case the will, testament, or codicil was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise or bequest made to him or her as aforesaid.

Devise to a subscribing witness.

If debtor of testator appointed executor.

SEC. 12. In no case hereafter, within this Territory, where any testator or testatrix shall by his or her will appoint his or her debtor to be his or her executor or executrix, shall such appointment operate as a release or extinguishment of any debt due from such executor or executrix to such testator or testatrix, unless the testator or testatrix shall in such will expressly declare his or her intention to devise, bequeath, or release such debt, nor even in that case unless the estate of such testator or testatrix is sufficient to discharge the whole of his or her just debts, over and above the debt due from such executor or executrix.

Children born after execution of will.

SEC. 13. If after making a last will and testament, a child or children shall be born to any testator or testatrix, and no provision be made in such will for such child or children, the will shall not on that account be revoked, but, unless it shall appear by such will that it was the intention of the testator or testatrix to disinherit such child or children, the devises and legacies by such will granted and given shall be abated in equal proportions to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive out of the estate of such testator or testatrix, if he or she had died intestate.

Devisee, &c., dying before testator.

SEC. 14. Whenever a devisee or legatee in any last will and testament, being a child or grand child of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee shall take the estate devised or bequeathed, as the devisee or legatee would have done had he or she survived the testator or testatrix; and if there be no such issue at the time of the death of such testator or testatrix, the estate disposed of by such devise or legacy shall be considered and treated in all respects as intestate estate.

How a will, &c., may be revoked.

SEC. 15. No will, testament, or codicil shall be revoked otherwise than by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence, by his direction and consent, or by some other will, testament, or codicil, in writing, declaring the same, signed by the testator or testatrix, in the presence of two or more witnesses, and by them attested in his or her presence, and no words spoken shall revoke or annul any will, testa-

ment, or codicil, in writing, executed as aforesaid in due form of law.

SEC. 16. The courts of probate in each county in this Territory shall have jurisdiction and authority to hear and determine all causes, matters, and controversies, testamentary, which shall be brought before them, touching the proof of wills, testaments, and codicils, and may grant probate thereof, and shall hear and determine the right of administration of estates of persons dying intestate, and to do all other things touching the granting of letters testamentary, and of administration, and the settlement of estates. Jurisdiction of probate courts.

SEC. 17. All original wills, after probate thereof, shall be recorded and remain in the office of the judge of probate of the proper county, and authenticated copies thereof, certified under the hand and seal of the said judge, shall be admitted as evidence in any court of law or equity in this territory. Authenticated copies of wills to be evidence.

SEC. 18. If any testator or testatrix shall have a mansion-house or known place of residence, his or her will shall be proved in the court of probate of the county wherein such mansion-house or place of residence shall be; if he or she have no place of residence, and lands be devised in his or her will, it shall be proved in the court of probate of the county wherein the lands lie, or in one of them where there shall be land in several different counties; and if he or she have no such known place of residence and there be no lands devised in such will, the same may be proved either in the county where the testator or testatrix shall have died, or that wherein his or her estate, or the greater part thereof, shall lie. Where will to be proved.

SEC. 19. Any person or persons, who may have in his or her possession any last will or testament of another for safe keeping or otherwise, shall, immediately upon the death of the testator or testatrix, deliver up the said will to the court of probate of the proper county, and upon a failure or refusal so to do the court of probate may issue attachments and compel the production of the same, and the person or persons thus withholding any such will, testament, or codicil as aforesaid, shall forfeit and pay twenty dollars per month, from the time the same shall be thus wrongfully withheld, to be recovered by action of debt for the use of the estate by any person who will sue for the same in any court having jurisdiction thereof; and if any person to Court may compel production of will.

whom a will, testament, or codicil hath been or shall be delivered by the party making it for safe custody as aforesaid, shall alter or destroy the same without the direction of the said party, or shall wilfully secrete it for the space of six months after the death of the testator or testatrix shall be known to him or her, the person so offending, shall, on conviction thereof, be sentenced to such punishment as is or shall be inflicted by law in cases of larceny.

When letters of administration with will annexed may be granted.

SEC. 20. All persons named as executors in any will, testament, or codicil as aforesaid, shall, after the same shall be proved and admitted to record as before directed, be entitled to letters testamentary thereon, and where there shall be no executors named in such will, testament, or codicil, or the executor named therein shall die before having fully administered, or refuse to act, or be otherwise disqualified, letters of administration with the will annexed, shall be granted to such person or persons as may be entitled thereto, in all which cases copies of such wills, testaments, or codicils, shall go out with the letters.

Within what time will to be proved.

SEC. 21. It shall be the duty of the executor or executors of the last will and testament of any person deceased, knowing of his, her, or their being so named or appointed, within sixty days next after the decease of the testator or testatrix, to cause such will to be proved and recorded in the proper county as aforesaid, or to present said will and declare his or her refusal to accept of the executorship, and every such executor or executrix so neglecting his trust and duty as aforesaid, without just excuse for such delay to the satisfaction of the judge of probate, shall forfeit the sum of twenty dollars per month, from and after the expiration of the said term of sixty days, until he shall cause probate of said will to be made, or present the same as aforesaid, to be recovered by action of debt, for use of the estate, by any person who will sue for the same in any court having jurisdiction thereof.

Penalty for neglect.

To whom administration may be granted.

SEC. 22. Upon the refusal of the executor or executors to administer the estate, or upon non-qualification as aforesaid, the court of probate shall commit the administration of the estate of the deceased, with a copy of the will annexed, unto the widow or next of kin to the deceased, and upon the refusal, neglect, or incapacity to act of the widow or next of kin, the court of probate may grant such adminis-



tration to one or more of the principal creditors, and on their refusal to such other person or persons as the court shall think fit.

SEC. 23. The executor of an executor shall not, in Execution of an consequence thereof, be executor of the first testa- executor.  
tor.

SEC. 24. Persons of the age of seventeen years, of Who may be sound mind and memory, may be appointed execu- executors.  
tors, but should any person under the age of twenty-one years be appointed executor or executrix, the court of probate shall appoint some suitable person to manage and control the estate, under the direction of the court, until such executor or executrix appointed by the will shall attain the full age of twenty-one years; and all such persons, appointed to take charge of the estate during the minority of any such executor or executrix, shall for the time being give bond with security as in other cases.

SEC. 25. The power of the executor or executors Power of exe- over the testator's estate, before probate of the will and obtaining letters testamentary, shall extend to the burial of the deceased, the payment of necessary funeral charges, and the taking care of the estate, but in all such cases, if the will shall be rejected when presented for probate, and such executor thereby never qualify, he shall in nowise be liable as an executor of his own wrong, unless upon refusal to deliver up the estate to the person or persons authorized to receive the same: *Provided*. That this section shall not be construed to exempt any such person, claiming to be executor as aforesaid from liabilities for any waste or misapplication of such estate. Probate.

SEC. 26. Where two or more executors are ap- If one executor pointed in and by the same will, and one or more of the persons named as such shall die, refuse to take act.  
upon himself or herself such executorship, or be otherwise disqualified, letters testamentary shall be granted thereon to the other person or persons so named, not renouncing as aforesaid and not disqualified.

SEC. 27. Every executor, or administrator with Oath to be ta- the will annexed, at the time of proving the will and taken by execu- granting letters testamentary or of administration as aforesaid, shall take and subscribe before the tor, or admin- judge of probate the following oath, to wit: "I do istrato-solemnly swear (or affirm) that this writing contains the true last will and testament of the within named

A. B. deceased, so far as I know or believe, and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend and the law charge me, and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and abilities, so help me God." Which said oath shall be administered by the judge of probate, and be attached to and form a part of the probate of said will.

**Executors, &c.,  
to give bond.**

SEC. 28. All executors hereafter to be appointed, unless the testator or testatrix shall otherwise direct in the will, and all administrators with the will annexed shall, before entering upon the duties of their executorships and administrations respectively, enter into bond with good and sufficient security, to the judge of probate and his successors, to be approved by him, in a sum double the value of the estate, for the use of the parties interested, in the following form, to wit:

**Form.**

"Know all men by these presents, that we, A. B., C. D. and E. F. of the county of \_\_\_\_\_ and Territory of Iowa, are held and firmly bound unto G. H. judge of probate, in the penal sum of \_\_\_\_\_ dollars, current money of the United States, to be paid G. H. or his successors in office; for which payment, well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

**Condition.**

"The condition of the above obligation is such, that if the above bounden A. B. executor of the last will and testament of G. H. deceased (or administrator with the will annexed of G. H. deceased, as the case may be) do make or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements, and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have or shall come to the hands, possession, or knowledge of the said, A. B. or into the possession of any other person for him, and the same so made do exhibit in the court of probate for the said county

of — as required by law, and also make and render a fair and just account of his actings and doings as such executor (or administrator) to said court, when thereunto lawfully required, and well and truly fulfil the duties enjoined upon him in and by the said will, and shall moreover pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof, and as the law shall charge him, and shall in general do all other acts which may from time to time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue:" Which said bond shall be signed and sealed by the said executor (or administrator) and his securities, attested by the judge of probate, and filed in his office.

Bond to be  
filed.

SEC. 29. Where any testator or testatrix shall leave visible estate more than sufficient to pay all his or her debts, and by will shall direct that his or her executors shall not be obliged to give security, in that case no security shall be required, unless the court of probate shall see cause, from their own knowledge or the suggestions of creditors or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, in either of which cases such court may require security, and the same shall be given before letters testamentary shall be granted, notwithstanding any directions to the contrary in said will.

