

Conflicting acts repealed. Sec. 787. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

When to take effect. Sec. 788. This act shall take effect from and after its passage.

APPROVED, January 11, 1865.

PROBATE COURTS.

CHAPTER XVIII.

AN ACT ESTABLISHING PROBATE COURTS, DEFINING THE JURISDICTION THEREOF, AND PRESCRIBING THE PROCEEDINGS THEREIN.

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

Probate courts established. Section 1. That there is hereby established in each organized county in this territory, a probate court, with the jurisdiction conferred by this chapter.

To have exclusive jurisdiction, when. Sec. 2. The said probate courts have exclusive jurisdiction, in the first instance, in the county to take the proof of wills:

1. When the testator at or immediately before his death, was an inhabitant of the county, in whatever place he may have died.

2. When the testator, not being an inhabitant of the territory, shall have died in the county, having assets therein.

3. When the testator not being an inhabitant of this territory, shall have died out of the territory, not leaving assets therein, but when assets thereafter came into the county.

4. When real property devised by the testator is situated in the county, and no other probate court has gained jurisdiction under either of the preceding subdivisions of this section.

Sec. 3. The probate court has jurisdiction : also,

1. To take proof of a will relating to real property in the county when the testator shall have died out of this territory, not being an inhabitant thereof, and not having assets therein.

2. To grant and revoke letters testamentary and of administration.

3. To direct and control the conduct and settle the accounts of executors and administrators.

4. To enforce the payment of debts and legacies, and the distribution of the estates of intestates.

5. To order the sale, and dispose of the real property of deceased persons.

6. To appoint and remove guardians, to direct and control their conduct, and to settle their accounts.

7. To take the care and custody of the person and estate of a lunatic, or habitual drunkard, residing in the county, and to appoint and remove guardians.

8. To direct the admeasurement of dower.

9. To exercise the powers and duties conferred upon it by law.

Sec. 4. The jurisdiction acquired by any probate court over a matter or proceeding is exclusive of that of any other probate court, except where otherwise provided by law, and when a guardian is appointed or any other proceedings is commenced in the probate court of a particular county, all further proceedings in respect to the same must be continued in that court.

Further Jurisdiction.

Sec. 5. The probate court of each county must be held by the judge of probate of said county.

Jurisdiction exclusive after commencement of proceedings.

Sec. 6. The probate court is always open for the transaction of business within its jurisdiction, but it is the especial duty of

Probate Judge must hold court

the judge of probate to attend at his office, on the first Monday of January, March, May, July, September and November, and there hold a probate court.

PROCEEDINGS IN PROBATE COURT.

Section 7. Proceedings in probate court, and powers of judge.

8. Duties of judge of probate.
9. Judge of probate must keep certain books.
10. Judge must cause certain entries to be made.
11. Index attached to books.
12. Power of successor in office.
13. Probate judge cannot be counsel, when.
14. Costs awarded, how.
15. Orders for payment, how enforced.
16. Executive officer of probate court.
17. Probate judge has jurisdiction of justices of the peace.

Probate court,
when open.

Sec. 7. There are no pleading in the probate courts of this territory. The proceedings are those prescribed by statute.— The granting of letters of administration and testamentary may be known as the appointment of administrators and executors; the proceedings in these courts are upon the application of a party, verbal or written, and when verbal entered in the minutes of the court, and when written they are to be filed.— The powers of a judge of probate, except as otherwise provided by law are exercised by means of :

1. A citation of the party.
2. An affidavit, deposition, examination or statement, under oath, of a party or witness, or other legal and competent evidence.
3. A subpoena to a witness or other attachment to compel his attendance or commitment for refusals to testify.
4. Orders, judgment or decrees.
5. An execution, warrant, or other process to enforce them.

Sec. 8. The judge of probate must keep his office open at ^{Duties of judge of probate.} reasonable hours, suitable and convenient for the transaction of business, and for the deposit and safe keeping of the public books and papers under his charge. He must also provide suitable cases for books and papers in his office, the expense of which is a county charge; they belong to the county, and must be delivered by the judge of probate to his successor in office.

Sec. 9. The following books must be kept by the judge of ^{Must keep certain books.} probate:

1. A register in which must be entered a memorandum of all ^{Must cause certain entries to be made.} official business transactions by him or in his office appertaining to the estate of each person deceased, under the name of such person: that pertaining to the general guardian of an infant, under the name of such infant; that pertaining to an insane person, under his name.

2. A record of wills, in which he must record all wills proven before him, with a certificate of probate thereof; and of all wills proven elsewhere, upon which letters of administration are issued by him.

3. A record of appointment of administrators and executors, of general guardians of infants, of guardians of insane persons, of appointment of admeasures of dower, with all orders relating to the same, and the administrators.

Sec. 10. The judge of probate must cause to be entered in ^{Index attached thereto.} the register, mentioned in the first subdivision of the preceding section, a summary balance sheet of the accounts of administrators, and guardians, and trustees before him, with his orders and judgments relating to the same, a memorandum of execution issued thereon, with a note of satisfaction, when satisfied; also all orders relating to the sale of real estate, and the distribution thereof, all orders made by him in the discharge of his official duties.

Sec. 11. To each of such books there must be attached an ^{Power of successor in office.} index referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page in the book where the entry is made.

Sec. 12. The successor in office of any judge of probate has

power to complete any unfinished business commenced by his predecessor.

Probate Judge, cannot be council, when.

Sec. 13. A judge of probate cannot be counsel or attorney in any civil action for or against any executor, administrator, guardian, minor, trustees, or other persons over whom or whose accounts he would by law have jurisdiction whether such actions relate to the business of the estate or not.

Costs awarded, how.

Sec. 14. Costs may be awarded in favor of one party against another, to be paid personally out of the estate or funds, in any proceeding contested adversely before the judge of probate but such cost shall not exceed those allowed in the district court for a trial in an action at law; witnesses' fees and other disbursements equal to those allowed in the district courts, may also be allowed.

Orders for payment, how conferred.

