

precinct, and two others in two of the most public places in each of the precincts, at least ten days before the term of holding said election.

SEC. 6. Mode of conducting election. Said election shall be conducted in all respects agreeably to the laws regulating general elections.

Approved January 13, 1841.

[49] CHAPTER 61.

AN ACT for the benefit of insane persons.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Probate courts to appoint guardians, etc. That the several probate courts in their respective counties in this territory, shall have power to appoint guardians to take the care, custody and management, of all insane persons who are incapable of conducting their own affairs, and their estates, real and personal, and to provide for the safe keeping of such persons, the maintenance of themselves and families, and the education of their children.

SEC. 2. Court to examine into insanity. That if any person shall give information in writing, under his hand, to the judge of said court, that any person in their county is or has become insane, and pray that an inquiry thereof be had, such court, if satisfied that there is good cause for the exercise of his jurisdiction, shall cause the said person to be brought before such court, and inquire into the facts by a jury, if the facts be doubtful.

SEC. 3. Duty of court. If it be found by the jury that the person so brought before the court is of unsound mind, and incapable of managing his own affairs, the court shall appoint a guardian for the person, and of the estate, of such insane person.

SEC. 4. Costs, how to be paid. When any person shall be found to be insane, or coming within the provisions of this act, the cost of the proceeding shall be paid out of his estate; or if that be insufficient, by the county.

SEC. 5. Of costs in certain cases. If the person alleged to be insane shall be discharged, and it shall be thought by the court or jury (if a jury be called) that there was no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and an execution may issue for the same.

SEC. 6. Guardian to enter into bonds—bonds to be filed. Every such guardian so appointed, shall, before entering upon the duties assigned him, enter into bond to the board of county commissioners, in such sum, and with such security, as the court shall approve, conditioned that he will take proper care of such insane person, and manage and administer his effects to the best advantage, according to law; and that he will faithfully discharge all duties as such guardian which may by law, or by the order, sentence, or decree of any court of competent jurisdiction, devolve upon him; which bond shall be filed in the office of the probate court, and a copy thereof, duly certified, shall be evidence in all respects as the original.

SEC. 7. Duty of guardian. It shall be the duty of every such guardian, within twenty days after his appointment, to cause a notice thereof to be published in some newspaper printed in this territory, or otherwise publish such notice at such time and place, and in said manner, as the court shall direct.

SEC. 8. Guardian, how to act in certain cases. Every such guardian shall take charge of the person of such lunatic; and if it be thought necessary for

the safety of his [50] person, or the person or property of others, it shall be the duty of such guardian to confine or guard such insane person.

SEC. 9. Guardian to take care of goods, etc. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects, and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

SEC. 10. Inventory of real estate, etc., to be made out. Within forty days after his appointment, such guardian shall make out and file in the office of the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits, and effects, as the same shall have come to his view.

SEC. 11. Subsequent inventory. And if, after having filed such inventory, it shall be found that there is other property belonging to said estate, it shall be the duty of such guardian to make out and file an additional inventory, containing a just and full amount of the same, from time to time, as the same may be discovered.

SEC. 12. How to be made. All such inventories shall be made in the presence of, and attested by, two credible witnesses of the neighborhood, and shall be verified by the oath of the guardian.

SEC. 13. Guardian to prosecute actions. It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter, to be commenced by, or on account of his ward, and to defend all actions pending or which may be brought against such ward.

SEC. 14. Guardian to collect debts, etc.—Every such guardian is authorized and required to collect all debts due or becoming due to his ward, and give acquittances and discharges thereof, and adjust, settle and pay all demands, due and becoming due from his ward, so far as his estate and effects will extend.

SEC. 15. Further powers of probate court. Every probate court shall have power to make order for the restraint, support, and safe keeping of such person, for the management of his estate, and the support and maintenance of his family and education of his children, out of the proceeds of his estate; to set apart and reserve, for the use of such family, any property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage, any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

SEC. 16. Personal estate insufficient, etc., how to proceed. Whenever the personal estate of such person shall be found to be insufficient to meet the foregoing requisitions, it shall be the duty of such guardian to lay the same before the probate court by whom he was appointed, setting forth the particulars relative to the estate, real and personal, of such person, and the debts by him owing, accompanied by a correct and true account of his own doings therewith; whereupon it shall be the duty of such court to make an order, directing the mortgage, lease, or sale, at his discretion, of the whole or such part of the real estate as may be necessary.

SEC. 17. Of sale and proceeds of real estate—guardian not to be purchaser. The court making such order shall direct the time and terms of such sale, mortgage, or lease of such estate, and the man-[51]-ner in which the proceeds shall be applied; and shall give due notice thereof, together with a full description of the property to be thus disposed of, at which time and place it shall be the duty of the guardian to execute the order of said court, and to make a full report of his doings therein, which report shall be accompanied

by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser thereof; or if otherwise disposed of, that he is not directly or indirectly interested personally in the agreement.