In what case  
security not to  
be required.

SEC. 30. If any person, named as an executor or executrix in any last will and testament, shall be, at the time when administration ought to be granted, under the age of seventeen years, or of unsound mind, or convicted of any crime rendering him or her infamous, or shall be a married woman, letters of administration or testamentary (as the case may require) may be granted in the same manner as if such person had not been named as such in such will, unless in the case of a married woman, her husband shall give bond with her as aforesaid, with two or more sufficient securities, to be filed as aforesaid. for her faithful performance as such executrix, and on all questions, touching such disqualification, the court of probate shall receive the like testimony as would be admissible in any court of law or equity in similar cases.

When execu-  
tor, &c., dis-  
qualified.

Pending any contest, court may appoint persons to preserve the estate

SEC. 31. During any contest in relation to the probate of any will, testament, or codicil, before the same shall be recorded, or until a will which may have once existed but shall have been destroyed, or shall be concealed, shall be established, and the substance thereof committed to record, with the proof thereupon taken, or during any contest in regard to the right of executorship, or to administer the estate of any person dying either testate or intestate, or whenever any other contingency may happen which shall be productive of great delay before letters testamentary or of administration can be issued upon the estate of such testator or intestate to the person or persons having legal preference to the same, the court of probate may appoint any person or persons as administrators to collect and preserve the estate of any such decedent, until probate of his will or until administration of his estate be granted, taking bond and security for collecting the estate, for the making an inventory thereof, and safe keeping and delivering up the same, when thereunto required by the said court of probate, to the proper executors or administrators whenever they shall be admitted and qualified as such.

Form of letters of administration to collect and preserve.

SEC. 32. The form of the letters to be granted to the person or persons so appointed to collect and preserve the estate of the decedent as aforesaid, shall be as follows, viz: "The Territory of Iowa to all to whom these presents shall come, greeting: Know ye, that whereas A. B. late of the county of \_\_\_\_\_, Territory of Iowa, deceased, as it is said, had at his, or her decease, personal property within this Territory, the administration whereof cannot be immediately granted to the persons by law entitled thereto, but which, if speedy care be not taken, may be lost, destroyed, or diminished; to the end therefore that the same may be preserved for those who shall appear to have a legal right or interest therein, we do hereby request and authorize C. D. and E. F., of the county of \_\_\_\_\_ and Territory aforesaid, to collect and secure the said property, wheresoever the same may be in this Territory, whether it be goods, chattels, debts, or credits, and to make or cause to be made a true and perfect inventory thereof, and to exhibit the same with all convenient speed to the court of probate of the said county of \_\_\_\_\_, together with a reasonable account of his collection, acts and doings in the premises aforesaid. Witness G. H.

judge of probate in and for the county of ———, at his office in ———, this ——— day of ——— A. D. 18—.

[SEAL.] G. H., Judge of Probate.

SEC. 33. Before letters of administration to collect shall be granted as aforesaid, the person or persons, so appointed as aforesaid, shall give bond, with good and sufficient security, to be approved by the court of probate, in the following form, to wit: Bond to be previously given.

“Know all men by these presents, That we, C. D., E F. and J. K., of the county of ———, and Territory of Iowa, are held and firmly bound unto G. H. judge of probate, in the penal sum of ——— dollars, current money of the United States, to be paid the said G. H. or his successors in office, for the payment of which, well and truly to be made and performed, we bind ourselves, our heirs, or executors and administrators jointly, severally, and firmly by these presents. Witness our hands and seals this ——— day of ——— 18—. The condition of the above obligation is such, that if the above bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator to collect the estate of A. B., late of the county of ———, deceased, and shall make or cause to be made a true and perfect inventory of all such goods, chattels, debts, and credits of the said deceased as shall come to his or her possession or knowledge, and the same in due time return to the office of the judge of probate of the proper county, and shall also deliver to the person or persons authorized by the said court of probate as executors or administrators to receive the same, all such goods, chattels, and personal estate as shall come to his or her possession as aforesaid, and shall in general perform such other duties as shall be required of him or her by law, then the above obligation to be void, otherwise to remain in full force and virtue.” Which said bond shall be signed and sealed by such administrator and his or her securities, attested by the judge of probate, and filed in his office. Form. Condition.

SEC. 34. Before any administrator to collect shall enter upon the duties of his appointment as aforesaid, he or she shall take and subscribe the following oath or affirmation before the judge of probate, to wit: “I do solemnly swear (or affirm) that I will well and honestly discharge the trust reposed in me, as collector, or administrator to collect, of the estate of A. B. deceased, according to the tenor and effect of the Oath to be taken and subscribed.

letters granted to me by the judge of probate of the said county of ———, to the best of my knowledge and abilities, so help me God:" which said oath shall be reduced to writing, subscribed by the party making it, and filed in the office of the judge of probate before whom the same shall be taken.

Powers granted to collector.

SEC. 35. Every collector, so appointed as aforesaid, shall have power to collect goods, chattels, and debts of the same deceased according to the tenor of the said letters, and to secure the same at such reasonable and necessary expense as shall be allowed by the court of probate, and the said court may authorize him or her, immediately after the inventory and appraisement of such estate, to sell such as shall be perishable, or may be injured by delay, and to account for the same, and for the whole trouble incurred by such collector, the court of probate may allow such commission, on the amount of the said personal estate, as shall be actually collected and delivered to the proper executor or administrator as aforesaid, as said court may deem just and reasonable: *Provided*, The same shall not exceed six per cent. on the amount stated in such inventory or bill of appraisement as aforesaid.

Suits not to abate by revocation of letters to collect.

SEC. 36. Every collector, appointed as aforesaid, shall have power to commence suits for debts due to the decedent, and to release the same on payment thereof, and no such suit shall abate by the revocation of the letters of such administrator to collect, or collector, but the same may be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary or of administration may be granted as aforesaid.

To deliver property to successor.

SEC. 37. On the granting of letters testamentary or of administration as aforesaid, the power of any such collector as may have been so appointed shall cease, and it shall be his duty to deliver, on demand, all the property and money of the deceased which shall have come to his hands or possession, saving such commission as may be allowed by the judge of probate as aforesaid to the person or persons obtaining such letters, and in case any such collector or administrator shall refuse or neglect to deliver over such property and money to such person or persons, when legal application shall be made therefor, such collector, so neglecting or refusing, shall be liable to pay twenty per cent. over and above the amount of all such property or money as shall come to his

Penalty for neglect.

hands by virtue of his said administration, and shall moreover forfeit all claim to any commission for collecting and preserving the estate; which said twenty per cent. together with all damages which may be sustained by reason of the breach of any bond which may at any time be given by any such collector, may be sued for and recovered by the person or persons to whom letters testamentary or of administration may be granted as aforesaid, for the use of the estate of such decedent.

SEC. 38. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate; but in all such cases the executor or executors, administrator or administrators with the will annexed, shall have the preference in administering on the same.

Estate real and personal not devised.

SEC. 39. If any lands, tenements, or hereditaments shall be charged with any debt or debts by any will, testament, or codicil, and the creditor, whose debt is so secured, shall attest the execution of the same, such creditor shall, notwithstanding, be admitted as a witness to the execution thereof.

Creditor may be a witness.

SEC. 40. Every devise of land, or any estate therein, or bequest of personal estate, to the wife of the testator, shall be a bar of her dower in lands, or share of the personal estate, unless it be otherwise expressed in the will, testament, or codicil.

Devise, &c., to wife to bar dower.

SEC. 41. A widow shall be debarred of her right of dower in the estate of her deceased husband in all cases where any provision shall be made for her in the testator's will as aforesaid, unless within six months, after the authentication or probate of the will, she shall deliver or transmit to the court of probate of the proper county a written renunciation, which may be in the following form, to wit: "I, A. B. widow of C. D., late of the county of \_\_\_\_\_, Territory of \_\_\_\_\_, do hereby renounce and quit all claim to any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law, and I do elect to take, in lieu thereof, my dower or legal share of the estate of my said husband." Which said letter of renunciation shall be filed in the office of the judge of probate, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provisions which may have been thus made for her in the will of any

Renunciation by widow, and within what time to be made.

such testator, and by thus renouncing all claims to a devise or bequest as aforesaid, such widow shall thereupon be entitled to the one third part of the real estate of her said deceased husband for life, and one-third part of the personal estate forever, which shall remain after the payment of all just debts and claims against the estate of such testator.

**What she shall then be entitled to.**

**When court to abate from or add to legacies, &c.**

**SEC. 42.** In all cases where a widow shall renounce all benefit under the will, and the legacies and bequests therein contained to other persons, shall, in consequence thereof become diminished or increased in amount, quantity, or value, it shall be the duty of the court of probate, upon the settlement of such estate, to abate from or add to such legacies and bequests, in such manner as to equalize the loss sustained or advantage derived thereby, in a corresponding ratio to the several amounts of such legacies and bequests, according to the intrinsic value of each.

**Widow liable for waste.**

**SEC. 43.** If the widow commit waste in the lands and tenements, or the personal estate of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, if of real estate, or by the executor or administrator if of personal estate, and if she marry a second husband, he shall be answerable with her in damages for any waste committed by her as aforesaid before such second marriage, or by the husband himself after such marriage.

