

TITLE 20. appear at said district court, at the time last aforesaid, and abide the order of the court therein.

Judgment,
how execu-
ted, &c.

SEC. 219. If the accused be convicted, and sentenced to be imprisoned, the judgment shall be executed by virtue of a warrant of commitment, under the hand of the justice, specifying the particulars of such judgment, and directed to the sheriff or any constable of the county in which the conviction shall be had. If such accused be convicted and adjudged to pay a fine and costs, the justice shall issue an execution to collect the same, which shall be returnable as executions in civil cases.

Penalty on
jurors and
witnesses for
default, &c.

SEC. 220. In case any person, summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this chapter, as a juror or witness, shall fail to appear, or if any witness appearing, shall refuse to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Certificate of
conviction.

SEC. 221. Whenever any conviction shall be had before a court, held by a justice of the peace, the justice, by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offence charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Ib. To be
filed.

SEC. 222. Within twenty days after such conviction, the said justice shall cause such certificate to be filed in the office of the clerk of the district court of the county in which the conviction shall have been had.

Ib. To be evi-
dence.

SEC. 223. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

TITLE XX.

Miscellaneous Provisions in Criminal Cases.

SEC. 224. Assault, battery, or affray, how punishable.

225. When indictable.

226. Justice not having jurisdiction, how to proceed.

227. Powers of justice for preserving public peace.

228. Breach of recognizance to be certified to district court.

229. Fines to be paid county treasurer.

230. Penalty for neglecting to pay over money collected for fines.

231. County when to pay costs.

232. Justice may require complainant to pay costs.

Assault, &c.,
how punish-
ed.

SEC. 224. No assault, battery, or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner by complaint before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five nor more than one hundred dollars, according to the nature of the offence.

Certain as-
saults, in-
dictable.

SEC. 225. The last section shall not extend to the trial of any case of riot, or unlawful assembly, nor to any assault with intent to murder, kill, maim, rob, or commit a rape, but such offences shall be punishable by indictment in the district court.

Justice, how
to proceed

SEC. 226. If, in the progress of any trial before a justice of the

peace, under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence, not cognizable before a justice of the peace, such justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the district court.

TITLE 20.
not having
jurisdiction.

SEC. 227. Justices of the peace shall have power to cause all laws, made for the preservation of the public peace to be kept, and in the execution of that power, may cause persons to be apprehended, and require them to give security to keep the peace, in the manner provided by law. And any justice may summon to his assistance all persons present, whose duty it shall be to aid him in preserving the peace, and in arresting and securing the offenders, and any person, who shall when summoned to aid in arresting and securing an offender, refuse to give his assistance shall pay a fine, not more than twenty, nor less than five dollars, for the use of the county.

Powers of
justice to
preserve
public peace.

SEC. 228. In case of the breach of any recognizance, or undertaking, entered into in a criminal case before a justice of the peace, the same shall be certified by the justice, and returned to the district court to be proceeded in according to law.

Breach of re-
cognizance.

SEC. 229. All fines, imposed by virtue of the provisions of this chapter, or any part thereof, collected by any justice of the peace, sheriff, or constable, shall within thirty days after the receipt thereof, be paid over to the county treasurer, to be distributed according to law.

Fines to be
paid county
treasurer.

SEC. 230. If any officer who shall have received any such fine, or any part thereof, shall neglect to pay the same, pursuant to the foregoing provision, it shall be the duty of the prosecuting attorney immediately to commence an action therefor, and to prosecute the same diligently to effect.

Penalty for
neglecting.

SEC. 231. If any person accused shall, upon trial before a justice of the peace, be acquitted, and the complainant be not adjudged to pay costs, as provided in section two hundred and seventeen, the costs of prosecution on such a case shall be paid by the county; and in all cases when the person accused, shall be convicted, but if the costs of prosecution cannot be collected from him, such costs shall be paid by the county.

County when
to pay costs.

SEC. 232. The justice may, if he deem proper, require any complainant to give security for costs, as in civil cases, and if he refuse the justice may dismiss the complaint.

Justice may
require com-
plainant to
pay costs.

FORMS IN CIVIL ACTIONS, IN JUSTICES' COURTS.

The following, or equivalent forms may be used by justices of the peace in civil actions, and proceedings under this chapter; to wit:

FORM OF A SUMMONS.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county:

In the name of the United States, you are hereby commanded to summon C. D., if he be found in your county, to be and appear be-

Form of sum-
mons.

TITLE 20. fore the undersigned, a justice of the peace, in and for said county, on the _____ day of _____, 18____, at _____ o'clock in the noon, at his office in _____, to answer to A. B., in a civil action, and have you then and there this writ.
Given under my hand this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF A WARRANT.

Territory of Oregon, } ss:
County of _____
To the sheriff or any constable of said county:
In the name of the United States, you are hereby commanded to take the body of C. D., if he be found within your county, and bring him forthwith before the undersigned, one of the justices of the peace, in and for said county, at his office in _____, to answer A. B., in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attorney; and have you then and there this writ.
Given under my hand this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF SUBPENA.

Territory of Oregon, } ss:
County of _____
To the sheriff, or any constable of said county:
In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace, in and for the said county, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, at his office in _____, to give evidence in a certain cause, then and there to be tried between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (or defendant as the case may be).
Given under my hand, this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF A VENIRE FOR A JURY.

Territory of Oregon, } ss:
County of _____
To the sheriff, or any constable of said county:
In the name of the United States, you are hereby commanded to summon six good and lawful men, of your county, to be, and appear before the undersigned, one of the justices of the peace in, and for said county, on the _____ day of _____, 18____, at _____ o'clock, in the _____ noon of said day, at his office in _____, to make a jury, for the trial of a civil action, between A. B., plaintiff, and C. D., defendant, and have you then and there this writ.
Given under my hand, this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF EXECUTION.

TITLE 20.

Territory of Oregon, } ss:
County of _____
To the sheriff, or any constable of said county:
Whereas judgment against C. D., for the sum of _____ dollars, and for _____ dollars, costs of suit, was recovered on the _____ day of _____, 18____, before the undersigned, one of the justices of the peace, in and for said county, at the suit of A. B.: These are therefore in the name of the United States, to command you to levy on the goods and chattels of the said C. D., (excepting such as the law exempts,) and make sale thereof according to law, to the amount of the said sum, and the costs upon this writ, and the same return to me within thirty days, to be rendered to the said A. B., for his debt, interest and costs.
Given under my hand, this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST THE BODY.

Territory of Oregon, } ss:
County of _____
To the sheriff, or any constable of said county:
Whereas judgment against C. D., for the sum of _____ dollars, and for _____ dollars, costs of suit, was recovered on the _____ day of _____, 18____, before the undersigned, one of the justices of the peace, in and for said county, at the suit of A. B., and an execution against his property, returned unsatisfied: These are therefore in the name of the United States to command you, to take the body of the said C. D., and him convey and deliver to the keeper of the jail of the said county, who is hereby commanded to receive and keep the said C. D. in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid, and satisfied, or until he be discharged therefrom by due course of law, and of this writ make due return within thirty days.
Given under my hand, this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

Territory of Oregon, } ss:
County of _____
To the sheriff, or any constable of said county:
Whereas judgment against C. D., for the sum of _____ dollars, and for _____ dollars costs of suit, was recovered on the _____ day of _____, 18____, before the undersigned, one of the justices of the peace, at the suit of A. B.; and whereas on the _____ day of _____, 18____, E. F. became surety to pay the said judgment and costs in _____ month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C. D. and E. F. have failed. These are therefore in the name, &c., (as in the common form).

