

Sec. 3. This act shall take effect and be in force from and ^{When take effect.} after its passage.

Approved, January 15th, 1864.

LUNATICS

CHAPTER XXVI.

AN ACT CONCERNING LUNATICS.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

Section 1. If information, in writing, be given to the probate court of any county within this Territory, that any person in such county is an idiot, lunatic, or person of unsound mind; and incapable of managing his or her affairs, and praying that an inquiry thereinto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury. ^{Probate court—how to proceed in case of lunatics.}

Sec. 2. Such information may also be given, in the vacation of said court, to the judge thereof; in which event he shall call a special term of the court, for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind or not. ^{Information—how given.}

Sec. 3. In proceedings under this act, the probate court may, in its discretion, cause the person alleged to be of unsound mind, to be brought before the court. ^{Discretionary power of court.}

Sec. 4. Whenever any justice of the peace, sheriff, coroner or constable, shall discover any person, resident of his county, to be of unsound mind, (as in the first section of this act mentioned,) it shall be the duty of such officers to make application to the probate court of said county, for the exercise of its jurisdiction; and thereupon the like proceed- ^{Duty of civil officers in case of lunatics.}

ings shall be had as in the case of information by unofficial persons.

Duty of court
in certain con-
tingencies.

Sec. 5. If upon inquiry, it be found by the jury that the subject of the inquiry is of unsound mind, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such person. The court may appoint two guardians, one to have charge of the person, and the other to have charge of the estate of such person of unsound mind.

Costs—how
paid.

Sec. 6. When any person shall be found to be insane, according to the preceding provisions, the costs of the proceedings shall be paid out of his or her estate, or, if that be insufficient, by the county.

Same.

Sec. 7. If the person alleged to be of unsound mind shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had, unless said person be an officer, acting officially, according to the provisions of this act, in which case the costs shall be paid by the county.

Powers of court

Sec. 8. The court may, if just cause appears at any time during the term at which an inquisition is had, set the same aside and cause a new jury to be impaneled to inquire into the facts; but when two juries concur in any cause, the verdict shall not be set aside.

guardian shall
give bond.

Sec. 9. Every guardian of a person of unsound mind, before entering upon the duties assigned him, shall enter into a bond to the Territory of Dakota, for the use of any person complaining, in such sum and with such security as the court shall approve, conditioned that he will take due and proper care of such insane person, or will manage and administer his estate and effects to the best advantage according to law, and will faithfully do and perform all such other acts, matters, and things touching his guardianship, as may be prescribed by law or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

Court may re-
quire additional
bond.

Sec. 10. The court may, at any time, require of any such guardian to give a new bond or additional security, as the circumstances of the case shall require, and if any order for that purpose be not complied with within a reasonable time, to be therein mentioned, the appointment of the guardian may be

revoked and another appointed who will give the bond and security required.

Sec. 11. Every bond given by such guardian shall be deposited with the probate judge, and a copy thereof, duly certified by such judge, shall be evidence in all respects as the original. Bond—where deposited.

Sec. 12. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published, at such time and in such manner as the probate court shall order. Guardian to publish notice.

Sec. 13. Every such guardian shall take charge of the person committed to his charge, or of the estate of such person of unsound mind, as the case may be, and provide for his or her support and maintenance, or to dispose of or manage the estate of such person, as directed by this act. Duty of guardian.

Sec. 14. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship. same.

Sec. 15. Within three months after his appointment such guardian shall make out and file, in the office of the probate judge, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such guardian. Guardian to make inventory

Sec. 16. Whenever any property belonging to such estate shall be discovered after the filing of any inventory, it shall be the duty of such guardian to file, as aforesaid, an additional inventory, containing a just and true account of the same from time to time, as the same shall be discovered. Shall file additional inventory

Sec. 17. All such inventories shall be made in the presence of, and attested by two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian. Inventory to be attested.

Sec. 18. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of or against his ward, to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor, and to adjust, settle and pay all demands due or becoming due from his ward, Duty of guardian.

so far as his effects and estate will extend, as hereinafter provided.

Court may make certain order.

Sec. 19. Every probate court by whom any person of unsound mind is committed to guardianship, may make an order for the restraint, support and safe keeping of such person, for the management of his or her estate, for the support and maintenance of his or her family and education of his or her children, out of the proceeds of such estate; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for the purposes above specified.

Duty of guardian in certain cases.

Sec. 20. Whenever the personal estate of any such person of unsound mind shall be insufficient for the discharge of his debts, the maintenance of himself or herself and family, or the education of his or her children, it shall be the duty of the guardian to apply, by petition, to the court by which he was appointed, praying for authority to mortgage, lease or sell the whole or so much of the real estate of such person of unsound mind as shall be sufficient and necessary to supply the deficiency.

