

the regular annual session in April preceding the general election, shall appoint three capable and discreet persons possessing the qualifications of electors, to act as judges of elections at the several precincts within their respective counties; and they shall, from time to time, fill any vacancies that may occur in the office of judges of election at any election precinct within their counties.

SEC. 23. It shall be the duty of the board of commissioners of the several counties, at their said meeting in April in each and every year, to establish precincts at such points in their respective counties as will be most convenient for the population; and they shall create new precincts from time to time, as the increase of the population may require; and whenever they shall be petitioned by the legal voters residing more than ten miles from an election precinct, for the establishment of a precinct in their vicinity, it shall be the duty of the board of commissioners to establish such precinct and appoint the judges of election: *Provided*, That no precinct shall be established within twenty days of any general, or ten days of any special election.

SEC. 24. The said board of commissioners shall, in the month of April in each year, publish, in some newspaper printed in the county, if there be one, and if not, by putting up notices in at least three public places within their county, a complete list of all the election precincts in their respective counties, and the names of the several judges of election in the several precincts.

SEC. 25. The board of commissioners, at their session in July in each year, shall receive and inspect the assessment roll returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by the chairman, and attested by the clerk, and cause the same to be filed in the office of register of deeds, where it shall remain as a matter of record, and shall be a guide for future assessors, so far as the same shall remain correct.

SEC. 26. The board of commissioners, at their session in July of each year, shall determine the rates of taxation upon the several subjects allowed to be taxed for county revenue, and enter such determination on record, and cause their clerk to calculate and carry out the amount of taxes opposite the specified property, one copy of which to be furnished the treasurer, and one copy with a precept to be delivered to the collector.

SEC. 27. So much of the laws now in force as contravene the provisions of this act are hereby repealed.

APPROVED the twenty-seventh day of October, one thousand eight hundred and forty-nine.

April session, commissioners shall appoint three judges of election for each precinct, and may fill vacancies as they occur.

April session... commissioners to establish precincts and increase them as the wants of the population may demand... upon petition of ten legal voters to establish a precinct and appoint judges... no precinct established within twenty days of a general, or ten days of a special, election.

Commissioners shall publish, in the month of April, a list of the election precincts and the names of the several judges of the several precincts... how to be published.

July session... commissioners to receive and inspect the assessment roll returned... if correct, accepted and signed... filed in the office of register of deeds and object of.

At July session commissioners to fix the rates of taxation upon the taxable objects, and have same recorded and cause their clerk to calculate and carry out amount of taxes... one copy of which to go to the treasurer, and one to collector with a precept. Repealing section.

CHAP. XX.—An Act concerning Courts of Record.

Nov. 1, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the supreme court of this Territory shall have and exercise an appellate jurisdiction only, which shall extend to all matters of appeal, error, or complaint, from the decisions, judgment, and decree of any of the district courts in all matters, whether at law or in equity.

SEC. 2. That the supreme court shall have power to issue writs of quo warranto, mandamus, procedendo, prohibition, error, supersedeas, scire facias, injunction, certiorari, and all other manner of process, which shall or may be necessary for the full and perfect administration of right and justice throughout the Territory; but no writ of

Supreme court, jurisdiction of in matters of law and equity.

Writs may issue from the supreme court and to operate as supersedeas when, etc.

error shall operate as a supersedeas, unless so ordered by the court upon motion, or by one of the judges thereof in vacation.

SEC. 3. The said court shall be vested with full power and authority to enforce the execution of any of its judgments, orders, or decrees, and to insure a proper exercise of its jurisdiction as the supreme judicial tribunal of this Territory.

SEC. 4. Any one of the judges of the said court shall have power, in vacation, to issue any of the processes allowed in the second section of this act.

SEC. 5. The said court shall be held at the seat of government of the Territory on the second Monday of January, in the year of our Lord one thousand eight hundred and fifty, and at the same place on the first Monday of July of every year thereafter; and each term thereof shall continue one week, unless otherwise determined by the court; and the judges of the said court shall have power, at any time, to order a special term thereof.

SEC. 6. That if any two of the judges shall not attend on the first day of the term, the clerk shall enter such fact of record, and the judge present shall have power to adjourn the said court to the next, or the next succeeding day, and so on from day to day for six days, if a quorum do not appear, at the end of which period all matters pending in said court shall stand continued till the next regular or special term, as the case may be.

SEC. 7. If neither of the judges of said court appear, the clerk shall adjourn the court from day to day, as provided in the above section.

SEC. 8. All decisions of the said court shall be made in writing, and be filed by the clerk with the other papers in the cause; and the said court shall appoint some person learned in the law to report the doings of said court in any case decided, which reports shall be published from time to time as the court shall direct.

SEC. 9. The judges of the said court shall have power to make and record such rules and regulations respecting the conducting of business in the said court as they may think proper, not contravening the laws of the United States or of this Territory.

SEC. 10. That the district courts of this Territory shall have original jurisdiction in all civil actions at law or in equity within their respective districts when the sum in controversy shall exceed one hundred dollars, and appellate jurisdiction in all cases, from courts of probate and justices of the peace, when the value of the matter, or the sum in controversy, shall exceed fifteen dollars; and the said courts respectively shall have power and authority to hear and determine all cases of crimes or misdemeanors, of whatever kind, which shall have been committed in any county or place within their respective districts, and the judges of the said courts shall be conservators of the public peace.

SEC. 11. The said courts in term time, and the judges thereof in vacation, shall have power to award throughout the Territory, returnable to the proper county, writs of injunction, ne exeat, and all other writs or process which may or shall be necessary to the perfect exercise of the powers with which they are vested, and the due administration of justice.

SEC. 12. No judge of any of the courts of record of this Territory shall sit in any cause in which he is interested, either directly or indirectly, or in which he would be excluded, under the common law, from sitting as a juror.

SEC. 13. No judge of any of the courts of record of this Territory shall practise as an attorney, counsellor, or solicitor at law or in

Judgments, order, and decrees, may be enforced by court.

Vacation, any one judge may allow writ.

Court where held on second Monday of January, 1850, and thereafter on the first Monday of July, in each year at same place, term one week unless, etc. may hold special term.

Judges not appearing on the first day of the term, clerk's duty. Judge may adjourn from day to day for six days, no quorum, may adjourn to succeeding term.

Non-attendance of judges, clerk's duty to adjourn court, etc.

Decisions of court in writing and filed by clerk, reporter appointed and decisions published.

Rules of practice, power to adopt.

District courts, original jurisdiction when sum exceeds one hundred dollars, and appellate when over fifteen dollars, and over all crimes or misdemeanors within their districts, judges conservators of the peace.

Writs of injunction, ne exeat and others may issue, and how and when.

Judge, interested in event of suit, not to sit.

equity, except it be in a cause in which he is a party in interest, nor shall he receive any fee for any legal or judicial services other than those prescribed by law, nor shall he be the partner of any practising attorney in the business of his profession, nor shall any one of the judges aforesaid hold any other office under the laws of this Territory during the time of his judgeship.

SEC. 14. No one of the courts of this Territory shall be opened for any purpose on Sunday, other than the receiving a verdict or discharging a jury; but this section shall not in any wise prevent the judges of any of said courts, or any justice of the peace, exercising jurisdiction in any case where it shall or may be necessary for the preservation of the peace, the sanctity of the day, or in arresting and committing any offender.

SEC. 15. In case any judge of a district court, from sickness or any other cause, shall be unable to hold any of his courts, or in case any vacancy shall occur in either of the districts, the clerk thereof shall, in due time, give notice of such fact to the Governor, who shall assign to the other district judges to hold the court or courts in such district until the inability of the judge shall be removed or the vacancy filled.

SEC. 16. In case the judge of any of the district courts shall not attend the place of holding the same by four o'clock in the afternoon on the first day of the term of such court, the sheriff or clerk shall forthwith open and adjourn the same till nine o'clock in the forenoon of the succeeding day; and if the said judge does not then appear, the court shall be adjourned by one of the aforesaid officers, without day, and the jury dismissed.

