

CHAPTER 156.

[S. B. 52.]

PROBATE CODE.

AN ACT to establish a code of probate law and procedure, including the making and probating of wills, administration of estates of deceased persons; appointment of guardians of the persons and estates of minors, insane and mentally incompetent persons and administering their estates and providing penalties for the violation of certain provisions of this act and repealing sections 1278 to 1340, both inclusive, sections 1372 to 1692, both inclusive, and sections 1694 and 1320-1 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and section 1693 of Remington & Ballinger's Annotated Codes and Statutes of Washington in part, and all other laws or parts of laws in conflict therewith.

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

I.

JURISDICTION AND POWERS OF THE COURT.

Extent of jurisdiction.

SECTION 1. The superior courts in the exercise of their jurisdiction of matters of probate shall have power to probate or refuse to probate wills, appoint administrators, executors and guardians of insane and incompetent persons and minors, and administer and settle all such estates, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction.

Books of record.

SEC. 2. There shall be kept in the office of the clerk of the superior court the following books of record for probate matters:

Journal.

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.

Will record.

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. Letters.

4. A record of bonds, in which all bonds and obligations required by law to be approved by the court or judge in matters of probate shall be recorded. Bond record.

5. 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, the number of the voucher for each payment; 9, the date of filing the voucher; 10, the date of disallowance and of notice of disallowance. Claim record.

6. 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. Filing memo.

7. A record of marriages, in which certificates of all marriages solemnized in the county shall be recorded. Marriage record.

II.

NOTICES AND CITATIONS.

SEC. 3. Whenever personal notice is required to be given to any party to a proceeding in matters of probate, and other proceedings under this act, and no other mode of giving notice is prescribed, it may be given in the manner required for the service of summons in civil actions or 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. Notices, manner of giving.

Service. SEC. 4. The officer to whom the citation is directed shall serve it by delivering a copy to the person or persons named therein, and shall return the original to the court according to its direction, indorsing thereon the time and manner of service.

Time of service. SEC. 5. In all cases in which citations are issued from the superior court in probate and other proceedings under this act, they shall be served at least ten days before the time 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.

III.

VENUE.

Venue. SEC. 6. Wills shall be proved and letters testamentary or of administration shall be granted:

1. In the county of which deceased was a resident or had his place of abode at the time of his death.

2. In the county in which he may have died, or in which any part of his estate may be, he not being a resident of the state.

3. In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death.

Conflicting jurisdictions. SEC. 7. When the estate of the deceased is in more than one county, he not having been a resident of the state at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate.

Retention of jurisdiction. SEC. 8. All orders, settlements, trials and other proceedings, under this act shall be had or made in the county in which letters testamentary or of administration were granted.

IV.

CUSTODY, PROOF AND PROBATE OF WILLS.

SEC. 9. Any person having the custody or control of any will shall, within thirty days after he shall have received knowledge of the death of the testator or testatrix, deliver said will to the superior court having jurisdiction, or to the person named in the will as executor or executrix; and any executor or executrix having in his custody or control any will shall within forty days after he received knowledge of the death of the testator or testatrix either present the same for probate to the court having jurisdiction, or present the same to such court with his written refusal to serve as such executor or executrix; any person who shall wilfully violate any of the provisions of this section with intent to injure or defraud any person shall be deemed guilty of a gross misdemeanor, and any person who shall without reasonable excuse violate any of the provisions of this section shall be liable to any person interested in the will for damages caused by such neglect.

Delivery
of will by
custodian.

Penalty.

SEC. 10. Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive as against all the world except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court.

Application
for probate.

Order of
court.

SEC. 11. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed

Commission
to take
testimony of
attesting
witnesses.

to any judge, justice of the peace, notary public, or other person, empowering him to take and certify the attestation of such witness.

Proof in case of death or insanity of witness.

SEC. 12. When one of the witnesses to any such will shall be examined and the other witness or witnesses are dead, insane, or their residence be unknown, then proof shall be taken of the handwriting of the testator and of the witness dead, insane, or whose residence is unknown, and all such other circumstances as would tend to prove such will.

Proof of handwriting of testator and witnesses.

If it should appear to the satisfaction of the court that all the subscribing witnesses to any such will are dead, insane, or their residence unknown, the court shall take and receive proof of the handwriting of the testator and subscribing witnesses to the will and such other facts and circumstances as would tend to prove such will.

Filing and recording wills.

SEC. 13. All wills shall be recorded in the book kept for that purpose, within thirty days after probate, and the original wills shall be carefully filed with the clerk, but may be withdrawn on the order of the court.

Record as evidence.

SEC. 14. The record of any will made, probated and recorded as herein provided, 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.

V.

WILL CONTESTS.

Contests, time of filing.

SEC. 15. If any person interested in any will shall appear within six months immediately following the probate or rejection thereof, and by petition to the superior court having jurisdiction contest the validity of said will, or appear 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. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make a last will and

Issues triable.

testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will.

If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding and final as to all the world: *Provided, however,* Every infant, person absent from the United States or of unsound mind, in whom a right to contest any will heretofore probated or rejected exists by virtue of any prior law, shall have one year from and after this act goes into effect within which to initiate such contest: *Provided further,* That this act shall not have the effect of shortening the period given by any prior law to persons other than those mentioned in the last above proviso, within which to contest any will probated or rejected prior to the going into effect of this act.

Time extended in case of disabilities.

Saving clause.

SEC. 16. 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 themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the 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.

Citation on contest.

SEC. 17. In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be *prima facie* evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will.

Burden of proof.

SEC. 18. If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the

Revocation of probate.

testator, the will and probate thereof shall be annulled and revoked, and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to such annulling or revoking.

COSTS. SEC. 19. If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, which costs may in the discretion of the court include a reasonable attorney's fee.

VI.

LOST OR DESTROYED WILLS.

TAKING PROOF. SEC. 20. Whenever any will be lost or destroyed, the superior court shall have power to take proof of the execution and validity of such will and to establish the same, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of court.

NECESSARY FACTS TO ESTABLISH LOSS OR DESTRUCTION. No will shall be allowed to be proved as a lost or destroyed will unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two witnesses, and when any such will shall be so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate.

RECORD OF JUDGMENT ESTABLISHING WILL.

ACTING ADMINISTRATORS RESTRAINED PENDING ESTABLISHMENT.

SEC. 21. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have

authority to restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

VII.

FOREIGN WILLS.

SEC. 22. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made; or if there be no clerk, by the attestation of the judge thereof, and by the seal of such officers, if they have a seal.

Admission to probate in this state.

SEC. 23. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state.

Carried into effect under domestic laws.

VIII.

WILLS.

SEC. 24. Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal.

Who may make.

SEC. 25. Every will shall be in writing signed by the testator or the testatrix, or by some other person under his or her direction in his or her presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator by his direction or request: *Provided, however,* That a last will and testament, executed without this state, in the mode prescribed by law, either of the place where executed or the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state.

How executed.

Exception as to foreign wills.

Interest on devises. SEC. 26. No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provide for such interest.

Testator's signature by subscribing witness. SEC. 27. Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name as a witness to such will and state that he subscribed the testator's name at his request.

Revocation, how effected. SEC. 28. No will in writing, except in cases herein-after mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, canceling, tearing, or obliterating the same, by the testator or testatrix, or in his or her presence, by his or her consent or direction.

Subsequent marriage of testator. SEC. 29. If, after making any will, the testator shall marry and the wife, or husband, shall be living at the time of the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such survivor by marriage settlement, or unless such survivor be provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse.

Divorce.

Agreements to convey property not to effect revocation of will. SEC. 30. A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him.

Charges or encumbrances not to effect revocation. SEC. 31. A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating

to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance.

SEC. 32. If any person make his last will and die leaving a child or children or descendants of such child or children not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, as to such child or children not named or provided for, shall be deemed to die intestate, and such child or children or their descendants shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part.

Intestacy as to children not named.