TITLE 20.

FORM OF ORDER IN REPLEVIN.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county :

Form of order in replevin.

In the name of the United States, you are hereby commanded to take the personal property, mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand, this day of , 18 .

J. P., Justice of the Peace.

FORM OF A WRIT OF ATTACHMENT.

Territory of Oregon, } ss:
County of

Ib. Of writ of attachment.

To the sheriff, or any constable of said county :

In the name of the United States, you are commanded to attach and safely keep the goods and chattels, moneys, effects, and credits of C. D., (excepting such as the law exempts,) or so much thereof as shall satisfy the sum of dollars with interest, and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and of this writ make legal service, and due return.

Given under my hand, this day of , 18 .

J. P., Justice of the Peace.

FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

Territory of Oregon, } ss:
County of

To the sheriff, or constable of said county :

Ib. Of summons in forcible entry and detainer

Whereas A. B., of hath exhibited unto the undersigned, one of the justices of the peace, in and for said county, a complaint against C. D., for a forcible entry and detainer of the following premises; to wit, ; therefore in the name of the United States, you are hereby commanded to summon the said C. D., if he be found in your county, to appear before the undersigned on the day of , 18 , at o'clock in the noon, at his office in , then and there to make answer to and defend against the complaint aforesaid; and you are also hereby commanded to serve a copy of the said complaint, on the said C. D., and of this writ make due return, with your doings thereon.

Given under my hand, this day of , 18 .

J. P., Justice of the Peace.

FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND DETAINER.

TITLE 20.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county.

Whereas A. B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C. D., of the said county, that he had been guilty of a forcible entry and detainer, of a certain tract of land (or other possessions) of the said A. B., and whereas a jury was empanelled and sworn to inquire of said complaint, and did return their verdict, that the said C. D. was guilty of a forcible entry and detainer of the following described tract of land; to wit (here describe the premises, of which the defendant is found guilty of forcibly entering and detaining); and whereas judgment was entered thereon by said justice, and that the said A. B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C. D. to be forthwith removed from the premises aforesaid, and that the said A. B. have peaceable restitution of the same, and also that you levy of the goods and chattels of C. D. found in your county, the sum of dollars being the amount of costs, on the trial aforesaid, together with dollars for this writ and also your own fees, and make return of this writ within thirty days next after the date hereof.

Form of writ of restitution, &c.

Given under my hand, this day of , 18 .

J. P., Justice of the Peace.

FORM OF UNDERTAKING FOR AN ARREST.

Whereas an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for county, for a warrant to arrest C. D., defendant, founded upon an affidavit of the said plaintiff, setting forth that, &c. (here state the cause for the arrest): Now therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D. in the sum of dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of dollars.

Ib. Of undertaking for an arrest.

Dated this day of , 18 .

A. B.
E. F.

FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A. B., plaintiff, has commenced an action before J. P., one of the justices of the peace in and for county, against C. D., defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff; to wit (here set forth the property claimed): Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto C. D. in the sum of dollars, for the prosecution of the action,

Ib. Of undertaking in replevin.

TITLE 20. for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the day of , 18 .
A. B.
E. F.
G. H.

FORM OF UNDERTAKING IN ATTACHMENT.

Form of undertaking in attachment.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace, in and for county, for a writ of attachment, against the personal property of C. D., defendant (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.): Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D. in the sum of dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of dollars.

Dated the day of , 18 .
A. B.
E. F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Form of undertaking to discharge attachment.

Whereas, a writ of attachment has been issued by J. P., one of the justices of the peace, in and for county, against the personal property of C. D., defendant, in an action in which A. B. is plaintiff: Now, therefore, we, C. D., defendant, E. F. and G. H., acknowledge ourselves bound unto J. K., constable, in the sum of dollars, (double the value of the property,) engaging to re-deliver the property attached; to wit (here set forth a list of articles attached): or pay the value thereof to the sheriff or constable, to whom execution upon a judgment obtained by the plaintiff, in the aforesaid action, may be issued.

Dated this day of , 18 .
C. D.
E. F.
G. H.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE, ON CLAIM OF PROPERTY BY A THIRD PERSON.

Form of undertaking to indemnify constable, on claim of property by a third person.

Whereas L. M. claims to be the owner of, and have the right to the possession of certain personal property; to wit (here describe it): which has been taken by J. K., constable, in county, upon an execution issued by J. P., justice of the peace, in and for the county of upon a judgment obtained by A. B., plaintiff, against C. D., defendant: Now therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto the said J. K., constable, in the sum of dollars, to indemnify the said J. K. against such claim.

A. B.
E. F.
G. H.

FORMS OF PROCEEDINGS IN CRIMINAL CASES.

TITLE 20.

The following or equivalent forms may be used by justices of the peace, in criminal proceedings under this chapter:

FORM OF WARRANT.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county:

Whereas A. B. has this day complained in writing, under oath, to the undersigned, one of the justices of the peace in and for said county, that on the day of , 18 , at in said county (here insert the substance of the complaint, whatever it may be): Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C. D., and bring him before me to be dealt with according to law.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF AN EXECUTION.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county:

Whereas at a justice's court held at my office in said county, for the trial of C. D., for the offence hereinafter stated, the said C. D. was convicted of having on the day of , 18 , in said county committed, (here state the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of dollars, and dollars costs; and whereas the said fine and costs have not been paid: These are therefore in the name of the United States to command you to levy on the goods and chattels, &c., (as in execution in civil cases.)

FORM OF CERTIFICATE OF CONVICTION.

Territory of Oregon, } ss:
County of

At a justice's court held at my office in said county, before me, one of the justices of the peace, in and for said county, for the trial of C. D., for the offence hereinafter stated, the said C. D. was convicted of having, on the day of , 18 , at in said county of (here insert the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of dollars, (or be imprisoned as the case may be,) and the said fine has been paid to me.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

TITLE 20.

FORM OF COMMITMENT UPON SENTENCE.

Territory of Oregon, } ss:
County of

To any constable, and the keeper of the common jail of said county:

Form of commitment on sentence.

Whereas at a justice's court, held at my office in said county, for the trial of C. D., for the offence hereinafter stated, the said C. D., was convicted of having, on the day of , 18 , in said county committed, (here state the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should be imprisoned in the common county jail of said county, for days: Therefore, you the said constable are commanded, in the name of the United States, forthwith to convey and deliver the said C. D. to the said keeper; and you the said keeper are hereby commanded to receive the said C. D. into your custody in the said jail, and him there safely keep until the expiration of said days, or until he shall thence be discharged, by due course of law.