SEC. 17. All persons bound by recognizance or otherwise to appear at any court, the term whereof shall not have been held, shall be bound to appear at the next succeeding term of said court.

SEC. 18. No process, proceeding, or writ, civil or criminal, before any of the said courts, shall abate or be discontinued by reason of any vacancy in the office of any of the judges of said courts, but shall be proceeded in, in like manner, by the judge who shall be assigned, or when such vacancy has been filled, as if the said vacancy had not occurred.

SEC. 19. In case a stated term of any court shall not have been holden, any process issuing therefrom may be tested on the first or any succeeding day when such term should have been held.

SEC. 20. The adjournment of any one of the said courts before the end of its term, shall not effect the teste, service, or return of any writ or process made returnable to any day of such term subsequent to such adjournment.

SEC. 21. Every court of record of this Territory shall have power to punish, for contempt, any person or persons who shall be guilty of any disorderly, contemptuous, or insolent behavior in the presence or hearing of any of the said courts during their sitting, or any misconduct tending to interrupt its proceedings, or impair the respect due to its authority, or for disobedience to any process or order of said court, or for resistance to any order, refusal to appear as witness when legally summoned, or to testify when present, or to answer any proper or legal interrogatory, or for the publication of any false or grossly incorrect report of its proceedings; but no court shall have the power to punish, as a contempt, the publication of true and full reports of the proceedings of such courts.

SEC. 22. Punishment shall be by fine or imprisonment in the county jail, or both, in the discretion of the court; but in no case shall the fine exceed two hundred dollars, nor the imprisonment ex-

Judge, not to practise as attorney, except, etc., not to receive fees, nor be partner of practising attorney, nor hold any other office.

Sunday, not to hold court on, except, etc., may exercise jurisdiction in criminal cases on Sunday.

Vacancies and failure to hold court, how supplied, and duty of clerk therein.

District judge not appearing, to hold court, sheriff or clerk's duty to adjourn court without day.

Appearances on recognizance or otherwise, and no court, parties shall appear next succeeding term.

Abatement or discontinuance shall not take place by reason of vacancy in office of judge.

Term of court not holden, writs may be tested on any day of succeeding term.

Adjournment before end of term shall not affect the teste, service, or return of any writ.

Contempt, may punish for, in presence of court, disobedience to process, refusal to appear as witness, or testify, or to answer, or for publication of falsehoods.

Contempt, punishments for, whom, how, and when, members of the bar, and others, etc.

Contempts committed in presence and hearing of court, how punished.

Contempt, fine, and commitment, and what the order to the officer shall contain.

Contempt, punishment may be by indictment.

Writs, how tested.

Writs issuing to be in the name of the "United States."

Writs issuing shall be sealed, dated, signed, and made returnable on a certain day, provision for returning writs to any day of the term.

Writs issuing to be endorsed, etc.

Judge of district court, if required, to write out opinion and file same.

Notice and affidavit to procure books, papers, etc., and consequences of failure, etc.

ceed thirty days; and in case the offender or offenders are members of the bar, the said court may punish him or them by fine or imprisonment, or by suspending him or them from the practice of his profession for a given period of time, or by dismissing him or them from the bar, and cause his name to be stricken from the roll of attorneys, or all or any of the said punishments in the discretion of the said court.

SEC. 23. Contempts committed in the presence or hearing of the court may be punished summarily; in all other cases the party charged shall be notified of the accusation, and he shall be allowed reasonable time to prepare his defence.

SEC. 24. Whenever any person shall be fined or committed for any contempt specified in this act, the circumstances regarding the offence shall be stated in the order or commitment, together with the amount of the fine or the time of imprisonment, or both, as the case may be, as information to the officer whose duty it shall be to take the offender in charge.

SEC. 25. Punishment for contempt under this act shall, in no case, prevent the offender from being indicted, if the offence be an indictable one; but the court trying said indictment shall take into consideration the former punishment in passing sentence on the trial of such indictment.

SEC. 26. All writs or processes issuing from or out of any of the said district courts, may be tested in the name of the presiding judge thereof, or in the name of any one of the judges of the supreme court.

SEC. 27. All writs or processes issuing from or out of any of the courts of this Territory, shall be in the name of the "United States."

SEC. 28. All writs or processes issuing from or out of any of the courts of this Territory, shall be sealed with the seals of the said courts respectively, dated on the day of their issuing, signed by the clerk and made returnable to the first day of the term succeeding their date; but if the issuing of such writ or process be too late to allow the prescribed time for service, and to make it returnable to the first day of such term, then, and in that case, it may be made returnable to any succeeding day of such term.

SEC. 29. All writs or processes issuing from or out of said courts shall, before the delivery thereof to the officer whose duty it is to serve the same, be endorsed by the clerk with the name of the attorney or other person endorsing the process.

SEC. 30. It shall be the duty of the judges of the district court in any cause, if required by either party, or the counsel of either party, to reduce the opinion, together with the reasons therefor, to writing, and file the same of record in such cause.

SEC. 31. The district courts shall have power in any action pending in them, or either of them, upon motion and upon good and sufficient cause being shown by affidavit or affirmation, and due notice thereof being given, to require the parties, or either of them, to produce all books, papers, or writing in their possession or power, which contain evidence pertinent to the issue; and if either party shall fail to comply with such, or to satisfy the said courts why they have not power so to do, it shall be lawful for the said courts, if the party so refusing shall be the plaintiff, to give judgment for the defendant, as in cases of nonsuit; and if a defendant, to give judgment against him or her by default, as far as relates to such part of the plaintiff or plaintiffs demand, or the defendant or defendants to which the books of the party are alleged to apply.

SEC. 32. The judge of any of the district courts is hereby authorized to hold adjourned terms of said court at any time he may see

proper, or appoint special terms in any county of his district for the trial of either civil or criminal cases, giving thirty days' previous notice thereof by advertisement, to be published four successive weeks in a newspaper printed in said county, if there be one, and if not, in the nearest paper published in the Territory, and also by posting a notice thereof on the door of the place for holding court in the county in which said term is to be held.

Terms of court, adjourned or special for trial of civil or criminal cases, notice of to be published, etc.

Sec. 33. Whenever the court house or place of holding court in any county shall by any means have been destroyed, or shall from any cause be unsafe, unfit or inconvenient for the holding of any court, or in case no court house shall have been provided, the judge of the district court of such county may appoint some convenient building in the vicinity of the place where the court is required to be held, as a temporary place for the holding of said court.

Court house-- Judge of court under certain circumstances may designate place of holding court.

Sec. 34. If at any time during the session of the supreme or any of the district courts, it shall be deemed by the said court improper or inexpedient, by reason of war, pestilence or other public calamity, or the danger thereof, that the said term or session should be continued at the place where the same is then holding, the said court may, by order entered upon the minutes, adjourn the session of said court, to be holden at such other time and place as the judge or judges thereof may direct; and the said adjourned session shall be taken as a continuance of said term, and all its acts, judgments, decrees, orders and determinations shall be of the same force and effect as if said court had continued its session at the regular place for holding the same.

Courts--Judges may adjourn the regular term thereof to be holden at some other place, when and how.

Sec. 35. The said courts are hereby authorized to enter judgments of non pros, and judgments by default for want of appearance, declaration or pleas required by or under the rules of said court, which judgment so entered shall be of the same force and effect as the same would have been had it been regularly entered upon verdict.

Judg'ts of non pros by default-- non appearance, etc., and effect of.

Sec. 36. The judges of the said courts are hereby authorized to make such orders, in regard to the taking of testimony either in term time, upon proper proof being made by the parties or upon application by petition and affidavit in vacation, as the necessity or emergency of the case shall require.

Testimony--to make orders in regard to in term time or vacation.

CHAPTER II.

OF THE COURT OF CHANCERY.

Be it further enacted, That the several district courts, within the several counties of this Territory, shall have exclusive original jurisdiction of all matters in chancery, properly arising within their respective counties, in which a plain, adequate and complete remedy cannot be had at law.

District courts-- original jurisdiction in chancery.

