

## CHAPTER CLV.

[S. B. No. 80.]

## IN RELATION TO PROCEEDINGS IN PROBATE.

AN ACT in relation to proceedings in probate, amending sections 1299, 1300, 1311, 1313, 1314, 1345, 1358, 1360, 1361, 1368, 1384, 1385, 1399, 1404, 1409, 1410, 1411, 1413, 1415, 1419, 1430, 1456, 1481, 1482, 1485, 1488, 1489, 1508, 1515, 1547, 1556, 1568, 1572, 1573, 1594 and 1601 of the Code of Washington of 1881, and repealing sections 623, 624, 625, 627, 628, 630, 631, 632, 633 and 634 of said Code.

*Be it enacted by the Legislature of the State of Washington:*

Jurisdiction of  
superior court.

SECTION 1. Section twelve hundred and ninety-nine of the code of Washington of 1881 is amended to read as follows: The superior courts, in the exercise of their jurisdiction of matters of probate, shall have power—1. To take proof of wills, and to grant letters testamentary and of administration, and to bind apprentices as by law provided. 2. To settle the estates of deceased persons and the accounts of executors, administrators and guardians. 3. To allow or reject claims against the estates of deceased persons as hereinafter provided. 4. To hear and determine all controversies between masters and their apprentices. 5. To award process and cause to come before them all persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians, or otherwise, shall be intrusted with or in any way accountable for any property belonging to a minor, orphan or person of unsound mind, or estate of any deceased person. 6. To order and cause to be issued all writs which may be necessary to the exercise of their jurisdiction.

Books of record.

SEC. 2. Section 1300 of said code of 1881 is amended to read as follows: There shall be kept in the office of the clerk of the superior court the following books of record of probate matters: 1. A journal, in which shall be entered all orders, decrees and judgments made by the court, or the judge thereof, and the minutes of the court in probate proceedings. 2. A record of wills, in which shall be recorded all wills admitted to probate. 3. A record of letters testamentary and of administration, in which all letters testamentary and of administration shall be recorded. 4. A record of bonds, in which all bonds and obligations re-

quired by law to be approved by the court or judge in matters of probate shall be recorded. 5. A record of petitions, in which all petitions for orders of sale of real estate shall be recorded. 6. A record of claims, in which at least one page shall be given to each estate, or case, wherein shall be entered, under the title of each estate or case, in separate columns properly ruled — (1) the names of claimants against the estate; (2) the date of filing proof of claim; (3) the amount claimed; (4) the amount allowed; (5) the date of allowance; (6) the nature of the claim; (7) the amount paid; (8) number of the voucher for each payment; (9) the date of filing the voucher. 7. A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, except proof of claims and vouchers noted in record of claims, and the date of filing each paper. 8. A record of marriages, in which certificates of all marriages solemnized in the county shall be recorded.

SEC. 3. Section 1311 of said code of 1881 is amended to read as follows: Whenever personal notice is required to be given to any party to a proceeding in matters of probate, and no other mode of giving notice is prescribed, it shall be given by citation issued from the court, signed by the clerk and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings. As to public notice.

SEC. 4. Section 1313 of said code of 1881 is amended to read as follows: In all cases in which citations are issued from the superior court in probate proceedings, they shall be served at least ten days before the term at which they are made returnable, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them; and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court.

SEC. 5. Section 1314 of said code of 1881 is amended to read as follows: All orders, settlements, trials and other

proceedings in probate shall be had or made in the county in which letters testamentary or of administration were granted.

Penalty for violation.

SEC. 6. Section 1345 of said code of 1881 is amended to read as follows: Any person violating either of the next three preceding sections, without reasonable excuse, shall be liable to every person interested in the will for damages caused by such neglect.

SEC. 7. Section 1358 of said code of 1881 is amended to read as follows: The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven.

Appearance of parties in interest.

SEC. 8. Section 1360 of said code of 1881, is amended to read as follows: If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issues shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or under influence or fraudulent representations, or for any other cause affecting the validity of such will.

SEC. 9. Section 1361 of said code of 1881 is amended to read as follows: Upon the filing of the petition referred to in the next preceding section a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the territory [state] or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted.

SEC. 10. Section 1368 of said code of 1881 is amended

to read as follows: When any such will shall be established, <sup>WILLS.</sup> the provisions thereof shall be distinctly stated in the judgment establishing it, and a copy of such decree shall be certified by the clerk, under the seal of the court; and such copy, together with the testimony upon which the decree is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon in the same manner as upon wills produced and duly proved.

SEC. 11. Section 1384 of said code of 1881 is amended to read as follows: The clerk shall record, in a well bound <sup>Record of wills.</sup> book kept for that purpose, all letters testamentary and of administration before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

SEC. 12. Section 1385 of said code of 1881 is amended to read as follows: Copies of such letters, or copies of the <sup>Copies.</sup> records thereof, certified by the clerk, and under the seal of the superior court, shall be received as evidence in any court in this state.