SEC. 33. If such child or children or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding section. Nothing shall be considered an advancement unless charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child or other successor or heir.

Advancements.

SEC. 34. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, having lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator. A spouse is not a relative under the provisions of this section.

Death of devisee before testator.

SEC. 35. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation, or revocation of such second will shall not revive the first will unless it appears by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Revival of prior will by revocation of subsequent.

SEC. 36. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars

Nuncupative wills.

(\$200.00) unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness. Nothing herein contained shall prevent any mariner at sea or soldier in the military service from disposing of his wages or other personal property by nuncupative will. No real estate shall be devised by a nuncupative will.

Proof of
nuncupative
will.

SEC. 37. No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation issued to the widow or next of kin of the deceased that they may contest the will if they think proper.

Devises, etc.,
to sub-
scribing
witnesses.

SEC. 38. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

Devise of
land, what
passes.

SEC. 39. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

SEC. 40. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised, it shall revert to the heirs at law of the testator.

Estates for life.

Remainders.

SEC. 41. Any estate, rights or interest in lands acquired by the testator after the making of his or her will shall pass thereby, and in like manner as if owned at the time of making the will, if such manifestly appear by the will to have been the intention of the testator.

Passing of after-acquired estates.

SEC. 42. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Contribution among legatees and heirs.

SEC. 43. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the superior court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made and enforce such order.

Enforcement by court.

SEC. 44. The term "will," as used in this chapter, shall be so construed as to include all codicils attached to any will.

Codicils included in term "will."

SEC. 45. All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them.

Intent of testator followed by courts.

SEC. 46. Words in this chapter contained, or in this act, which import the singular number only, may also be applied to the plural of persons and things, and words importing the masculine gender only may be extended to females also, when such construction shall be necessary.

Construction of words importing number and sex.

IX.

LETTERS TESTAMENTARY AND OF ADMINISTRATION.

Letters to
executors.

SEC. 47. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will.

Refusal to
serve.

Objections
to executors
named.

SEC. 48. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.

Community
property,
how admin-
istered.

SEC. 49. A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property.

Minority or
absence of
executor.

SEC. 50. If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person unless there be another executor who shall accept the trust, in which case the estate

shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former.

Removal of disqualification.

SEC. 51. If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted.

Revocation of letters by discovery of will.

SEC. 52. The court appointing any executor or administrator shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other executors or administrators in the place of those removed.

Annulment of letters.

SEC. 53. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued.

Effect of death of executor.

SEC. 54. When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose.

Powers of executor when associates are disqualified.

SEC. 55. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

Authority of administrators with will annexed.

SEC. 56. Letters testamentary and of administration with the will annexed shall be signed by the clerk of the court, and under the seal of the court, and a copy of the will shall be attached to the letters.

Execution of letters testamentary and with will annexed.

SEC. 57. The clerk shall record, in a well-bound book kept for that purpose, all letters testamentary and of administration before they are delivered to the executors or

Record and certification of letters.

administrators, and shall certify on such letters that they have been so recorded.

Copies as evidence.

SEC. 58. Copies of such letters, or copies of the 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.

Form of letters testamentary.

SEC. 59. Letters testamentary to be issued to executors under the provisions of this chapter may be in the following form:

State of Washington, county of

In the superior court of the county of

Whereas, the last will of A B, deceased, was, on the day of, A. D.,, duly exhibited, proven, and recorded in our said superior court, a copy of which is hereto annexed; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this day of, A. D. 19..

Form with will annexed.

SEC. 60. Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary.

Persons entitled to letters of administration.

SEC. 61. Administration of the estate of the person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

1. The surviving husband or wife, or such person as he or she may request to have appointed.

2. The next of kin in the following order: 1, child or children; 2, father or mother; 3, brothers or sisters; 4, grandchildren.

3. One or more of the principal creditors.

4. If the persons so entitled shall neglect for more than forty days after the death of the intestate to present a petition for letters of administration, or if there be no

relatives or next of kin or they waive their right, or if there be no principal creditor or creditors, then the court may appoint any suitable person to administer such estate.

SEC. 62. Application for letters of administration shall be made by petition in writing, signed and verified by the applicant or his attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and residence of the heirs of the deceased and that the deceased died without a will.

Application
for letters.

SEC. 63. When a petition for letters of administration or for letters of administration with the will annexed shall be filed, the clerk must give notice thereof, by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant and the time at which the petition will be heard. Such notice shall be given at least ten days before the time fixed for such hearing, and the clerk shall have authority to fix the time of such hearing: *Provided, however,* No notice of hearing need be given or posted if the petition be presented by or on behalf of the surviving husband or wife, and on the presentation of such petition by or on behalf of the surviving husband or wife, the court may at once make appointment and cause letters of administration to be issued: *Provided, further,* That if there be a surviving spouse and the petition is presented by anyone other than the surviving spouse prior to forty days after the death of the intestate, notice to such surviving spouse shall be given as hereinbefore provided.

Notice of
hearing.

Exception as
to petition
by surviving
spouse.

SEC. 64. At any time after the issuance of letters testamentary or of administration upon the estate of any decedent, any person interested in said estate as heir, devisee or legatee, or attorney for such heir, devisee or legatee, may serve upon the executor or administrator (or upon the attorney for such executor or administrator) and file with the clerk of the court wherein the administration of such estate is pending, a written request stating that

Special no-
tice to heirs,
legatees or
devisees.

he desires special notice of any or all of the following named matters, steps or proceedings in the administration of said estate, to-wit:

- 1. Filing of petitions for sales, leases or mortgages of any property of the estate.
- 2. Filing of accounts.
- 3. Filing of petitions for distribution.
- 4. Petitions by the executor or administrator for family allowances and homesteads.

Mode of giving notice.

Such request shall state the postoffice address of such heir, devisee or legatee, or his attorney, and thereafter a brief notice of the filing of any of such petitions or accounts, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to such heir, devisee or legatee, or his attorney, at his stated postoffice address, and deposited in the United States postoffice, with the postage thereon prepaid, at least five days before the hearing on such petition or account; or personal service of such notices may be made on such heir, devisee or legatee, or attorney, not less than five days before such hearing, and such personal service shall be equivalent to such deposit in the postoffice, and proof of mailing or of personal service must be filed with the clerk before the hearing of such petition or account. If upon the hearing it shall appear to the satisfaction of the court that the said notice has been regularly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive.

Finding as to regularity of notice.

SEC. 65. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

Form of letters of administration.

State of Washington, county of

Whereas, A. B., late of on or about the day of A. D., died intestate, leaving at the time of his death, property in this state subject to administration: Now, therefore, know all men by these presents, that we do hereby appoint.....

administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him to administer the same according to law.

Oath of executor or administrator.

Witness my hand and the seal of said court this day of, A. D., 19. .

SEC. 66. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath, before some person authorized to administer oaths, that he will perform, according to law, the duties of his trust as executor or administrator, which oath must be recorded.

Bond of executor or administrator.

SEC. 67. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the State of Washington, except as hereinafter provided, with such surety, or sureties, as the court may judge sufficient, which bond shall be in a sum to be fixed by the court, and which bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law, and such bond shall be approved by the court. The court may at any time and for any reason require the executor or administrator to give additional bonds, the same to be conditioned and to be approved as above provided: *Provided*, The court may allow a reduction of the bond upon proper showing.

Increase or reduction of bond.

SEC. 68. Before the judge approves any bond required under this chapter, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the executor or administrator, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses as may be produced touching the property of the sureties and

Citation and examination of sureties.

Costs

its value; and if upon such examination he is satisfied that the bond is insufficient he must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: *Provided*, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed.

Waiver of bond by will.

SEC. 69. When it is expressly provided in the will that no bonds shall be required of the executor, letters testamentary may issue and sale of real estate be made and confirmed without any bond, unless the court for good cause requires one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

Additional bond may be required.

SEC. 70. Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the executor or administrator to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises.

Persons excluded as sureties.