Sec. 15. Orders for the payment of money may be enforced by execution or otherwise, in the same manner as judgment for the payment of money in the district courts; except in a probate court all process is issued by the judge of probate.

Executive officer of probate court.

Sec. 16. Executions, warrants, and other process issued by a judge of probate, must be executed by the sheriff or coroner of the county to which they are sent to be executed in the same manner, with the same powers, and responsibilities and fees as a process issued from the district court.

Probate Judge has jurisdiction of Justices of the Peace.

Sec. 17. The several Judges of Probate shall, in court or out of court, have civil and criminal jurisdiction of Justices of the Peace, and shall be entitled to the same fees as are allowed by law to Justices of the Peace.

WILLS.

Section 18. Who may will property, &c.

19. Devise construed to convey all property, except when.

20. If estate is acquired after will is made.

21. Persons may bequeathe and dispose of personal property.

22. Wills, how proved.

23. Nuncupative will good only when.

- Section 24. Testamentary words must be recorded, when.
25. Devises, &c., to subscribing witness void, when.
 26. If witness would have been entitled to share, if will was not established.
 27. No will or part of will revoked, unless what.
 28. Will may be deposited with probate judge. Receipt to be given.
 29. Only to be delivered to order of testator.
 30. Judge of probate to give notice of will to whom.
 31. Other person, having possession of will, to deliver same to whom and when.
 32. Duty of person named executor.
 33. Person neglecting to perform duty.
 34. If person fail or neglect to deliver will ; penalty.
 35. Court to appoint time and place of proving will, &c.
 36. If will not contested.
 37. If subscribing witnesses reside out of the territory.
 38. No will effectual, except when.
 39. Of wills allowed in other parts.
 40. When a copy of such will is presented.
 41. If it appear that it ought to be allowed.
 42. Court shall grant letters.
 43. When child born after such will is made.
 44. When testator omits to provide for children &c.
 45. Share of such child, how made up.
 46. When devisee or legatee die before testator.
 47. Estate liable for debts, and judge may make reasonable allowance for support of widow, until when.
 48. If testator designates property to be used in payment of debts.
 49. If such provision not sufficient.
 50. Estate devised liable for debts, except when.

Section 51. In such cases executors may retain property until debts settled.

52. devisees or legatees holding property liable for their share of debts.

53. If any person liable become insolvent or die.

54. Court may settle amount of the liabilities.

55. When wills are sufficient evidence in court.

56. Attested copy to be recorded.

57. Certain words mean what.

Who may will property.

Sec. 18. Every person of full age and sound mind, being seized in his own right of any lands or any right thereto, or entitled to any interest therein descendible to his heirs, may devise or dispose of the same by his last will and testament in writing; and all such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases in the payment of all debts; and any married woman devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same.

Devise, how construed.

Sec. 19. Every devise of land in any will hereafter made shall be construed to convey all the estate of the deviser therein which he could lawfully devise, unless it shall clearly appear by the will that the deviser intended to convey a less estate.

Estate acquired after will is made.

Sec. 20. Any estate, right, or interest in lands acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

Personal property.

Sec. 21. Every person of full age and sound mind may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto and interest therein; and all such estate not disposed of by the will, shall be administered as intestate estate.

Wills, how proved.

Sec. 22. No will made within this territory, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to

charge, or in any way affect the same, unless it be in writing and signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Sec 23. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect: nor unless such nuncupative will were made at the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

Sec. 24. After six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken; nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator be fully expired, nor shall any nuncupative will be at any time approved and allowed, unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the territory, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any mariner, being on ship-board, from disposing of his wages and other personal estate by a nuncupative will.

Sec. 25. All beneficial devises, legacies, and gifts whatsoever

Nuncupative will.

Testamentary words.

Devises, &c., when void.

made or given in any will, to a subscribing witness thereto shall be wholly void, unless there be two other competent subscribing witnesses to the same ; but a mere charge on the lands of the divisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

When witness
entitled to
share.

Sec. 26. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established; then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Revoking wills.

Sec. 27. No will nor any part thereof, shall be revoked, unless by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it, by the testator, or by some other will or codicil in writing, executed as prescribed in this chapter ; or by some other writing, signed, attested, and subscribed in the manner provided in this chapter, for the execution of a will; excepting only that nothing contained in this section, shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of testator.

Will may be de-
posited with
probate judge.

Sec. 28. Any will in writing being enclosed in a sealed wrapper, and having indorsed thereon the name of the testator, and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

Only to be de-
livered to order
of testator.

Sec. 29. Such will shall, during the lifetime of the testator, be delivered only to himself or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness ; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

Sec. 30. The judge of probate, shall give notice of such will

being in his possession to the executor therein appointed, if there be one, otherwise, to the persons interested in the provisions of the same, to be presented for probate in such other court.

Notice of will to be given.

Sec. 31. Every person other than the judge of probate, having the custody of any will, shall within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Duties of other persons having possession of will.

Sec. 32. Every person named as executor in any will, shall within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall within the period above mentioned, signify, to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Duty of person named executor

Sec. 33. Every person who shall neglect to perform any of the duties required in the last two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

Person neglecting to perform duty.

Sec. 34. If any person having the custody of any will, after the death of the testator, shall, without reasonable cause fail or neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement, until he shall deliver the will as above directed.

Penalty.

Sec. 35. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same such court shall appoint a time and place for proving it when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this territory, as the judge shall direct, three weeks successively, previous to

Duties of court.

the time appointed, and no will shall be proved until notice shall be given as herein provided.

If will not con-
tested.

Sec. 36. If no person shall appear to contest the probate of will at the time appointed for that purpose, the court may in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

If witnesses re-
side out of ter-
ritory.

Sec. 37. If none of the subscribing witnesses shall reside in this territory at the time appointed for proving the will, the court may in its discretion admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as the evidence of the execution of the will may admit proof of the handwriting of the testator and of the subscribing witnesses.

No will effect-
ual, except when

Sec. 38. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court, as provided in this chapter; or on appeal in the district court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Of wills allowed
in other parts.

