CHAPTER 205.

[H. B. 271.]

PROBATE LAW AND PROCEDURE.

AN ACT relating to probate law and procedure; amending sections 20, 31, 55, 77, 92, 93, 162, 199 and 205, chapter 156, Laws of 1917, and RCW 11.20.070, 11.12.070, 11.28.070, 11.68.010, 11.68.020, 11.68.030, 11.28.280, 11.68.040, 11.88.050 and 11.92.040, and amending section 1, chapter 31, Laws of 1919 and RCW 11.76.040, and amending sections 2 and 7, chapter 264, Laws of 1951 and RCW 11.52.010 and 11.52.020; adding to chapter 156, Laws of 1917 as new sections, sections 68a, 68b, 68c, and 123a.

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

SECTION 1. Section 20, chapter 156, Laws of 1917 and RCW 11.20.070 are each amended to read as follows: Amendment.

Whenever any will is lost or destroyed, the superior court may take proof of the execution and validity of such will and establish it, 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. Notice to interested persons.

No will shall be allowed to be proved as a lost or destroyed will unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been destroyed, cancelled or mutilated in whole or in part as a result of actual or constructive fraud or in the course of an attempt to change the will in whole or in part, which attempt has failed, or as the result of a mistake of fact, nor unless its provisions are clearly and distinctly proved by at least two witnesses, and when any such will is 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 ref- Will allowed to be proved. Judgment recorded. Appointment of executors and administrators.

erence to original wills presented to the court for probate.

Amendment.

SEC. 2. Section 31, chapter 156, Laws of 1917 and RCW 11.12.070 are each amended to read as follows:

Mortgaged property.

When any real or personal property subject to a mortgage is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides that such mortgage be otherwise paid. The term "mortgage" as used in this section shall not include a pledge of personal property.

Charge or encumbrance.

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.

Amendment.

SEC. 3. Section 55, chapter 156, Laws of 1917 and RCW 11.28.070 are each amended to read as follows:

Administrators with the will annexed.

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

Limitation.

for every purpose: *Provided,* That they shall not lease, mortgage, pledge, exchange, sell or convey any real or personal property of the estate except under order of the court and pursuant to procedure under existing laws pertaining to the administration of estates in cases of intestacy, unless the powers expressed in the will are directory and not discretionary.

Amendment.

SEC. 4. Section 92, chapter 156, Laws of 1917 (heretofore divided and codified as RCW 11.68.010, 11.68.020 and 11.68.030) is amended as set forth in sections 5, 6 and 7 of this act.

SEC. 5. (RCW 11.68.010) 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 body having charge of the collection of inheritance tax, in the manner required by law.

Estate settled without intervention of the court.

After the probate of any such will and the filing of the inventory all such estates may be managed and settled without the intervention of the court, if the last will and testament so provides. However, 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 entitled thereto. Such decree shall be made after notice given as provided for like decrees in the estates of persons dying intestate. If no application for a final decree is filed, the executor shall, when the administration of the estate has been completed, file a written declaration to that effect, and thereupon his powers shall cease.

Court decree.

Notice.

Written declaration.

SEC. 6. (RCW 11.68.020) In all cases, if the party named in such will as executor declines to execute the trust or dies or is otherwise disabled for any cause from acting as such executor, letters testamentary or of administration shall issue and the estate be settled as in other cases.

Enacted without amendment.

Executor disabled.

Enacted without amendment.

Failure to execute trust.

Citation and hearing.

Costs of citation.

SEC. 7. (RCW 11.68.030) If the person named in the will fails to execute the trust faithfully and to take care and promote the interest of all parties, then, upon petition of a creditor of the estate, or of any of the heirs, or of any person on behalf of any minor heir, the court shall cite such person to appear before it, and if, upon hearing of the petition it appears 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 the doings of the executor, then, in the discretion of the court, administration may be had and required as is 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 the will.

Amendment.

SEC. 8. Section 77, chapter 156, Laws of 1917 and RCW 11.28.280 are each amended to read as follows:

Death, resignation, and removal of executor or administrator.

Administrator de bonis non.

If the executor or administrator of an estate dies, resigns, or the letters are revoked before the 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 like duties and incur like liabilities as the former executor or administrator: *Provided,* That notice of the hearing on the petition for such appointment shall not be necessary unless the court otherwise directs.

Amendment.

SEC. 9. Section 93, chapter 156, Laws of 1917 and RCW 11.68.040 are each amended to read as follows:

Executors under nonintervention wills.

Executors acting under nonintervention wills may after the filing of an inventory of the estate, if the estate has been adjudged solvent, mortgage, lease, sell, and convey the real and personal property of the testator without an order of the court for that pur-

pose and without notice, approval, or confirmation, and in all other respects administer and settle the estate without the intervention of the court. The other party to any such transaction and his successors in interest shall be entitled to have it conclusively presumed that such transaction is necessary for the administration of the estate.

Conclusive presumption.

SEC. 10. Section 2, chapter 264, Laws of 1951 and RCW 11.52.010 are each amended to read as follows:

Amendment.