**Descents.**

**SEC. 44.** Estates, both real and personal, of resident or non-resident proprietors in this Territory dying intestate, or whose estates, or any part thereof, shall be deemed and taken as intestate estate, and after all just debts and claims against such estate shall be paid as aforesaid, shall descend and be distributed to his or her children, in equal portions, the descendants of a deceased child or grand child taking the share of their deceased parent, by representation, in equal parts among them. And when there shall be no children of such intestate, or descendants of any child or children living at the time of his or her decease, the estate of said intestate shall belong to his or her father, if living, but if said intestate's father be not living, such estate shall belong to his or her mother, if living, and if neither of the parents of said deceased shall be living, such estate shall be equally distributed among the brothers and sisters of said deceased, the children or descendants of any deceased brother or sister taking the share of their deceased parent, by representation, in



equal parts among them. And if there be no children or descendants of any such deceased, and no parents, brothers, or sisters, and no descendants of any brothers or sisters, of said deceased, the estate aforesaid shall descend to, and be divided equally among, his or her next of kin, in equal degree, computing according the rules of the civil law. And in no case shall there be a distinction between the kindred of the whole and those of the half-blood; saving to the widow, in all cases, her dower, and to the husband his courtesy, according to the course of the common law.

SEC. 45. The widow, in all cases, shall be allowed to have and retain as her sole and separate property, one bed and bedding, the wearing apparel of herself and family, one milch cow and calf, her saddle and bridle, one horse, household and kitchen furniture sufficient for herself and family, and provisions for the same for one year; said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall in no case be subject to the payment of the debts of the deceased. In all cases where the intestate at his death shall leave no property of the description specified to the widow by this act, the widow shall be entitled to other property, or the value of the same in money, and it shall be the duty of the administrator, or judge of probate, to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money or other personal property at her election.

Property retained by widow, not subject to debts of deceased.

SEC. 46. Where any of the children of a person dying intestate, or their issue, shall have received from such intestate, in his or her lifetime, any real or personal estate by way of advancement, and shall desire to come into the partition or distribution of such estate with the other parceners or distributees, such advancement, both of real and personal estate, shall be brought into hotchpot, with the whole estate real and personal of such intestate; and every person so returning such advancement, as aforesaid, shall thereupon be entitled to his or her just proportion of said estate.

Hotchpot.—Proceedings thereon.

SEC. 47. If any man shall have one or more children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment be thereby legitimated, and capable in law to inherit and transmit inheritance as if born in wedlock.

Children born before marriage.

**Children of unmarried women not to be disinherited.** SEC. 48. If any single or unmarried woman, having estate either real or personal, in her own right, shall hereafter die, leaving one or more children deemed in law illegitimate, such child or children shall not on that account be disinherited, but they, and each of them, and their descendants, shall be deemed able and capable in law to take and inherit the estate of their deceased mother, in equal parts among them, to the exclusion of all other persons: *Provided*, That if there shall be no such child or children, or their descendants, then and in such case the estate of the intestate shall be governed by the rules of descent, as in other cases where illegitimates are excluded.

**Aliens may hold and transmit real estate.** SEC. 49. All foreigners, whether aliens, denizens, or naturalized citizens, may take and hold real and personal estate in this Territory, either by purchase or descent, and alienate and transmit the same to their heirs or assigns, whether such heirs or assigns be citizens of the United States or not, in the same manner as natural born citizens of the United States may or can do; and the children or next of kin of any such person dying intestate, and leaving estate either real or personal in this Territory, whether such children or kindred be citizens of the United States or not, shall be deemed and taken to come within the rule of descents hereinbefore described, and shall inherit such estate accordingly; saving to the widow of such alien, denizen, or naturalized citizen, in all cases, such dower, provision, and privilege as is or may be allowed by law in other cases.

**Equitable estates subject to dower.** SEC. 50. Equitable estates shall be subject to the widow's dower, and all real estate of every description contracted for by the husband in his lifetime, the title to which may be completed after his decease.

**Provision for posthumous children of intestates.** SEC. 51. In all cases where any person shall die intestate, leaving real or personal estate in this Territory, and a child or children shall be born unto him after his decease, within the usual time prescribed by law, such child or children shall come in for their just proportion of said estate, in all respects as though he, she, or they had been born in the lifetime of the intestate.

**To whom administration may be granted.** SEC. 52. Administration shall be granted to the husband upon the goods and chattels of his wife, and to the widow, or next of kin to the intestate, or some of them, if they will accept the same and are

not disqualified; but in all cases the widow shall have the preference, but if no widow, or other relation of the intestate, shall apply within sixty days from the death of such intestate, the court of probate may grant administration to any creditor or creditors who shall apply for the same; and in case no such application be made by any creditor or creditors, within fifteen days next ensuing the lapse of the said term of sixty days as aforesaid, administration may be granted to any person or persons whom the judge of probate may think will best manage the estate; and in all cases where such in-<sup>Non-resident</sup>testate shall have been a non-resident, or without a<sup>intestates.</sup> widow, next of kin, or creditors, in this Territory, but having property within the Territory, administration shall be granted to the public administrator of the proper county, and to no other person: *Pro-*<sup>Proviso.</sup>*vided.* That no administration shall in any case be granted until satisfactory proof be made before the court of probate, to whom application for that purpose shall be made, that the person, on whose estate letters of administration are requested, is dead, and died intestate so far as they have knowledge and believe.

SEC. 53. If any balance of any such intestate's es-<sup>Balance of in-</sup>tate, as may at any time be committed to any pub-<sup>testate's estate.</sup>lic administrator as aforesaid, shall remain in the hands of such administrator, after all just debts and charges against such estate shall have been fully paid, which shall have come to the knowledge of such public administrator, for two years after the administration of such estate shall have been committed to him as aforesaid, such administrator shall cause the amount thereof, with the name of the intestate, the time and place of his or her decease, to be published in some one of the public newspapers printed in this Territory, for eight weeks successively, <sup>Amount and other partic-  
ulars to be pub-  
lished.</sup> notifying all persons having claims or demands against such estate to exhibit the same, together with the evidence in support thereof, before the court of probate of the proper county within six months after the date of such notice, or that the same will be forever barred; and if no such claim be presented for payment or distribution within the said time of six months as aforesaid, such balance shall be paid into the public treasury of said county, and the county shall be answerable for the same, without interest, to such person or persons as shall thereafter appear

to be legally entitled to the same, if any such shall ever appear.

Property of intestate to be secured by public administrator.

SEC. 54. Upon the death of any person intestate, not leaving a widow, or next of kin, or creditor, or creditors, within any county in this Territory, it shall and may be lawful for the public administrator of the county wherein such person may have died as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper for the protecting and securing the property and effects of such intestate from waste or embezzlement, until administration thereon shall be granted to the person entitled thereto as aforesaid; the expenses whereof shall be paid to such public administrator, upon the allowance of the court of probate, in preference to all other demands against such estate, funeral expenses excepted.

Letters testamentary, &c., to issue in the name of the Territory.

SEC. 55. All letters testamentary, letters of administration, either with or without the will annexed, letters of administration to collect, and *de bonis non*, writs, summonses, citations, subpœnas, and all other processes which may at any time be made or issued by the judge of probate in the discharge of his official duties, shall be made and issued in the name of the Territory of Iowa, bear test in the name of such judge, and be sealed with the seal of the said court of probate.

Evidence may be required of certain applicants for administration.

SEC. 56. Upon every application for letters of administration upon the goods and chattels, rights and credits of any person dying intestate, by any person not entitled to the same, as husband, widow, next of kin, creditor, or creditors, or public administrator, the court of probate, to which such application shall be made, shall, before the granting of administration to any such applicant or applicants, cause such applicant or applicants to produce satisfactory evidence that the person or persons having the preference have relinquished their prior right thereto: *Provided*, Such application shall be made within the space of seventy-five days next ensuing the death of any such intestate as last aforesaid; but if such application be made after the expiration of seventy-five days, it shall not be necessary to make such proof, and the judge of probate may proceed to grant letters to such applicant or applicants or any other person or persons as he may think fit.

Proviso.

SEC. 57. All letters testamentary, to be hereafter issued to executors under this law, shall be in the following form, to wit: Form of letters testamentary.

Territory of Iowa, }  
County of \_\_\_\_\_ } SCT.

The Territory of Iowa to all, to whom these presents shall come, greeting. Know ye, that whereas A. B. late of the county of \_\_\_\_\_ and Territory of \_\_\_\_\_ died on or about the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this Territory which may be lost, destroyed, or diminished in value if speedy care be not taken of the same; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament to execute the same, and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his decease, in whatsoever hands or possession the same may be found in the Territory, and well and truly to fulfil and perform all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charge him, and in general to do and perform all other acts which now are or hereafter may be required of him by law. Witness E. F. judge of probate of the said county of \_\_\_\_\_, at his office in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

[Seal] E. F., judge of probate.

SEC. 58. The form of letters of administration, hereafter to be issued in this Territory, shall, as near as may be, be as follows, to wit: Form of letters of administration.

Territory of Iowa, }  
County of \_\_\_\_\_ } SCT.

The Territory of Iowa to all, to whom these presents shall come, greeting:

Know ye, that whereas A. B. of the county of \_\_\_\_\_ and State (or Territory) of \_\_\_\_\_ died intestate, as it is said, on or about the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, having at the time of his decease, personal property in this Territory which may be lost, destroyed, or diminished in value, if

speedy care be not taken of the same. To the end therefore that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint C. D. of the county of ——— and Territory of Iowa, administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease, with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this Territory, and in general to do and perform all other acts which now are or hereafter may be required of him by law. Witness E. F. judge of probate, in and for the county of ——— at his office in ——— this ——— day of ——— A. D. 18—.