SEC. 71. No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as surety on any bond required to be taken in any proceeding in probate.

Record of bonds.

SEC. 72. The clerk shall record in a book kept for that purpose all bonds given by executors and administrators, and preserve the originals in regular file.

Defective bonds.

SEC. 73. No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties

thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted.

Successive recoveries on bond.

SEC. 74. Whenever the court has reason to believe that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such executor or administrator, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after citation and hearing to revoke such letters. The manner of the citation and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such executor or administrator shall at once cease, and it shall be the duty of the court to immediately appoint some other executor or administrator, as in this act provided.

Revocation of letters.

Citation and hearing

SEC. 75. The applications and acts authorized by the foregoing section in 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.

Hearings in chambers authorized.

SEC. 76. If there be more than one executor or administrator of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law.

Powers of remaining executors.

SEC. 77. If the executor or administrator of an estate shall die, resign, or the letters be revoked before the

Administrator *de bonis non*.

settlement of the estate, letters of administration of the goods remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator *de bonis non* shall perform the like duties and incur the like liabilities as the former executors or administrators.

Accounting on death or resignation of executor or administrator.

SEC. 78. If any executor or administrator resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his successor or to the surviving or remaining executors or administrators, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on final settlement with such executor or administrator or his legal representatives.

Proceedings against delinquent executors.

SEC. 79. The succeeding administrator, or remaining 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.

Limitation on action against sureties.

SEC. 80. All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

X.

SPECIAL ADMINISTRATORS.

Appointment of special administrator.

SEC. 81. 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. 82. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the State of Washington, with condition as required of an executor or in other cases of administration.

Bond.

SEC. 83. Such special administrator shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court, and he shall be allowed such compensation for his services as the said court shall deem reasonable.

Powers and duties.

SEC. 84. Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money and effects of the deceased in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

Succession by executor or administrator.

SEC. 85. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted.

Non-liability to creditors.

SEC. 86. The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are required to do.

Rendition of account.

XI.

QUALIFICATIONS OF EXECUTORS AND ADMINISTRATORS.

SEC. 87. The following persons are not qualified to act as executors or administrators. Corporations, non-residents of this state, minors, persons of unsound mind,

Persons disqualified.

Trust companies and national banks as executors and guardians.

or who have been convicted of any felony or of a misdemeanor involving moral turpitude: *Provided*, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as administrators or guardians of the estate of minors or other incompetents upon petition of any person having a preference right to such appointment and may act as executors or guardians when so appointed by will. But no trust company or national bank shall be entitled to qualify as such executor or guardian under any will hereafter drawn by it, or its agents or employees, and no salaried attorney of any such company shall be allowed any attorney fee for probating any such will, or in relation to the administration or settlement of any such estate, and no part of any attorney fee shall inure, directly or indirectly, to the benefit of any trust company or national bank. And when any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of leaving the state, becoming of unsound mind, or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters: *Provided*, A person named as executor in any last will and testament may be appointed to act as such executor whether he be a resident of this state or not: *Provided further*, That such non-resident executor shall file a bond to be approved by the court and appoint an agent or attorney in the county where such estate is being probated, upon whom service of all papers may be made; such appointment to be in writing and filed by the clerk with other papers of such estate.

Non-residents as executors.

Local agent necessary for service of papers.

XII.

PARTNERSHIPS.

Inventory of deceased's partnership property.

SEC. 88. The executor or administrator of the estate of a deceased person who was a member of a co-partnership, shall include in the inventory, in a separate schedule, the whole of the property of such co-partnership; and the appraisers shall estimate the value thereof and also the

value of such deceased person's individual interest in the partnership property.

The whole of the partnership property shall be administered by such executor or administrator, unless the surviving partner shall within five days from the filing of the inventory, or such further time as the court may allow, apply for the administration thereof. If he so apply, he shall be entitled to administer the partnership property if the court find him to be qualified. If letters of administration be issued to such partner, he shall give such bond as the court may require. He shall be denominated the administrator of the partnership and shall give such notice to the partnership creditors as general administrators are required to give and shall settle the partnership estate in the same manner as is or shall be provided for the settlement of estates of deceased persons, except he shall account to the general executor or administrator for the interest of the deceased in the partnership property.

Administration by surviving partner.

Accounting to general administrator.

SEC. 89. The surviving partner, whether he be administrator or not, shall have the right at any time to petition the court to purchase the interest of such deceased in any or all of the personal property of the partnership. Upon such petition being presented it shall be the duty of the court, in such manner as it may see fit, to learn and by order to fix the value of the interest of the deceased over and above all partnership debts and obligations, in such partnership personal property, and the terms and conditions upon which such surviving partner may purchase, and thereafter such surviving partner shall have the preference right for such length of time as the court may fix, to purchase the interest of such deceased partner at the price and upon the terms and conditions fixed by the court.

Purchase of deceased partner's interest by survivor.

It shall be the duty of the court to make such orders as it may deem proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations.

Protection of estate against partnership liabilities.

Authority to survivor to operate business.

SEC. 90. The court shall have authority, in instances where it is deemed advisable, to authorize the administrator of the partnership property to continue to operate any going business pending the settlement of the partnership estate or the purchase by the surviving partner of the interest of the deceased partner.

Administration where survivor does not act.

SEC. 91. In case the surviving partner is not appointed administrator of the partnership property, the administration thereof shall devolve upon the executor or administrator and the court shall have power to require the surviving partner to deliver the partnership property and evidences thereof to the administrator or executor.

XIII.

SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION.

Settlement without court intervention.

SEC. 92. In all cases where it is provided in the last will and testament of the deceased that the estate shall be settled in a manner provided in such last will and testament, and that such estate shall be settled without the intervention of any court or courts, and where it duly appears to the court, by the inventory filed, and other proof, that the estate is fully solvent, which fact may be established by an order of the court on the filing of the inventory, it shall not be necessary to take out letters testamentary or of administration, except to admit the will to probate and to file a true inventory of all the property of such estate and give notice to creditors and to the state board or person having charge of the collection of inheritance tax, in the manner required by existing laws. After the probate of any such will and the filing of such inventory all such estates may be managed and settled without the intervention of the court, if the last will and testament shall so provide. But when the estate is ready to be closed the court, upon application, shall have authority and it shall be its duty, to make and cause to be entered a decree finding and adjudging that all debts have been paid, finding and adjudging also the heirs and those entitled to take under the will and distributing the property to the persons

Order of distribution by court.

entitled to the same, such decree to be made after notice given as provided for like decrees in the estates of persons dying intestate: *Provided, however,* In all cases, if the party named in such will as executor shall decline to execute the trust or shall die or be otherwise disabled for any cause from acting as such executor, then letters testamentary or of administration shall issue and the estate be settled as in other cases: *And provided further,* If the person named in the will shall fail to execute the trust faithfully and to take care and promote the interest of all parties, then, upon petition of a creditor of such estate, or of any of the heirs, or of any person on behalf of any minor heir, it shall be the duty of the court to cite such person having the management of such estate to appear before such court, and if, upon hearing of such petition it shall appear that the trust in such will is not faithfully discharged, and that the parties interested, or any of them have been or are about to be damaged by such actual doings of the executor, then, in the discretion of the court, administration may be had and required as is now required in the administration of estates, and in all such cases the costs of the citation and hearing shall be charged against the party failing and neglecting to execute the trust as required in such will.

Refusal or disqualification of executor named.

Mismanagement by executor named.

SEC. 93. Executors acting under wills such as are mentioned in the last preceding section shall have power, after the filing of an inventory of the estate, if the said estate has been adjudged solvent, to mortgage, lease, sell and convey the real and personal property of the testator without an order of the court for that purpose and without notice, approval or confirmation, and in all other respects administer and settle the estate without the intervention of the court.

Powers of non-intervention executors.

SEC. 94. Every executor or administrator shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall

Right to possession and management.

be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his control.

XIV.

THE INVENTORY AND EFFECTS OF DECEASED PERSONS.