Sec. 39. All wills which shall have been duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator shall have real and personal estate, on which such will may operate in the manner mentioned in the following sections.

When a copy of
such will is pre-
sented.

Sec. 40. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

If it appear that
it ought to be
allowed.

Sec. 41. If on hearing the case, it shall appear to the court that the instrument ought to be allowed in this territory, as the last will and testament of the deceased, the copy shall be

filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Sec. 42. When any will shall be allowed, as mentioned in ^{Court shall grant letters.} the preceding section, the probate court shall grant letters testamentary, or letters of administration, with the will annexed, and such letters testamentary or letters of administration, shall extend to all the estate of the testator in this territory, and such estate, after payment of his just debts, and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as provided by law in cases of estates in this territory, belonging to persons who are inhabitants of any other territory, state, or county.

Sec. 43. When any child shall be born after the making of ^{When child born after such will is made.} his parent's will and no provisions shall be made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate, and the share of such child shall be assigned to him, as provided by law in cases of intestate estate.

Sec. 44. When any testator shall omit to provide in his will ^{When testator omits to provide for children.} for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

Sec. 45. When any share of the estate of a testator shall be ^{Share of such child, how made up.} assigned to a child born after the making of a will, or to a child or the issue of a child, omitted in the will as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless, the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated, in which case such specific devise, legacy, or provision, may be ex-

empted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

When devisee or legatee die before testator.

Sec. 46. When a devise or legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

Estate liable for debts, &c.

Sec. 47. All the estate of the testator, real and personal, not exempt from execution by law, shall be liable to be disposed of for the payment of his debts and the expense of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expense of the maintenance of the widow and minor children, either constituting the family of the testator, out of his personal estate or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

If testator designates property to be used in payment of debts.

Sec. 48. If the testator shall make provisions 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, or so far as the same may be sufficient.

If such provision not sufficient.

Sec. 49. If the provisions made by the will, or the estate appropriated shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate devised liable for debts.

Sec. 50. The estate, real or personal, given by will to any devisees, or legatees, not exempt from execution by law, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary in order to

carry into effect the intention of the testator, if there shall be other sufficient estate.

Sec. 51. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child or of the issue of a child not provided for in the will, as hereinbefore provided, the executor shall have a right to retain possession of the same until such liability shall be settled by order of the probate court; and until the devises and legacies so liable, shall be accordingly assigned by order of such court, and when the same can properly be done, any devisee or legatee may take his claim to such court to have such liability settled, and his devise or legacy assigned to him.

When executor may retain property.

Sec. 52. All the devisees and legatees who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will, before such liability shall be settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will: and the persons who may as heirs have received the estate not disposed of by the will, as provided in this chapter, shall be liable to contribute in like manner as the devisees or legatees.

Who are liable for share of debts.

Sec. 53. If any of the persons liable to contribute according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

If person liable, become insolvent or die.

Sec. 54. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the

Court may settle amount of the several liabilities.

preceding sections, and decree how much and in what manner each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy in any proper action or complaint in law or equity.

When wills are sufficient evidence.

Sec. 55. Every will when proved as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this territory without further proof.

Attested copy to be recorded.

Sec. 56. An attested copy of every will devising lands, or any interest in lands, and the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

Certain words defined.

Sec. 57. The word "executor" in this act shall be construed to mean an administrator with the will annexed, and the word "chapter" shall be construed to mean act, and the words "he," "him" and "his" shall be construed to mean she, her and hers, as the case may be.

LETTERS TESTAMENTARY.

Section 58. When probate court to issue letters testamentary.

59. Executor to give bond, with what conditions.

60. If executor be a residuary legatee.

61. If person named, neglects trust for twenty days.

62. Same.

63. If person named executor is under age.

64. Of administrator with will annexed.

65. If unmarried, executrix is married.

66. When executor may be removed.

67. When executor die, &c.

68. When all executors named are not authorized part may act.

69. Executor of executor has what powers.

70. Separate bonds taken, when.

Sec. 58. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon to the person named executor therein, if he is legally competent, and shall accept the trust, and give bond as required by law.

When probate court to issue letters testamentary.

Sec. 59. Every executor, before he shall enter upon the execution of this trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: to make and return to the probate court within three months a true and perfect inventory of all goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him; to administer, according to law and to the will of the testator, all his goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay, and discharge all debts, legacies, charges, chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court; to render a true and just account of his administration to the probate court, within one year, and at any other time when required by such court; to perform all orders and decrees of the probate court, by the executors to be performed in the premises.

Executor to give bonds.

Sec. 60. If, however, the executor shall be a residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond, in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

If executor be a residuary legatee.

Sec. 61. No person named as executor in any will, shall refuse to accept the trust, or shall neglect to give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

If person named neglects trust for twenty days

Sec. 62. If a person named executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the

Same.

other executors, if there be any who are capable and willing to accept the trust ; and if there be no such other executor who will give bond, the court may commit administration of the estate, with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

If person named executor is under age,

Sec. 63. When the person named executor in any will is under full age at the time of proving the will, administration shall be granted, with the will annexed. during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond; and in that case the executor who shall give bond shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor, on giving bond according to law.

Of administrator with will annexed.

Sec. 64. Every person who shall be appointed administrator, with the will annexed, shall before entering upon the execution of his trust, give bond to the judge of probate, in the same manner and with the same conditions as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

Of executrix.

Sec. 65. When an unmarried woman appointed an executrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

When executor may be removed

Sec. 66. If an executor shall reside out of this territory, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform the decree of the court, or shall abscond, or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

When executor dies.

Sec. 67. When an executor shall die, or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust ; and if there shall be no other executor, administration, with the will annexed, may be granted of the estate not already administered.

What executors may act.

Sec. 68. When all the executors appointed in any will shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same author-

ity to perform every act, and discharge every trust required and allowed by the will ; and their acts shall be as valid and effectual for every purpose as if all were authorized and should act together ; and administrators, with the will annexed, shall have the same authority to perform every act and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for any purpose.