SEC. 18. Court to execute deed. When any such sale, mortgage or lease, is approved of by the court ordering the same, as having been performed according to law, and not under such circumstances as to operate prejudicial to the interest of such ward, it shall be the duty of the court to execute a deed, mortgage, or other instrument of writing, which shall be as valid and effective in law as if executed by such ward when of sound mind and discretion.

SEC. 19. Court may set aside proceedings. If such report be disapproved of by said court, as not doing justice to said ward, the court may set aside the proceedings, and proceed in like manner as if no sale had been made.

SEC. 20. Guardian to render account. Every such guardian, as often as required by the court appointing him, shall render a true and perfect account of his guardianship.

SEC. 21. Process against ward, how served. No such ward shall be held to bail, or his body be taken in execution, in any civil action; and in all actions commenced against him the process shall be served upon his guardian; and in all judgments against such ward (or his guardian as such) the execution shall be against the property of the ward only, and in no case against his body, nor against that of his guardian, nor the property of said guardian, unless he shall have rendered himself liable thereunto by false pleading or otherwise.

SEC. 22. Restoration of reason to ward, etc. Whenever the court shall receive information that such ward has recovered his reason, he shall immediately inquire into the facts; and if he finds that such ward is of sound mind, he shall forthwith discharge such person from care and custody; and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to such ward.

SEC. 23. Of death of ward. In case of the death of any such ward, while under guardianship, the power of the guardian shall cease, and the estate descend and be disposed of in the same manner as if said ward had been of sound mind; and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his legal representatives.

SEC. 24. Courts may remove guardian, etc. The several probate courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or for disobedience to any lawful order, and appoint another in his place; whereupon such guardian shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

SEC. 25. Expenses, how to be paid. All the expenses of taking care of such insane person, [52] and the management of his estate, shall be paid out of his estate, if it be sufficient; if not, out of the county treasury.

SEC. 26. Lunatic to have benefit of poor laws, etc. If the estate of such lunatic be insufficient for his maintenance, and the maintenance of his family, he shall be entitled to all the benefits of the laws of this territory for the relief of paupers, in which case it shall be the duty of the court of probate to issue an order to the overseer of the poor, requiring him to take charge of such person according to the provision of the laws of this territory for the relief of paupers; which overseer shall have power to arrest and confine such person, if necessary, until the next ensuing session of the board of county commissioners, at which time it shall be the duty of said board to dispose of the same as may to them seem right and proper, consistent with the principles of humanity and justice.

SEC. 27. Recovery by county of expenses. In all cases of appropriation out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such insane person, if there be any such of ability to pay the same.

SEC. 28. Maintenance of insane persons. The father or mother of such insane person shall maintain them at their own charge, if of sufficient ability; and if not, then the children, grandchildren, or grandparents, shall, if of sufficient ability, maintain them at their own charge.

SEC. 29. Repealing section. That all acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

Approved January 14, 1841.

CHAPTER 62.

AN ACT to establish certain territorial roads therein named.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Names of commissioners—road from Davenport to Marion—meeting of commissioners. That Andrew F. Russel, of Scott county, and Norman Seely, of Jones county, and Ross M'Cloud, of Linn county, be and they are hereby appointed commissioners to lay out and establish a territorial road from Davenport, in Scott county, to Marion, in Linn county, via Seely's Mills, in Jones county; thence up the timber of the Wabesipinicon river, on the most direct and eligible route to Marion, having due reference to the accommodation of the people on the route. Said commissioners shall meet on the first Monday in May, eighteen hundred and forty-one, or at such other time during the year as they may agree upon, and proceed to the discharge of their duties.

[53] **SEC. 2. Names of commissioners—road from West Liberty to intersect military road in direction of Dubuque—meeting of commissioners.** That William Smith, sen., of Dubuque county, and A. Hostuttee, of Jones county, and Samuel P. Higginson, of Cedar county, be and they are hereby appointed commissioners to lay out and establish a territorial road from West Liberty, in Muscatine county, to Tipton, in Cedar county; thence to or near Seeley's Mills, in Jones county; thence to Edinburgh, the county seat of Jones county; thence on the most direct and eligible route to intersect the military road in a direction to Dubuque, having due reference to the accommodation of the inhabitants of the county through which the said road passes, as well as the public generally. Said commissioners shall meet at West Liberty on the first Monday in May, eighteen hundred and forty-one, or at such other time during the year as they may agree upon, and proceed to the discharge of their duties.

SEC. 3. Oath to be taken by commissioners—form of oath. That each of the several commissioners appointed under the provisions of this act, shall, before he enters upon the duties required of him, take and subscribe, before some justice of the peace, or other officer authorized to administer oaths, the following affidavit: "I do solemnly swear (or affirm, as the case may be,) that I will faithfully and impartially, without prejudice or favor, perform the duties of commissioner in accordance with the provisions of this act."