[Seal.] E. F., judge of probate.

And in all cases where letters of administration with the will annexed, letters of administration *de bonis non*, or letters of administration to any public administrator, shall hereafter be issued by any court of probate in this Territory, the same shall be issued in conformity with the foregoing forms as nearly as may be, taking care to make the necessary variations, additions, or omissions, to suit each particular case.

**Administrator to take an oath.** SEC. 59. The court of probate shall, in all cases, upon granting administration of the goods and chattels, rights and credits of any person dying intestate, require the administrator or administrators (public administrator excepted) to take and subscribe the following oath, to wit: "I do solemnly swear, or affirm, that I will well and truly administer all and singular the goods and chattels, right, and credits, and effects of A. B. deceased, and pay all just claims and charges against his estate, so far as his goods, chattels, and effects shall extend, and the law charge me, and that I will do and perform all other acts, required of me by law, to the best of my knowledge and abilities." Which said oath shall be reduced to writing, subscribed by the person taking the same before the said judge of probate, and filed in his office.

**And enter into bond.** SEC. 60. Each and every administrator, except as is hereinbefore provided for, shall, before entering upon the duties of his office, enter into bond, with good and sufficient security, to be approved by the judge of probate, in a sum double the value of the estate, and payable to the people of the Territory of Iowa, for the use of the parties interested, in the following form, to wit:

“Know all men by these presents that we, A. B., <sup>Form.</sup> C. D. and E. F. of the county of \_\_\_\_\_ and Territory of Iowa, are held and firmly bound unto the people of the Territory of Iowa, in the penal sum of \_\_\_\_\_ dollars, current money of the United States, for which payment, well and truly to be made and performed, we and each of us do bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents. Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

“The condition of the above obligation is such, <sup>Condition.</sup> that if the said A. B., administrator of all and singular the goods and chattels, rights and credits of J. R. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which shall come to the hands, possession, or knowledge of him the said A. B. as such administrator, or to the hands of any person or persons for him, and the same so made do exhibit or cause to be exhibited in the court of probate for the said county of \_\_\_\_\_ agreeably to law, and such goods and chattels, rights and credits, do well and truly administer according to law, and all the rest of the said goods and chattels, rights and credits which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the court of probate, shall deliver and pay unto such person or persons as may be legally entitled thereto, and further do make a just and true account of all his actings and doings therein, when thereunto required by the said court; and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A. B. do in such case, on being required thereto, render and deliver up the letters of administration granted to him as aforesaid, and shall in general do and perform all other acts which may at any time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.”

Which said bond shall be signed and sealed by the said administrator and his securities, attested by <sup>In other cases same form of bond.</sup> the judge of probate, and filed in his office. And in all cases where bonds shall be taken from any administrator *de bonis non*, or in any other case where

a form shall not be prescribed in this act, the same shall be made as nearly as may be in conformity with the form above prescribed, with corresponding variations to suit each particular case.

Actions on  
bonds of execu-  
tors, &c.

SEC. 61. All bonds which may at any time be given by any executor or executors, administrator or administrators, either with or without the will annexed, or *de bonis non*, to collect, or public administrator may be put in suit and prosecuted against all or any one or more of the obligors named therein, in the name of the Territory of Iowa, for the use of any person or persons who may have been injured by reason of the neglect or improper conduct of any such executor or administrator as aforesaid, and such bond shall not become void on the first recovery thereon, but may be sued upon from time to time until the whole penalty shall be recovered: *Provided*, That the person or persons, for whose use the same may at any time be prosecuted, shall be liable for all costs which may accrue in the prosecution of the same; and certified copies of all such bonds, under the seal of the court of probate, shall be received as evidence to authorize such recovery in any court of law or equity having jurisdiction thereof in this Territory.

Certified copies  
to be evidence.

Records to be  
kept of all  
wills, adminis-  
trations,  
bonds, &c.

SEC. 62. The judges of the court of probate respectively shall make, keep, and preserve complete records of all wills, testament, and codicils, and the probate thereof; all letters testamentary and of administration, either with or without the will annexed, *de bonis non*, or to collect; all bonds taken of executors or administrators; all inventories, appraisements, and sale bills; and all other exhibits presented to and allowed by said courts, appertaining to the administration and settlement of estates, with an alphabet of reference to the page, names of parties, and amount of such exhibits, inventories, appraisements, and sale bills; and shall docket from time to time, upon their books of record, all matters and controversies that shall arise for a decision or adjudication before any of said courts, with the names of the parties litigant, the evidence adduced thereon, and the opinion or decision of the court, in order that there may be no difficulty in taking appeals therefrom; they shall record all letters testamentary and of administration before they are delivered out of their offices respectively, and shall certify at the foot, or on the back thereof, that the



same have been recorded according to law; they shall preserve all original wills, testaments, codicils, oaths, bonds, inventories, appraisements, and sale bills, accounts current, and transcripts of settlements, in proper order on file in their offices respectively, and copies of any of the aforesaid papers, or of such records, duly certified by the judge of probate, under the seal of said court, shall have the same force and effect as the originals in all courts of judicature in this Territory: *Provided*, it shall not be necessary to make a complete record of the proceedings, except on the request of one of the parties who shall pay for the same. Proviso.

SEC. 63. If at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereof granted according to law, such letters of administration shall be revoked and repealed, and letters testamentary, or of administration with the will annexed, shall be granted in the same manner as if the former letters had not been obtained. Administration to be revoked on production of will.

SEC. 64. In all cases when a will, testament, or codicil shall have been proved, and letters granted thereon as aforesaid, and such will shall thereafter be set aside or annulled by due course of law, the letters granted thereon shall be revoked and repealed, and administration *de bonis non* granted of the goods and chattels unadministered. If will set aside, administration *de bonis non* to be granted.

SEC. 65. The court of probate shall have power to revoke and repeal all letters testamentary, or of administration, granted to persons who shall become insane, lunatic, or of unsound mind, habitual drunkards, persons who may be convicted of any infamous crime, who waste or mismanage the estate, or who conduct themselves in such a manner as to endanger their co-executors, co-administrators, or securities; in all which cases the court shall summon the person or persons charged to be in default or disqualified as aforesaid, to show cause why such revocation should not be made; and when made, the reasons therefor shall be stated at large upon the record, and other letters granted to the next person or persons who shall, according to law, be entitled to the same. Cases in which letters testamentary, or adm'n. may be recorded.

SEC. 66. If any executor of any last will or testament, or administrator of an intestate estate, residing out of the Territory at the time of taking upon Other cases.

himself the execution of such trust, or after having done so, shall remove beyond the limits of this Territory, and shall refuse or neglect, after due notice from the court of probate, to render his accounts and make settlement of such estate with creditors, legatees, or heirs, or their legal representatives, the said court may in like manner revoke such letters, and grant other letters thereon to such person or persons as may be entitled to the same, and as to the said court shall seem mete.

Revocation of letters, death, or disqualification of executor, &c.

SEC. 67. Where the letters of one of several executors or administrators are revoked, or one or more of the executors or administrators shall die, or become disqualified, the court of probate may, in their discretion, join other administrators in their stead or place, and require additional bonds from such new administrator or administrators, or the survivor or survivors, or such as shall not have their powers revoked, shall proceed to manage the estate; and in case the letters of all of them shall be revoked, or all of said executors or administrators shall depart this life before final settlement and distribution of the estate shall have been made, administration with the will annexed, or as the case may require, shall be granted to the persons next entitled thereto; and in all cases where any such executor or administrator shall have his letters revoked as aforesaid, he shall nevertheless be liable on his bond to such subsequent administrator or administrators, or to any other person or persons aggrieved, for any mismanagement of the estate thus committed to his care as aforesaid; and such subsequent administrator or administrators may have and maintain actions of trover, debt, *detinue*, account, and on the case, against such former executor or administrator for all such goods, chattels, debts, and credits as shall have come to the possession of him or her, and which shall be withheld, or may have been wasted, embezzled, or misapplied, and no satisfaction made for the same.

Application of this act.

SEC. 68. All the provisions of this act, relative to an executor or administrator, shall apply and extend to an executrix or administratrix, executors or administrators, and *vice versa*, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party, is mentioned, the rule shall apply to a female, or two or more having a joint interest, so far as the rule can be with

propriety applied, and so far as is not otherwise directed.

SEC. 69. No executor or administrator, or security for an executor or administrator, shall be chargeable beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading, or false pleading of such executor or administrator.

SEC. 70. If any court of probate shall hereafter grant letters testamentary or of administration of the estate of any person deceased, without taking good security for the same as aforesaid, or if the security so taken shall afterward become insufficient, and in all cases where such security has been heretofore taken, and now has or shall hereafter become insufficient as aforesaid, it shall be lawful for the said court, on the application of any person entitled to distribution, a creditor, or otherwise interested in such estate, to require such executor or administrator to give other and sufficient security; and in default thereof, the letters testamentary or of administration shall be revoked, and administration granted to the person entitled to the same, according to the rules hereinbefore prescribed in the case of an administrator *de bonis non*; and all acts done and performed according to law, by the executor or administrator, whose letters testamentary or of administration may be revoked as aforesaid, prior to such revocation, shall be valid and effectual.