Inventory of estate.

Appointment of appraisers.

SEC. 95. Every executor or administrator shall make and return, upon oath, into the court, within one month after his appointment, a true inventory of all of the property of the estate which shall have come into his hands, and within thirty days after filing such inventory he shall make application to the court to appoint three disinterested persons to appraise the property so inventoried, and it shall be the duty of the court to appoint such appraisers. Such appraisers shall receive as compensation for their services each the sum of three dollars (\$3.00) per day and mileage. If any part of the estate shall be in another county than that in which letters are issued, appraisers residing in such county may be appointed by the court having jurisdiction of the case, or, if most advisable, the same appraisers may act: *Provided*, That the court may appoint persons to appraise the estate at the time, or any time after the appointment of the administrator.

Oath and duties of appraisers.

SEC. 96. Before proceeding to the discharge of their duties the appraisers shall take and subscribe an oath, before any officer authorized to administer oaths, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures, opposite the respective articles: *Provided, however*, Household articles need not be separately mentioned. The inventory shall contain all the estate of the deceased, real and personal, a statement of all credits, partnership and other interests, bonds, mortgages, notes, moneys, and other securities for the payment of money belonging to the deceased, specifying the name of

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

SEC. 97. The naming of any person as executor in a will, or the appointment of any person as administrator, shall not operate as a discharge from any just claim which the testator or intestate had against the executor or administrator, but the claim shall be included in the inventory and the executor and administrator shall be liable to the same extent as he would have been had he not been appointed executor or administrator.

Claims against personal representatives not discharged by appointment.

SEC. 98. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will or against any person shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies.

Discharge of testator's debt construed as specific bequest.

SEC. 99. If any executor or administrator shall neglect or refuse to return the inventory within the period prescribed, or within such further time, not exceeding three months, as the court may allow, the court may revoke the letters testamentary or of administration; and the executor or administrator shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect.

Failure to return inventory ground for revoking letters.

SEC. 100. Whenever property not mentioned in any inventory shall come to the knowledge and possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this act, and an additional inventory to be returned, subscribed and sworn to as is provided in this act, as soon as practicable after the discovery thereof, and the making of such inventory may be enforced, after notice, by attachment to which may be added the revocation of the letters.

Additional inventory on discovery of further assets.

Liability for embezzlement prior to letters.

SEC. 101. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the executor or administrator of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate.

Proceedings for discovery of concealed or embezzled property.

SEC. 102. The court shall have authority to bring before it any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate, or who has in his possession or within his knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he be found innocent of the charges he shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorneys fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he refuse to answer such interrogatories as may be put to him touching such matters, the court may commit him to the county jail, there to remain until he shall be willing to make such answers.

XV.

PROVISIONS FOR THE SUPPORT OF THE FAMILY.

Provisions in lieu of homestead and exemptions.

SEC. 103. If it shall be made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, upon such notice as may be determined by the court, upon being satisfied that the funeral expenses,

expenses of last sickness and of administration have been paid or provided for, and upon petition for that purpose, shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of three thousand dollars (\$3,000.00), exclusive of any mortgage or mechanic's, laborer's or materialmen's or vendor's liens upon the property so set off, which property so set off shall include the home and household goods, if any, and such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates. The order or judgment of the court making the award or awards provided for in this section shall be conclusive and final, except on appeal and except for fraud. The awards in this section provided shall be in lieu of all homestead provisions of the law and of exemptions.

SEC. 104. In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead result in vesting the complete or partial title in the survivor, it shall be the duty of the court, upon petition of any person interested, and upon being satisfied that the value thereof does not exceed two thousand dollars (\$2,000.00), exclusive of mortgages, mechanic's, laborer's, materialmen's or vendor's liens thereon, to enter a decree, upon such notice as the court may determine, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor. In addition thereto, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, shall set off and award to such survivor, other property, either separate or community, not to exceed one thousand dollars (\$1,000.00) in value, exclusive of all such liens. If the value of the homestead, exclusive of all such liens, be less than two thousand dollars (\$2,000.00), the court shall set off and award additional property, either separate or com-

Homestead,
when
awarded.

Provision ad-
ditional to
homestead.

munity, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens, when added to the value of the other property awarded, exclusive of all such liens, shall equal three thousand dollars (\$3,000.00). Said decree shall particularly describe the said homestead and other property so awarded, and such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions: *Provided*, That the awards in this and the next preceding section provided for, shall not be taken from separate property of the deceased, which is otherwise disposed of by will, where there is no minor child living as the issue of the surviving spouse and the deceased.

Awards from separate property, when barred.

SEC. 105. If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, and in such proportions as he considers proper, property of the estate as the court may consider necessary for the care and support of said minor or minors until they become of legal age, not exceeding in value the sum of three thousand dollars (\$3,000.00).

Provision for minor children.

SEC. 106. In addition to the awards herein provided for, the court may make such further reasonable allowance of cash 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, and any such allowance shall be paid by the executor or administrator in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration.

Further allowance for maintenance.

XVI.

CLAIMS AGAINST ESTATE.

SEC. 107. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the

Notice to creditors.

court, a notice that he has been appointed and has qualified as such executor or administrator, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the executor or administrator or his attorney of record, and file with the clerk of the court, together with proof of such service, within six months after the date of the first publication of such notice. Such notice shall be published not less than once in each week for three successive weeks, or for such further time as the court may direct. If a claim be not filed within the time aforesaid, it shall be barred. Proof by affidavit of the publisher of the publication of such notice shall be filed with the court: *Provided, however,* In cases where all the property is awarded to the widow, husband or children as in this act provided, the notice to creditors herein provided for may be omitted.

Limitation
on time of
filing claims.

When notice
may be
omitted.

SEC. 108. Every claim served and filed as above provided shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant.

Affidavit of
claimant.

SEC. 109. When a claim, accompanied by the affidavit required in the preceding section has been served and filed, it shall be the duty of the executor or administrator to endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the court, who shall in the same manner indorse on it his allowance or rejection. If the executor or administrator reject the claim in whole or in part, he shall notify the claimant forthwith of said rejection and file in the office of the clerk an affidavit showing such notification and the date thereof. Such notification shall be by personal service or registered mail.

Allowance
and rejection
of claims.

If the executor or administrator shall neglect for the period of sixty days after service upon him or his attorney to act upon any such claim, the claimant may take the matter up before the court and the court may require

Failure to
act on
claims.

the executor or administrator to act on such claim and in its discretion may impose costs and attorney's fees.

Effect of allowance of claim.

SEC. 110. Every claim which has been allowed by the executor or the administrator and the said judge, shall be ranked among the acknowledged debts of the estate to be paid in the course of administration.

Judge as creditor of estate.

SEC. 111. Any judge of a court may present a claim against the estate of any decedent for allowance; and if the executor or administrator allows such claim, he shall, in writing, designate some other judge of the superior court, who shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

Suit on rejected claims.

SEC. 112. When a claim is rejected by either the executor, administrator, or the court, the holder must bring suit in the proper court against the executor or administrator within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

No allowance of outlawed claims.

SEC. 113. No claim shall be allowed by the executor, administrator, or court which is barred by the statute of limitations.

Necessity of presentation of claims.

SEC. 114. No holder of any claim against an estate shall maintain an action thereon, unless the claim shall have been first presented as herein provided.

When bar of statute not to run.

SEC. 115. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Actions pending at death.

SEC. 116. If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within ninety days after first publication of notice to creditors, serve on the executor or administrator a motion to have such executor or administrator, as such, substituted as defendant in such action, and, upon the hearing of such motion, such executor or administrator shall be so substituted, unless, at or prior to such hearing, the claim of plaintiff, together with costs, be allowed by the executor

Substitution of executor or administrator.

or administrator and the court. After the substitution of such executor or administrator, the court shall proceed to hear and determine the action as in other civil cases.

SEC. 117. Whenever any claim shall have been filed and presented to an executor or administrator and the court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

Partial allowance of claim.