Given under my hand, this day of , 18 .
 J. P., Justice of the Peace.

FORM OF WARRANT TO KEEP THE PEACE.

Territory of Oregon, } ss:
County of

Form of warrant to keep the peace.

To the sheriff, or any constable of said county:

Whereas, A. B. has this day complained in writing, and under oath to the undersigned, one of the justices of the peace, in and for said county, that he has just cause to fear, and does fear that C. D. late of said county, will (here state the threatened injury, or violence as sworn to): Therefore, in the name of the United States, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace, and be of good behavior towards all the people of this territory, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand, this day of , 18 .
 J. P., Justice of the Peace.

FORM OF COMMITMENT TO ANSWER IN THE DISTRICT COURT.

Territory of Oregon, } ss:
County of

To any constable, and to the keeper of the common jail of said county:

Form of commitment to answer in district court.

Whereas, on the day of , 18 , A. B. made complaint in writing, and on oath, before the undersigned, one of the justices of the peace, in and for said county, charging C. D. with having on the day of , 18 , committed the crime of larceny, (or other crime, as the case may be,) and the said C. D.

TITLE 20.

having been brought before and examined by me, and it being sufficiently proved to me, that the said C. D. has in said county, committed the crime of larceny (or other crime) by stealing one bay horse, of the value of dollars, of the goods and chattels of the said A. B.; and he, the said C. D. having failed to give bail for his appearance to answer at the next term of the district court, in the sum of dollars, as required by me: Therefore, in the name of the United States, you, the said constable, are commanded forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody, in the said jail, and him there safely keep, until he be discharged by due course of law.

Given under my hand this day of , 18 .
 J. P., Justice of the Peace.

FORM OF COMMITMENT WHEN JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Oregon, } ss:
County of

To any constable, and to the keeper of the common jail of said county:

Form of commitment. When justice has not jurisdiction.

Whereas C. D., of &c., has been brought this day before the undersigned, one of the justices of the peace, in and for said county, charged on the oath of A. B., with having on the day of , 18 , in said county, committed the offence of (here state the offence charged in the warrant) and in the progress of the trial of said charge, it appearing to the said justice, that the said C. D. has been guilty of the offence of (here state the new offence found on the trial, committed at the time and place aforesaid, of which offence the justice has not final jurisdiction); and whereas the said C. D. has failed to give bail in the sum of dollars, for his appearance to answer at the next term of the district court, as required by me: Therefore, in the name of the United States, &c. (as in the last form).

FORM OF SEARCH WARRANT.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county:

Whereas A. B. has this day made complaint on oath, to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels; to wit, (here describe them,) the property of the said A. B. have, within days past, (or were on the day of ,) by some person, or persons unknown, been stolen, taken and carried away out of the possession of said A. B. in the county aforesaid; and also that the said A. B. verily believes that the said goods or a part thereof are concealed in or about the house of C. D. in said county (describing the premises to be searched): Therefore in the name of

Form of search warrant.

CHAPTER 1. the United States, you are commanded that with the necessary and proper assistance, you enter into the said house (describe the premises to be searched) and then diligently search for the said goods, and chattels, and if the same or any part thereof be found on such search, bring the same, as also the said C. D., forthwith before me to be disposed of according to law.

Given under my hand, this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF RECOGNIZANCE TO APPEAR AT DISTRICT COURT.

Form of recognizance to appear at district court.

Be it remembered that on the _____ day of _____, 18____, before me a justice of the peace in and for said county, personally came C. D. and E. F., and acknowledge themselves each to owe the Territory of Oregon _____ dollars. The condition of this recognizance is such that if the said C. D. shall personally appear at the district court of said county, on the first day of the next term thereof, then and there to answer a charge of, (here name the offence with which the party is charged,) and abide the judgment of said court, and not depart without leave of the same; then this recognizance shall be void: otherwise in full force.

C. D.
E. F.
Taken and acknowledged before me, this _____ day of _____, 18____.
J. P., Justice of the Peace.

SEC. 293. This act shall take effect and be in force from and after the first day of May next.

Passed January 12th, 1854.

AN ACT TO ESTABLISH A PROBATE COURT AND DEFINE ITS DUTIES AND POWERS.

CHAPTER I.

PROBATE COURT.

- SEC. 1. Election of judge of probate, his term of office.
2. Title of probate court; its jurisdiction.
3. Election of probate judges how conducted.
4. Judge when to take oath of office; form of oath, bond and action thereon.
5. Certain officers not eligible.
6. Power of judge of probate.
7. Extent of jurisdiction.
8. May grant administration on estate of prisoners for life.
9. Power of judge to cite witnesses, trustees, &c.
10. Jurisdiction over estates of persons under guardianship, &c.
11. Issue of process by judge of probate; seal of office.
12. Sheriffs, &c., to execute process.
13. Court of probate a court of record.
14. Judge of probate may punish for contempt.
15. Court of probate when and where to be held.
16. Cases when judge of probate shall not act as judge.
17. Administration in such case granted by another judge of probate.

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- SEC. 18. Judge of probate when not to act, or practice as attorney, &c.
19. Certain affidavits to be taken only by judge of probate.
20. Appeal from decision of judge of probate, to district court.
21. Bond of appellant; where to be filed.
22. Judge may grant an appeal with or without bond, when an insane person or minor is a party.
23. Appeal when and where cognizable; proceedings on appeal.
24. Transcript of proceedings to be sent to appellate court.
25. Stay of proceedings after appeal allowed.
26. Appellate court may affirm or reverse decree.
27. Trial of facts on appeal.
28. Costs in probate court.
29. When judge of probate may issue commission to justice to administer oath.
30. Probate of will, &c., not to be granted after twenty years.
31. Act when to take effect.

SEC. 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That there shall be elected by the qualified electors, in each of the organized counties of this territory, at the general election, one judge of probate, who shall have the qualification of a voter. The person duly elected and qualified, shall hold his office for three years, unless sooner removed for mal-conduct in office, and until his successor be elected and qualified.

SEC. 2. The court established by this act, in each of the counties of this territory, shall be styled "The Probate Court of the county of _____," with such jurisdiction as may be prescribed to such courts by the laws of the territory.

SEC. 3. All elections for judges of probate shall be conducted and returns made, as prescribed by the act regulating general elections in this territory; and the clerk of the board of county commissioners shall issue a certificate of election to the person duly elected under the provisions of this act.

SEC. 4. Every person elected a judge of probate in this territory, shall, within fifteen days after receiving his certificate, take and subscribe the following oath:

I, E. B., do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the laws of this territory; that I will administer justice without respect to persons; and faithfully and impartially discharge and perform all duties incumbent upon me as a judge of probate, according to the best of my abilities.

Signed, _____ E. B.

Territory of Oregon, county of _____ ss:

Subscribed and sworn to before me, this, _____ day of _____, 18____.

G. D.,

Clerk of the board of county commissioners, in and for said county.