If it is 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, after hearing and 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 six thousand dollars at the time of death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased spouse, and exclusive of any mortgage or mechanic's, laborer's or materialmen's or vendor's liens upon the property so set off, and exclusive of funeral expenses, expenses of last sickness and administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse; provided that the court shall have no jurisdiction to make such award unless the petition therefor is filed with the clerk within six years from the date of the death of the person whose estate is being administered.

No homestead claimed.

Award and set off to surviving spouse.

Exclusive of.

Petition filed.

SEC. 11. Section 7, chapter 264, Laws of 1951 and RCW 11.52.020 are each amended to read as follows:

Amendment.

In event a homestead has been, or shall be selected in the manner provided by law, whether the

Homestead claimed.

selection of such homestead results 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 six thousand dollars at the time of the death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased and exclusive of mortgages, mechanic's, laborer's, materialmen's or vendor's liens thereon, and exclusive of funeral expenses, expenses of last sickness and of administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse, to enter a decree, upon notice as provided in RCW 11.52.014 or upon longer notice if the court so orders, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor: *Provided,* That if there be any minor child or incompetent heirs of the decedent, the court shall appoint a guardian ad litem for such minor child or incompetent heir who shall appear at the hearing and represent the interest of such minor child or incompetent heir.

Decree entered.

Fee simple title.

Minor child or incompetent heir.

New section.

SEC. 12. There is added to chapter 156, Laws of 1917 a new section, 123a, (and to chapter 11.28 RCW) to read as follows:

Contract to convey real property.

If any person who is bound by contract in writing to convey any real property dies before the fulfillment of the contract, the superior court of the county in which the estate is being administered, may, upon the application of the executor or administrator, make an order authorizing and directing the executor or administrator to sell and convey the vendor's interest in the contract and the lands described therein under administration. All the provisions of RCW 11.56.020 relating to sales of personal property shall be applicable to sales authorized by this section.

Convey vendor's interest in contract.

SEC. 13. Section 162, chapter 156, Laws of 1917, as last amended by section 1, chapter 31, Laws of 1919 and RCW 11.76.040 are each amended to read as follows: Amendment.

When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty-five days subsequent to the day of the first publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the executor or administrator by publishing a notice thereof in a legal newspaper published in the county at least once a week for three successive weeks preceding the time fixed for the hearing. It 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 thereto, 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 the court. Final report and petition for distribution filed. Notice of hearing. Notice contents.

Within twenty days after his appointment, the executor or administrator of the estate of a decedent shall cause written notice of his said appointment, and of the pendency of said probate proceedings, to be mailed to each heir and distributee of said estate whose name and address is known to him, proof of which shall be made by affidavit and filed in the cause. Notice of appointment and pendency of probate proceedings.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the executor or administrator of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed for hearing to each heir or distributee Notice of hearing on final report or petition for distribution.

whose name and address is known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing.

Amendment.

SEC. 14. Section 199, chapter 156, Laws of 1917 and RCW 11.88.050 are each amended to read as follows:

Petition for appointment of guardian.

If the petition is for the appointment of a guardian of the property of any minor, insane or mentally incompetent person, who resides without the state of Washington, the petitioner shall make

Affidavit.

an affidavit stating the fact of such nonresidence, and unless the petitioner is a nonresident guardian, the notice hereinbefore provided for shall be served

Publication.

by publication in some newspaper printed and of general circulation in the county where the petition is filed. Such publication shall be once a week for not less than three successive weeks prior to the

Proof of publication.

time set for the hearing, and proof of publication shall be made and filed as in other cases: *Provided,*

Notice personally served.

That in lieu of publication the notice may be personally served within or without the state upon such minor, insane or mentally incompetent person and upon the person having the care, custody or control of such person, not less than twenty-one days prior to the time set for such hearing, and proof of service shall be made and filed as in other cases. At the time fixed for the hearing, if the court is satisfied that publication has been made, or personal service has been made as hereinabove provided, it may proceed to the hearing and to the appointment of the guardian.

Amendment.

SEC. 15. Section 205, chapter 156, Laws of 1917 and RCW 11.92.040 are each amended to read as follows:

Duties of guardian. Inventory.

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, the court shall remove him and appoint a successor;

(2) To manage the estate for the best interest of his ward; Management.

(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; Account of receipts and expenditures.

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

(5) To pay all just debts due from the ward out of the estate in his hands, and to collect all debts and demands due the ward, and in case of doubtful debts, to compound them, and to appear for and defend, all suits against the ward; Payment and collection of debts. Suits against ward.

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

It shall be the duty of the clerk of court to notify each guardian to file an account as required by law whenever he shall have failed to do so for a period of two years. If the guardian shall fail to file an account for sixty days after such notice, the clerk shall report the case to the judge assigned to probate for such action as he may deem proper. Notification of clerk of court to file account.

Passed the House March 8, 1955.

Passed the Senate March 7, 1955.

Approved by the Governor March 16, 1955.