SEC. 13. Section 1399 of said code of 1881 is amended to read as follows: In all cases where bonds or undertak- <sup>Bonds</sup> ings are required to be given under this title the sureties must possess the qualifications and justify thereon in the same manner as required for bail upon an arrest, and the certificate thereof must be attached to and filed and recorded with the bond or undertaking. All such bonds or undertakings must be approved by the judge before being filed or recorded.

SEC. 13½. Section 1404 of said code of 1881 is amended to read as follows: Any person interested in an estate may, by verified petition, represent to the judge that the sureties of the executor or administrator thereof have become or are becoming insolvent, or that they have removed, or are about to remove, from the state, or from any other cause the bond is insufficient, and ask that further security be required.

SEC. 14. Section 1409 of said code of 1881 is amended to read as follows: No judge of the superior court, no

Sureties.

sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as surety in any bond required to be taken in any proceeding in probate.

SEC. 15. Section 1410 of said code of 1881 is amended to read as follows: The judge shall take special care to take as sureties men who are solvent and sufficient and who are not bound in too many other bonds; and to satisfy himself he may take testimony and examine, on oath, the applicant or person offered as surety.

Record of bonds.

SEC. 16. Section 1411 of said code of 1881 is amended to read as follows: The clerk shall record, in a well bound book kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular file.

SEC. 17. Section 1413 of said code of 1881 is amended to read as follows: The applications and acts authorized by the foregoing sections of this chapter may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court.

SEC. 18. Section 1415 of said code of 1881 is amended to read as follows: When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or if appearing the court is satisfied that there exists cause for his removal, his letters must be revoked and letters of administration granted anew, as the case may require.

Administrator.

SEC. 19. Section 1419 of said code of 1881 is amended to read as follows: When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator he shall, nevertheless, proceed in the execution of his trust until he shall be otherwise ordered by the appellate court.

SEC. 20. Section 1430 of said code of 1881 is amended to read as follows: The succeeding administrator, or re-

maining executor or administrator, may proceed by law against any delinquent former executor or administrator, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

SEC. 21. Section 1431 of said code of 1881 is amended to read as follows: All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

SEC. 22. Section 1456 of said code of 1881 is amended to read as follows: If the executor, administrator, heir, legatee, creditor or other person interested in the estate of any deceased person shall complain to the court, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away or disposed of any moneys, goods or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings which contain evidence of or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, or any claim, demand, or last will of the deceased, the said court may cite such person to appear, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 23. If, by the return of the inventory of the estate of any intestate who died leaving a widow or minor children, it shall appear that the value of the estate does not exceed one thousand dollars, the court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the estate, or for the support of the minor child or children, if there be no widow, the whole estate, after the payment of the funeral expenses and expenses of administration, and there shall be no further proceedings in the administration unless further estate be discovered.

Support of  
widow or heirs.

SEC. 24. When a person shall die, leaving a widow or minor child or children, the widow, child or children shall be entitled to remain in possession of the homestead, and of all the wearing apparel of the family and of all the household furniture of the deceased, and if the head of the family in his lifetime had not complied with the provisions of the law relative to the acquisition of a homestead, the widow, or child or children, may comply with such provisions, and shall be entitled on such compliance to a homestead as now provided by law for the head of a family, and the same shall be set aside for the use of the widow, child or children, and shall be exempt from all claims for the payment of any debt, whether individual or community. Said homestead shall be for the use and support of said widow, child or children, and shall not be assets in the hands of any administrator or executor for the debts of the deceased, whether individual or community.

SEC. 25. In case of the appointment of an executor or administrator upon the death of the husband as mentioned in the last preceding section the court shall, without cost to the widow, minor child or children, set apart for the use of such widow, minor child or children, all the property of the estate by law exempt from execution. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the court shall make such further reasonable allowance out of the estate as may be necessary for the maintenance of the family according to their circumstances during the progress of the settlement of the estate.

SEC. 26. Section 1481 of said code of 1881 is amended to read as follows: The referee or referees, having been sworn, shall proceed to hear and determine the case and make return thereof; and their award, if not excepted to, shall be entered as the decision of the court. If exceptions in writing are filed the court shall proceed to determine the case in like manner as other claims are determined. The compensation of referees shall be the same as allowed to referees in other causes.