Said oath shall be indorsed on the certificate of election, and filed, together with the certificate, in the office of the clerk of the board of county commissioners for the proper county; and every person elected a judge of probate shall, at the time of filing his oath of office with the clerk, enter into bonds with the board of commissioners for said county, with good security, to be by the said commissioners approved, in the sum of five hundred dollars, conditioned that he will deliver over to his successor all files, papers and books belonging to the probate office; that he will keep in

CHAPTER 1. good order the records of his court, with faithful and correct alphabets and indexes to the same, and perform all other duties belonging to his office; said bond shall be filed in the office of the clerk of the board of county commissioners. And any person aggrieved by a breach of the conditions thereof, may, by suit upon the bond in the district court for the proper county, have judgment against the judge of probate and his securities, for such sum as he may show himself entitled to, with costs and interest, at the discretion of the court.

Certain officers not eligible. SEC. 5. No sheriff, coroner, clerk of the district court, county commissioner, or clerk of the board of county commissioners shall be eligible to the office of judge of probate.

Power judge. SEC. 6. The judge of probate for each county, shall have and possess the following powers: Original jurisdiction in all cases relating to the probate of last wills and testaments, the granting of letters testamentary and of administration, and revocation of the same, the appointing or displacing guardians over orphan minors, spendthrifts, and persons of unsound minds, and the binding orphan minors as apprentices: the settlement and allowance of all accounts against estates, and of executors, administrators and guardians; the hearing and determining all disputes and controversies respecting wills; the right to executorship, administration or guardianship, and respecting duties and accounts of executors, administrators or guardians; the hearing and determining all disputes and controversies between master and apprentice; the hearing and determining all suits and other proceedings instituted against executors and administrators upon any demand against the estate of their testator or intestate.

Extent of jurisdiction. SEC. 7. His jurisdiction shall extend over the estates of all persons deceased, who, at the time of their decease were inhabitants of, or residents in, the same county, and all who shall die without the territory, leaving any estate within said county, or whose estate may afterwards be found in said county.

Administration on estate of prisoners for life. SEC. 8. He may, upon the application of the party or parties interested, grant administration on the estate of any person who, by due course of law, shall be under sentence of imprisonment for life, in the penitentiary, whether by commutation of a previous sentence, or otherwise.

Power to cite witnesses, trustees, &c. SEC. 9. He shall have authority to cause to come before him by citation, all and every person or persons whom he may deem it necessary to examine as witnesses, or who as executors, administrators, guardians or otherwise, shall be intrusted with, or in any way accountable for any lands, tenements, goods or chattels belonging to any minor, orphan, or person of unsound mind, or the estate of any deceased person; and may examine on oath or affirmation, such person or persons, touching any such estate or guardianship, before him; and any such person summoned to appear before him, who shall refuse so to appear, or when present shall refuse to be examined as a witness, touching such estate or guardianship, shall be liable to be punished as for contempt.

Jurisdiction. SEC. 10. He shall have jurisdiction in all matters relating to the estates of such persons as are under guardianship, and the settlement of the same; and his jurisdiction shall extend to whatever

CHAPTER 1. else may by law rightfully come under his cognizance; and when a case shall originally be within the jurisdiction of the probate court of two or more counties, the court which shall first take cognizance thereof, by the commencement of proceedings, shall retain the same throughout exclusively.

Issue of process. SEC. 11. He shall have authority to issue whatever process may be necessary for the discharge of his official duties, and he shall have a seal of office.

Sheriffs, &c., to obey process. SEC. 12. Sheriffs, their deputies, coroners and constables shall serve and execute all legal warrants and processes, by him directed to them.

Court to be court of record. SEC. 13. That the court established by this act, shall be a court of record, and shall keep just and faithful record of its proceedings, and the judge thereof shall have the care and custody of all files, papers and books belonging to the same, and record all wills and other instruments in writing, required by law to be put on record.

Contempt, how punished. SEC. 14. Contempt of his authority or office, in any cause on hearing before him, may be punished in like manner, as such contempt may be punished in the district court.

Court, when and where to be held. SEC. 15. The judge of probate for each county in this territory, shall hold a court at the seat of justice, or usual place of holding the district court in such county, on the first Tuesday of every month.

When judge shall not act. SEC. 16. When any judge of probate shall be interested as heir, legatee, creditor, debtor, or within the degree of kindred, by means of which by law he might by any possibility be heir to any part of the estate of any person deceased, leaving property to be administered in his county, such estate shall be settled in the probate court for the most ancient adjoining county. If his interest commence at any time after he shall have regularly assumed jurisdiction of such estate, further proceedings therein shall be transferred to the probate court held in the most ancient adjoining county.

Administration granted by another judge. SEC. 17. The will of any such deceased person may be there proven or administration granted, as the case may require, and all subsequent proceedings had thereon, in like manner as if the deceased had died in that county.

Judge not to practice, &c. SEC. 18. No judge of probate shall have a voice in judging and determining, nor be attorney or counsellor, in or out of court, in any civil action whatever, which may depend on or relate to any sentence or decree made by him in his office; nor be attorney or counsellor in any civil action, for or against any executor, administrator or trustee, under any last will and testament, or guardian, as such within his county.

Taking and filing affidavits. SEC. 19. All affidavits required to be taken in relation to, or in anywise pertaining to any proceeding in the probate court, shall be administered by the judge of probate, and by him recorded or filed as the case may be, in his office.

Appeal. SEC. 20. Any person aggrieved by any order, allowance, sentence, decree or denial of any judge of probate, or any other act in his official capacity, may appeal therefrom to the district court, within and for the same county: *Provided*, the appeal be taken within twenty days from the date of the proceedings appealed from.

Bond of appellant. SEC. 21. The appellant shall make his bond to the adverse party

CHAPTER 1. for such sum and with such security as the judge shall approve, conditioned for the prosecution of his appeal, with effect, at the next term of the district court for the same county, and in case he fail in such prosecution, to pay all costs and damages already accrued, and such costs as may be taxed against him by said district court. Said bond shall be filed in the probate office, for the use of the adverse party.

Granting an appeal when minor, &c., a party.

SEC. 22. In case of any controversy wherein an insane person, or other person under guardianship is a party, the probate court may, at its discretion, grant an appeal on the part of the ward, without bond being given as aforesaid: *Provided*, that all other requirements in relation to appeal be complied with. This act shall not be so construed as to require any executor or administrator to enter into bonds to entitle him to an appeal.

Appeal, when and where cognizable.

SEC. 23. Appeals shall be cognizable at the next term of the district court, which shall be holden after the expiration of twenty-four days, after such appeal shall have been allowed, and the appellant shall file the reasons for his appeal with the court appealed from, and shall serve all parties who have appeared before the judge of probate in the case, with a copy of such reasons, under the official signature of the probate judge, fifteen days before the sitting of the court, to which the appeal is made.

Transcript, &c. to appellate court.

SEC. 24. When an appeal is granted, the judge of the court appealed from shall transmit to the clerk of the district court, under his official signature, a transcript of the records and proceedings relative to the cause, together with the original papers relating thereto.

Stay of proceedings after appeal allowed.