SEC. 118. The effect of any judgment rendered against any executor or administrator shall be only to establish the amount of the judgment as an allowed claim.

Effect of judgment against executor.

SEC. 119. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however,* That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Judgment against decedent to be presented as claim.

Sales in case of lien.

SEC. 120. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to non-intervention and all other wills.

Claims of personal representatives.

SEC. 121. 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 admin-

Notice of resignation or removal of executor or administrator.

istrator first appointed, to persons to file 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, but the time between the resignation or removal and such publication shall be deducted from the time within which claims shall be filed unless such time shall have expired before such resignation or removal.

Deduction of
time for
filing claims.

XVII.

SALES AND MORTGAGES BY EXECUTORS AND ADMINISTRATORS

SEC. 122. The court may order real or personal property sold or mortgaged for the purposes hereinafter mentioned but no sale or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law.

Authority
for sale or
mortgage.

SEC. 123. The court may at any time order any personal property of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public auction or private sale and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in section 64 hereof, unless the court expressly orders such notice.

Sales of
personal
property.

Mortgage or
pledge of
personalty.

Where personal property is sold prior to appraisal, the sale price shall be deemed the value for ap-

praisal. Personal property may be mortgaged or pledged for the same reasons and purposes, and in the same manner as is hereinafter provided for real property.

SEC. 124. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold or mortgaged for the purpose of raising money to pay the debts and obligations of the estate, the expenses of administration, inheritance tax or for the support of the family, the court may order the sale or mortgage of such portion of the real property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the executor or administrator to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale or mortgage and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale or mortgage need be given, except as provided in section 64 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale or mortgage, and the court may, if it see fit, order such sale or mortgage or both without any petition having been previously presented.

Sale or mortgage of realty.

Petition.

Notice of hearing.

Hearing.

Petition not essential.

SEC. 125. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the executor or administrator to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction

Order directing mortgage.

and authorize the executor or administrator to execute and deliver his note or notes and secure the same by mortgage, and thereafter it shall be the duty of such executor or administrator to comply with such order. The executor or administrator shall not deliver any such note, mortgage or other evidence of indebtedness until he has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it.

Mortgage not impaired by irregularities.

Order directing sale.

SEC. 126. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this act, then it may make and cause to be entered an order directing the executor or administrator to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale. The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised. After the giving of such order it shall be the duty of the administrator or executor to sell such real estate in accordance with the order of the court and as in this act provided with reference to the public or private sales of real estate.

Sales of realty at public auction.

SEC. 127. When real property is directed to be sold at public auction, notice of the time and place of such sale shall be posted in not less than three public places in the county where the property or some part thereof is situated, at least twenty days before the day of sale, and such notice shall be published in some newspaper published

in said county, if there be one, and if none, then in such newspaper or newspapers as the court may by order direct, once a week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty. At the time and place named in such notices for the said sale, the executor or administrator shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public auction shall be made at the front door of the court house of the county in which the lands are, unless the court shall by order otherwise direct.

Notice.

Place of sale.

SEC. 128. The executor or administrator, should he deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the executor or administrator at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the executor or administrator to cause written notice of such adjournment to be posted at the place of posting the original notices of sale in addition to making such proclamation.

Postponement of sale.

Notice.

SEC. 129. When a sale of real property is ordered to be made at private sale, notice of the same must be posted in three public places in the county in which the property or part thereof is situated, and published in a newspaper, if there be one printed in the same county; if none, then in such newspaper as the court may direct; such notice to be posted at least two weeks and be published once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day,

Private sale of realty.

Notice.

Written bids
required.

but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the executor or administrator personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order.

Shortening
time of
notice.

Sale must
bring 90% of
appraised
value.

SEC. 130. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers may be appointed, and they must make an appraisement thereof in the same manner as in the case of the original appraisement of the estate, and which appraisement may be made at any time before the sale or the confirmation thereof.

Reappraise-
ments.

Return of
sale.

SEC. 131. The executor or administrator making any sale of real estate, either at public or private sale, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return the court may without notice approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale that it did not sell for at least ninety per cent of the appraised value as in the preceding section

Approval or
disapproval
by court.

provided, and that a sum exceeding said bid by at least ten per cent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made.

Order for resale.

SEC. 132. If, at any time before confirmation of any such sale, any person shall present to the court or file with the clerk of the court a bid on such property for an amount equal to ten per cent higher than the bid upon which sale was made by the executor or administrator, and shall deposit with the court or the clerk not less than twenty per cent of such bid, the same to be forfeited to the estate unless such bidder shall comply with his bid, then it shall be the duty of the court to cause the former successful bidder to be informed of such increased bid and to give such former successful bidder an opportunity to raise his bid higher than the bid of said subsequent bidder, and if such former successful bidder fails within the time fixed by the court to raise his bid as aforesaid, the property may be sold to such subsequent bidder, or if such first successful bidder should raise his bid as herein provided then the property may be sold to him.

Offer of increased bid.

Duty of court.

SEC. 133. Upon the confirmation of any such sale the court shall direct the executor or administrator to make, execute and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased, and any interest acquired by the estate.

Order for conveyance.

SEC. 134. No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds what-

Confirmation conclusive as to regularity of proceedings.

soever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with.

Sale or mortgage of realty to pay legacy.

SEC. 135. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell or mortgage his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale or mortgage for the payments of the debts.

Insufficiency of estate to pay debts.

SEC. 136. If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter.

Liability of devisees and legacies for debts.

SEC. 137. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and allowances to the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator.

Contribution among devisees and legatees.

SEC. 138. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payments of the debts or expenses; and the court, when distribution is made, shall by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute.

SEC. 139. If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his executor or administrator in the same manner as if he died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this act in respect to lands of which he died seized, except as hereinafter provided.

Sale of decedent's contract interest in lands.

SEC. 140. Such sale shall be made subject to all payments that may thereafter become due on such contract, and if there be any such payments thereafter to become due such sale shall not be confirmed by the court until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such sureties as the court shall approve.

Purchaser's bond to secure payments coming due.

SEC. 141. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator and the person so entitled against all demands, costs and charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

Conditions of bond.

SEC. 142. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living.

Assignment of decedent's contract.

Redemption
of decedent's
mortgaged
estate.

SEC. 143. If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the executor or administrator to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors.

Sale or
mortgage
of other
property
to effect
redemption.

SEC. 144. If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court.

Sale of
mortgaged
property, if
redemption
inexpedient.

SEC. 145. If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this act, and shall be sold subject to such mortgage, and the executor or administrator shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration.

Sales
directed
by will.

SEC. 146. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any

application to the court with reference to such sales or have the same confirmed by the court.

XVIII.

POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS.

SEC. 147. It shall be the duty of every executor or administrator to settle the estate in his hands as rapidly and as quickly as possible, without sacrifice to the estate. He shall collect all debts due the deceased and pay all debts as hereinafter provided. He shall be authorized in his own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

Powers and duties.

SEC. 148. Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by and against their respective testators or intestates.

Actions for recovery of property and on contract.

SEC. 149. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away, or converted to his own use the goods of their testator or intestate in his lifetime; also may maintain actions for trespass committed on the estate of the deceased during his lifetime.

Waste, conversion and trespass.

SEC. 150. Any person, or his personal representatives, shall have an action against the executor or administrator of any estate or intestate who in his lifetime shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods and chattels of any such person, or committed any trespass on the real estate of such person.

Actions on torts of decedent.

SEC. 151. Any administrator may in his own name, for the benefit of all parties interested in the estate, main-

Actions on bonds of prior executor or administrator.

tain actions on the bond of an executor or of any former administrator of the same estate.

Compromise
of claims.

SEC. 152. The court shall have power to authorize the executor or administrator to compromise and compound any claim owing the estate.

Recovery of
decedent's
fraudulent
conveyances.

SEC. 153. 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 rights, or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors the executor or administrator may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

XIX.