Sec. 2. Either of said district courts, at any stated term thereof, may appoint as many special chancery terms at any place within the proper district as they may deem expedient, and at such special terms may entertain jurisdiction of any cause pending in any court within said district.

Term of court-- Judges may appoint special terms &c.

Sec. 3. The proceedings in said court, where they are not regulated by statutes, shall be prescribed by the judges thereof; but shall in all matters of practice be made to conform to the known usages of courts of equity.

Rules of court established.

Sec. 4. All applications to the chancery side of said courts shall be by bill, setting forth the nature and grounds of such application, which shall be filed in the office of the clerk of said court.

Bill in chancery to be filed, &c.

Sec. 5. The clerk shall thereupon issue a summons to the defendants named in such petition, commanding them to appear at the next

Summons issued, when issued and returnable, etc.

Summons--form and service and duty of officers.

Def'ts several and residents in different counties--service on all and duty of officers.

Service of process, etc.

Def'ts not found--notice by publication six weeks to be made.

Disclaimer--complainant to pay costs--except, etc.

Heirs made def'ts, names unknown--court makes orders as to notice.

Service--def'ts in court to answer and plead.

Def't not filing plea, answer or demurrer.

Plea--issue--demurrer and answer--demurrer first disposed of.

Plea or demurrer overruled--no other plea or demurrer can be filed--but answer and affidavit may be.

Costs when to be paid by complainant and when by def't.

term of the court and answer the bill of the complainant; but if the summons be issued in term time, it may be made returnable forthwith and the defendant compelled to appear and answer.

Sec. 6. The said summons shall in all respects conform as nearly as may be, as well in its form as in its service and return, to the form of such process in commencing proceedings at law, and the proper officer shall be liable in the same penalty for not duly serving the same.

Sec. 7. Where there are several defendants, suits may be commenced in the courts of the county wherein either of them resides; and the clerk of the court in the said county may issue process directed to any other county, which shall be served by the proper officers in such other county and returned to the court from whence it issued.

Sec. 8. Such process may be served by any person whatever, but if not served by the proper person and within the same county, the return shall be made upon affidavit.

Sec. 9. Whenever any of the defendants cannot be found to be served as aforesaid, the complainant may cause notice of the pendency of the suit or petition, containing a brief history of the object and prayer thereof, to be published for six successive weeks in some newspaper printed in the county in which said bill or petition has been filed, if there be one, and if not, then in some newspaper printed at the seat of government of this Territory; and such notice shall be equivalent to personal service.

Sec. 10. The complainant may insert as many defendants in the bill or petition as he may think proper, though said defendants claim under distinct titles; but if any of said defendants disclaim, he shall have his costs of the plaintiff, except where the court for special reasons shall otherwise decree.

Sec. 11. Whenever the heirs of any decedant are made defendants in any bill, any of whose names are unknown to the complainant, they may be proceeded against without being named individually, and the court may make such order in regard to notice as it may deem proper.

Sec. 12. When service shall have been effected by either of the methods aforesaid, the defendant shall be considered in court, and the court may establish by rule the period within which the answer or plea may be filed.

Sec. 13. If the defendant shall not file his plea, answer or demurrer within the period limited by the said courts, they may at their discretion proceed to decree thereon, or order the complainant to prove his claim, when the court may make its decree if it be proper so to do.

Sec. 14. When the complainant conceives the plea of the defendant to be good, though not true, he may reply to and take issue thereon and proceed as in case of answers, and if the respondent file both demurrer and answer, the orator shall not proceed on said answer until the demurrer be disposed of.

Sec. 15. If the plea or demurrer of the respondent be overruled, no other plea or demurrer shall be thereafter received, and the orator's bill may be taken as confessed by the defendants, and the courts shall proceed to decree thereon; or in their discretion may receive an answer or affidavit of merit, and that such plea or demurrer was not filed merely for the purpose of delay.

Sec. 16. If the plea or demurrer in any case be allowed, the complainant shall pay costs; and if overruled, the defendant shall pay them.

Sec. 17. If the complainant does not file his replication or exceptions within the time prescribed by the rules of court, the cause shall be proceeded in on the petition and answer; and where the exceptions

shall be filed to an answer, an order may be entered of course by the clerk, either in term time or in vacation, to refer the same to a master in chancery, or the court itself may decide upon the sufficiency of the answer, and an appeal shall in all cases be allowed from the master's report, to the court.

Sec. 18. The costs of the reference to the master shall be paid by the complainant or defendant, according as the exceptions are overruled or the answer be adjudged insufficient; and any defendant may swear or affirm to his answer before any master in chancery, or other person authorized to administer oaths in the county where the suit is pending.

Sec. 19. Whenever it shall be necessary for the defendant to bring any new party before the court, he shall state it in his answer, and may insert therein interrogations for such new party to reply to; and thereupon a summons may be issued and other proceedings had as in case of other defendants.

Sec. 20. The defendant in chancery may, after filing his answer, exhibit interrogatories to the orator, which shall be answered by him on oath or affirmation, which answer shall have the effect and credit as the answer of a respondent in any case; and if the said orator do not answer within the time prescribed by the rules of court, his petition may be dismissed with costs.

Sec. 21. If a cross bill shall be filed by any defendant, he must put in his answer to the first bill, before the defendant to the cross bill shall be compelled to answer.

Sec. 22. All amendments shall be made under the restrictions imposed by the court, and upon such equitable terms as the same may direct.

Sec. 23. Every cause in chancery shall be deemed at issue on filing a replication.

Sec. 24. If a complainant proceed to a hearing on bill and answer only, the answer shall be taken to be true on all points, and no evidence shall be received to contradict the same unless it be matter of record to which the answer refers and is provable by said record.

Sec. 25. All pleadings subsequent to the original bill shall be served on the opposite party, or one of them where there are several; but if the party have a solicitor, a service upon said solicitor shall be sufficient.

Sec. 26. Depositions may be taken in causes in chancery under the same rules and in the same manner as is provided in cases at law; or the court may examine witnesses orally, or may direct a master to take depositions in writing, in such manner as they shall by rule prescribe.

Sec. 27. The courts in chancery shall have full power to dismiss, order or decree in regard to any matter before them, with or without costs, as to them may seem just and equitable, if the parties to such matters or suits shall not conform to the rules prescribed by said court.

Sec. 28. Any person having the possession of any lands and claiming title thereto, may institute a suit against any other person who may set up a title to the same, for the purpose of determining who is the real owner; and if the petitioner shall substantiate his title to such lands, the defendant shall be decreed to release to the complainant all claim thereto and to pay the costs of the whole proceeding; but if the defendant in his answer shall disclaim all title to such lands and offer a release to the petitioner, or shall make good his claim to the lands in question, he shall be entitled to costs unless the court specially decree to the contrary.

Complainant not filing replication or exceptions how to proceed, and where exceptions filed to an answer, how appeal from master's report.

Costs of master--how and by whom p'd--answer sworn to before master, etc.

Party new, how made by def't.

Def't after answer, may exhibit interrogatories to complainant, and effect of answer and effect of not answering, etc.

Cross bill, when and how filed.

Amendments.

Issue when.

Bill and answer, hearing on, answer taken as true, etc.

Service of proceedings on def'ts or their solicitor.

Depositions how taken--witnesses examined orally--master may take.

Decree, order or dismiss, costs--parties not conforming to rules.

Bill to quiet title--decree and costs--def't may disclaim or make good and costs unless, etc.

Decree, before service on defendant—complainant to give security before process to compel performance of.

Sec. 29. Whenever any decree shall be made against any defendant upon whom the summons shall not have been personally served, the court, before issuing process to compel the performance of such decree, may require the complainant to give security in such sum as the court may direct, conditioned that the said complainant will abide and perform any order or decree of the court obtained by said defendant in the manner hereinafter provided.

Sequestration of def't's estate and effect when.

Sec. 30. If no security be given as aforesaid, the estate and effects of such defendant may, by order of court, be sequestered, to abide such order as said court may think proper to make respecting the same.

Decree set aside how and when.

