

GENERAL LAWS
OF
THE TERRITORY OF DAKOTA.

ADMINISTRATORS AND EXECUTORS.

CHAPTER 1.

AN ACT CONCERNING THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

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

SECTION 1. When any person shall die, possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows: 1. The widow, if any, shall be allowed all her articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars, and other personal property to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provisions made for her in the will of her husband, as when he dies intestate. 2. The widow and children constituting the family of the deceased, shall have such reasonable allowance out of the personal estate, as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances; which, in case of an insolvent estate, shall not be longer than

Estate, how applied and distributed.

one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow. 3. When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die, before the children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate, and the income of such part of the real estate as would have been assigned to their mother, if she had been living. 4. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration. 5. If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowance mentioned in the preceding sub-divisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate. 6. The residue, if any, of the personal estate, shall be distributed in the same proportion and to the same persons, and for the same purposes, as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue, as a child of such intestate would be entitled to.

Letters of administration granted by what court.

SECT. 2. When any person shall die intestate, being an inhabitant of this territory, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death. If such deceased person, at the time of death, resides in any other territory, state, or county, leaving estate to be administered in this territory, administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered; and the administration first legally granted, shall extend to all the estate of the deceased in this territory, and shall exclude the jurisdiction of the probate court of every other county.

To whom and when granted.

SECT. 3. Administration of the estate of a person dying in-

testate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order: 1. The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust. 2. If the widow or next of kin, or the person selected by them shall be unsuitable or incompetent, or if the widow or next of kin, shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it. 3. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

SECT. 4. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

Administrator to give bond.

SECT. 5. When there shall be a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed; and no appeal shall be allowed from the appointment of such special administrator.

When delay in granting letters, special administrator appointed.

SECT. 6. An administrator, appointed according to the provisions of the preceding section, shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator, who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

Powers of special administrator.

SECT. 7. Such special administrator shall not be liable to

Same not liable to action.

an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

Same give
bond.

SECT. 8. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits, and effects of the deceased, which shall come to his possession or knowledge; and that he will truly account for all the goods, chattels, debts, and effects of the deceased, which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

Upon granting
letters his powers
to cease.

SECT. 9. Upon granting letters testamentary or of administration on the estate of the deceased, the power of such 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 to final judgment any suit commenced by such special administrator.

If any person
embezzles any
money, goods,
&c., of deceased.

SECT. 10. 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, such person shall stand chargeable, and be liable to the action of the executor or administrator of such estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

When executor
or administrator
dies.

SECT. 11. When any sole executor or administrator shall die without having fully administered the estate, the probate court may grant letters of administration, with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered.

When adminis-
trator may be
removed.

SECT. 12. If an administrator shall reside out of this territory, or shall neglect, after due notice by the judge of probate to render his account, and to settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable or incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator.

SECT. 13. When an unmarried woman, who is administratrix, alone, or jointly with another person, shall marry, her marrying shall extinguish her authority as administratrix.

When unmarried woman marry, her rights as administratrix extinguished.

SECT. 14. When an administrator shall be removed or his authority shall be extinguished, the remaining administrator, if any, may execute the trust; if there shall be no other, the court of probate may commit administration of the estate, not already administered, to some suitable person, as in the case of the death of a sole administrator.

Remaining administrator may execute duties, or new one appointed.

SECT. 15. An administrator appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers and shall proceed in settling the estate in the same manner as the former executor or administrator should have had or done, and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution or any judgment recovered in the name of the former executor or administrator.

Powers of new administrator.

SECT. 16. If, after the granting of letters of administration by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

If, after letters granted, a will is proved.

SECT. 17. The executor of the will shall, in such case, be entitled to demand, sue for and collect all the goods, chattels, rights, and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Executor may complete unfinished administration.

SECT. 18. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

All previous acts of administrators legalized.

SECT. 19. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a

When two or more, separate bonds may be taken.

separate bond from each, with sureties or a joint bond with sureties from all.

Notice of application for letters, &c., to be given.

SECT. 20. When application shall be made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct.

Laws relating to exemption to apply to estates of intestates.

SECT. 21. Any laws now existing or hereafter passed, exempting property from execution by seizure and sale shall also apply to the property of the estates of intestates.

Take effect, when.

SECT. 22. This act to take effect from and after its passage and approval by the governor.

Approved May 8, 1862.

W. JAYNE, *Governor.*

CHAPTER 2.

AN ACT RELATING TO INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

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

Return inventory of real estate, &c.

SECTION 1. Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights, and credits of the deceased, which shall have come to his possession or knowledge; excepting, only, that an executor who shall be a residuary legatee and shall have given bond to pay all the debts and legacies, as provided by the law, shall not be required to return an inventory.