ACCOUNTS OF EXECUTORS AND ADMINISTRATORS AND PAYMENT OF DEBTS.

Promise
to pay
decedent's
debts, when
binding on
executor.

SEC. 154. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Chargeable
with whole
estate.

SEC. 155. Every executor and administrator shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession. He shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his fault.

SEC. 156. He shall be allowed all necessary expenses in the care, management and settlement of the estate. Allowance of expenses.

SEC. 157. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault. No executor or administrator shall purchase any claim against the estate he represents, but however the executor or administrator may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the executor or administrator under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the executor or administrator shall not profit thereby. Uncollectible debts of estate.

Purchase by executor of claims against estate.

SEC. 158. Where no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed such compensation as to the court shall seem just and reasonable, based on the services rendered; and the like compensation shall be allowed to administrators. In all cases where it is necessary for such executor or administrator to employ an attorney, such attorney shall be allowed such compensation as to the court shall seem just and reasonable. Compensation of executor, administrator and attorney.

SEC. 159. Within thirty days after the expiration of the time for filing of claims of creditors, the executor or administrator shall make, verify by his oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell or mortgage any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he may in such report set out the facts showing such necessity and ask for such sale or mortgage; such report shall likewise state the amount of property, real and personal, which has come into his Reports of executors and administrators.

hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done. Such executor or administrator may, however, make, verify, and file, prior to the expiration of the time for the presentation of claims, any reports which in his judgment would be proper or which the court may order to be made.

Notice of hearing.

SEC. 160. It shall not be necessary for the executor or administrator to give any notice of the hearing of any report prior to the final report, except as in section 64 provided, but the court may require notice of the hearing of any such report. If the court does not require such notice to be given, then at any time after ten days following the filing of any report, other than the final report, the court may hear and settle such report.

Settlement by court.

Final report and petition for distribution.

SEC. 161. When the estate shall be ready to be closed, such executor or administrator shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled, and shall show any moneys collected since the previous report, and any property which may have come into the hands of the executor or administrator since his previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the executor or administrator. If the executor or administrator has been discharged without hav-

ing legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective.

SEC. 162. When such final report and petition for distribution, or either, shall have been filed, the court shall fix a day for the hearing of the same, which day must be at least twenty-five days subsequent to the day of the first publication and posting of notices of such hearing as hereinafter provided. Notice of the time and place fixed for such hearing shall be given by the executor or administrator by publishing the same at least once a week for three successive weeks preceding the time fixed for such hearing, such publication to be in such paper as the court may order, and such notice shall be posted in three public places in the county at least fifteen days preceding the time fixed for such hearing, and which shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court, and that the court is asked to settle such report, distribute the property to the heirs or persons entitled to the same, and discharge the executor or administrator, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the executor or administrator or the clerk of court and be posted and published or caused to be posted and published as aforesaid.

Notice of
time and
place for
hearing.

SEC. 163. Upon the day fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and

Hearing.

Objections
to report.

present his objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the executor or administrator should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report and find the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to same, and direct the executor or administrator to deliver to the distributees their portions according to the provisions of such decree and to make return of his proceedings to the court, showing receipt by such distributees of their portions of the estate, which decree shall be final and conclusive as to all the world. Upon such return being made, the court shall, if satisfied of the correctness thereof, adjudge the estate closed and discharge the executor or administrator: *Provided, however,* The court may, in its discretion, distribute any property subject to any encumbrance thereon.

Decree of
distribution.

SEC. 164. If there be any minor interested in the estate who has no legally appointed guardian, the court shall appoint some disinterested person to represent such minor, with reference to such final report and petition for distribution, who, on behalf of the minor, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services.

Representa-
tion of
minor by
guardian.

SEC. 165. When any estate shall have been distributed by decree of the court as provided in this chapter, to any person residing out of this state, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may

Appointment
of agent for
non-resident
distributee.

appoint an agent for that purpose, and authorize him to take charge of such estate.

SEC. 166. Such agent shall give a bond to the State of Washington, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the estate for his services and expenses.

Agent's
bond and
compensation.

SEC. 167. When the estate shall have remained in the hands of the agent unclaimed for three years, it shall be sold under order of the court, and the proceeds, after deducting the expenses of the sale and allowance to the agent, to be fixed by the court, shall be paid into the county treasury. When the payment is made the agent shall take triplicate receipts, one of which he shall file with the county auditor, and another with the court.

Sale of
unclaimed
share.

SEC. 168. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceding section, and may be sued thereon by any person interested.

Liability
of agent.

SEC. 169. If any person shall within four years immediately following the payment of said money as aforesaid to the treasurer, 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. If no such claim be made within the four year period last above mentioned the said money shall escheat to the state.

Claimant for
proceeds
of sale.

Escheat
to state.

SEC. 170. In rendering his accounts or reports the executor or administrator shall produce receipts for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court; however, he may be allowed any item of expenditure, not exceeding twenty dollars (\$20.00), for which no receipt is produced, if such

Receipts for
expenses and
charges to
be filed.

item be supported by his own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars (\$300.00) in any one estate.

Order for
payment
of debts.

SEC. 171. The debts of the estate shall be paid in the following order:

1. Funeral expenses in such amount as the court shall order.
2. Expenses of the last sickness, in such amount as the court shall order.
3. Wages due for labor performed within sixty days immediately preceding the death of decedent.
4. Debts having preference by the laws of the United States.
5. Taxes, or any debts or dues owing to the state.
6. Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.
7. All other demands against the estate.

Extent of
mortgage and
judgment
preferences.

SEC. 172. The preference given in the preceding section to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment.

Due allow-
ance to
precede
payment.

SEC. 173. No claim against the estate shall be paid until the same shall first have been allowed by both the executor or administrator and the court.

Payments in
case estate
insufficient.

SEC. 174. If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid.

Expense of
monument
payable from
estate.

SEC. 175. Executors and administrators of the estate of any deceased person are hereby authorized, by and with the consent of the court, to expend a reasonable amount out of the estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt

of the said decedent, and the expense thereof shall be paid as the expenses of administration are paid.

SEC. 176. 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, except when his inability to make the payment thereof from the property of the estate shall result without fault upon his part. The executor or administrator shall likewise be liable on his bond to each creditor.

Liability of personal representatives for payment of claims.

SEC. 177. If, after the accounts of the executor or administrator have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the executor or administrator and his bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the executor or administrator or his sureties be required to make any payment in this section provided for, he or they shall have a right of action against said distributees and creditors to compel them to contribute their just share.

Action on unpaid claim.

Actions for contribution.

SEC. 178. If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration.

Order maturing claim not due.

SEC. 179. If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to es-

Contingent and disputed claims.

tablish his claim, to be paid over or distributed as the circumstances of the case may require.

SEC. 180. A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued.

Issuance of
letters after
final
settlement.

XX.

DISTRIBUTION PRIOR TO SETTLEMENT AND ADVANCEMENT.

SEC. 181. At any time after six months from the date of the first publication of notice to creditors, any heir, legatee, or devisee, may present his petition to the court praying that the legacy or share of the estate to which he is entitled may be given to him, upon his giving bond with security for the payment of his proportion of the debts of the estate, inheritance tax, expenses of administration, support of the family, or other obligations of the estate.

Application
for premature
distribution.

SEC. 182. Notice of the application shall be given to the executor or administrator and to all persons interested in the estate in the same manner that notice is required to be given of the settlement of the final account of the executor or administrator and petition for distribution.

Notice.

SEC. 183. The executor, administrator, or any person interested in the estate may appear and resist the application; or any other heir, legatee, or devisee may make a similar application for himself.

Resistance of
application.