Sec. 31. In case such defendant, his heirs, executors, administrators or assigns, shall, within six months after being notified of the decree aforesaid, and within two years after such decree shall have been made, petition the court to set aside said decree, and shall pay or cause to be paid, the costs on the original decree, or such part thereof as the court may direct, then the person so petitioning may be permitted to appear and answer the complainant's original petition or bill, and such proceeding shall be had thereon as if the defendant had appeared and answered in due season, and no decree had been made; but the title to any real or personal estate, the subject of the former decree, which in pursuance to such decree shall have passed into the hands of a bona fide purchaser, shall not be effected by any proceeding under this section.

Bill by def't for an account and settlement when it may be filed.

Sec. 32. Or such defendant, his heirs, executors, administrators or assigns, or either of them, may within the time aforesaid, file his or their petition praying for an account and settlement of the sum which was really due and owing by said defendant to such complainant at the time of the decree, and to compel the complainant to refund so much as he shall have wrongfully received, together with interest for the same from the time of the receipt thereof, with costs of suit; and in either of the cases provided for in this or the preceding section, the court shall make such final decree in the premises as justice and the circumstances of the case will warrant.

Decree confirmed nunc pro tunc when.

Sec. 33. In case neither of the methods provided for in the two preceding sections shall have been adopted by the defendant or his heirs, executors, administrators or assigns, within the time therein prescribed, the decree shall be confirmed *nunc pro tunc*, and such decree shall be executed as if defendant had duly appeared and answered.

Decree, effect of.

Sec. 34. A decree in chancery shall have the same operation, force and effect from its date as a judgment at law.

Decree, order or other proceeding recorded—bill, answer and pleadings filed by clerk.

Sec. 35. Every decree, order in, or dismissal of any suit or other proceeding in chancery, shall be entered upon record by the clerk; and the petition, answer and all pleading in such proceeding, together with all orders, reports or decrees and all papers relating to such proceeding, shall be attached together by the clerk and filed in his office.

Decree for conveyance or acquittance of real or personal estate effectual in law and equity.

Sec. 36. Whenever any decree shall have been made by any court for the conveyance, release or acquittance in regard to any estate, either personal or real, and the party against whom said decretal order was made fails to comply therewith in the period appointed, shall be considered and taken in all courts of law and equity to have the same operation and effect, and be as available to the party in whose favor it was made as if the conveyance, release or acquittal had been executed conformably to such decree.

Sec. 37. Where a decree is made in regard to any real estate lying in any other county than that in which the decree was rendered, said decree, in order to operate as a lien upon said real estate, must be

recorded in the office of the register of deeds in the county in which said real estate shall be situated; but if the county in which said lands or estate are situated shall not be organized, then and in that case, the lien shall extend to such estate as fully and effectually as if it were recorded as aforesaid.

SEC. 38. The said courts shall have power, upon application by bill or petition for the foreclosure of any mortgage, to decree a sale of the mortgaged premises, or such part thereof as may be necessary to satisfy said mortgage, and make such order in regard to the sale thereof as to them may seem right and proper.

SEC. 39. All sales of real estate under the decree of any court of chancery shall be made by the sheriff of the county where the lands lie, or by such other person as the court shall name in such order to sell.

SEC. 40. Deeds shall be executed by the person making such sale to the purchaser, in such manner as the said courts shall direct; which deeds shall convey to the purchaser the title that the defendant had therein and no more, and shall be as effectual as if made by the defendant himself.

SEC. 41. The proceeds of such sale shall be brought into court for the use of the person or persons entitled thereto, and shall in all cases be subjected to the order of the court; and if such proceeds be insufficient to satisfy the debt and costs, the court may order an execution to issue for the residue against any property of the defendant as in actions of law.

SEC. 42. No suit in chancery shall abate by reason of the death of any party thereto, and in case the death of such person shall be satisfactorily shown to the court, the said suit shall be proceeded in by or against the survivor or survivors, or by substitution, or as the circumstances of the case require and the court direct.

SEC. 43. If the representatives of a second party, or the parties in interest by reason of such death, shall not appear and put in their answer, or signify their disclaimer of the suit within the time prescribed by the rules of the court, the complainant may cause their appearance to be entered; and in such case the answer of the deceased party, if one shall have been filed, the petition of the complainant shall be taken as confessed against the parties refusing or neglecting to answer.

SEC. 44. If any of the complainants shall die pending a suit wherein the cause of action shall not survive, the person or persons interested by reason of said death, may, on affidavit setting forth such facts, upon motion in open court, be entered as complainant in the suit, and may be permitted to amend the bill as their interests require, upon the payment of the costs accruing by reason of such amendment, and to this amendment the respondents shall be compelled to answer and the suit proceed as in other cases.

SEC. 45. And the persons so interested by reason of the death of the complainant in any suit, shall within six months after such death cause themselves to be entered as complainants, according to the provisions of the preceding section, or thereafter be debarred from so doing, and the cause in either case shall be proceeded in as in other cases.

SEC. 46. The courts may make rules in regard to taking a bill as confessed, and also for the proceedings necessary to entitle either party to a decree or order of such court against the opposite party, by default in any case not otherwise provided for by law.

SEC. 47. The courts may from time to time make, alter, amend or entirely revoke a rule of practice.

SEC. 48. Any judge in vacation may make orders of reference to

Decree for land in another county -- must be recorded in county where land lies -- If organized and if not good.

Mortgage foreclosure of-decree, etc.

Sale of real estate by sheriff or other person.

Deeds to purchaser made by sheriff and effect of.

Sale proceeds of -- how disposed of -- insufficient -- execution for residue.

Abatement -- not to take place by death but suit proceeded in and how.

Answer or disclaimer not filed by representatives of decedent -- appearance entered and decree pro confesso taken.

Death of complainant and cause of action not surviving -- affidavit -- motion -- new party -- amend bill -- costs -- answer and cause proceeded in.

Death -- after six months new party complainants entered or debarred -- case proceeded in.

Decree pro confesso or by default -- court may make rules, etc.

Rules of practice

Master in chancery—orders of reference—notice.

a master in chancery, in any cause depending in chancery; but the party applying for such order must give reasonable notice to the opposite party, or his solicitor, of the time and place at which the application for such order will be made.

Attachment, sequestration or other process to enforce decrees or orders.

Sec. 49. The said courts shall have full power and authority to enforce their decrees and orders by attachment, sequestration, or by such other process against the property or person of the defendant as under the circumstances of the case may be necessary.

Decree or judgment—deficit equitable interest in real estate, monies, etc., may be reached and decreed to the payment thereof.

Sec. 50. In all cases where judgment at law or decree in chancery may have been obtained and rendered against any person who shall not have property, subject to execution, sufficient to satisfy such judgment or decree, but who may have an equitable interest in any real estate, or any money, contracts, judgments, decrees, debts or choses in action, dues owing or to become due to him, or money, goods or other effects, in the hands or possessions of any other person or body corporate, the same may be, on application to a court of chancery, decreed to the payment of such judgment or decree.

Decrees—effect of and at what time lien attaches.

Sec. 51. The said court may decree sales and enforce transfers and conveyances to vest in any person or persons purchasing or taking, by virtue of or under such decree, all the right, title, and interest of the defendant in such judgment or decree, the interest sold subject to such decree, at the time of the service of process in such case.

Sales of equitable interest how conducted.

Sec. 52. The sales of all equitable interests or title to real estate shall be conducted, as far as practicable, in the same manner as is provided by law for the sale of real estate.

Attachment may issue when and the proceedings against garnishees, etc.

Sec. 53. Where a bill in chancery is filed for the recovery of any debt or damages, a writ of attachment may issue under like circumstances and upon like conditions as in actions at law; and the proceedings against garnishees, as far as the nature of the case will permit, shall be made to conform to like proceedings at law.

Appeals to supreme court within thirty days, notice to opposite party and the clerk.

Sec. 54. Any party may appeal from any decree or order of the courts of chancery to the supreme court: *Provided*, That within thirty days after the rendition of such order or decree, he shall serve notice of such intended appeal on the opposite party, or his solicitor, and on the clerk of the court wherein such decree or order was made and entered.

Clerk's duty on notices to certify proceedings to clerk of supreme court.