Sec. 69. The executor of an executor shall not, as such, Executor of executor. have any authority to administer the estate of the first testator; but, on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

Sec. 70. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them, with sureties, or a joint bond from all of them, with sureties. Separate bonds taken.

ADMINISTRATORS AND EXECUTORS.

71. Estate, how applied and distributed.
72. Letters of administration granted by what court.
73. To whom and when granted.
74. Administrator to give bond.
75. When delay in granting letters, special administrator appointed.
76. Powers of special administrator.
77. Same not liable to action.
78. Same to give bond.
79. Upon granting letters his powers to cease.
80. If any person embezzles any money, goods, &c., of deceased.
81. When executor or administrator dies.
82. When administrator may be removed.
83. When unmarried women marry, her rights as administratrix extinguished.
84. Remaining administrator may execute duties or new one appointed.

Section 85. Powers of new administrator.

86. It, after letters granted, a will is proved.
87. Executor may complete unfinished administration.
88. All previous acts of administrators legalized.
89. When two or more separate bonds may be taken.
90. Notice of application for letters, &c., to be given.
91. Laws relating to exemption to apply to estate of intestate.

estate, how applied and distributed.

Sec. 71. 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 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 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.

Sec. 72. 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 his 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.

Sec. 73. Administration of the estate of a person dying intestate, 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

Letters of administration,

To whom and when granted.

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.

shall give bond. Sec. 74. 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.

When special administrator to be appointed. Sec. 75. 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.

Powers of special administrators. Sec. 76. 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.

Same not liable to action. Sec. 77. Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

Sec. 78. 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.

Same to give bond.

Sec. 79. 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.

When his powers to cease.

Sec. 80. 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.

Embezzlement of money, goods &c. of deceased.

Sec. 81. 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 administrator or executor dies.

Sec. 82. 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

When administrator may be removed.

the trust, the probate court may, by an order therefor, remove such administrator.

When unmar-
ried woman
marry.

Sec. 83. When an unmarried woman, who is administratrix, alone or jointly with another person, shall marry, her marrying shall extinguish her authority as administratrix.

Who may exe-
cute trust.

Sec. 84. 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.

Powers of new
administrator.

Sec. 85. 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.

If after letters
are granted a
will is proved.

Sec. 86. 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.

Executor may
complete unfin-
ished adminis-
tration.

Sec. 87. 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.

Previous acts
legalized.

Sec. 88. 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.

Sec. 89. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each, with sureties or a joint bond with sureties from all. Separate bonds may be taken.

Sec. 90. 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. Notice of application.

Sec. 91. 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. Laws relating to exemption.

INVENTORY AND COLLECTION OF EFFECTS.

- Section 92. Return inventory of real estate, &c.
93. To be appraised by two disinterested persons.
 94. Order issued to appraisers.
 95. Appraisement carefully noted and certified.
 96. A separate inventory of personal property allowed the widow.
 97. Debts paid out of personal estate; if not sufficient, then out of real estate.
 98. Have possession of all real estate, and keep in tenantable repair.
 99. If complaint made of embezzlement, &c., person may be cited to appear and answer.
 100. If person cited does not appear.
 101. Person intrusted with parts of estate required to report, when.
 102. When debtor unable to pay all his debts.
 103. When mortgagee die without foreclosing.
 104. In case of redemption or sale.
 105. Real estate so held may be sold for payment of debts and legacies.

Section 106. If not sold, may be partitioned among legatees.

107. When there is deficiency of assets.

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

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

110. Property exempted.

Return inventory of real estate

Sec. 92. 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 inventory.

To be appraised

Sec. 93. 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, probate having jurisdiction in the case, or by a disinterested justice of the peace of such other county.

Order issued to appraisers.

Sec. 94. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them, in substance as follows :

Territory of Dakota, } ss.
County of

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.

Sec. 95. 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.

Appraisement carefully noted and certified.

Sec. 96. A separate and distinct inventory and appraisement 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 administrator.

Separate inventory of personal property.

Sec. 97. 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 licences therefor, in the manner provided by law.

Debts, how paid.

Sec. 98. 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 tenantable repair, all houses, buildings, and fences thereon, which are under his control.

Rights of executor.

Sec. 99. 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, 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

If complaint made of embezzlement.

the court of probate, and may examine him on oath upon the matter of such complaint.

If person cited does not appear

Sec. 100. 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, to report, when.

Sec. 101. 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.

When debtor unable to pay all his debts.

Sec. 102. 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 mortgagee die without foreclosing.

Sec. 103. 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 may 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.

In case of redemption or sale

Sec 104. 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 debts, 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.

Sec. 105. 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 therefor from the probate court, in the manner provided by law.

Real estate so held may be sold

Sec. 106. 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 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.

If not sold, may be partitioned among legatees.

Sec. 107. 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 in 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, what-

When there is deficiency of assets.

ever may have been the manner of such fraudulent conveyance.

Not bound to
sue for estates,
unless, what

Sec. 108. 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.

Payment of
debts.

Sec. 109. All real estate so recovered, as provided in the 107th 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 exempt
ted.

Sec. 110. 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.

GUARDIANS AND THEIR DUTIES.

111. Who is natural guardian.
112. Probate court must appoint guardian—when.
113. Father or mother may be appointed.
114. Minor may select guardian—when.
115. Guardian must give bond and take oath.
116. Guardians must make out inventory.
117. Guardians have same power as parents.
118. Duty of guardians.
119. Concerning minor's property.
120. Form of petition to dispose of minor's property.
121. Court may direct postponement.
122. Court may direct reference.

- Section 123.** Guardians to give security—when.
 124. Court may award costs.
 125. Deed—how made, &c.
 126. What rules shall apply.
 127. In case of failure to comply with order of court—what penalty.
 128. Guardians must make return—when.
 129. Effects of minor to be delivered up to new guardians.
 130. Relative to foreign guardians.
 131. How appointed.
 132. Duty of court.
 133. Compensation for guardian.
 134. Court may appoint guardian for half breeds.
 135. Same.
 136. Powers of guardians.