SEC. 71. When securities for executors or administrators, or their representatives, may conceive themselves in danger of suffering by the mismanagement of such executors or administrators, and petition the court of probate for relief, in writing, setting forth the cause of such apprehension, the said court shall examine such petition, and if the judge thereof shall deem the causes, therein stated and set forth, sufficient to entitle such petitioner or petitioners to relief, if true, he shall summon such executor or administrator to shew cause against such petition, and may thereupon dismiss the same, or direct such executor or administrator, in his discretion, either to give good counter security to save such petitioner or petitioners harmless, or to give a new bond in the like penalty as the first; and such new bond shall have relation back to the time of granting letters testamentary or of administration, and shall be as effectual, in every respect as if the same had been executed before such letters had been

Mission or mis-pleading of executor, &c.

Court may require further security.

In default, letters to be revoked.

Securities may petition for counter security.

New bond may be taken.

granted; and upon refusal or neglect to give bond *de novo*, or counter security, as aforesaid, the letters granted to such executor or administrator may be revoked, and letters of administration with the will annexed, or *de bonis non*, granted thereon as aforesaid.

Condition thereof.

SEC. 72. In all cases where a new bond shall be required to be given by an executor or administrator, as aforesaid, the formal part of the bond shall be as heretofore prescribed, with a condition thereto in the following form, to wit: "The condition of the above obligation is such, that whereas the above bound A. B., executor of the last will and testament of J. K. deceased, (or administrator of the goods and chattels, rights and credits of J. K. deceased), has heretofore executed a bond, payable to the Territory of Iowa, and conditioned for the discharge of his duties as executor or administrator as aforesaid, which said bond bears date on the — day of — A. D. 18—; and whereas, by an order of the court of probate, made on the — day of — A. D. 18—, other bond and security has been required of the said executor or administrator; now, therefore, if the said executor or administrator shall well and truly have kept and performed, and shall well and truly keep and perform, the condition of the bond first given as aforesaid, in all respects, and shall in all respects have performed, and shall continue to perform, the duties of his office as aforesaid, then this obligation to be void, otherwise to remain in full force and virtue." Which bond shall be signed, sealed, attested, and filed, in all respects as aforesaid.

Inventories, how taken and returned.

SEC. 73. In every case wherein letters testamentary, of administration, or of collection, are granted, it shall be the duty of the executor or administrator to make out a full and perfect inventory of all such real and personal estate, or of the proceeds thereof, as shall be committed to his superintendence and management, and as shall come to his hands, possession, or knowledge, whether the same shall consist in lands, tenements, hereditaments, annuities, or rents, or in goods or chattels, and rights and credits, particularly specifying the nature and amount of each, or both, as the case may require, and noting distinctly the amount in money on hand, the nature of each debt due to the deceased, and whether the same be safe, or doubtful, or desperate; which said inventory shall be returned to the office of the judge

of probate, within three months from the date of said letters testamentary, or of administration, as aforesaid.

SEC. 74. On granting any letters testamentary or of administration as aforesaid, a warrant or warrants shall issue, under the seal of the court of probate, authorizing three persons of discretion, not related to the deceased, or interested in the administration of the estate, to appraise the goods, chattels, and personal estate of the deceased, known to them, or to be shown by the executor or administrator, which warrant shall be in the following form, to wit: "The Territory of Iowa to A. B. C. D., and E. F., of the county of \_\_\_\_\_ and Territory of Iowa, Greeting. This is to authorize you to appraise the goods, chattels, and personal estate of J. K., late of \_\_\_\_\_ deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath (or affirmation) hereto annexed, a certificate whereof you are to return annexed to an appraisement bill of said goods, chattels, and personal estate, by you appraised, in dollars and cents, and in the said bill of appraisement you are to set down, in a column or columns opposite to each article appraised, the value thereof. Witness S. M., judge of probate for the said county of \_\_\_\_\_ at his office in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18— (SEAL) S. M., Judge of probate.

Appraisers to be appointed.

Warrant.

For which said warrant the said judge of probate shall receive the sum of fifty cents, and no more. And on the death, refusal to act, or neglect of any such appraiser, another warrant, in form as aforesaid, may forthwith issue in its stead.

Fee to judge.

SEC. 75. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath (or affirmation,) to be annexed to or endorsed on the warrant of appraisement as aforesaid, before any person authorized to administer an oath, viz: "You, and each of you, do solemnly swear (or affirm) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of J. K., deceased, so far as the same shall come to your sight and knowledge, and that you will in all respects perform your duty as appraisers to the best of your skill and judgment." After which the said appraisers shall proceed as conveniently as may be to the discharge of their duty, and shall set down each article, with the

Oath to be taken by appraisers.

Their duty.

value thereof, in dollars and cents, as aforesaid. All the valuation shall be set down on the right hand side of the paper, in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up, and set at the foot of each column respectively.

Bill of appraisalment to be certified, &c.

SEC. 76. When the bill of appraisalment shall be completed, the appraisers shall certify the same under their hands and seals, with a certificate of the oath (or affirmation) to be taken by them, to be thereto annexed, and shall deliver the same into the hands of the executor or administrator, to be by him returned into the office of the judge of probate, within three months from the date of his letters testamentary, or of administration.

Inventories, &c may be given in evidence.

SEC. 77. Inventories, and bills of appraisalments, and authenticated copies thereof, may be given in evidence in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if any other testimony be given that the estate was really worth, or was *bona fide* sold for more or less than the appraised value thereof.

Inventory of further assets, how and when to be returned.

SEC. 78. Whenever personal property of any kind, or assets, shall come to the possession or knowledge of any executor or administrator, which shall not have been mentioned and included in the inventory and bill of appraisalment as aforesaid, an account or inventory of the same shall be returned to the office of the judge of probate, appraised by three disinterested sworn appraisers as aforesaid, within three months after discovery shall be made of the same.

Compensation to appraiser.

SEC. 79. Each and every appraiser, appointed under this act, shall be entitled to the sum of one dollar per day for each day's necessary attendance in making all such appraisements and bills thereof as aforesaid, to be allowed by the judge of probate, and paid upon his order by the executor or administrator, and charged to the account of the estate.

Widow may make her election touching her share of personal estate.

SEC. 80. When the estate of any testator or intestate shall have been appraised, and the same shall be ascertained to be entirely solvent and free from debt or incumbrance, or where there shall be a sufficiency of money or assets in the hands of the executor to pay such debts, independent of the property mentioned in such inventory and bill of appraisalment, it shall be lawful for the widow to make her election, whether she will take that part of the personal estate to which she may be entitled by right

of dower, or otherwise, out of the articles mentioned in such bill of appraisement according to the appraised value thereof, or the amount thereof in money, whenever the same shall be sold and the money collected therefor, or she may take a part in property, and a part in money, as she may prefer. And in all such cases it shall be the duty of the executor or administrator to notify the widow as soon as such appraisement shall be made, and to set apart to her such articles of property, not exceeding the amount to which she may be entitled, and as she may prefer or select, within thirty days after written application shall be made for that purpose by such widow; and if any such executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay for the use of such widow the sum of twenty dollars per month, for each month's delay to set apart said property so selected, after the said term of thirty days shall have elapsed, to be recovered in the name of the Territory of Iowa, for the use of such widow, in any court having jurisdiction of the same.

Executor, &c.,  
to notify widow and set  
apart property

SEC. 81. Executors and administrators shall, in addition to the inventory and bill of appraisement required to be made as aforesaid, make a further inventory from time to time of all monies, judgments, bonds, promissory notes, open accounts, or other evidences of debts; also of his titles to estates both real and personal, as well equitable as legal, specifying the kind, quantity, quality, situation, and value of such real estate, by what title held, and from whom purchased, if known, the debts appearing to be due, or to become due to such testator or intestate, the names of the persons by whom owing, date of the contracts, and amount of interest accruing on the same, with such other and further description of the estate, the books, papers, and evidences of title, so as to make the same as full and perfect as possible; which said inventory, when made, shall be filed in the office of the judge of probate as is required in other cases by this act.

Further inventories to be  
made from  
time to time.

SEC. 82. If any executor or administrator, or other person interested in any estate, shall state upon oath to any court of probate that they believe that any person has in possession, or has concealed or embezzled, any goods, chattels, moneys, or effects, books of accounts, papers, or any evidences of debt

Persons may  
be examined  
on oath touching  
the concealment of  
property.

whatever, or titles to land, belonging to any deceased person, the court shall require such person to appear before them, by citation, and may examine him or her, on oath, touching the same; and if such person shall refuse to answer such proper interrogatories as may be propounded by the court, or person interested as aforesaid, or shall refuse to deliver up said property or effects as aforesaid, upon a requisition being made for that purpose, by an order of the said court of probate, such court may commit such person to jail until he or she shall comply with the order of the court therein.

Accounts subject to inspection.

SEC. 83. The books of accounts of any deceased person shall be subject to the inspection of all persons interested therein.

To what extent executors &c. chargeable

SEC. 84. Executors and administrators shall be chargeable with so much of the estate, whether real, personal, or mixed, or the proceeds thereof, of their testator or intestate, as they, after due and proper diligence, shall recover and receive.

Sales of real estate to be valid.

SEC. 85. In all cases where power is or may be given in any will to sell and dispose of any real estate, or interest therein, and the same shall be sold and disposed of in the manner, and by the person, appointed in such will, the sale shall be good and valid; and where one or more executors shall depart this life before such sales be made, the survivor or survivors shall have the same power, and their sales shall be good and valid as though they all joined in such sale.

Property not to be removed beyond the limits of the Territory.