Sec. 55. Upon being served with such notice, the clerk shall forthwith certify up to the clerk of the supreme court all the papers, proofs, and orders in the cause, together with a certified copy of the record in such cause.

Fond on appeal, affirmance of decrees and damages awarded not to exceed fifteen per cent.

Sec. 56. Such proceeding shall not operate as a stay of proceeding upon the decree, unless the appellant shall give security in such sum as one of the judges of the supreme court shall direct, conditioned to perform the final order of the supreme court, and all costs, in case the final order or decree of the court below shall be affirmed; and if such decree shall be affirmed as aforesaid, the supreme court may award such damages against the appellant as they may think proper, not, however, in any case to exceed fifteen per cent. on the amount awarded by the decree of the court below.

Lien not released or vacated by appeal.

Sec. 57. Any lien created by the final decree of any of the courts below shall not be released or vacated by reason of any appeal, but shall remain until the final adjudication of the cause in the supreme court.

Review bill of, when filed and when to operate as original bill.

Sec. 58. Any party to any of the decrees of a court of chancery, their heirs, executors, administrators, or assigns, may file a petition for a review of the proceedings in which such order or decree was rendered at any time within two years after the rendition of such order or decree; and if the review be asked for the reason that the er-

rors of law are apparent upon the decree or proceedings themselves, it may be filed as an original bill in chancery, as a matter of course.

SEC. 59. But if the petition for review be made upon the discovery of new matter since the hearing on the former decree, it shall only be filed with the leave of the court before whom it is exhibited.

Review bill upon the discovery of new matter.

SEC. 60. And at any time the courts may, at their discretion, on motion, stay their proceedings on any decree, until the further order of the court, or until a final decree be made upon a bill to review; if, however, the proceedings are decreed to be stayed, the court shall require security as in case of appeals.

Proceedings stayed, security required when, etc.

SEC. 61. In all cases of persons making application for writs of injunction, ne exeat, or other restraining [writs], the court, or the judge to whom such application is made, may, at their discretion, cause the applicant to give security in such amount as the said court or judge shall order, conditioned that the complainant will compensate the defendant for all damages he may sustain by reason of such process being granted without sufficient cause.

Injunctions, ne exeat, etc., security required.

SEC. 62. All writs of injunction, ne exeat, and other process as aforesaid, shall be tested and directed like a summons, and served by the proper officer in like manner as a summons.

Writs tested, directed, and given as a summons.

SEC. 63. If any injunction ordered by any court, or the judge thereof, be disobeyed, the court or judge by whom it was ordered, may direct an attachment to issue to bring the party guilty of the contempt forthwith before the said court or judge; and unless sufficient cause to the contrary be shown, the offending party may be punished by fine not exceeding two hundred and fifty dollars, and by imprisonment until the offender shall give to the said court or judge sufficient security that he will obey the said process, or until he be otherwise legally discharged.

Attachment for disobeying injunction, etc., punishment, fine, and imprisonment.

SEC. 64. After filing his answer, the defendant, at any special term, may move for the dissolution of the injunction; or he may move to dismiss all the proceedings without filing any answer; and the court, upon any motion to dissolve, may receive any affidavits on the part of the complainant, and may make such order in the premises as it may deem proper.

Motions to dissolve injunctions or dismiss proceedings when made, affidavits.

SEC. 65. No writ shall be granted upon any petition or bill filed in any of the courts of chancery, unless the same be accompanied by an affidavit of the truth of the allegations contained in such bill or petition.

Writs granted only on affidavit.

SEC. 66. Petitions in chancery for the purpose of perpetuating testimony, shall set forth specially the subject matter relative to which such evidence is to be taken, and the names of the parties, if known to the complainant; but if not known, they shall be described as accurately as possible, and such parties may be brought into court, as in other cases.

Testimony perpetuated, application for, what to set forth.

SEC. 67. Previous to the order for taking depositions to perpetuate testimony, the party applying therefor shall file with the court the names of the witnesses, and the interrogatories to be propounded to each; and the other parties may file cross-interrogatories, all of which interrogatories shall be forwarded to the person or persons who is or are to take the depositions; and he or they shall make returns in the same manner as is provided for the taking of depositions in suits already pending; which depositions, so taken and returned, shall be filed of record in the court by which the order to take the same was made.

Order to take testimony, file witnesses' names, interrogatories and cross interrogatories, returns there-of and filing.

SEC. 68. The original depositions, or a certified copy thereof, shall be received in evidence in any suit at law or chancery, which may thereafter arise or be litigated between the parties, their heirs, admin-

Depositions, original or copy evidence, when.

istrators, executors, assigns, or privies, relative to the subject matter thereof, provided the deponent cannot be had to testify.

Order to take depositions, proof of the necessity, if not taken at the time appointed, may be at another.

SEC. 69. After filing a bill in chancery to perpetuate testimony, upon proof being made that either party will be in danger of losing the testimony of any witness by death, removal, or bodily infirmity, and also that the opposite party has received due notice of the time and place of making application, the court, or any judge thereof in vacation, may make, and cause to be filed among the records in such case, an order for taking the depositions thus sought for and deemed necessary, in such manner as the said court or judge may think proper; and in case the witnesses cannot be procured at the regular time appointed for the taking of such testimony, or if he shall, at such time, be incapable of testifying, on account of any mental or bodily infirmity, the person taking the same may fix any other time; and the deposition so taken shall have the same force and effect as if taken in the ordinary way and at the regular time.

Will and testament lost or destroyed may take proof of execution, etc.

SEC. 70. That in all cases where any last will and testament shall have been lost or destroyed, either by accident or design, the court of chancery shall have full power and authority to take proof of the execution and contents thereof, and to compel a just and proper execution of its provisions.

Trusts may be dissolved and property subject to order of court.

SEC. 71. And said courts shall have power to dissolve all trusts in all cases where equity and justice demand the same; and the property resulting from the dissolution of such trust shall be subject to the order of the court.

For performance specific decreed.

SEC. 72. And the said court shall have power to decree the specific performance of any contract, bargain, or agreement made by any person or persons, upon application properly made, if the court, upon hearing the parties in interest, shall be of opinion that a specific performance should be decreed.

Bills of discovery may be filed and for what.

SEC. 73. Bills of discovery may be filed, and the defendant compelled to answer, in any case where the defendant is charged with having given or permitted any [judgment] to be entered against him without a full consideration therefor, or where he has placed any of his property, or is about to place any of his property, either real, personal, or mixed, out of his hands with the intent to defraud his creditors.

Courts of chancery given general jurisdiction.

SEC. 74. And generally the said courts of chancery shall have power to decree that justice be done in all cases which shall come before them, not provided for by this act, in such manner as they may prescribe, conforming always, as nearly as may be, to the known usages of a court of chancery.

CHAPTER III.

OF PROBATE COURTS.

Court of probate, where held and jurisdiction thereof.

Be it further enacted. That there shall be established in each organized county in this Territory, a court of record to be styled the court of probate, to be held at the several seats of justice of their respective counties; the jurisdiction whereof shall be co-extensive with the limits of the county in which the judges shall be respectively appointed.

Judge elected, term three years, bond in \$10,000 and filed with the Secretary of the Territory, oath and by whom administered.

SEC. 2. There shall be elected in each of the counties aforesaid, some fit person as judge of said court, who shall hold his office for the term of three years, and shall, before entering upon the duties of his office, give bond in the sum of ten thousand dollars, conditioned for the faithful performance of his duties, which bond shall be filed with the Secretary of the Territory, and take an oath or affirmation to support the constitution of the United States, and well and faithfully to

discharge the duties of his office; the said oath or affirmation to be administered by the clerk of the district court of the proper county, and entered of record.

Sec. 3. The said courts shall sit in their respective counties four times each year, on the first Monday of March, June, September, and December, and at such other times as circumstances may require, and in each case shall continue open until the business before them is disposed of. The said courts shall have a seal and may issue all processes necessary under the hand and seal of the judge; and all such processes shall bear date from their issue; and the said judge shall record all his proceedings at length in a book specially prepared for that purpose; and for all necessary books, so furnished, and for the seal, the county commissioners of their respective counties shall allow the judge of probate a reasonable compensation to be paid out of the county treasury.