To be appraised by two disinterested persons.

SECT. 2. The estate and effects, comprised in the inventory, shall be appraised by two or more disinterested persons, appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust; and if any part of such estate or effects shall be in any other county, appraisers thereof may be appointed, either by the judge of

probate having jurisdiction in the case, or by a disinterested justice of the peace of such other county.

SECT. 3. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them, in substance as follows: Order issued to appraisers.

Territory of Dakota, }
 County of } ss.

To , of , in said county:

You are hereby appointed to appraise, on oath, the estate and effects of , late of , deceased, which may be in said county; and when you have performed that service, you are required to deliver this order, and your doings in pursuance thereof, to , executor (or administrator, as the case may be,) of said deceased.

Given under my hand this . day of , in the year
 ————, *Justice of the Peace.*

SECT. 4. The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same, certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator. Appraisal carefully noted and certified.

SECT. 5. A separate and distinct inventory and appraisal shall be made and returned, as aforesaid, of all the household furniture and other personal property, which may be allowed to the widow, pursuant to law; but the same shall not be considered assets in the hands of the executor or administrators. A separate inventory of personal property allowed the widow.

SECT. 6. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first 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 and the expense of administration, the whole of his real estate, not exempt by law, except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining license therefor, in the manner provided by law. Debts paid out of personal estate; if not sufficient, then out of real estate.

Have possession of all real estate, and keep in tenable repair.

SECT. 7. 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, issues, and profits of the real estate, until the estate shall have been settled, or until delivered over by order of the probate court, to the heirs or devisees; and shall keep in good tenable repair, all houses, buildings, and fences thereon, which are under his control.

If complaint made of embezzlement, &c., person may be cited to appear and answer.

SECT. 8. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased, or that such person 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 or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath upon the matter of such complaint.

If person cited does not appear.

SECT. 9. If the person so cited shall 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 common jail of the county, 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.

Person intrusted with parts of estate required to report, when.

SECT. 10. The judge of probate, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to such 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 render such

account, the court may proceed against him as provided in the preceding section.

SECT. 11. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor and give him a discharge upon receiving a fair and just dividend of his effects.

When debtor unable to pay all his debts.

SECT. 12. When any mortgagee of real estate, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage and the debts secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and he may foreclose the same, and have any other remedy for the collection of such debts which the deceased could have had if living; or may continue any proceedings commenced by the deceased for that purpose.

When mortgagee die without foreclosing.

SECT. 13. In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein, or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if, upon the sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the sum for the same persons, whether creditors, next of kin, or others who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

In case of redemption or sale.

SECT. 14. Any real estate so held by an executor or administrator, or which may be purchased by him as such, upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefrom from the probate court, in the manner provided by law.

Real estate so held may be sold for payment of debts and legacies.

SECT. 15. If any land so held by an executor or administrator, as mentioned in the preceding section, shall not be sold by him, as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if upon

If not sold may be partitioned among legatees.

such distribution the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it were real estate which the deceased held in his lifetime.

When there is deficiency of assets.

SECT. 16. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate, or any right or interest therein, with the 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 or suit, at law, or in chancery, 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 for all goods, chattels, rights, or credits which may have been so fraudulently conveyed [by] the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Not bound to sue for estates, unless urged by creditors, and unless they give security.

SECT. 17. No executor or administrator shall be bound to sue for such estates, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

All real estate recovered to be sold for payment of debts.

SECT. 18. All real estate so recovered, as provided in the sixteenth section of this act, shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits, recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

Property exempted.

SECT. 19. All property, real and personal, goods and chattels, rights and credits, interests and estates, exempt by law from seizure and sale under execution; and all property, real and personal, reserved by law to widows and minor children, be and the same is exempt as provided by law, any thing in this act to the reverse notwithstanding.

SECT. 20. This act shall take effect from and after its passage and approval by the governor. Take effect, when.

Approved May 15, 1862.

W. JAYNE, *Governor.*

APPORTIONMENT.

CHAPTER 3.

AN ACT TO APPORTION THE REPRESENTATION TO THE
RED RIVER DISTRICT.

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

SECTION 1. That all that portion of territory lying on the Red River, including the settlements of Pembina and St. Joseph, shall constitute the seventh council district of Dakota, and shall be entitled to one councilman, and two representatives in the legislative assembly of this territory. Apportioned one councilman and two representatives.

SECT. 2. This act shall take effect and be in force from and after its passage and approval by the governor. Take effect, when.

Approved April 21, 1862.

W. JAYNE, *Governor.*