SEC. 86. No executor or administrator shall, under any pretence whatever, remove any property whatsoever, wherewith such administrator or executor may be charged by virtue of his letters, beyond the limits of this Territory; and in case any such executor or administrator shall remove such property, it shall be the duty of the judge of probate forthwith to revoke his letters, and to cause a suit to be instituted, on his bond, against him and his securities, for the use of the persons interested in the said estate; and the jury trying such cause shall, on satisfactory evidence of the removal of the property as aforesaid, render a verdict against the offender or offenders and his securities for the full value thereof, and such other damages as the parties interested may have sustained by reason thereof; and letters of administration on said estate shall issue to the next person, or persons, entitled as in other cases.



SEC. 87. The executor or administrator shall, as soon as convenient after making the inventory and appraisal as hereinbefore directed, sell at public sale all the personal property, goods, and chattels of the testator or intestate, not reserved to the widow as aforesaid, and also excepting specific legacies and bequests, when the estate is sufficient to discharge the debts over and above the specific legacies and bequests, upon giving three weeks' notice of the time and place of such sale, by at least four advertisements, set up in the most public places in the county where the sale is to be made, or by inserting an advertisement in the nearest and most public newspaper, printed in this Territory, to the place of such sale, at least four weeks successively, previous thereto, upon a credit of not less than six nor more than twelve months, by taking bond, with good security, of the purchasers at such sale: *Provided*, That such executor or administrator may make it a part of the condition of such sale, that purchases under the sum of five dollars shall be paid in hand: *And provided*, further, That if any testator shall direct that his estate shall not be sold, the same shall be preserved in kind and distributed accordingly, unless such sale should become absolutely necessary for the payment of the debts and charges against the estate of such testator.

SEC. 88. If any executor or administrator shall be of opinion that it would be of advantage to the estate of the testator or intestate to dispose of the crop growing at the time of his or her decease, the same shall be inventoried, appraised, and sold, at the same time and in the same manner as is directed in the preceding section; but if such executor or administrator shall believe that it would eventually be of more advantage to the estate to go on and finish the same previous to such sale, he shall be authorized so to do, and the proceeds of such crops, after deducting all necessary expenses for cultivating, gathering, and making sale of the same, shall be assets in the hands of such executor or administrator, and subject to the payment of debts and legacies and to distribution as aforesaid.

SEC. 89. In all public sales of property, made in pursuance of this act as aforesaid, the executor or executors, administrator or administrators, may employ the necessary clerks and a crier, who shall be

Sales between  
10 A. M. and  
6 P. M.

allowed such compensation, not exceeding two dollars per day, as the court of probate may judge reasonable, to be paid by such executors or administrators and charged to said estate. All such sales shall be made between the hours of ten o'clock, in the forenoon, and five o'clock, in the afternoon, of each day; and any such as shall be made before, or after the time herein limited, shall be void.

Sale bill to be  
certified and  
returned.

SEC. 90. All executors and administrators shall, immediately after making such sales as aforesaid, make or cause to be made a bill of the sales of said estate, describing particularly each article of property sold, to whom sold, and at what price; which sale bill, when thus made, and certified by the clerk of such sale and the crier thereof as true and correct, shall be returned to the office of the judge of probate, in the like time as is required in cases of inventories and appraisements.

Notice to per-  
sons having  
claims against  
deceased.

SEC. 91. It shall be the duty of all executors and administrators, as soon as they are qualified as such, to cause an advertisement to be published in the nearest newspaper printed in this Territory, for four weeks successively, notifying and requesting all persons, having claims against the deceased, to exhibit the same to such executor or administrator, or to the court of probate for the proper county, for settlement, within nine months from the date of such advertisement, in order that such executor or administrator may certainly know the number and amount of claims against said estate, preparatory to the liquidation and payment of the same, and also to enable him to ascertain whether the estate be insolvent or not: *Provided*, That if the appraised value of any such estate shall not exceed the sum of one hundred and fifty dollars, the notice aforesaid may be given by putting up advertisements in four of the most public places in the county.

Debts not due  
may be exhib-  
ited.

SEC. 92. Any creditor, whose debt or claim against the estate is not due, may nevertheless present the same for allowance and settlement, and shall thereupon be considered as a creditor under this act, and shall receive a dividend of the said testator's estate, after deducting a rebate of interest for what he shall receive on such debt, to be computed from the time of the actual payment thereof to the time such debt would have become due, according to the tenor and effect of the contract.

SEC. 93. No action shall be maintainable against any executor or administrator, for any debt due from the testator or intestate, until the expiration of one year after the taking out of letters testamentary or of administration, except as is herein excepted; nor shall any person, suing after that time, recover costs against such executor or administrator, unless a demand be proved before the commencement of such suit; but in all other cases, both executors and administrators shall be liable to pay costs as other persons.

When action may be maintained against executors, &c.

SEC. 94. When any executor or administrator, whose testator or intestate shall have died seized of any real estate in this Territory, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay the just claims against his or her estate, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and shall make out a petition to the district court of the county in which administration shall have been granted, stating therein what real estate the said testator or intestate died seized of, or so much thereof as will be necessary to pay his or her debts as aforesaid, and request the aid of the said court in the premises; and it shall also be the duty of such administrator or executor to give at least thirty day's notice of the time and place of presenting such petition, by serving a written notice of the same, together with a copy of said account and petition on each of the heirs, or their guardians, or devisee of said testator or intestate, or by publishing a notice in the nearest newspaper, for three weeks successively, commencing at least six weeks before the presenting of said petition, of the intention of presenting the same to the district court, for the sale of the whole, or so much of the real estate of the said testator or intestate as will be sufficient to pay his or her debts, and requesting all persons interested in said real estate to show cause why it should not be sold for the purposes aforesaid.

If personal estate insufficient to discharge debts.

SEC. 95. It shall be the duty of the said district court, at the time and place specified in the notice aforesaid, or at such other time as the said court shall appoint, to hear and examine the proof and allegations of such executor or administrator, and of all such other persons interested in said estate as may

District court may order sale of real estate.

think proper to resist such sale, and if, upon due examination, the said district court shall ascertain that the said personal estate of such testator or intestate is not sufficient for the payment of his or her debts, the said court shall order and direct the whole, if necessary, but if not, then so much of said real estate, from time to time, as will be sufficient to pay such debts, to be sold as is hereinafter directed, and when a part only of such estate is ordered to be sold, such order shall specify, as particularly as may be, the part so ordered to be sold: *Provided*, always, That where any houses and lots, or other real estate, are so situated that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, such court may, in its discretion, order the sale of the whole, or such part thereof as shall be necessary for the payment of debts, and the overplus arising from such sale shall be distributed among the heirs and devisees, or such other person or persons as may be entitled thereto.

Proviso, as to houses and lots.

By whom conveyances to be executed.

SEC. 96. All sales of such real estate, directed to be made as aforesaid, shall be made, and conveyances executed for the same, by the executor or administrator applying for such order; which said conveyances shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of such testator or intestate, and all other persons claiming by, through, or under him, her, or them.

In sales of real estate certain requisitions to be complied with.

SEC. 97. No lands or tenements shall be sold by virtue of any such order of the district court as aforesaid, unless such sale be at public vendue, and between the hours of ten o'clock, in the forenoon, and five o'clock in the afternoon, of the same day; nor unless the time and place of holding such sale shall have been previously published for the space of six weeks successively, by putting up notices thereof in at least four of the most public places in the county where such real estate shall be sold, and also by causing a similar notice thereof to be published in the nearest newspaper in this Territory; nor unless such real estate be described with common certainty in said advertisements; and if any executor or administrator, so ordered to make sale of any real estate as aforesaid, shall sell the same contrary to the provisions of this act, he shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in the name of the Territory of Iowa, for the use of any person interested who may prose-

cute for the same: *Provided*, That no such offence shall be deemed to affect the validity of such sale: *And provided further*, That it shall be lawful for such executor or administrator to sell the same on a credit of not less than six, nor more than twelve months, by taking bond, with good security, for the payment of the purchase money, and by taking a mortgage on said land.

*Providso.*

*Terms of sale.*

SEC. 98. No part of the real estate of any testator or intestate shall be ordered to be sold, unless the executor or administrator applying for such order shall have made and filed an inventory, appraisalment bill, and sale bill, in the office of the judge of probate; nor unless such executor or administrator shall have first applied the personal estate, or the proceeds thereof, or such part thereof as shall have come to his possession, towards the payment of the debts of the said testator or intestate.

*Inventory, &c., to be filed before sale.*

SEC. 99. In all cases where a petition shall be presented for the sale of any real estate, and one or more of the devisees or heirs of the testator or intestate shall be infants, and without a guardian resident in the county in which such petition shall be preferred, the district court, to which the same shall be presented, shall appoint some discreet person as guardian *ad litem* for the purpose of appearing for, and defending the interest of such infant or infants in the proceedings therein.

*Petition for sale of real estate. Infant devisees or heirs.*

SEC. 100. Any person or persons, claiming to be aggrieved by any judgment, decree, or order, for the sale of any such real estate as aforesaid, may appeal from the same to the supreme court of this Territory: *Provided*, Such appeal be entered during the term in which such judgment, decree, or order shall be made.

*Appeal to supreme court.*

SEC. 101. When any real estate shall at any time be ordered to be sold, the moneys arising from such sales shall be received by the executor or administrator applying for such order, and shall be considered as assets in his or her hands for the payment of debts, and shall be applied in the same manner as assets arising from the sale of personal property.