Sessions of court first Monday of March, June, September, and December, and other times, a seal, process, date, etc., record of proceedings, commissioners to furnish seals, books, etc.

Sec. 4. That until proper seals can be provided by the commissioners, or by the judges of said court, a temporary seal may be used as the seal of said courts respectively.

Temporary seal may be used.

Sec. 5. The jurisdiction of the several courts of probate of this Territory, shall extend to and embrace the appointment and control the removal and discharge of administrators and guardians, the settlement and approval of their respective accounts; the removal and control of executors, and the settlement of their respective accounts; the distribution of the assets of the estates of decedents among the heirs, and generally to all matters within their respective counties, wherein executors, administrators, guardians, and trustees are or may be possessed of, or undertake the case of, or are in anywise accountable for any real or personal estate of any decedent.

Jurisdiction of court in matters of administration, guardianship, etc.

Sec. 6. The said court shall have power to take the probate of wills, grant letters of administration on the estates of deceased persons having been residents in, or inhabitants of, the same county at the time of their decease; and the judge of probate shall keep a registry of all wills, administrations, accounts, decrees, or lites, determinations, and other writings, which shall be allowed, granted, or decreed upon by the said court, and shall have the custody and keeping of papers and books to the probate court belonging; and in case of the inability of the said judge, temporarily from any cause, to perform the duties of probate office, it shall and may be lawful for him to appoint some competent person to perform all the duties of said office, except the taking of wills, granting letters of administration, or making orders or decrees in regard to matters pending therein. The said deputy shall first take an oath faithfully to discharge the duties of his trust.

Wills, proof of, letters of administration, keep a registry of wills, etc., may appoint a deputy, oath of and certain matters deputy cannot do.

Sec. 7. All matters of law and fact shall be determined by said court when properly before it, and in all cases an appeal shall be to the district court of the county, to [be] prosecuted in the same manner as appeals are or hereafter may be directed to be prosecuted from the decisions of justices of the peace; and writs of error in such cases shall be from the said district court to the supreme court, as in other cases.

Appeal to district court, writs of error from district court may be taken in such cases.

Sec. 8. The probate courts of the several counties of this Territory shall have the care of the persons of all minors resident within such county, and of their estates, and shall have power to admit such minors when and as often as there shall be occasion to make choice of such guardians, and to appoint guardians for such as are too young or otherwise incompetent to make choice for themselves; and the appointment of guardians by the court of the county wherein the minor resides shall have the like effect in every other county or court

Guardians, court to have the care of persons and estates of, to appoint guardians and permit them to choose, etc., no person interested to be appointed.

of this Territory as in that county in which it was made: *Provided*, That the said courts shall not in any case appoint the executor or administrator of any estate, guardian of any minor having an interest in said estate.

Guardian appointed out of the Territory not to control estate in, but may be appointed in the Territory.

SEC. 9. No appointment of any guardian made or granted by any authority out of this Territory, shall authorize the person so appointed to control or interfere with the person or estate of the minor within this Territory: *Provided*, however, that nothing contained in this section shall prevent the court having jurisdiction from appointing such foreign guardian, on his giving security for the due and faithful performance of his trust.

SEC. 10. The said courts shall require a bond with good and sufficient sureties, to be approved of by said courts, from any guardian of any minor, whether created by will or appointed by the courts, which bond shall be filed in the office of said court, and be considered in trust for any or all persons interested in the estate of such minor; and the said bond shall be taken to the Territory of Minnesota, in such penalty as the court may direct, and the condition thereof shall be in the following form:

Bond of guardian to the Territory filed, form of condition, minor entitled to action at common law.

"The condition of this obligation is such, that if the above bounden A B, guardian of C D, minor child of E F, late of _____ county, deceased, shall, at least once in every two years, and at any other time when required by the court, render a just and true account of the management of the property and estate of said minor under his care, and shall also deliver up the property agreeably to the order or decree of the said court, or the directions of law, and shall, in all respects, faithfully perform the duties of guardian of the said C D, then this obligation shall be void; otherwise it shall be and remain in full force and virtue." *Provided*, That nothing contained in this act shall deprive any minor from any action at common law to which he may be in any way entitled.

Inventory upon oath to be filed and when.

SEC. 11. Every such guardian shall, within two months after any property of his ward shall come into the hands or possession of any person or persons for him, file, in the office of said court, a just and true inventory and statement, upon oath or affirmation, of all such property and estate.

Guardian every two years or oftener to render an account, and full account when his ward arrives of age, decree and of fact of.

SEC. 12. Every such guardian shall, at least once in two years, and at any other time, or as often as the court may require, render an account of the management of the minor's property or estate under his care, which accounts shall be filed in the probate office for the information of the court and the inspection of all parties in any way interested or concerned; and every such guardian, unless previously discharged and removed, shall, on the arrival of his ward at full age, settle in the said court a full and complete account of his management of the minor's property under his care, including all the items embraced in each former settlement; and the decree of the probate court, upon such final account, shall, like all other decrees of said court, be conclusive upon the parties, unless reversed, altered, or modified on appeal.

Guardian may be discharged: first to render an account, etc.

SEC. 13. Any guardian may be discharged upon his petition to the court, asking to be relieved from the duties of his trust: *Provided*, That no guardian shall be discharged from his liability for the estate of his ward, until he shall have rendered to the court an account of the management of his trust, nor until the same shall have been examined and confirmed by the court, nor until such guardian shall have surrendered the residue of the estate standing upon his account as settled and confirmed to the person directed by the court to receive the same: and it shall be the duty of the court, upon such ap-

plication for discharge being made, to appoint some proper person to appear and act for the ward.

Sec. 14. The courts of probate shall have power to remove any guardian, whether testamentary or otherwise, on due proof of his [mis]management of the minor's estate, or misconducting himself in respect to the maintenance, education or moral interests of the minor; in any such case the court shall have power to order the offending guardian to deliver up, assign, transfer, or pay over to his successor, or such person as the court shall direct, all and any of the goods, chattles, rights, credits, title deeds, evidence and securities whatsoever, belonging to the minor, and in the hands or under the control of the guardian, and to make such other order or decree touching the premises as the interests of the minor may require.

Guardian may be removed.

Sec. 15. When any one shall die leaving an infant child or children, without having made adequate provision for their support and education during their minority, the said courts shall direct a suitable periodical allowance, out of the minor's estate, for such purposes according to the circumstances of the case, and the said order may at any time [be] varied by the court.

Infant, how provided for.

Sec. 16. Whenever any guardian, executor, administrator, or trustee shall have in his hands any moneys, the principal or capital whereof is to remain for a time in his possession, and the interests, profits, or income are to be paid away or to accumulate, the said courts shall have power to make an order directing the investment of the same in such manner as may be thought best for the parties in interest; and the said guardian, executor, administrator and trustee shall be exempted from all liability for any loss by reason of such investment. *Provided*, That nothing contained in this act shall authorize the said courts to make an order contrary to the directions contained in any will or other instrument, in regard to the investment of such moneys.

Guardian, executor, administrator or trustee having money in their hands, court may order investment, and exemption from loss: no order contrary to will or other instrument made.

Sec. 17. All accounts presented to the probate courts by any executor, administrator, guardian, or trustee, shall, if presented thirty days before any term of said courts, be confirmed nisi at such term; but if not presented in due time shall lie over till the next succeeding term of said court, when they shall be confirmed as aforesaid; and at least four weeks before each and every term of said courts, the judge thereof shall make out a statement of all accounts then in court which have previously been confirmed as aforesaid, and all accounts to which exceptions have been filed, and all other matters which are to be disposed of at the coming term, and shall cause a notice thereof to be published for four successive weeks in two newspapers published in said county, and if no newspaper is published in said county, then in the next adjoining county, and also to put up a list of such matters in some public place in his office, where it may be open to the inspection of those interested; and if said accounts (be) confirmed as aforesaid shall not be excepted to by the second day of said term, they shall be carefully examined by the court and confirmed absolutely.