SEC. 25. After an appeal is allowed, the bond filed, and the reason served in compliance with this act, all further proceedings in relation to the order, decree, sentence, or denial appealed from, shall cease until the determination of the court or courts above.

Court may reverse or affirm decree.

SEC. 26. The court above may reverse or affirm, in whole or in part, the sentence or proceeding appealed from, and may make such decree or order thereon, as the judge of probate should have made, and shall remit the case to the court from whence it came, for further proceedings.

Trial of facts.

SEC. 27. If, upon hearing an appeal in the court above, any question of fact shall occur that is proper for a jury to try, the court may, at its discretion, cause it to be tried upon an issue to be formed for that purpose, under the direction of the court.

Costs.

SEC. 28. In all cases that are contested in a probate court, the said court may, at its discretion, award costs to either party, to be paid by the party in default, and may issue execution for the same, in like manner as such executions are issued out of the district court.

Issue of commission to justice to administer oath.

SEC. 29. If any person required to make oath to any instrument in writing, which is to be used before a judge of probate, shall be unable to attend by reason of infirmity or otherwise, or shall reside without the county where the court of probate is holden, it shall be lawful for said judge, by commission issued for the purpose, to authorize any disinterested justice of the peace to administer such oath, who shall return a certificate thereof to the judge, together with the commission, and instruments in writing annexed.

SEC. 30. No probate of any last will, nor administration on the estate of any person deceased, shall be originally granted, after the expiration of twenty years from his decease.

SEC. 31. This act shall take effect and be in force from and after the first day of May next.

Passed December 15th, 1853.

CHAPTER 1.
Probate not to be granted after twenty years.
Act when to take effect.

AN ACT RESPECTING EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL ESTATE.

CHAPTER I.

EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL PROPERTY.

- SEC.**
1. Letters testamentary where granted.
 2. Trials, &c., where held.
 3. Persons incompetent to act as administrators, &c.
 4. Letters of administration to whom and in what order granted.
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 8. Executors, &c., to give separate bonds.
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 12. Bond of special administrator.
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 15. Special administrator not liable to creditors of deceased; when limitation begins to run.
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 37. Power of executor to cease from time of resignation.
 38. Survivor to act in case co-executor becomes incompetent.
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- CHAPTER 1. SEC. 48. Bond of surviving partner in such case.
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 51. New bond of executor before administering on partnership effects.
 52. Surviving partner to exhibit partnership effects to appraiser, and when to surrender profit &c., to administrator.
 53. *Ib.* In case of refusal may be committed.
 54.] Letters of administration not to be granted non-residents.

Letters test-
amentary,
where grant-
ed.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That upon the decease of any inhabitant of this territory, letters testamentary, or letters of administration on his estate, shall be granted by the probate court for the county, in which the mansion house or place of abode of the deceased was situated, at the time of his death. If he had no mansion house, or place of abode in this territory at the time of his death, and be possessed of lands in this territory, letters may be granted in the county in which such land, or a part thereof lies. If the deceased had neither mansion house, place of abode, nor lands in this territory at the time of his death, letters testamentary or of administration, may be granted in the county where he died, or in which the greater part of his estate may be. If he died out of this territory, having neither mansion house, place of abode, or lands in this territory, such letters may be granted in any county where his estate or a part of it may be.

Trials, &c.,
where had.

SEC. 2. All orders, settlements, trials, and other proceedings intrusted by this act, to the probate court, shall be had or made in the county in which letters testamentary or of administration were granted.

Persons in-
competent to
act.

SEC. 3. No judge of probate in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; nor shall the executor of an executor, in consequence thereof, be executor of the first testator, provided that this chapter shall not be so construed as to prevent a widow under twenty-one years of age from acting as the executrix or administratrix of the deceased husband's estate.

Letters of
administra-
tion to whom
granted, and
in what or-
der.

SEC. 4. Letters of administration shall be granted:

1. To the widow or next of kin, or both, as the judge of probate shall think fit, and if they do not voluntarily either take or renounce the administration, they shall, if resident, in the county, be cited for that purpose by the judge;

2. If persons so entitled to administration are incompetent or evidently unsuitable for the discharge of the trust, or if they neglect without any sufficient cause, for sixty days after the decease of the intestate, to take administration of his estate, the judge of probate may grant letters to one or more of the principal creditors, if there be any competent, and willing to undertake the trust;

3. If there be no such creditor, the judge of probate shall commit administration to such other person as he shall think fit; *Provided, however,*

4. That if the deceased were a married woman, administration of her estate shall, in all cases be granted to her husband, if competent and willing to undertake the trust, unless by force of a marriage settlement, or otherwise, she shall have made some testamentary disposition of her separate estate, or some other provision which

shall render it necessary or proper to appoint some other person to administer her estate. CHAPTER 1.

SEC. 5. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein; if all such persons refuse to act or be disqualified, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted, if there had been no will.

When
executors
named in
will refuse to
act.

SEC. 6. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle except those who give bond.

Co-executor
not to act
without giv-
ing bond.

SEC. 7. Every executor or administrator, before entering upon the execution of his trust, shall give bond, with sufficient sureties, resident in this territory in such sum as the judge of probate shall order, payable to the Territory of Oregon. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the probate judge, by examination on oath of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust, according to law.

Bond.

SEC. 8. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

Penalty and
condition. 2
Hill 226; 2
Barb. Ch.
427; 5 Barb.
451.
Executors to
give sepa-
rate bonds.

SEC. 9. If the executor be a minor, or absent from the territory, letters of administration, with the will annexed, shall be granted during the time of such minority or absence, to some other person, unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor, until the disqualification shall be removed, when such minor having arrived at full age, or such absentee shall be admitted as joint executor with the former, on giving bond as before required.

When exe-
cutor is a
minor or ab-
sentee.

SEC. 10. Every person who shall be appointed administrator, with the will annexed, shall, before entering upon the execution of his trust, give bond to the Territory of Oregon in like manner, and with like condition, as is required of an executor; provided that when such administrator shall be appointed in pursuance of the last preceding section, there shall be added to such condition in his bond, as follows: and to deliver the letters of administration into the probate court, in case such minor shall become of full age, or said absent executor return, and obtain letters testamentary on the estate.

Bond of ex-
ecutor ap-
pointed with
will annexed

SEC. 11. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary, or of administration, the judge of probate may, in his discretion, appoint a special administrator to collect and preserve the effects of the deceased, and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust, until he shall be otherwise ordered by the district court, to which such appeal is taken.

Appoint-
ment of spe-
cial adminis-
trator.

SEC. 12. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in

Ib. His bond.

CHAPTER 1. such sum as the judge of probate shall order, payable to the Territory of Oregon, with condition as required of an executor, or administrator, in other cases, to make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge; and that he will truly account, on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Duties and powers of special administrators

SEC. 13. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall thereafter be appointed, and for that purpose may commence and maintain suits as an administrator; and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his services, as the judge of probate shall deem reasonable.

1b. Power, &c., to cease on granting letters testamentary.

SEC. 14. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute any suit, commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

Special administrators not liable to creditors of decedent.