Sec. 111. The father is the natural guardian of the persons who is natural guardian. of his minor children. If he dies or is incapable of acting, the mother becomes the guardian. The natural and acting guardian of any minor child may, by will, appoint another guardian for such minor. If without such will, both parents be dead or disqualified to act as guardian, the probate court may appoint one.

Sec. 112. Although the parents are living and of sound Court must appoint guardian. mind, yet if the minor has property not derived from either of them, a guardian must be appointed by the probate court to manage such property.

Sec. 113. The father, or, in case of his death, absence or in- Father or mother appointed. capacity, the mother may be appointed the guardian to take charge of the property of his or her minor child, if deemed by the court a suitable person for that purpose.

Sec. 114. If the minor be over the age of fourteen years and Minor may select guardian. of sound intellect, he or she may select his, or her, own guardian, subject to the approval of the court.

Sec. 115. Guardians appointed to take charge of the prop- Guardian may give bond and take oath. erty of the minor, must give bond, with surety, to be approved by the court, in a penalty double the value of the personal estate, and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as

such guardians, according to law. They must also take an oath of the same tenor as the condition of the bond.

Must make out inventory.

Sec. 116. Within forty days after their appointment, they must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the judge of probate of the proper county.

Guardian have same power as parents.

Sec. 117. Guardians of the persons of minors have the same power and control over them, that parents would have, if living.

Duty of guardians.

Sec. 118. Guardians of the property of minors must prosecute and defend for their wards. They must also in other respects manage their interests, under the direction of the probate court. They may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards.

Concerning minor's property.

Sec. 119. When not in violation of the terms of a will by which a minor holds his, or her, real property, it may, under the direction of the probate court, be sold or mortgaged on the application of the guardian either when such sale or mortgage is necessary for the minor's support and education, or when his, or her interest will thereby be promoted by the reason of the unproductiveness of the property or of its being exposed to waste or of any other peculiar circumstances.

Form of petition.

Sec. 120. The petition for an order to dispose of or mortgage the property of the minor, must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor, at least ten days prior to the time fixed for such application.

Postponement.

Sec. 121. The probate court in its discretion, may direct a postponement of the matter, and may order such further publication through the newspapers or otherwise, as it may deem expedient.

Court may direct reference.

Sec. 122. The court may also, direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for.

Sec. 123. Before any such sale or mortgage can be executed, the guardian must give security, to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold, or of the money to be raised by the mortgage, conditioned that he will faithfully perform his duty in that respect and account for and apply all moneys received by him under the direction of the court.

Sec. 124. When the application for the sale of property if resisted, the court may, in his discretion, award costs to the prevailing party, and may when satisfied that there was no reasonable grounds for making the application, direct the costs to be paid by the guardian from his own funds.

Sec. 125. Deeds may be made by the guardian in his own name, but they must be returned to the court, and the sale or mortgage be approved before the same are valid.

Sec. 126. The same rules that are prescribed in the sale of real property by executors and administrators shall be observed in the sales under the provisions of this act as far as applicable.

Sec. 127. A failure to comply with any order of the court in relation to the guardianship, shall be deemed a breach of the condition of the guardian's bond, which may, accordingly, be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor if necessary. The court may, also, commit him to jail until he complies with such order.

Sec. 128. Guardians of the property of minors must account, on oath, annually, or oftener, if required by the court. It may, also, direct them to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the record.

Sec. 129. When a new guardian is appointed, the court may order the effects of the minor, which are in the hands of his predecessors, to be delivered up to such new guardian.

Sec. 130. The foreign guardian of any non-resident minor may be appointed the guardian of such minor by the probate court of the county wherein such minor has any property, for

the purpose of selling or otherwise controlling that and all other property of such minor, within this territory.

Foreign guardians.

Sec. 131. Such appointment may be made, upon his filing, in the office of the probate judge of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify, like other guardians, except as in the next succeeding section is prescribed.

Duty of court.

Sec. 132. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign State or territory, if the court is satisfied with the sufficiency of the amount of the security, it may dispense with the filing of an additional bond.

Compensation of guardian.

Sec. 133. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for which the allowance was made, must be entered upon the records of the court.

Guardian of half breeds.

Sec. 134. The probate court may, in like manner, as is provided for in other cases by this act, appoint guardians of the persons and guardians of the property of half breed minors, or infants of mixed blood.

Same.

Sec. 135. Whenever it is made to appear to the satisfaction of the probate judge that a half-breed minor, or an infant of mixed blood, residing within said county, has real or personal property, or is in receipt of, or is entitled to, annuity from the United States, or has script for an amount of land, it shall be the duty of the probate court to appoint a suitable guardian of the property of said half-breed child.

Powers of guardians.

Sec. 136. Guardians appointed under the provisions of sections one hundred and thirty four and one hundred and thirty five shall have the same power, and shall observe the same requirements as are provided for in other cases by this act. And all the business, in and out of court, appertaining to the guardianship of the persons or property of half breed minors, or infants of mixed blood, shall be conducted the same as is provided by this act in other cases except that, it is hereby enacted that an Indian woman, or a half breed woman, cannot be lawful guardian of the property of their children.

CONCERNING LUNATICS.

- Section 137.** Probate court, how to proceed in case of lunatics.
138. Information, how given.
139. Discretionary power of court.
140. Duty of civil officers in cases of lunatics.
141. Duty of court.
142. Costs, how paid.
143. Same.
144. Powers of court.
145. Guardian shall give bond.
146. Court may require additional bond.
147. Bond where deposited.
148. Guardian to publish notice.
149. Duty of guardian.
150. Same.
151. Guardian to make inventory.
152. Shall file additional inventory.
153. Inventory to be attested.
154. Duty of guardian.
155. Court may make certain order.
156. Duty of guardian.
157. Petition shall set forth, what.
158. Duty of court.
159. Same.
160. Where sale is ordered, guardian shall cause certain notice.
161. Lands to be sold to the highest bidder.
162. Report made and verified, how.
163. If the court approve, guardian to execute deed.
164. If disapproved, sale set aside.
165. No deed given until sale approved.
166. Conveyance shall be valid.
167. Guardian shall render account.
168. Contract not binding, when.
169. Insane person exempt from civil or criminal action.
170. Process to be served, how.