Accounts of guardians, &c., presented thirty days before term; confirmed nisi—judge four weeks before term to make a statement of accounts, and publish in a newspaper; also a list in his office: second day of term, confirmed absolutely.

Sec. 18. Whenever the account of any executor, administrator, or guardian shall be excepted to as aforesaid, the court shall appoint a day certain for the examination of such account and the exceptions thereto, and the judge thereof shall cause due and timely notice to be given to the parties interested, and after the examination of the account, the parties and their witnesses, he shall allow or reject the exceptions, and proceed to the confirmation of the account, in such manner as he thinks proper.

Accounts excepted to, a day appointed for hearing; notice to parties; allowed or rejected.

Sec. 19. Whenever there shall not be sufficient assets belonging to the estate to pay all the debts and expenses of settling up the estate of any decedent, it shall be the duty of the court to appoint, upon the

Assets, insufficiency of; rates and proportion of payment to be fixed; creditor failing to exhibit his account one year after notice shall not be entitled to dividend.

Heirs, legatees or creditors residing out of the Territory additional notice shall be given.

Waste of estates; refusal to render an account of or intention to remove from the Territory; citation to be issued and proceedings thereon; further security; attachment may issue and proceedings thereon.

Letters of administration vacated: guardian removed; new letters, new guardian: former one required to hand over to successor: refusal, attachment, or otherwise.

application of the executor, or administrator, or any person interested in such estate, one or more suitable persons, to settle and adjust the rates and proportion of the assets among the respective creditors, according to the orders established by law for the payment of the debts of decedents. *Provided*, That no creditor who shall neglect to exhibit his account to the executor or administrator within one year after public notice given in one or more newspapers published in the county in which the letters testamentary or of administration were granted, or if there be no paper published in said county, then in one or more published in the neighboring county, for four successive weeks, shall be entitled to receive any dividend out of the remaining assets.

SEC. 20. Whenever any of the heirs, legatees, distributees, or creditors of any decedent shall reside out of the Territory, or from other causes it be expedient that additional notice shall be given, the court will require such other or additional notice to be given as may seem just and proper.

SEC. 21. Whenever it shall be made to appear to any of the said courts, or the judges thereof in vacation, on the oath or affirmation of any person interested, that the executor, administrator, guardian or trustee, is wasting or mismanaging the estate under his charge, or is like to prove insolvent, or has neglected or refused to render a true account of such estate, then and in every such case, it shall be lawful for the court having jurisdiction or the judge thereof to issue a citation to the person so mismanaging, wasting, or neglecting to account, requiring him to appear on a day certain before the probate court, to be convened for that purpose, if it be not in session; and upon the return of such citation the said court may require security of such executor, administrator, trustee, or guardian, such other or further security of such executor, administrator, trustee, or guardian as the said court may think reasonable, conditioned for the faithful performance of their respective trusts, which security shall be taken in the same manner as is provided in the case of guardians, in the tenth section of this act; and if upon oath or affirmation as aforesaid it shall be made to appear that such executor, administrator, trustee or guardian is about to remove from this Territory, or that the property or estate under his care or charge may be wasted or materially injured before he can be compelled to appear under ordinary process, it shall be lawful for such court or the judge thereof to issue a writ of attachment, returnable forthwith; and the court shall proceed upon such attachment in the same manner as it would or might have done had the proceedings been by citation only.

SEC. 22. If such executor, administrator, or guardian shall neglect or refuse to give the security required, then the said court shall vacate the letters of administration, or remove such guardian, and may grant new letters in such manner as the case may require, or appoint a new guardian; and the court shall order such superseded executor, administrator, or guardian to deliver over and pay to his or their successor or successors all and every part of the goods and chattles, rights, credits and moneys, belonging to the decedent or minor, as the case may be; and if such executor, administrator or guardian shall refuse to comply with such order to pay over and deliver up the goods and chattles, rights and credits to his or their successor or successors, the said court may at once proceed against such parties, by attachment against their persons or estates, with or without sequestration, or may issue process for the delivery of the trust, property and effects; or the successor may proceed upon the bond of such party, if one be given, or against any other person who may have any of the property or estate of the decedent or minor in his hands or possession, or be

indebted to them or either of them, or by the remedies of execution and suit at law or in equity, or any of them.

SEC. 23. The probate court having jurisdiction of the accounts of any executor, administrator, or guardian, shall have power to authorize a sale or mortgage of real estate by such executor, administrator, or guardian, in the following cases, viz:

1. On application of the executor or administrator, setting forth, upon oath or affirmation, that the personal estate of the decedent is insufficient for the payment of debts, and maintenance and education of his minor children, or for the purpose of paying the debts alone.

2. Or that on the final settlement of the administrative account it appears that there are not sufficient personal assets to pay the balance appearing to be due from the estate of such decedent, either to the accountant or to others; and this request may be made by any person interested.

3. On the application of a guardian, setting forth in manner aforesaid, that the personal estate of his ward is insufficient for his maintenance and education, or for the improvement and repair of other parts of his real estate, or that his estate is in such a state of dilapidation and decay, or so unproductive and expensive that it would be to the advantage of said minor that the said estate should be sold.

SEC. 24. When the real estate, with respect to which application shall be made to the court of probate in the cases mentioned in the preceding section, is situated in the same county, the said court may order the sale or mortgage of such part or so much of said real estate as to them shall appear necessary; when the said estate is situated in another county or counties, or in the same and another county or counties, the probate court having jurisdiction over the accounts of such executor, administrator, or guardian, may make a decree authorizing such executor, administrator, or guardian to raise so much money as the said court may think necessary from the real estate situated in such county as they may designate; and thereupon it shall be the duty of the probate court of the county wherein the real estate so designated is situated, upon the petition of such executor, administrator, or guardian, accompanied by the order aforesaid, to make an order for the sale or mortgage as shall be thought expedient of so much and such parts of such real estate as shall in their opinion be necessary to raise the sum specified in the order aforesaid; and such executor, administrator, or guardian shall in all cases make return of his proceeding to the proper court of the county wherein the estate so sold or mortgaged lies, when, if the same be approved by the court, it shall be confirmed; and the said executor, administrator, or guardian shall give at least twenty days public notice of the time and place of such sale according to the directions of said court.

SEC. 25. No authority shall be granted to any executor, administrator, or guardian for the sale of any real estate in any county, until he shall have exhibited to the proper court a true and perfect inventory, and conscionable appraisement of all the personal estate whatsoever of such decedent or minor, together with a full and correct statement of all the real estate of such decedent or minor, wherever situated, which shall have come to his knowledge; and also in case of an executor or administrator, a just and true account upon oath or affirmation, of all the debts of their decedents, which shall have come to their knowledge; nor in any case shall such authority be granted until such executor, administrator, or guardian have filed in the office of the proper court a bond with sufficient security, to be approved of by the court, conditioned for the faithful appropriation of the proceeds of such sale or mortgage, according to their respective duties.

Sale or mortgage of real estate.

Assets, insufficiency of, to pay debts.

And educate minor:

Real estate to be sold, &c. etc.

Sale or mortgage order for, when situate in county, and when in another county may decree and proceeding thereon: notice of sale.

Inventory and appraisement by administrator or guardian, not to sell real estate until: bond, &c.

Interest, when executor, administrator guardian or trustee required to pay and when not and what rate.

SEC. 26. No executor, administrator, guardian, or trustee shall [be] liable to pay any interest, except for the surplus of the estate remaining in his hands, after his accounts are or ought to have been settled and adjusted: *Provided*, That nothing in this act shall exempt such executor, administrator, guardian, or trustee from liability for interest, in case he may have used the funds of the estate for his own purposes: *Provided*, That the rate allowed by the court shall in no case exceed the legal rates of interest for the time being.

Jury--probate court may send an issue to district court whenever parties may require, etc., certified back to probate court.

SEC. 27. The probate court shall have power to send an issue to the district courts of their respective counties for the trial of facts by a jury whenever any of the parties in interest may require it; and the facts so found in the said district court shall be certified back to the probate court, and the said probate court shall then proceed in the same manner as if no issue had been granted or no facts had been found by such jury.