SEC. 15. Such special administrator shall not be liable to an action by any creditor of the deceased; and the time of limitation for all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner, as if such special administration had not been granted.

Application for letters of administration.

SEC. 16. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to give the court jurisdiction of the case; and such applicant, at the time of making such application, shall make an affidavit, stating to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased; that the deceased died without a will; that he will make a perfect inventory of, and faithfully administer all the estate of the deceased, pay the debts, as far as the assets will extend and the law direct, and account for and pay over all assets which shall come to his possession or knowledge.

Affidavit by administrator *de bonis non*.

SEC. 17. A similar affidavit, with such variations as the case may require, shall be made by administrators, of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

Oath of administrator, &c.

SEC. 18. Every administrator with the will annexed, and executor, at the time letters are granted him, shall make an affidavit that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator; pay the debts and legacies so

far as the assets will extend, and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration. CHAPTER 1.

SEC. 19. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act. Certain officers not to be sureties.

SEC. 20. The judge of probate shall take special care to take as sureties, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine on oath the applicant or persons offered as sureties. Judge to take good security.

SEC. 21. The judge of probate shall record, in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files. Judge to record executors', &c., bonds.

SEC. 22. The judge of probate shall record in a well-bound book kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded. 1b. Letters testamentary.

SEC. 23. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory. Certified copies evidence.

SEC. 24. Letters testamentary, issued to the executors under the provisions of this act, may be in the following form:

*Territory of Oregon, } ss:
County of*

To all persons to whom these presents shall come, greeting:

Know ye, the last will and testament of A. B., deceased, hath in due form of law been exhibited, proven and recorded in the probate court, for ——— county, a copy of which is hereto annexed; and inasmuch as it appears that C. D. hath been appointed executor in and by said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that said last will and testament may be executed according to the will of the testator; we do hereby authorize him, the said C. D. as such executor, to collect and secure, all and singular, the goods, chattels, rights and credits which were of the said A. B. at the time of his death, in whosoever hands or possession the same may be found; and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property, and the law charge him; and in general to do and perform all other acts and things which now are, or hereafter may be required of him by law. Form of letters testamentary to executors.

In testimony whereof, I, E. G., judge of the probate court for ——— county, have hereunto signed my name, and affixed the seal of said court, at ———, in said county, this ——— day of ———, A. D., 18 .

[Seal of Probate Court.]

E. G., Judge of Probate.

CHAPTER 1. SEC. 25. Letters of administration hereafter to be issued in this territory, may be in the following form:

Territory of Oregon, } ss:
County of

To all persons to whom these presents shall come, greeting:

Form of letters of administration

Know ye, that whereas A. B., late of the county of _____, died intestate as it is said, 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; to the end, therefore, that said property may be collected, preserved and disposed of according to law; we do hereby appoint C. D. administrator of all the goods and chattels, rights and credits which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be required of him by law.

In testimony whereof, I, E. G., judge of the probate court for _____ county, have hereunto signed my name, and affixed the seal of said court at _____ in said county, this _____ day of _____, A. D., 18—.

[Seal of Probate Court.]

E. G., Judge of Probate.

1b. SEC. 26. In all cases where letters of administration with the will annexed, letters of administration to special administrators, or letters of administration *de bonis non*, shall hereafter be issued by the probate court, the same may be issued in conformity to the foregoing forms, with such variations as may suit each particular case.

Proceedings when will is found after administration granted

1b. If will be set aside.

SEC. 27. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked; and letters testamentary or of administration, with the will annexed, shall be granted.

SEC. 28. If, after a will has been found, and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

Marriage of executrix.

SEC. 29. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate; nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

Judge to revoke, &c., in certain cases

SEC. 30. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if he find it just, shall revoke the letters granted.

CHAPTER 1. SEC. 31. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit stating that the affiant has sufficient cause to believe that the sureties in the executor's or administrator's bond has or is likely to become insolvent; or has died or removed from the territory; or that the principal in such bond has or is likely to become insolvent or is wasting the estate; or that the penalty of such bond is insufficient, or that such bond has not been taken according to law; and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

Legatees, &c., may apply in certain cases for relief. 11 Paige 261.

SEC. 32. If any person bound as surety in any executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient reason to believe and does believe his co-surety has died, or has or is likely to become insolvent, or has removed from the territory; or the principal in such bond has or is likely to become insolvent or is wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the same.

Application by sureties for relief.

SEC. 33. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond with sufficient sureties to be given.

New bond.

SEC. 34. Such additional bond when given and approved, shall discharge the former sureties from any liability arising from the misconduct of the principal after the filing of the same; and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

Former sureties not liable for subsequent acts of administrator.

SEC. 35. If such person fail to give such additional bond and sureties within ten days after making such order, his letters from thenceforth shall be deemed to be revoked and his authority from that time cease.

Failure to give new bond in ten days.

SEC. 36. If any executor or administrator shall publish for six weeks in some newspaper in this territory, in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication, believe that he should be permitted to resign, it shall so order; said publication of notice in the newspaper upon application to the probate court for that purpose may be dispensed with, and instead thereof, the probate court may require said executor or administrator to post ten written or printed handbills containing said notice, in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

Resignations

SEC. 37. Such person shall then surrender his letters; his power from that time shall cease; and he shall pay the expenses of publication, and of all the proceedings on such application.

SEC. 38. If there be no more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered or a part die, or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

Co-executor becoming incompetent.

SEC. 39. If all the executors or administrators of an estate shall die, resign, or their letters be revoked, in cases not otherwise pro-

If all become incompetent.

CHAPTER 1. vided for, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration; and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

Liability of administrator, &c., after resignation, &c. SEC. 40. If any executor or administrator resign, or his letters be revoked, or he die, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

Administrator may proceed against predecessor. SEC. 41. The succeeding administrator, remaining executor or administrator, may proceed at law against any delinquent, former executor or administrator, or his legal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

Suits to be commenced in six years. SEC. 42. All suits against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

Failure to account yearly. SEC. 43. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose by the probate court, it shall order such executor or administrator to give notice when required, and to make such settlement; and may enforce obedience to such order by attachment, and may revoke his letters.

Settlement after revocation, &c., how compelled. SEC. 44. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator, shall fail to make final settlement as required by law, after being cited for that purpose by the probate court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

Costs. SEC. 45. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

Inventory of partnership effects. SEC. 46. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory which he is required by law to return to the probate court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases; but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

Partnership effects, when under control of surviving partner. SEC. 47. The co-partnership property thus appraised, shall remain with or be delivered over as the case may be, to the surviving partner or partners who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he or they shall be required to give to the Territory of Oregon, in such

sum and with such sureties as are required in other cases of administration. **CHAPTER 1.**

SEC. 48. The condition of such bond shall in substance be as follows:

The condition of the above bond is, that if A. B., or A. B. and C. D., surviving partner or partners of the late firm of shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the probate court, whenever required so to do by said court, of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the probate court, to the executor or administrator, the excess, if any there be beyond satisfying the partnership debts; then this bond shall be void, otherwise remain in full force.