Section 171. Jury to make inquiries into cases of recovery from insanity.

- 172. If true, person shall be discharged.
- 173. Disposition of estate, in case of death.
- 174. Power of probate court.
- 175. Guardian's duty on being removed.
- 176. Power of court.
- 177. Insane person to be confined in certain cases.
- 178. Same.
- 179. Expenses, how paid.
- 180. County to recover expenses.

Lunatics. Sec. 137. 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.

Information, how given. Sec. 138. 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.

Discretionary power of court. Sec. 139. 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.

Duty of civil officers in cases of lunatics. Sec. 140. Whenever any justice of the peace, sheriff, coroner or constable, shall discover any person, resident of his county, be of unsound mind, as in the one hundred and thirty seventh 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; thereupon the like proceedings shall be had as in the case of information by unofficial persons.

Duty of court. Sec. 141. 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 ap-

point two guardians, one to have charge of the person, and the other to have charge of the estate of such person of unsound mind.

Sec. 142. 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. Costs, how paid

Sec. 143. 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. Same.

Sec. 144. 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. Powers of court

Sec. 145. 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 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. Guardian shall give bond.

Sec. 146. 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. Additional bond

Sec. 147. 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.

**Guardian to
publish notice.**

Sec. 148. 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 such manner as the probate court shall order.

Duty of guardian.

Sec. 149. 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.

Same.

Sec. 150. 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.

**Guardian to
make inventory**

Sec. 151. 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 profit thereof, and the debts, credits, and effects, so far as the same shall have come to the knowledge of such guardian.

Shall file, what.

Sec. 152. 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.

To be attested.

Sec. 153. 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.

Duty of guardian.

Sec. 154. 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 or pay all demands due or becoming due from his ward, so far as his effects and estate will extend, as hereinafter provided.

**Court may
make certain
order.**

Sec. 155. 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.

Sec. 156. 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.

Sec. 157. 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.

Sec. 158. 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 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.

Sec. 159. The court making such order shall direct the time and terms of such 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.

Sec. 160. 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.

How sale conducted.

Sec. 161. 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.

Reports.

Sec. 162. 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.

If the court approve.

Sec. 163. If the court approved the proceedings, the guardian shall execute a deed 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 disapproved.

Sec. 164. 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.

No deed given until sale approved.

Sec. 165. 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.

Conveyance valid.

Sec. 166. 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.

Guardian shall render account.

Sec. 167. 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.

Contract not binding when.

Sec. 168. No contract of any person found to be of unsound mind, 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.

Sec. 169. No such insane person shall be held to bail, nor ^{Insane person.} shall his or her body be taken in execution on any civil or criminal action.

Sec. 170. In all actions commenced against such insane person, ^{Process, how served.} the process shall be served on his guardian ; and on judgments 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.

Sec. 171. If any person shall allege, in writing, verified by ^{Duty of jury.} 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.

Sec 172. If it shall be found that such person has been re- ^{When person to be discharged.} stored 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.

Sec. 173. In case of the death of any such insane person ^{Disposition of estate.} 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.

Sec. 174. The several probate courts shall have power to ^{Power of probate court.} remove such guardians, at any time, for neglect of duty, misconduct or mismanagement, or disobedience to any lawful order, and appoint others.

Sec. 175. Whenever any such guardian shall be removed ^{Guardian's duty.} from his trust, he shall immediately settle his accounts, and render to his successor the state and effects of his ward.

- Power of court.** Sec. 176. The probate court shall have full power to control the guardian of 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.
- Insane person** Sec. 177. 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.
- Same.** Sec. 178. 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, and judge of court or 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.
- Expenses.** Sec. 179. 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 and support such insane person, or the same shall be paid out of the county treasury.
- County to recover expenses.** Sec. 180. 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 sufficient ability to pay the same.

CONCERNING APPRENTICES.

- Section 181. Shall serve on the time specified.
 182. May bind himself.
 183. Master to make affidavit.

- Section 184. Mother to have power in certain cases.
 185. Fathers incapacity to be decided ; how.
 186. Probate court to bind apprentice.
 187. Guardian to appoint apprentice.
 188. Shall not remove apprentice.
 189. Duty of probate courts.
 190. Age of apprentice recorded.
 191. When indentures shall be void.
 192. Apprentice to make complaint.
 193. Apprentice to be discharged ; when .
 194. Masters may complain.
 195. If apprentice abscond ; to be reclaimed ; how.
 196. Duty of justice.
 197. Penalty for enticing apprentice to abscond.
 198. Penalty for harboring runaway apprentice.
 199. Executor may bind apprentice.
 200. Apprentice not to be removed beyond territory.
 201. If master fails to give surety, another appointed as custodian.
 202. Apprentice to be re-indentured in certain cases.
 203. Apprentice if bound to two or more persons.

Sec. 181. Every person bound by indenture of his free will, with the consent of his father, or if the father be dead, of the mother or guardian, and signified by such parent or guardian signing the same, or by the probate court, as hereinafter directed, to serve as clerk or apprentice, in any profession, trade or employment, until the age of twenty one years, or, if a female, until the age of eighteen years, or for a shorter time, shall be bound to serve the time specified in such indenture. shall serve for the time specified.

Sec. 182. Any infant, having no parent or guardian, may, with the approbation of the probate court, endorsed on the indenture, bind himself an apprentice until he arrives at the age of twenty-one years, or if a female, at the age of eighteen years. May bind himself.

Sec. 183. Upon the execution of every indenture of apprenticeship the person to whom the apprentice is bound, shall make an affidavit that he will faithfully perform the duties required

by the indenture and enjoined on him by law, which affidavit shall be indorsed on the indenture.

Master to make affidavit.

Sec. 184. When the father has no legal capacity to give consent, or when he shall willfully have abandoned his family for six months, without making suitable provisions for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father was dead.

Mother to have power in certain cases.