SEC. 27. Section 1482 of said code of 1881 is amended

to read as follows: If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 28. Section 1485 of said code of 1881 is amended to read as follows: In case of resignation or removal for any cause of any executor or administrator, and the appointment of another or others after notice has been given by publication as required by law, by such executor or administrator first appointed, to persons to present their claims against the estate, it shall be the duty of the judge of the court to cause notice of such resignation or removal and such new appointment to be published two successive weeks in the same newspaper in which the original notice was published, if the publication of such paper is at the time continued, and if not, then in some other newspaper published in the county, or if there be no newspaper published in such county, then in a newspaper published in the state and of general circulation in the county, and the estate shall be closed up and settled within the year from the date of said original notice, unless further time be granted by the court as provided by law.

SEC. 29. Section 1488 of said code of 1881 is amended to read as follows: Within twenty days after the filing of the inventory the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased; and the order of sale may be made without notice of the application, but the executor or administrator shall be responsible for the value of the property unless the sale be reported to and approved by the court.

SEC. 30. Section 1489 of said code of 1881 is amended to read as follows: If the claims against the estate have been allowed, or a sale of property shall be necessary for the payment of the expenses of the administration, he may also apply for an order to sell so much of the personal estate as shall be necessary.

SEC. 31. Section 1508 of said code of 1881 is amended

to read as follows: The executor or administrator making any sale of real estate shall, within ten days thereafter, make a return of his proceedings to the court, which shall examine the same, and if the court shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of expenses of a new sale, may be obtained, the order of sale shall be vacated, another sale shall be ordered. On a resale, notice shall be given, and the sale shall be conducted in all respects as if no previous sale had been made.

SEC. 32. Section 1515 of said code of 1881 is amended to read as follows: When such provision has been made, or any property directed to be sold, the executor administrator with the will annexed may proceed to sell without the order of the court; but he shall be bound as an administrator to give notice of the sale and to proceed in making the sale in all respects as if he were under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions; but in no [all] cases he shall make return of the sale to the court, which shall vacate such sale unless the same shall appear in all respects to be made according to law in like manner as upon sales made by administrator.

SEC. 33. Section 1547 of said code of 1881 is amended to read as follows: If the court be satisfied, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, a citation shall be issued to the executor or administrator requiring him to appear on some day named in the citation and render an exhibit as prayed for.

SEC. 34. Section 1556 of said code of 1881 is amended  
Settlement. to read as follows: When the account is rendered for settlement, the court, or the judge thereof, shall appoint a day for the hearing and settlement of the same, and notice of such hearing and settlement shall be given by posting notices thereof in three of the most public places in the county, and publishing a similar notice for such time as the court or judge may order, in a newspaper published in

the county, or if there be no newspaper published in the county, then in a newspaper published in the state and of general circulation in the county. The notice shall set forth the name of the estate, of the executor or administrator and the day appointed for the settlement of account, which shall be on some day not more than six weeks after the filing of the account.

SEC. 35. Section 1568 of said code of 1881 is amended to read as follows: Whenever a decree shall have been made by the court for the payment of creditors the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and execution may be issued on such decree as upon a judgment in favor of each creditor. The executor or administrator shall also be liable on his bond to each creditor. Liability of executor.

SEC. 36. Section 1572 of said code of 1881 is amended to read as follows: If the executor or administrator neglect to render his final account, the same proceedings may be had as are prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this act relative to the last mentioned account and the notice and settlement thereof shall apply to his account presented for final settlement.

SEC. 37. Section 1573 of said code of 1881 is amended to read as follows: At any time after six months from the issuing letters testamentary or of administration, any heir, legatee or devisee may present his petition to the court that the legacy or share of the estate to which he is entitled may be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate. Rights of heirs.

SEC. 38. Section 1594 of said code of 1881 is amended to read as follows: The commissioners shall make a report of their proceedings in writing, and the court may, for sufficient reasons, set aside such report and remit the same to the same commissioners or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the court, and a certified copy thereof, under the seal of the court, shall be recorded in

the office of the county auditor of the county where the land lies.

SEC. 39. Section 1601 of said code of 1881 is amended to read as follows: When any person shall appear and claim the money paid into the treasury the court making the distribution, being first satisfied of his right, shall order the payment of such money, and upon the presentation of a certified copy of the order to the county auditor he shall draw his warrant on the county treasurer for the amount.

SEC. 40. If any person who is bound by contract in writing to convey any real property shall die before making the conveyance, the superior court of the county in which such real estate or any portion thereof is situate may make a decree authorizing and directing his executor or administrator to convey such real property to the person entitled thereto.

SEC. 41. On filing and presentation of a petition of any person claiming to be entitled to such conveyance under such contract, setting forth the facts upon which such claim is predicated, the court, or the judge thereof, shall make an order appointing a time for hearing such petition, and shall also order notice thereof, and of the time of the hearing, to be published four successive weeks next before such hearing in such newspaper in the state as the court shall designate; and in case such deceased person was an inhabitant of this state at the time of his death, or died in this state, and in all other cases in which an executor or administrator has been appointed in this state the court shall further order that the notice be personally served upon the executor or administrator, by delivery to him of a copy of the same, together with a copy of the petition.