SEC. 49. The probate court shall have the same authority to cite such survivor or survivors to account and to adjudicate upon such account, as in the case of any ordinary administration; and the parties interested shall have the like remedies by means of such bond for misconduct or neglect of such survivor or survivors, as may be had against administrators. **Bond of surviving partner.**

SEC. 50. In case the surviving partner or partners having been duly cited for that purpose, shall all neglect or refuse to give the bond required by law, the executor or administrator on the estate of such deceased partner, on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm if necessary, and shall, with the partnership property, pay the debts due from the late firm, and return or pay to the survivors, his or their proportion of the excess, if any. **Power of court over surviving partner.**

SEC. 51. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds. **Refusal, &c., of surviving partner to give bond.**

SEC. 52. Every surviving partner on the demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof, shall devolve upon such administrator, the said survivor or survivors shall surrender to him on demand, all the property of such partnership, including their books, papers and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust. **New bond by executor before administering partnership effects.**

SEC. 53. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal to appear before the probate court; and unless he comply with such provision, or show sufficient excuse for his omission, the probate court may commit him to the common jail of the county, there to remain until he comply, or be discharged by due course of law. **Partner to exhibit effects to appraisers.**

Ib. In case of refusal may be committed.

CHAPTER 2.

Non-residents not to administer

SEC. 54. Letters testamentary or of administration shall not be granted to a non-resident of this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his letters.

CHAPTER II.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

- SEC. 1. Executor to make and return inventory on oath two months after appointment.
 2. Estate, &c., to be appraised; appointment of appraisers, their fees how paid.
 3. Appraisers before acting to take oath; appraisal how made, inventory what to contain.
 4. Inventory what to contain.
 5. The appointment of a debtor executor, not to discharge debt.
 6. Discharge of any debt in a will, to be considered a specific bequest.
 7. Inventory to be signed by appraiser and executor and sworn to before judge of probate.
 8. Liability of executor for not returning inventory after time allowed.
 9. New assets discovered, to be appraised and inventoried: inventory to be returned.
 10. Right of possession of executor, &c., to real and personal estate until, &c.
 11. Personal estate to be first liable for debts, &c., of deceased.
 12. Persons embezzling before administration granted, liable in double value of the property.
 13. Proceedings in case of suspected embezzlement, &c.
 14. Person cited, refusing to appear and answer in case of suspected embezzlement, may be committed.
 15. Proceedings to compel account by persons intrusted with any part of estate.

Return of inventory.

SEC. 1. Every executor or administrator shall make and return upon oath into the probate court, within two months after his appointment, a true inventory of the real and personal estate of the deceased which is by law to be administered, and which shall have come to his possession or knowledge.

Appraisers.

SEC. 2. The estate and effects comprised in the inventory shall be appraised by three suitable disinterested persons, who shall be appointed by the judge of probate. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed either by the probate judge having jurisdiction of the case, or by the probate judge of such county; and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

Oath of appraisers.

SEC. 3. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability: then they shall proceed to estimate and appraise the property, and set down each article separately with the value thereof in dollars and cents in figures opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered; a statement of all debts, partnership and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to

Appraisal;

Inventory.

CHAPTER 2.

the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon if any, and their dates, and the sum which in the judgment of the appraisers may be collectable on each debt, interest or security.

SEC. 4. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator, and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

Inventory. What to contain.

SEC. 5. The naming any executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same as for so much money in his hands at the time the debt or demand became due.

Naming executor in will, not to discharge debt.

SEC. 6. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Discharge of debts by will invalid as to creditors.

SEC. 7. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe on oath before the probate judge, that the inventory contains a true statement of all the estate of the deceased which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator; and the oath shall be indorsed upon or annexed to the inventory.

Inventory to be signed and sworn to.

SEC. 8. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

Executor neglecting to return inventory.

SEC. 9. Whenever property not mentioned in an inventory that shall have been made, shall come to the possession or knowledge of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to as is provided in this chapter, within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

New assets.

SEC. 10. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over by order of the probate court to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings, and fixtures thereon, which are under his control.

Executor's, &c., right to possession of estate.

SEC. 11. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first

Personal estate first liable.

CHAPTER 2. chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this act.

Embezzlement before administration granted.

SEC. 12. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Proceedings in case of suspected embezzlement, &c.

SEC. 13. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the deceased; or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased, to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Penalty for neglecting citation.

SEC. 14. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the probate court.

Persons intrusted with estate, how compelled to account.

SEC. 15. The probate judge, upon the complaint on oath of any executor or administrator, may cite any person who shall have been intrusted with any part of the estate of the deceased person, to appear before the probate court, and may require such person to give a full account on oath, of any moneys, goods, chattels, bonds, accounts or other papers belonging to the estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

CHAPTER III.

PROVISION FOR THE SUPPORT OF THE FAMILY.

- SEC. 1.** Widow or minor child may remain in homestead until, &c.—right to appeal, &c.
- 2.** On return of inventory, court to set apart for widow and child certain property.
- 3.** Further allowance in case such property be insufficient.
- 4.** Executor to pay such allowance, in preference to all debts, except, &c.
- 5.** Property exempt from execution, how distributed.
- 6.** All of the estate of the deceased, when to be assigned to widow and children.
- 7.** If there is no widow or child, all of the estate to be deemed assets.

SEC. 1. When a person shall die, leaving a widow, minor child or children, the widow, child or children, shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

Widow or child may remain in homestead; right to apparel, &c.

SEC. 2. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child or children, all the property of the estate, by law exempt from execution.

Property exempt from execution set apart for their use.

SEC. 3. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the probate court shall make such further reasonable allowance out of the estate, as may be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate; but no such allowance shall be made after one year from the granting letters testamentary or of administration.

Allowance in case such property insufficient.

SEC. 4. Any allowance made by the court in accordance with the provisions of the preceding section, shall be paid by the executor or administrator, in preference to all other charges, except funeral charges, and expenses of administration.

Allowance how paid.

SEC. 5. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor children, such property shall be the property of the widow; and if he shall have left also a minor child or children, one-half to the widow and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

Property exempt how distributed.

SEC. 6. If on the return of the inventory of any intestate's estate, who died, leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate after the payment of the funeral expenses, and expenses of administration, and there shall be no further proceeding in the administration, unless further estate be discovered.

When all the estate assigned to widow and children.

SEC. 7. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses, and expenses of administration, for the payment of the debts of the deceased, or to be distributed according to law.

If no widow or child, estate to be assets.

CHAPTER IV.

OF CLAIMS AGAINST ESTATE.