Sec. 185. Acts of incapacity, desertion or drunkenness, shall be decided in the probate court, by a jury, before the indenture shall take effect, and an indorsement on the indenture, under the seal of the court, if a seal has been provided, that the same are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge of incapacity, drunkenness or desertion to be true, the person at whose instance such proceedings may have been had, shall pay all costs attending the same.

Father's incapacity to be decided, how.

Sec. 186. When any poor child is, or may be, chargeable to the county, or beg for alms, or when the parents of such children are poor, and their father an habitual drunkard, or if there be no father, when the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, it shall be lawful for the probate court to bind such child an apprentice, if a male, until he arrives at the age of twenty-one years, and if a female, to the age of eighteen years.

Court to bind apprentice.

Sec. 187. Every orphan or minor, who has not estate sufficient for his or her maintenance, may be bound by his or her guardian, under the order and direction of the probate court, and the indenture of binding such infant, shall be as effectual as if such infant were of full age; and the counterpart of such indenture shall, for the benefit of the infant so bound be deposited in the office of the judge of probate before whom such binding shall take place, who shall preserve the same.

Guardian to appoint apprentice.

Sec. 188. It shall not be lawful for any master to remove an apprentice out of this territory, and in all indentures by the probate court, for binding out any orphan or poor child as an apprentice there shall be inserted, among other covenants, a

clause to the effect, that every master to whom such child shall be bound, shall cause such child to be taught to read and write, and the ground rules of arithmetic, the compound rules and the rule of three, and at the expiration of his, or her, time of service, shall give him, or her, a new bible, a dictionary, arithmetic, English grammar, and ten dollars worth of religious books, and two new suits of clothes; if a male, to be worth forty dollars, and if a female, to be worth thirty dollars, and fifty dollars in current money of the United States.

Sec. 189. The probate court shall see that the terms of the indenture, and the covenants therein contained, be fulfilled, and that such child be not ill used; and the said court is hereby required to inquire into, and redress any grievances that may occur in the premises, in such manner as is prescribed by law. Duty of court.

Sec. 190. The age of every apprentice shall be inserted in the indenture. Age of apprentice recorded..

Sec. 191. All indentures entered into otherwise than according to law, shall be utterly void, so far as concerns the apprentice therein bound. When indentures void.

Sec. 192. The probate court shall receive the complaints of apprentices who reside within the county, against their masters alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, want of instruction in their trade or profession, or that they are in danger of being removed out of this territory, or the violation of the indentures of apprenticeship; and may hear and determine such cases by a jury, and make such order therein as will relieve the party injured, in future. Apprentice to make complaint

Sec. 193. The probate court shall have power, when circumstances require it, to discharge an apprentice from his apprenticeship; and in case any money or other thing has been paid, or contracted to be paid by either party, in relation to such apprenticeship, the court shall make such order concerning the same, as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the probate court, it shall be the duty of the court, if judged necessary, again to bind such apprentice. Apprentice to be discharged, when.

Masters may
complain.

Sec. 194. The court shall, in like manner, hear and determine the complaint of masters against their apprentices, for desertion without good cause, misconduct or ill behavior, and may punish such apprentice according to the nature and aggravation of his offense; and if the offense be willful desertion, without cause, the court may, in addition to other punishments, order the apprentice guilty thereof, to make restitution by the payment of a sum not exceeding ten dollars, for each month he may be so absent, to be collected as other debts after such apprentice shall have become of full age. The awarding of costs in the proceedings under this section shall be in the discretion of the court.

If apprentice
abscond.

Sec. 195. If any apprentice shall abscond or depart from the service of his master, without leave, or shall rebel against or assault his master, any judge of probate or justice of the peace, on complaint made, and sufficient cause shown on oath, by the master, or any one in his behalf, shall issue a warrant directed to any sheriff or constable in this territory or any discreet and responsible person, to be named in the warrant, to execute the same in any part of this territory.

Duty of Justice

Sec. 196. If upon the return of any such warrant, the probate court shall not be in session, it shall be the duty of the person serving the same to carry the apprentice before some judge or justice of the peace of said county, who shall take bail for the appearance of the apprentice at the next term of the probate court, to answer to the complaint of the master. The costs of the process, service and other proceedings, shall be paid, in the first instance, by the master; but hereing, may order such apprentice to make restitution of such costs, by service, after the expiration of the time for the court, upon the final which he shall have been bound.

Costs to be paid

Sec. 197. Every person who shall consult, persuade, entice or assist any apprentice to run away or absent himself from the service of his master, shall forfeit not less than twenty nor more than five hundred dollars, to be sued for and recovered, with costs, by such master, in any court having jurisdiction thereof.

Penalty for en-
ticing appren-
tice to abscond.

Sec. 198. Every person who shall entertain, harbor, or con-

veal any apprentice, knowing such apprentice to be runaway or to have absented himself from the service of his master without leave, shall forfeit one dollar for every day's entertainment, harboring or concealing, to be sued for and recovered by action of debt, with costs, by such master, in any court having jurisdiction thereof.

Penalty for harboring runaway apprentice.

Sec. 199. The executor, who, by the last will of a father, is directed to bring up his child to some trade or calling, shall have power, with the consent of the mother, if living, to bind such child by indenture in like manner as the father, if living, might have done, or shall raise such child according to such direction, if consented to by the mother.

Executor may bind apprentice

Sec. 200. If it shall appear to any probate judge or justice of the peace, upon the oath of any competent person, that any master is about to remove, or cause to be removed, any apprentice out of this territory, such probate judge or justice of the peace shall issue his warrant and cause such master to be brought before him; and if, upon examination, it shall appear that such apprentice is in danger of being removed without this territory, the said judge or justice may require the master to enter into recognizance with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice shall not be removed without this territory, and that said master will appear, with the apprentice, before the probate court, at the time fixed by the probate judge, and abide the decision of the court thereon, which recognizance shall be returned to the probate court; and the court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance and otherwise proceed according to law and justice.

Apprentice not to be removed beyond Territory.

Sec. 201. If the master, when brought before the judge or justice, fails to enter into recognizance when required so to do, such judge or justice shall commit the custody of such apprentice to some other proper person, who will enter into recognizance.