*Proceeds of sales to be assets.*

SEC. 102. Whenever an estate is found to be insolvent, it shall be so entered of record by the judge of probate, and after such order, so made, no action shall be maintained against the executors or administrators, except at the costs of the party suing; but persons entitled shall receive their proportions of said estate in the manner herein provided for; and

*When estate insolvent.*

whenever the real estate shall be required to be sold for the payment of debts, no suit shall be maintained until the money is received for such real estate, and an order made by said court, directing the executor or administrator to pay out the same as required in this act; and the court of probate may make all necessary orders to coerce the executor or administrator to make immediate application to the district court for the sale of such real estate.

How demands  
to be classed.

SEC. 103. All demands against the estate of any testator or intestate shall be divided into classes in manner following, to wit: 1st. All funeral and other expenses attending the last sickness shall compose the first class. 2d. All expenses of proving the will and taking out letters testamentary, or of administration, and settlement of the estate, and the physician's bill in the last illness of the deceased, shall compose the second class. 3d. Where any executor, administrator, or guardian has received money as such, his executor, or administrator, shall pay out of his estate the amount thus received and not accounted for, which shall compose the third class. 4th. All other debts and demands of whatsoever kind, without regard to quality or dignity, which shall be exhibited within two years from the granting of letters as aforesaid, shall compose the fourth and last class. All demands, not exhibited within two years as aforesaid, shall be forever barred, unless such creditor shall find other estate of the deceased not inventoried or accounted for by the executor or administrator, in which case his claim shall be paid *pro rata* out of such subsequently discovered estate, saving, however, to *femes covert*, infants, persons of unsound mind, or imprisoned, or beyond the seas, the term of two years, after their respective disabilities shall be removed, to exhibit their claims.

Not exhibited  
within two  
years to be  
barred.

Proviso.

How claims  
may be exhib-  
ited.

SEC. 104. The manner of exhibiting claims against the estate of any testator or intestate may be by serving a notice of such claim on the executors or administrators, or presenting them the account, or filing the account, or a copy thereof, with the judge of probate.

Powers grant-  
ed to courts of  
probate.

SEC. 105. The courts of probate in their respective counties shall have concurrent power with the district courts of adjudicating and allowing or rejecting claims exhibited against estates, not exceeding one hundred dollars, and on all sums above

twenty dollars either party may have a jury, and for that purpose said court of probate shall have power to summon witnesses, to grant orders for taking depositions in the manner prescribed in courts of law, and to make all such other orders in the premises as may be necessary; and persons having claims as aforesaid, having given the executor or administrator ten days notice of the time they intend to present the same to the said court, the court, upon examination, shall allow or reject such claims: *Provided*, The court may allow further time for either party to produce other or further evidence in his favor: *Provided*, also, That judgments regularly obtained, and a copy thereof duly certified and filed with the court of probate, shall be taken as duly proven; and all instruments in writing, signed by the testator or intestate, if the hand writing be proven, and nothing be shown to the contrary, shall be deemed duly proved.

SEC. 106. In no case shall any person, making a claim against the estate of any testator or intestate, be permitted to prove the same by his or her oath. Claim not to be proved by oath of party.

SEC. 107. All claims and demands against estates, when allowed by the court of probate as aforesaid, shall be classed and paid by the executor or administrator in the manner provided by this act, commencing with the first class; and when the estate is insufficient to pay the whole of the demands, such demands, in any one class, shall be paid *pro rata*, whether the same shall be due by judgment, writing obligatory, or otherwise, except in such cases as shall be herein excepted. Claims, when allowed, to be classed.

SEC. 108. When any executor or administrator shall have any demand against his testator or intestate's estate, he shall be required to file his demand with the court of probate, as other persons, and the court shall appoint some discreet person to appear and manage the defence of the estate; and upon a final hearing, said court shall allow said demand, or such part thereof as shall be legally established, or reject the same, as to said court shall appear just. Should an executor or administrator appeal in such case, the court of probate shall appoint some person to defend as aforesaid. Demand of executor, &c., to be filed.

SEC. 109. The court of probate shall make an entry of all demands allowed against estates, and file and preserve the papers belonging to the same, and shall also class said demands as is required by this act; Demands allowed, to be entered and classed.

and when any executor or administrator shall pay any claim before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim, by the like evidence as is required in other cases, before the same is classed and he credited therewith.

Courts to provide books.

SEC. 110. The judge of the court of probate shall provide well bound books, and enter therein the accounts of executors and administrators, so as to make a complete record of all accounts allowed, and all settlement of said estate made in said court.

When administration accounts to be exhibited for settlement.

SEC. 111. All executors and administrators shall exhibit accounts of their administration, for settlement, to the court of probate, from which the letters testamentary or of administration were obtained, at the first term thereof, which shall happen after the expiration of one year after the date of their letters as aforesaid, and in like manner every twelve months thereafter, or sooner if required, until the duties of their administration be fully completed.

If moneys insufficient, creditors to be paid *pro rata*.

SEC. 112. Upon each and every settlement of the accounts of any executor or administrator, as provided by this act, it shall be the duty of the court to ascertain the whole amount of moneys which shall have come into the hands of such executor or administrator, belonging to the estate of the deceased, and the whole amount of debts established against such estate; and if there be not sufficient to pay the whole of the debts, the moneys aforesaid shall be appropriated among the several creditors, *pro rata*, according to their several rights, as established by this act; and thereupon the court shall make an order, directing such executor or administrator to pay the claims which have been allowed by the court, according to such apportionments; and the court, upon each and every settlement, shall proceed in like manner until the whole debts be paid, or the assets exhausted.

When abstracts of debts, &c., and of lands, to be presented to district court.

SEC. 113. Whenever it shall appear that the personal estate of any person deceased is insufficient to discharge the debts of such estate, and there is real estate belonging to the same, the court of probate shall make out such an abstract, from its records, of the debts and credits of such estate, and of the lands owned by such testator or intestate, from the inventory of such estate, whether the title be complete or



not; which abstract shall be presented to the district court, by the executor or administrator, who may then obtain an order to sell the same in the manner hereinbefore directed; and the proceeds of such sale shall be assets in the hands of such executor or administrator for the payment of debts, and be subject to the same order by the court of probate, in the payment of debts, as other assets.

SEC. 114. If any executor or administrator shall fail or refuse to pay over any moneys or dividend to any persons entitled thereto, in pursuance of the order of the court of probate lawfully made, within thirty days after demand made for such moneys or dividend, the court of probate, upon application made, shall attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law; and, moreover, such failure or refusal on the part of such executor or administrator shall be deemed and taken in law to amount to a *devastavit*, and an action upon such executor's or administrator's bond, and against his or their securities, may be forthwith instituted and maintained; and the failure aforesaid, to pay such monies or dividend, shall be a sufficient breach to authorize a recovery thereon.

Proceedings  
against delin-  
quent execu-  
tors or adm'rs.

SEC. 115. Whenever it shall appear that there are sufficient assets to satisfy all demands against the estate, the court of probate shall order the payment of all legacies mentioned in the will of the testator, the specific legacies being first satisfied.

Payment of le-  
gacies.

SEC. 116. Where any heir of an intestate has received money, goods, chattels, or real estate, from such intestate, if the amount so received shall be charged to such heir by said intestate, the same shall be taken into computation in making distribution of the estate, upon being brought into hotchpot as aforesaid: *Provided*, That an heir, who has received from the intestate more than his share, shall in no case be required to refund.

Money, &c.,  
received from  
intestate, to be  
taken into ac-  
count.

Proviso.

SEC. 117. Executors and administrators shall not be compelled to pay legatees or distributees, until bond and security be given, by such legatees or distributees, to refund the due proportion of any debt which may afterwards appear against the estate, and the costs attending the recovery thereof; such

Bonds of lega-  
tees or distri-  
butees

bond shall be made payable to such executor or administrator, and shall be for his indemnity, and filed in the court of probate.

In what case moneys to be refunded by distributees, &c

SEC. 118. Where, at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded for the payment of debts, it shall be the duty of the court of probate, on application made, to apportion the same among the several legatees or distributees, according to the amount received by them, except the specific legacies, which shall in no case be required to be refunded, unless the residue be insufficient to satisfy such debts; and if any distributee or legatee shall refuse to refund, according to the order of the court of probate, made as aforesaid, within sixty days thereafter, and upon demand made, such refusal shall be deemed a breach of his bond given to the executor or administrator as aforesaid, and an action may be instituted thereon to the use of such party entitled; and in all cases, where there may be no bond, an action of debt may be maintained against such distributee or legatee, and the order of the court of probate shall be evidence of the demand.

Action by one executor, or administrator, against another.

SEC. 119. When there are two or more executors or administrators of an estate, and any one of them take all or a greater part of such estate, and refuse to pay the debts of the testator or intestate, or refuse to account with the other executor or administrator, in such case the administrator or executor so aggrieved may have his action of account, or suit in equity, against such delinquent executor or administrator, and recover such proportionate share of said estate as shall belong to him; and every executor, being a residuary legatee, may have an action of account, or suit in equity, against his co-executor or co-executors, and recover his part of the estate in his or their hands; and any other legatee may have the like remedy against the executors: *Provided*, That before any action shall be commenced for legacies as aforesaid, the court of probate shall make an order directing them to be paid.

Actions that survive.

SEC. 120. Actions of trover, *detinue*, or replevin, shall survive for and against executors and administrators, and may be maintained in the same manner, and with like effect, as such actions could be for or against their testator or intestate, if living.