Petition shall set forth—what.

Sec. 21. The petition shall set forth the particulars of the amount of the estate, real and personal, of such insane person, and of the debts by him or her owing, accompanied by a full true and perfect account of the guardianship of the petitioner, showing the application of the funds which may have come to his hands.

Duty of court.

Sec. 22. If it appears to the court, upon examination of the matter, that the personal estate is insufficient for the purposes above mentioned, and that the property has been applied, as far as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease or sale of the whole or such part of the estate as may be necessary or proper.

Same.

Sec. 23. The court making such order shall direct the time and terms of sale, or, if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which the proceeds shall be secured, and the income or produce thereof be appropriated.

When sale is ordered, guardian shall cause certain notice.

Sec. 24. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place, and terms of

sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper in or nearest to the county in which the premises to be sold are situated, if said newspaper be published within this Territory, and shall also put up like notices at six of the most public places in such county six weeks before the day of sale.

Sec. 25. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction to the highest bidder, and make report of his proceedings to the court at the term next succeeding the sale.

Lands to be sold
to the highest
bidder.

Sec. 26. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not, directly or indirectly, become the purchaser of the property sold, and that he was in no wise interested in the purchase thereof.

Report made
and verified—
how.

Sec. 27. If the court approved the proceedings, the guardian shall execute a deed or deeds to the purchaser or purchasers, reciting the order of sale, and conveying to the purchaser or purchasers all the estate, right, title and interest of such person of unsound mind to the estate sold.

If the court ap-
prove, guardian
to execute deed.

Sec. 28. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be cancelled, and may renew the order of sale, as often as may be necessary, until the proceedings are approved.

If disapproved,
sale is set aside.

Sec. 29. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose, until the court shall have approved the agreement made by the guardian under such order.

No deed given
until sale ap-
proved.

Sec. 30. Every conveyance, mortgage, lease and assurance made under the order of a probate court, pursuant to the provisions of this act, shall be as valid and effectual as if the same had been executed by such insane person when of sound memory and understanding.

Conveyance
shall be valid.

Sec. 31. Every guardian appointed under this act shall, once a year or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court.

Guardian shall
render account
—when.

Sec. 32. No contract of any person found to be of unsound

Contract not
binding—when.

mind, as hereinbefore specified, which shall be made without the consent of his or her guardian, shall be valid or binding, and such guardian may sue for and recover any money or property which may have been sold or disposed of by his ward, without his consent.

Insane person
exempt from
civil or criminal
action.

Sec. 33. No such insane person shall be held to bail, nor shall his or her body be taken in execution on any civil or criminal action.

Process to be
served—how.

Sec. 34. In all actions commenced against such insane person, the process shall be served on his guardian; and on judgment against such person, or his or her guardian, as such, the execution shall be against his property only, and in no case against his or her body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto, by false pleading or otherwise.

Jury to inquire
into cases of
recovery from
insanity.

Sec. 35. If any person shall allege, in writing, verified by oath or affirmation, that any person declared to be of unsound mind, has been restored to his or her right mind, the court by which the proceedings were had, shall cause the facts to be inquired into by a jury.

If true, person
shall be dis-
charged.

Sec. 36. If it shall be found that such person has been restored to his or her right mind, he or she shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hand, belonging or appertaining to him or her.

Disposition of
estate, in case
of death.

Sec. 37. In case of the death of any such insane person while under guardianship, the power of the guardian shall cease, and the estate shall descend and be distributed in the same manner as if such person had been of sound mind, and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his personal representatives.

Power of pro-
bate court.

Sec. 38. The several probate courts shall have power to remove such guardians, at any time, for neglect of duty, misconduct or mismanagement, or disobedience to any lawful order, and appoint others.

Guardian's duty
on being re-
moved.

Sec. 39. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

Sec. 40. The probate court shall have full power to control

the guardian of any such insane person, in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery. Power of court.

Sec. 41. If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next setting of the probate court of the county, who shall make such order for the restraint, support and safe keeping of such person as the circumstances of the case shall require. Insane person to be confined in certain cases

Sec. 42. If any such person, as in the last preceding section is specified, shall not be confined by the person having charge of him or her, or there being no person who has such charge, any judge of a court of record, or any justice of the peace may cause such insane person to be apprehended, and may employ any person to confine him or her, in some suitable place, until the probate court shall make further order therein, as in the preceding section specified. Same.

Sec. 43. The expense attending such confinement shall be paid by the guardian out of his or her estate, or by the person bound to provide for any support such insane person, or the same shall be paid out of the county treasury. Expenses—how paid.

Sec. 44. In all cases of appropriations out of the county treasury, for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same. County to recover expenses.

Sec. 45. This act shall take effect from and after its passage and approval. When take effect

Approved, January 11, 1864.