If master fails to give security

Sec. 202. Whenever any master of an apprentice shall wish to remove out of this territory, or quit his trade or business, he shall appear with his apprentice before the probate court of the

Apprentice to be re-indentured when.

proper county ; and if the court be satisfied that the master has done justice to said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

When bound to two or more persons.

Sec. 203. Whenever any person shall become bound as an apprentice to two or more persons, and one or more of them die before the expiration of such term of service, the indenture shall survive to and against such survivor, and, in case of the death of all masters in any such indenture, before the expiration of the term of service, the executor or administrator shall bring the indenture and apprentice named therein, before the probate court of the proper county, and such court, shall, if necessary, again bind such apprentice to some other person.

ADOPTION OF CHILDREN.

Section 204. What person may adopt children.

205. Certain parties must consent, and proceedings.

206. Further proceedings for adoption.

207. Rights of adopted child.

208. Case of ill treatment, duty of probate court.

209. Appeals from probate court, when.

210. What party can take appeal.

211. Proceedings in case of appeal.

212. Time for appeal limited.

213. Probate court—court of record.

214. Conflicting acts repealed.

215. When to take effect.

What person may adopt children.

Sec. 204. Any person competent to make a will is authorized in the manner hereinafter set forth, to adopt, as his own, the minor child of another, conferring thereby upon such child all the rights, privileges, and responsibilities which would pertain to the child if born to the person adopting in lawful wedlock.

Certain parties must consent.

Sec. 205. In order thereto, the consent of both parents, if living and not divorced and separated, or if unmarried the consent of the parent lawfully having the care and providing for the wants of the child, or if either parent is dead, then the con-

sent of the survivor, or if both parents be dead, or if the child shall have been and remain abandoned by them, the consent of the mayor of the city, where the child is living, or if not in a city, then of the probate judge of the county where the child is living, shall be given to such adoption, by an instrument in writing, signed by the party or parties consenting, and stating the name of the parent, if known, the name of the child, if known, the name of the person adopting such child, and the residence of all, if known, and declaring the name by which such child is hereafter to be called and known, and stating also, that such child is given to the person adopting, for the purpose of adopting as his own child.

Sec. 206. Such instrument in writing shall be also signed by the person adopting, and shall be acknowledged by all the parties thereto, in the same manner as deeds affecting real estate are required to be acknowledged; *Provided*, That when both parents of the child execute the same, the mother shall be examined apart from her husband, by the officer taking the same, and shall certify whether or not she executed the same freely and without compulsion, or undue influence of her husband, and if not the instrument shall not be valid; and when duly acknowledged, the same shall be recorded in the county where the person adopting resides, in the office and with the record of deeds of real estate; and shall be indexed, with the name of the parent by adoption as grantor, and the child as grantee in its original name, if stated in the instrument.

Further proceedings for adoption.

Sec. 207. Upon the execution, acknowledgement, and record of such instrument, the rights, duties and relation between the parent and child, by adoption, shall, thereafter, in all respects, including the right of inheritance, be the same that exist by law between parent and child by lawful birth.

Rights of adopted child.

Sec. 208. In case of mal-treatment committed or allowed by the adopted parent, or palpable neglect of duty on his or her part, toward such child, the custody thereof may be taken from him and entrusted to another at his or her expense, if so ordered by the court; and the same proceedings may be had therefor, so far as are applicable, as are authorized by law in such a case, in the relation of master and apprentice; or the court

In case of ill treatment.

may, on showing of the facts, require from the adopted parent, bond, with security in a sum to be fixed by him, the county being the obligee, and for the benefit of the child, conditioned for the proper treatment and performance of duty toward the child, on the part of the parent; *Provided*, That no action of the court or judge in the premises shall affect or diminish the acquired right of inheritance, on the part of the child, to the extent of such right in a natural child of lawful birth.

Appeals from
probate court.

Sec. 209. Appeals may be taken to the district court from judgments or orders in a probate court in the following cases :

1st. An order admitting a will to record or probate or refusing the same.

2nd. An order appointing a person administrator, executor or guardian of an infant or a trustee for an insane person or removing him or refusing to make such appointment or removal.

3d. An order directing real property to be sold, mortgaged or leased, or confirming the same.

4th. An order or judgment by which a debt claim, legacy, or distributive share is allowed or payment thereof directed, or such allowance or direction refused when the amount in controversy exceeds fifteen dollars.

5th. Judgment upon an accounting, by an executor, administrator, guardian or trustee, including an intermediate order invoking the merits and necessarily affecting such judgment.

What party can
take appeal.

Sec. 210. The appeal can only be taken by a party aggrieved who appear and move for or oppose the order or judgment, appealed from, or who being entitled to be heard, the latter fact to be shown by affidavit filed and served with the notice.

Proceedings in
case of appeal.

Sec. 211. The appeal may be taken upon question of fact or law, and may be made by the service of a notice of the appeal upon the adverse party, stating the appeal from the order or judgment or some specified part thereof and filing the copy of the said notice in the office of the judge of probate together with the recognizance to be made by the party appealing with one or more sufficient sureties to be approved by the judge of

probate conditioned that the party will prosecute his appeal with due diligence to a determination, and will pay all costs that may be adjudged against him in the district court.

Sec. 212. The appeal must be taken within thirty days after the notice of the order or judgment appealed from. Time for appeal limited.

Sec. 213. Every probate court now organized or to be hereafter organized shall be a court of record, and authorized to adopt such seal, with such inscriptions and devices as the judge thereof may allow and direct. Probate court; court of record.

Sec. 214. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed. Conflicting acts repealed.

Sec. 215. This act shall take effect and be in force from and after its passage. When to take effect.

APPROVED, January 2d, 1865.

POISONS.

CHAPTER XIX.

AN ACT TO PROHIBIT LAYING OUT STRYCHNINE, OR ANY OTHER POISONS.

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

Section 1. No person shall lay out strychnine, or any other poison, within the limits of any town, or within one mile of any dwelling house, or any barn, stable, or out building, used at Laying out of strychnine.