Distribution of  
property.

SEC. 42. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of the publication of the notice, and of personal service thereof where personal service is required, the court shall proceed to a hearing, and all persons interested as creditor, heirs, devisees or personal representatives may appear and resist such petition by filing their objections, in writing, and the court shall examine, on oath, the petition-

ers, and all witnesses who may be produced on the hearing, by an interested party, for that purpose.

SEC. 43. Such conveyance shall be executed by the executor or administrator of the estate of the deceased, if the deceased was a resident of or had his place of abode at the time of his death in this state, or if he died therein, or if an executor or administrator has been appointed therein; but in such case no decree for conveyance shall be made unless the executor or administrator shall have been served with a copy of the said petition and the notice provided for in section eleven hundred and seven, at least twenty days prior to the time appointed for the hearing.

SEC. 44. If the deceased died out of the state, and was not an inhabitant thereof at the time of his death, and no executor or administrator shall have been appointed in the state, such conveyance shall be executed by a commissioner to be appointed by the court, in the decree, for that purpose; but in such case, in addition to the notice provided for in section eleven hundred and seven, it shall appear to the satisfaction of the court, at the hearing, that the executor or administrator of such deceased duly appointed in another state, territory or country, or his heirs or devisees, shall have had reasonable notice personally of the pendency of said petition, and of the time and place appointed for such hearing. And such foreign executor or administrator shall have the same right to file objections and resist the claim of the petitioners as an executor or administrator appointed under the laws of this state would have; and it shall not be necessary, in such case, that an administration of the estate of the deceased be had in the state to authorize the decree of conveyance prayed for.

SEC. 45. Any party interested may appeal therefrom to Appeals. the supreme court, in the same manner as appeals are taken and prosecuted from final decrees or judgments in equity causes; but if no appeal be taken from such decree within the time limited therefor, or if such decree be affirmed on appeal, it shall be the duty of the executor, administrator or commissioner to execute and deliver the conveyance according to the directions contained in the decree; and a certified copy of the decree shall be recorded

with the deed in the office of the auditor of the county where the lands lie, and shall be conclusive evidence of the correctness of the proceedings and of the authority of the executor, administrator or commissioner to make such conveyance.

SEC. 46. A copy of the decree for conveyance made by the court and duly certified and recorded in the office of the auditor of the county wherein the land is situate, shall, after affirmance upon appeal, or after expiration of the time for taking an appeal in case no appeal be taken, give to the person entitled to the conveyance a right to the immediate possession of the land contracted for, and of holding the same according to the terms of the intended conveyance, in like manner and with like effect as if they had been conveyed in pursuance of the decree.

SEC. 47. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of persons entitled, may commence such proceedings or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the persons who would have been entitled to it, or in the executor or administrator for their benefit.

**Testimony.**

SEC. 48. The testimony of witnesses in support of the claim of the petitioner may be taken by deposition whenever the deposition of such witnesses might be taken to be used in the trial of a civil action; but notice of the time and place of taking such deposition shall be published by the petitioner, in the paper required to be designated by section eleven hundred and seven, for three successive weeks prior to taking the same, which notice shall also state the name of the officer before whom the deposition is to be taken, and the name[s] of the witnesses whose testimony is proposed to be taken at such time and place, and shall also be served personally in all cases wherein per-

sonal service of the notice is required by the provisions of section eleven hundred and seven. Any party interested in the estate may appear and cross-examine such witnesses, and the manner of examination and form of such deposition shall be in conformity with the statute regulating depositions of witnesses in civil actions. Any party interested in the estate, and resisting the claim of the petitioner, may, after filing his objections, take the testimony of witnesses in his behalf in like manner as in civil actions.

SEC. 49. The foregoing sections of this act shall be embodied in the code of procedure of this state under appropriate numbers, and shall be a part of the law of procedure in relation to probate.

SEC. 50. Sections 623, 624, 625, 627, 628, 630, 631, 632, 633 and 634 of said code of 1881 are repealed.

Approved March 9, 1891.

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## CHAPTER CLVI.

[S. B. No. 132.]

### AMENDING MUNICIPAL INCORPORATION LAW.

AN ACT to amend sections 105, 106, 114 and 117 of an act entitled "An act providing for the organization, classification, incorporation and government of municipal corporations, and declaring an emergency," and approved March 27, 1890.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. That section one hundred and six (106) of said act shall be amended to read as follows: Sec. 106. The mayor, members of the city council, and the assessor, treasurer and health officer shall be elected by the qualified electors of said city at a general municipal election to be held therein on the first Tuesday after the first Monday in December in each year. The mayor, treasurer, assessor Terms of office. and health officer shall hold office for the period of one year from and after the second Tuesday in January next