SEC. 184. If, on the hearing of such petition or petitions, it appear to the court that the estate is but little in debt and that the shares of the parties applying may be allowed and set off to him or them without injury to the creditors of the estate, the court may make a decree establishing such petitioner or petitioners to be heirs or legatees or devisees and set off to him or them by a decree his or her portion of such estate: *Provided*, Each one of

Order setting
off share
of estate.

them shall first execute and deliver to the executor or administrator a bond in such sum as may be designated by the court, and with sureties to be approved by the court, which bond shall be conditioned for the payment by the devisee or legatee or heir, whenever required, of his portion of the debts, expenses of administration, inheritance tax, allowance to the family and other obligations of the estate.

Bond to secure payment of debts, etc.

SEC. 185. The cost of the proceedings authorized by the preceding section shall be paid by the applicant, or if there be more than one, shall be equally apportioned among them.

Costs.

SEC. 186. Whenever any bond has been executed and delivered under the provisions of the preceding sections and the court shall determine that it is proper and necessary to require payment of any part of the money thereby secured, he may make an order requiring the payment and direct the executor or administrator to take such proceedings as may be necessary to enforce such payments, and such executor or administrator may, if the court so order, institute suit on the said bond for the collection of such sums.

Enforcing repayment by distributee.

SEC. 187. All questions as to advancements made, or alleged to have been made, by the deceased to any heirs may be heard and determined by the court before any distribution is made as in this act provided and the same shall be specified in the decree of distribution.

Advancements, determination of.

XXI.

SPECIFIC PERFORMANCE OF DECEDENT'S CONTRACT.

SEC. 188. 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 the estate is being administered, may upon application of the executor or administrator, without notice, make an order authorizing and directing the executor or administrator to convey such real property to the person entitled thereto.

Order for conveyance on application of executor.

Petition
by party
entitled to
conveyance.

Notice to
executor.

SEC. 189. If the executor or administrator fail to make such application, then any person claiming to be entitled to such conveyance under such contract, may present a petition setting forth the facts upon which such claim is predicated, and 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 personally served upon the executor or administrator, by delivery to him of a copy of the same, together with a copy of the petition. If personal service cannot be had upon the executor or administrator, such service shall be made as the court may direct.

Hearing.

SEC. 190. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as herein provided, the court shall proceed to a hearing and determine the matter.

Conveyance
under order
of court.

SEC. 191. A conveyance executed under the provisions of this act shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract.

Filing of
certified copy
of order.

SEC. 192. A certified copy of the order shall be recorded with the deed in the office of the auditor of the county where the lands are, and shall be conclusive evidence of the correctness of the proceedings and of the authority of the executor or administrator to make such conveyance.

Actions in
case of death
of person
entitled to
conveyance.

SEC. 193. 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 act 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.

SEC. 194. The testimony of witnesses concerning the claim may be taken by deposition whenever the deposition of such witnesses might be taken to be used in the trial of a civil action. The notice of the time and place of taking such deposition, and the manner of such taking, shall be governed as is provided for in civil actions.

Depositions
of witnesses.

XXII.

APPOINTMENT OF GUARDIANS FOR MINORS, INSANE AND MENTALLY INCOMPETENT PERSONS.

SEC. 195. The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of minors, insane and mentally incompetent persons resident of the county, and guardians for the estates of all such persons who are non-residents of the state but who have property in such county needing care and attention.

Authority
to appoint
guardians.

SEC. 196. Guardians shall have the same qualifications as executors and administrators except that a non-resident, otherwise qualified, may be guardian of the estate in this state of a non-resident ward.

Qualifi-
cations.

SEC. 197. When a petition duly verified is presented to the superior court, showing that a person resident of the county where the petition is filed is a minor or is insane or mentally incompetent and needs the care and attention of a guardian, or that such person has property in the county needing care and attention of a guardian, or showing that such minor, insane or mentally incompetent person is a non-resident of the state and has prop-

Petition for
appointment.

Notice of
hearing.

erty in the county needing care and attention of a guardian, and praying for appointment of a guardian for the person and property, or either, of such minor, insane or mentally incompetent person, the court shall thereupon make an order setting a time for the hearing of such petition and directing the clerk of the court to issue a notice stating that such petition has been filed and the time and place of hearing thereof and that all persons interested shall appear at such time and place and show cause why a guardian should not be appointed for the person and estate, or either thereof, of such minor, insane or mentally incompetent person: *Provided, however,* If such petition be made by a parent asking the appointment of himself as guardian of his minor child under the age of fourteen years, or if a petition be accompanied by the written consent of a minor over the age of fourteen years, consenting to the appointment of the guardian asked for, or should a minor, insane or mentally incompetent person be a non-resident of the state and the petition be by any foreign guardian of such minor, insane or mentally incompetent person, then the court may at once upon presentation of such petition, and without notice of hearing thereof, appoint such guardian.

Consent of
minor to
appointment
of parent.

Foreign
guardian of
non-resident.

Service
of notice.

SEC. 198. If the petition be with reference to the appointment of any guardian mentioned in the preceding section, except guardians for the property of non-residents of the state, then the notice of hearing provided for in the preceding section shall be personally served upon the person having the custody, care and control of such minor, insane or mentally incompetent person, or the person with whom such minor, insane or mentally incompetent person resides, and if such minor, insane, or mentally incompetent person be over the age of fourteen years, then such notice shall be personally served upon such minor, insane or mentally incompetent person also. If such minor, insane or mentally incompetent person be in the care, custody or control of any officer or institution, then such notice shall be served upon such officer or head of

such institution. The notice herein provided for shall be served at least ten days prior to the time set for such hearing, and proof, as in civil actions provided, of such service shall be made and filed in the proceedings.

SEC. 199. If such petition be for the appointment of a guardian to the property of any minor, insane or mentally incompetent person, who resides without the State of Washington, then the petitioner shall make an affidavit stating the fact of such non-residence, and unless the petitioner be a non-resident guardian, the notice hereinbefore provided for shall be served by publication in some newspaper printed and of general circulation in the county where the petition is filed, and such publication shall be for once a week for not less than three successive weeks prior to the time set for such hearing, and proof of such publication shall be made and filed as in other cases. At the time fixed for such hearing, if the court be satisfied that the publication has been made, it may proceed to the hearing and to the appointment of the guardian.

Service by publication in case of non-resident ward.

Appointment by court.

SEC. 200. In all cases for the appointment of guardian where the notice cannot be given as in this act provided, the court may require such notice as to it may seem right and proper and take such proceedings as it shall determine upon with reference to the appointment of such guardian.

Substitute notice.

SEC. 201. Before the hearing, the petition or a copy thereof shall be submitted to the prosecuting attorney, whose duty it shall be to appear for such minor, insane or incompetent person at such hearing: *Provided, however,* It shall not be necessary for the prosecuting attorney to appear if such person for whom a guardian is to be appointed, be represented in the proceeding by any other attorney.

Representation by prosecuting attorney.

XXIII.

POWERS AND DUTIES OF GUARDIANS OF MINORS, INSANE OR MENTALLY INCOMPETENT PERSONS OR THEIR ESTATES.

SEC. 202. Guardians herein provided for shall at all times be under the general direction and control of the

Guardians under court control.

Legal age.

court making the appointment. For the purposes of this act, males shall be of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they are eighteen years old or at any age under eighteen, when, with the consent of the parent or guardian, or the person under whose care or government they may be, they shall have been legally married.

Oath and bond of guardian.

SEC. 203. Before letters of guardianship are issued, each guardian shall take and subscribe an oath and file a bond, with sureties to be approved by the court, payable to the State of Washington, in such sum as the court may fix, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law and shall render a fair and just account of his guardianship to the superior court for the county of, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management and education of such minor, insane or mentally incompetent person, or his or her property, and render and pay to such minor, insane or mentally incompetent person all moneys, goods, chattels, title papers and effects which may come into the hands or possession of such guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect.

Successive recoveries on bond.

The said bond shall be for the use of such minor, insane or mentally incompetent person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty shall be recovered thereon. The court may require an addi-

tional bond whenever for any reason it may appear to the court that such additional bond should be given.

Additional bonds.

SEC. 204. All the provisions of this act relative to bonds given by executors and administrators shall apply to bonds given by guardians.

What law governs.