- SEC. 1. When executor to publish notice to creditors to exhibit accounts.
 2. Copy of notice, with affidavit of publisher, to be filed.
 3. Claims barred, unless presented within one year after publication of notice, unless, &c.
 4. Claim presented, to be supported by affidavit; vouchers may be required.
 5. Allowance of claim to be indorsed thereon by executor and probate judge.
 6. Claims allowed to be filed; how ranked.
 7. Holder when to bring suit on rejected claim.
 8. Claim barred by statute of limitation, not to be allowed.
 9. Claim must be presented before action brought.
 10. Time of vacancy in administration, not included in limitation.
 11. Claims in action against deceased, to be presented.
 12. Partial allowance to be indorsed thereon; costs of creditor in case of refusal.
 13. Effect of judgment on claim against executor.
 14. Judgment against deceased, may be presented without verification: proviso.
 15. If claim be doubted, may be submitted to reference.
 16. Proceedings on reference, report, judgment and effect thereof.
 17. Claim of executor, how to be presented for allowance to probate judge.
 18. Penalty for executors neglecting to give notice for two months after appointment.
 19. Return of statement of claims by executor; nature of statement.

Notice to
creditors.

SEC. 1. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper, printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit them with the necessary vouchers, within one year after the date of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge of probate shall deem necessary, but not less than once a week for four successive weeks.

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

SEC. 2. After the notice shall have been published, a copy thereof, together with an affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

Claims to be presented within one year; proviso.

SEC. 3. If a claim be not presented within one year after the first publication of the notice, it shall be barred, provided, if it be not then due, or if it be contingent, it may be presented within one year from the time it shall become due or absolute.

Claim to be supported by affidavit.

SEC. 4. Every claim presented to the administrator shall be supported by the affidavit of the claimant, that the amount is justly due; that no payments have been made thereon; and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Allowance to be indorsed thereon.

SEC. 5. When a claim, accompanied by the affidavit required in the preceding section has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge, who shall in the same manner indorse on it his allowance or rejection.

SEC. 6. Every claim which has been allowed by the executor or administrator, and the judge of probate, shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

SEC. 7. When a claim is rejected by either the executor, administrator or the probate judge, the holder shall bring suit in the proper court, against the executor or administrator within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise, the claim shall be forever barred.

SEC. 8. No claim shall be allowed by the executor, administrator or probate judge which is barred by the statute of limitations.

SEC. 9. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 10. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

SEC. 11. If an action be pending against the testator or intestate at the time of his death, the plaintiff shall, in like manner, present his claim to the executors or administrator for allowance or rejection, authenticated as in other cases, and no recovery shall be had in the action, unless proof be made of the presentment.

SEC. 12. Whenever any claim shall have been presented to any executor or administrator and the probate judge, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

SEC. 13. The effect of any judgment rendered against any executor or administrator, upon any claim against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be, that the executor or administrator pay in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court; and no execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give the judgment creditor any priority of payment.

SEC. 14. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death; but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; provided, however, that if the execution shall have been levied upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

CHAPTER 4.
Claims allowed to be filed.

Suits on rejected claim.

Claims barred not to be allowed.

Must be first presented.

Vacancy in administration excluded.

Claims in action against deceased to be presented

Partial allowance of claim.

Effect of judgment against executor.

Judgment against deceased to be presented.

Proviso.

CHAPTER 4.

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

Proceedings.
7 Wen 522;
10 do. 601.

Claim of exe-
cutor, how
allowed.

Penalty for
neglecting to
give notice.

Return of
statement of
claims.

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

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

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

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

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

CHAPTER 5.

CHAPTER V.

SALE OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

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

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

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

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

CHAPTER 5. allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, he shall also apply for an order to sell so much of the personal estate as shall be necessary. He shall make a similar application, giving at least two weeks previous notice in a newspaper in general circulation in the county where letters were granted, or by posting written or printed notices thereof, in ten of the most public places in the county from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

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

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

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

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

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

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

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

CHAPTER 5. shall order; *provided, however*, if all persons interested in the estate, shall signify in writing their assent to such sale, the notice may be dispensed with.

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

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

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

SEC. 14. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned. Sale. 10 Wen. 441.

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

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

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

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

CHAPTER 5.

Notice of sale.

Sale.

Adjournment of sale.

1b. Notice of.

If on credit.

When sale may be vacated. 13 Wen. 460; 3 Comst. 303.

Who may object to confirmation.

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

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

Order confirming, when given.

Sale of incumbered estates.

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

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

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

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

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

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

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

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

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

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

CHAPTER 5.

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

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

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

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

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

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

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

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

Estates appropriated.

If appropriation, be insufficient.

Estates to legatees liable for debts, &c.

Contribution &c.

Contract of lands to be sold.

CHAPTER 5. entitled to the interest of the deceased, in the lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such securities as the probate judge shall approve.

Bond of purchaser.

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

Assignment of contract to purchaser.

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

Redemption by executor.

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

Sale instead of redemption.

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

Executor liable for neglect.

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

Ib. Fraudulent sales. 2 Barb. Ch. 57.

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

Certain actions when to be brought

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

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

CHAPTER 6.
Exceptions to prior section.

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

Account of sale.

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

Executor, &c., not to purchase.

CHAPTER VI.

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

SEC. 1. Duty of executor.

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

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

Duties of.

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

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

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

Ib. 5 Cow. 267.

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

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

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

Compounding with creditors.

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

Fraudulent conveyances by deceased.

CHAPTER 7. his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person; or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence, and prosecute to final judgment, any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

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

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

CHAPTER VII.

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

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

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

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

CHAPTER 7. order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

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

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

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

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

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

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

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

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

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

CHAPTER VIII.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 9.
Increase and decrease of property.

Uncollected debts.

Compensation.

Not to purchase claims, &c.

Commissions.

Petition for exhibit.

Id. Failing to render.

Petition for exhibit.

Citation to render exhibit.

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

Objections to exhibit.

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

Attachment.

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

Account to be rendered one year from appointment.

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

Citation to account at instance of successor.

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

Revocation of letters, &c.

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

Vouchers of expenses.

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

Allowance without vouchers.

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

Notice of settlement.

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

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

CHAPTERS.
Exceptions to account.

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

Guardian for minor.

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

Examination of accounts.

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

Allowance of account.

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

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

Order of payment of debts.

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

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

Preference to mortgage qualified.

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

When estate is insufficient to pay debts.

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

CHAPTER 8. **SEC. 28.** It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration; but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed by this act, the payment has been ordered by the court.

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

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

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

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

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

CHAPTER 9. **SEC. 34.** At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account, and pray a settlement of his administration.

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

Proceedings if executor neglect to render account.

CHAPTER IX.

OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

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

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

Petition for legacies, &c.

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

Notice of application, to whom given.

CHAPTER 9.

Opposing application.

Allowance of application; proviso.

Order to deliver legacy.

Partition.

Costs of application.

Petition by executor for order requiring payment of money secured.

Distribution of residue.

Decree.

Ib. When made.

Partition, &c. of undivided shares

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

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

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

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

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

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

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

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

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

SEC. 12. When the estate, real or personal, assigned to two or

CHAPTER 9.

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

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

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

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

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

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

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

If in different counties.

Notice of partition. 11 Wen. 647; 17 do. 458; 1 Hill 141; 2 do. 267.

Partition when shares have been conveyed.

Shares how set out.

Proceedings when partition impracticable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER X.

MISCELLANEOUS PROVISIONS.

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

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

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