SEC. 121. When the mortgagee of any lands or tenements shall die, leaving minor heirs, the executors or administrators of such mortgagee shall be, and they are hereby authorized, on receiving the amount due the estate of such deceased mortgagee, to release to the mortgagor the legal title of the said mortgaged premises, and such deed of release shall be valid.

Release of legal title by executor of mortgagee.

SEC. 122. Real estate may be mortgaged or leased by executors or guardians: *Provided*, Such mortgage or lease shall not be for a longer term than until the heir entitled to such estate shall attain the age of twenty-one years, if a male, or eighteen years, if a female.

Real estate may be mortgaged, &c.

SEC. 123. Before any mortgage or lease shall be made as aforesaid, the executors or guardians shall petition the court of probate for an order authorizing such mortgage or lease to be made, and which the court may grant, if the interests of the estate require it: *Provided*, That the executor or guardian, making application as aforesaid, upon obtaining such order, shall enter into bond, with good security, faithfully to apply the moneys, to be raised upon such mortgage or lease, to the payment of the debts of the testator, or for the benefit of the ward or wards of such guardian: and all moneys, so raised, shall be assets in the hands of such executor for the payment of debts, and shall be subject to the order of the court of probate in the same manner as other assets, or shall be applied to the use of such ward or wards where the same shall be received by a guardian as aforesaid.

If authorized by probate court.

Executor, &c., to give bond.

Moneys so raised to be assets.

SEC. 124. Executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per centum on the whole amount of personal estate, and not exceeding three per cent on the money arising from the letting of land, or from the sale of the same, with such additional allowances, for costs and charges in collecting and defending the claims of the estate, and disposing of the same, as shall be reasonable.

Compensation to executors and administrators.

SEC. 125. If any executor or administrator shall fail to comply with the provisions of this act, or shall fail to comply with any or all of the covenants in his bond, an action may be forthwith instituted and maintained upon such bond against the principal, or securities, or both; and the failure aforesaid shall be a sufficient breach to authorize a recovery, in the

Actions against executors, &c., and securities.

same manner as though a *devastavit* had been previously proved against such executor or administrator.

Appeals allowed from probate courts.

SEC. 126. Appeals shall be allowed from all judgments, orders, or decrees of the court of probate, to the district court, in favor of any person who may consider himself or herself aggrieved by any judgment, order, or decree of the court of probate as aforesaid, and from the district court to the supreme court, as in other cases.

Within 90 days from rendition of judgment.

SEC. 127. Appeals from the court of probate shall be taken within ninety days from the rendition of the judgment or order appealed from, and not thereafter. The party appealing shall make out and tender to the judge of probate, within the time aforesaid, a statement in the nature of a bill of exceptions, setting forth each item, opinion, or decision objected to, and the order, judgment, or decree of the court thereon, and the judge of probate shall sign and seal the same; and he shall thereupon make out a transcript of the records and proceedings relative to the items, opinions, or decrees, so excepted to and appealed from, and transmit the same to the clerk of the district court, who shall docket the same.

Court of probate to suspend proceedings.

SEC. 128. When an appeal shall be taken to the district court as aforesaid, the court of probate shall suspend all proceedings upon such claim or matter in controversy, until decision shall be had thereon; the district court, in all cases of appeal, shall proceed *de novo* as to the judgments and orders appealed from, and claims for debts may be tried by a jury as in other cases. Where the judgment of the court of probate shall be affirmed upon such appeal, the clerk of the district court shall certify the same to the court of probate. Where the judgment aforesaid shall be reversed, the district court shall proceed to give such judgment as the court of probate ought to have given, and the same shall be certified to the court of probate, and said court shall enter the same upon its records, and shall proceed therein agreeably to the order or decision of the district court.

If judgment affirmed.

If reversed.

Appellant to give bond.

SEC. 129. The party appealing, as aforesaid, shall, at the time of taking such appeal, file with the judge of probate a bond, with good security, payable to the Territory, conditioned to prosecute his appeal, and to pay all costs should the judgment be affirmed, and

said bond may be put in suit for the use of the party entitled to such costs.

SEC. 130. The courts of probate, respectively, shall have power to enforce due observance of all orders, decisions, judgments, and decrees, which shall at any time be made in the discharge of their official duties, and may issue attachments for any contempt offered such court, or its process, by any executor, administrator, witness, or other person or persons, and may fine and imprison, or either, all such offenders, in the same manner as the district courts may or can do in all similar cases, except in such cases as have been hereinbefore provided for: *Provided*, That the fine inflicted in such cases shall in no instance exceed the sum of fifty dollars, nor shall any such imprisonment be extended beyond the term of twenty days.

Power of probate courts to enforce observances of order &c.

Proviso.

SEC. 131. For the purpose of enabling the courts of probate respectively to execute the powers vested in them by this act, it shall be the duty of the sheriff of each county in which such courts shall be held, when required by the judge of probate, to attend all regular and special sittings of said court, either by himself or deputy, and to keep and preserve good order in the same; and also to serve and execute all writs of attachment, summons, subpoenas, citations, notices, and other process, which may at any time be legally issued by such judge of probate, and to make due return thereof. And all such sheriffs shall be entitled to the same fees and compensation as are or may be allowed, for the time being, for the performance of similar services in the district courts, to be taxed and allowed by the court of probate against the county, party liable, or delinquent (as near as may be applicable), according to the rules and practice of the district courts respectively.

Sheriff to attend probate court when required.

And serve process.

Compensation.

SEC. 132. And whereas it may be often necessary to enable the representatives of persons deceased to perform the engagements entered into by such deceased persons for the transfer of real estate, *Therefore, be it further enacted*, That whenever it shall be represented and made to appear to the district court of the proper county, by any person or persons contracted with, by bond, covenant, or other contract, in writing, that a deceased testator or intestate, in his or her lifetime, entered into such bond, covenant, or contract, to convey some real estate to him, or her, but was prevented by death, and that such person or persons contracted with, as aforesaid, have on his,

Contracts by testator, &c., in relation to real estate, may be perfected by executor or administrator.

her, or their part performed, or stand ready to perform, the condition of such bond, covenant, or contract made with the deceased, the said court may (after due notice to all concerned shall have been given, by personal service of summons, if such persons concerned reside in the county wherein such representation is made, and if such persons concerned shall not reside in such county, then by an advertisement, printed in the nearest newspaper of general circulation, for six weeks successively) grant license to, and empower the executors or administrators of such deceased obligor, covenantor, or contractor, to make and execute such conveyance or conveyances, to such person or persons contracted with as aforesaid, as it shall appear the said obligor, covenantor, or contractor, would by his bond, covenant, or contract, be obliged to make and execute, in case he, she, or they were living at the time of the performance of the conditions of the bond, warrant, or contract, by the contractors on their part making reasonable allowance for any alterations, improvements, or injuries, that may be made or done in the same estate since such contract was made, as the said court may award; which conveyance or conveyances, when duly acknowledged, and recorded in the registry of deeds for the county where such estate shall lie, shall be good and valid, and the moneys or consideration paid for such estate, if not paid to the deceased contractor during his lifetime, shall be assets in the hands of the said executors or administrators, and be apportioned among the representatives of the deceased: *Provided*, That the summons, in this section mentioned, shall be served upon the persons concerned at least thirty days before the term of the court at which such license or power is granted as aforesaid.

Service of  
summons.

Plaintiff, &c.,  
dying before  
judgment, executor or administrator may be a party to the suit.

SEC. 133. In all actions now or hereafter pending in the supreme court or any of the district courts in this Territory, by appeal, continuance, or otherwise, if the plaintiff or defendant, appellant or appellee, complainant or respondent, shall die before final judgment, the executor or administrator of such deceased person (in case the cause of action doth in law survive), may, upon motion, and suggesting the death of the deceased, become a party to such suit, and shall have full power to prosecute or defend such suit to final judgment; and if the executor or administrator of such deceased party, after taking upon himself the trust, shall neglect or refuse to become

a party to the suit, the court, before whom such cause shall be pending, may enter up judgment against the goods and estate of the deceased party, in the same way and manner as judgment might have been, in case the executor or administrator had voluntarily, after such death, made himself a party to the suit: *Provided*, always, That such executor or administrator be duly served with a notification from the clerk of the court, where such suit is pending, fourteen days beforehand.

SEC. 134. In all cases where executors and administrators have been heretofore appointed, and who shall not have completed their respective administrations or executorships before this act shall take effect, such executors or administrators shall be deemed to be within the provisions of this act, in relation to the revocation of their powers, giving of new or additional bonds, bonds to save securities harmless, and in relation to the payment of debts to creditors, and the remainder of the estate to distributees, and in relation to performance of their duties generally, wherever the provisions of this act shall be deemed applicable: and the courts of probate, in such cases, shall cause the settlements to be made, and the administration completed, according to the rules and regulations herein prescribed, without delay: *Provided*, That no executor or administrator shall be liable for any act done or performed by him, as such, in conformity with the existing laws, or such laws as may be in force at the time this act takes effect.

SEC. 135. That after the taking effect of this act, all acts, and parts of acts, coming within the purview, or conflicting with this act, are hereby repealed.

SEC. 136. This act to take effect from and after the first day of May next.

APPROVED, January 25, 1839.

## WORSHIPING CONGREGATIONS.

AN ACT to preserve good order in all worshiping congregations in this Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That any person who shall, by menace, profane swearing,

Notice.

Administra-  
tions, &c., not  
completed  
when this act  
shall take ef-  
fect.

Proviso.

Repealing  
clause.

How the mis-  
demeanor.