SEC. 205. It shall be the duty of the guardian of any estate:

1. To make out and file, within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same, and failing so to do, it shall be the duty of the court to remove him and appoint a successor.

Inventory.

2. To manage the estate for the best interest of his ward.

3. To render on oath to the proper court an account of his receipts and of his expenditures, with vouchers therefor, at least once in every two years, and whenever cited to do so, and failing so to do, he shall receive no allowances for services, and be liable to said ward on his bond in damages for ten per cent. of the whole amount of the estate, both real and personal in his hands belonging to such ward.

Accounts.

4. At the expiration of his trust fully to account for and pay over to the proper person all the estate of said ward remaining in his hands.

Final accounting.

5. To pay all just debts due from such ward out of the estate in his hands, and to collect all debts and demands due such ward, and in case of doubtful debts, to compound the same, and to appear for and defend, or cause to be defended, all suits against such ward.

Payment of debts and collection of demands.

6. When any ward has no father or mother, or such father or mother is unable or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify.

Education of ward.

SEC. 206. Guardians of minors, insane or mentally incompetent persons, or their property, shall have power and authority to represent their wards in all matters, and may sue and be sued as such guardian, and such

Guardian to represent ward.

Compromises
and
settlements.

wards shall be bound by any compromise or settlement made by such guardian: *Provided*, The court shall have ordered or approved such action of the guardian. Before making any such compromise or settlement, the guardian shall file with the court which appointed him a petition setting out the nature of the suit, claim or dispute, together with the reasons for settling or compromising the same, and the court, either with or without notice of hearing, may make such order on such petition as shall appear proper.

No action
against estate
unless claim
rejected.

SEC. 207. No holder of a claim, demand or judgment against an estate of a person under guardianship shall maintain an action thereon or enforce same, unless the claim, demand or judgment shall have been first presented to such guardian and by him rejected in whole or in part. A failure or neglect to allow a claim for thirty days after the same is presented shall be deemed a rejection thereof.

Judgments,
except
foreclosures,
rank as
claims.

SEC. 208. No judgment entered against such guardian or the estate or person of any such minor, insane or mentally incompetent person, except for the foreclosure of a mortgage or other lien, shall be a lien against or upon the estate of such minor, insane or mentally incompetent person, but such judgment shall be presented and paid as other claims of the same class or grade.

Removal or
death of
guardians.

SEC. 209. The court in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed; and when any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor, insane or mentally incompetent person, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or in the posses-

Enforcement
of delivery of
estate to
successors.

sion of any other person or persons, and upon failure, to commit the party offending to prison, until he, she, or they comply with the order of the court.

SEC. 210. When either parent is deceased, the surviving parent of any minor child may, by his last will in writing appoint a guardian or guardians for his minor child, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time, and every such testamentary guardian shall give bond in like manner and with like conditions as hereinbefore required, and he shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed as aforesaid.

Testamentary guardians.

SEC. 211. Nothing contained in this chapter shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor, insane or mentally incompetent person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

Guardian ad litem.

SEC. 212. Whenever it shall appear to the satisfaction of a court by the petition of any guardian, that it is necessary or proper to sell, lease or mortgage any of the real or personal property of the estate of such ward for the purpose of paying debts or for the care, support and education of such ward, or to redeem any property of such ward's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, lease or mortgage of such part or parts of the real or personal property as shall to the court seem proper.

Sale, lease or mortgage of property.

SEC. 213. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

Contents of petition.

1. The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.

2. The disposition of such personal estate.
3. The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.
4. The annual income of the real estate of the ward.
5. The amount of rent received and the application thereof.
6. The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.
7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.
8. The age of the ward, where and with whom residing.
9. All other facts connected with the estate and condition of the ward necessary to enable the court to fully understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application.

SEC. 214. All the provisions of this act with reference to applications by administrators or executors for sales and mortgages by them, and notices concerning same, and all provisions of this act with reference to the report of such administrator or executor of sales and mortgages, and the confirmation thereof, shall be applicable to sales and mortgages made by any guardian mentioned in this act, but the court may order leases to be made upon such terms, conditions and notices as it may see fit. The provisions of section 64 hereof shall not be applicable to guardianships.

SEC. 215. No sale by any guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity

Law govern-
ing sales and
mortgages
by executors
applies.

Leases
within
discretion
of court.

Sales not
avoided by
irregularities.

Conclusive-
ness of con-
firmation
by court.

and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instruments of transfer may not be attacked for any purpose or any reason, except for fraud.

SEC. 216. Every guardian shall be allowed by the court, on settling his accounts, the amount of all reasonable expenses incurred in the execution of his trust, and also such compensation for his services and the services of his attorney, as the court shall deem reasonable.

Compensation and expenses.

SEC. 217. When the guardian and ward are both non-residents, and the ward is entitled to property in this state, which may be moved to another state or territory, such property may be removed to the state or territory in which such ward may reside, upon the application of the guardian to the judge of the superior court of the county in which the estate of the ward, or the principal part thereof, may be, in the manner following: The guardian so applying must produce a transcript from the records of a court of competent jurisdiction, certified according to the laws of this state, showing his appointment as guardian of the ward in the state or territory in which he and the said ward reside; that he has qualified as such according to the laws thereof; and must also give thirty days' notice to the resident executor, administrator, guardian, agent or trustee, if there be such, of the applications. Thereupon, if no objection be made, or if no good cause be shown to the contrary, the judge of the court shall make an order granting such guardian leave to remove the property of said ward to the state or territory in which he or she may reside; which order shall be full and complete authority to said guardian to sue for and receive the same in his own name, for the use and benefit of said ward.

Removal of property of non-resident ward.

Procedure.

SEC. 218. Every guardian for any insane or mentally incompetent person shall, after appointment and qualification, cause notice of his appointment to be published in

Guardian's notice to creditors of ward.

some newspaper printed in the county of his appointment, once a week for three consecutive weeks, and if there be no such paper published in such county, then by posting such notice for a like period at the courthouse of such county. The court by order may require such notice to be published or posted for an additional period. Such notice shall further call upon all creditors to serve their claims, duly verified, on such guardian or his attorney of record, and file with the clerk of the court, with proof of service, within six months from the date of the first publication of such notice, otherwise such claims shall be barred.

Limitation
on filing
of claims.

GENERAL PROVISIONS.

SEC. 219. It is the intention of this act that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents, minors, insane and mentally incompetent persons in this act mentioned. If the provisions of this [act] with reference to the administration and settlement of such estates should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates may be by the court administered upon and settled.

Jurisdiction
of courts in
administra-
tion of
estates.

SEC. 220. In exercising any of the jurisdiction or powers by this act given or intended to be given, the court is authorized to make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes not inconsistent with the provisions of this act, which may be considered proper or necessary in the exercise of such jurisdiction.

Exercise
of powers.

SEC. 221. Any interested party may appeal to the supreme court from any final order, judgment or decree of the court, and such appeals shall be in the manner and way provided by law for appeals in civil actions.

Appeals to
supreme
court.

SEC. 222. All probate proceedings heretofore conducted in this state, including sales and mortgages by executors, administrators and guardians, and all final settlements, made or had in conformity with the provisions of this act, or in conformity with the provisions of any prior law applicable thereto, are hereby declared valid.

Validation
of prior
probate
proceedings.

SEC. 223. Sections 1278 to 1340, both inclusive, sections 1372 to 1692, both inclusive, and sections 1694 and 1320-1 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and section 1693 of Remington & Ballinger's Annotated Codes and Statutes of Washington insofar as said section is meant to affect sales hereafter to be made under this act, and all other laws or parts of laws in conflict herewith, are hereby repealed: *Provided, however,* In all estates now in process of probate, where notice to creditors has been or is being given under any prior law, creditors shall have the time in such notices specified within which to present claims.

Repealing
clause.

Saving
clause.

Passed the Senate February 22, 1917.

Passed the House March 5, 1917.

Approved by the Governor March 16, 1917.