Appearance--proceedings to compel obedience to orders and decrees--may punish for contempt.

SEC. 28. The manner of proceedings in the probate courts to obtain the appearance of persons amenable to their jurisdiction and to compel obedience to its orders and decrees, shall be the same as allowed in other courts of record in this Territory; and they shall have the same power to punish for contempt as other courts of record.

Certificate, judge to give of balances found due against ex'r, adm'r and guardian--filed and entered on judge's docket, a lien, etc.

SEC. 29. It shall be the duty of the judge of probate to give to any persons interested in the same, upon application, a certified copy of any balance found due and remaining unpaid upon any executor's, administrator's and guardian's accounts; and the said certified copy of such balance may be filed in the office of the clerk of the district court of the proper county, and entered upon the judgment docket of such court, which, when so done, shall be a lien to all intents and purposes upon the property of said grantor or guardian as a judgment obtained in said court.

Attachment or sequestration or fieri facias alias fieri facias or venditioni exponas or a testatum fieri facias or venditioni exponas may be issued in certain cases--sheriff's duty to levy and sell.

SEC. 30. Compliance with any order, decree, determination or judgment of the courts of probate, for the payment of money, or by which any sum certain is found to be due to any person, may be enforced against the person or persons against whom such decree, order, determination or judgment was made or entered, by a writ of attachment or sequestration, or by a writ in the nature of a writ of fieri facias alias fieri facias, or venditioni exponas, or a testatum fieri facias, or venditioni exponas, as the case may be; and the sheriff, or other officer to whom such process is directed, shall proceed to levy upon and sell the real and personal estate of the person or persons against whom the said process shall have issued, and convey the real estate so sold to the purchaser or purchasers in the same manner in all respects as if such process had issued out of and from a judgment in the district courts; and the sale and conveyance so made shall be good and valid as the same would have been if done under the direction of the said district courts.

Idiot--non compos mentis, lunatic, insane or drunkard--court and judge thereof have power over--sheriff's duty--jury of seven or twelve to enquire--appointment of guardian and duty.

SEC. 31. The said courts of probate, or the judges thereof in vacation, shall have power, upon request made by the friends or relatives of any idiot, person non compos mentis, lunatic, insane person or habitual drunkard, or by any other person of the county wherein such idiot, person non compos mentis, lunatic, insane person or habitual drunkard resides, to direct the sheriff of the proper county to summon not less than seven nor more than twelve good and discreet citizens of the neighborhood, on a day certain to appear before said court or the judge thereof, to inquire whether the person named in such venire is an idiot, a person non compos mentis, lunatic, insane or an habitual drunkard, as the case may be; and if the said jury of inquirers, or a majority of them, shall find the allegations true, and that the person is incapable of taking proper care of his family and estate, the

said court or the judge thereof shall appoint a guardian for such idiots, non compos mentis, lunatic, insane person or habitual drunkard, as the case may be, whose duty it shall be to take charge of the estate thereof.

Sec. 32. The said court shall give to the person accused of idiocy, unsound mind and memory, lunacy, insanity or drunkenness, or as the case may be, due and timely notice of the time, place, and object of such inquisition; and shall, at the request of either party, issue subpoenas to witnesses to compel their attendance at the time and place fixed for such inquiry.

Subpoenas for witnesses and notice to def't.

Sec. 33. The said guardian so appointed to take charge of the person and property of such idiot, non compos mentis, lunatic, insane person or habitual drunkard, shall file a bond, with good and sufficient security, in such sum as the court or judge shall direct, to be approved by said court, conditioned for the true and faithful management of the estate of such idiot, non compos mentis, lunatic, insane person or drunkard; and he shall within sixty days after his appointment make a true and faithful statement and return, on oath or affirmation, of all the estate, real and personal, of such person which has come to his knowledge; and the said guardian shall be governed by the same rules, subject to the liabilities, and shall in all things act in the premises as the guardian of the minor of some decedent, and he shall have charge of the family of such person, and shall from time to time as the circumstances may require, apply to the court to make some order or decree for the maintenance of the family under his care.

Guardian, bond-- statement and return in sixty days-- duties prescribed-- family to take charge of, etc.

Sec. 34. No foreign executor or administrator or guardian shall have power over the estates of their testator or intestate, or the estate of any idiot, lunatic, non compos mentis, insane person, or habitual drunkard, until they shall have filed a certified copy of their letters testamentary or of administration, together with a copy of the will, or their appointment as guardian of the person whose estate they seek to control, in the office of probate, and shall have given a bond, with good and sufficient securities, to be approved of by the court or the judge thereof, conditioned for the faithful management, care, and settlement of such estate, and the faithful appropriation of the proceeds thereof, in case the same shall be sold by them or either of them.

Ex'r, adm'r or guardian foreign-- to file copy of letters or appointment-- bond, etc.

Sec. 35. And any idiot who shall recover from his affliction, lunatic person, non compos mentis, insane person, who shall become of sound mind, memory and understanding sufficient to take charge of their estates and the maintenance of their families, or habitual drunkard who shall be confirmed in a reform of his habits, so as again to be competent to take charge of his family and estate, may, upon petition to the court or the judge thereof, have an order made or decree allowed upon the guardian appointed by such court or the judge thereof, to surrender up the property and family of such restored person, and to settle his account of the management thereof: *Provided, however,* That if the friends, relatives, or any of the family of such idiot, lunatic, insane person, non compos mentis or habitual drunkard, shall except thereto, within thirty days after they have notice of such decree or order, they shall have the right to apply to the said court for an inquisition to try whether such person is sufficiently restored to be reinstated in his family and estate: *Provided, however,* That the person making such application shall be liable for all charges incurred by reason of said inquisition, if the decree is affirmed by a verdict of such inquisition, at the discretion of the court.

Idiot, lunatic, non compos, insane, etc., who shall recover from his affliction-- on application to court may have an order or decree &c. exceptions in thirty days-- jury and costs.

Sec. 36. The estate of the person charged with idiocy, lunacy, unsound mind and memory, insanity or habitual drunkenness, shall be chargeable with the costs of the first inquisition, whether the charge is

Costs—estate chargeable with—county may pay costs and court to determine.

Court and judges thereof to carry out provisions of the law.

Fee bill of judges of probate.

established or not, if the application for the inquisition is made in good faith; but if the estate of said lunatic, idiot, non compos mentis, insane person or drunkard, be too small or insufficient to bear such expenses, the court may, at its discretion, order that the county pay the costs; and in case of the second inquisition provided for in the thirty-fifth section of this act, the court shall say whether the county or the applicant shall pay the costs.

Sec. 37. The said courts of probate and the judges thereof are hereby invested with full power and authority to carry out and enforce the provisions of this act, and in all things to do and proceed as the case and justice shall require.

Sec. 38. The judges of the several courts of probate shall be entitled to receive for their services the following fees, viz:

For taking probate of will and issuing letters testamentary,	\$1 00
For entering caveat,	50
For granting letters of administration,	75
When the same are contested,	1 50
Hearing complaints against idiots, lunatics, non compos mentis, insane person or drunkard,	50
For issuing venire in same cases,	50
For hearing inquisition and decreeing thereon,	2 50
For appointing,	1 00
Filing account,	25
Examining, allowing account for first page,	50
Every additional page (if not excepted to,)	10
For deciding upon each exception,	25
Filing inventory and allowing (first page,)	25
Every successive page,	10
Order for distributing of assets,	50
Decree on final settlement of account,	1 00
Registering, per line,	02
Issuing any process under seal,	50
Order to divide or appraise estates,	25
For entering the same of record,	25
Issuing commission to revise and examine claim of creditors, when estate is insolvent,	50
Allowing appeal,	25
Approving securities of executor, administrator or guardian,	25
Assigning personal estate to widow,	25
Assigning dower in real estate,	25
When application is rejected for letters of administration or probate of will,	50
For any continuance,	12½
Order for sale of personal estate,	25
Order for sale of real estate or certificate of necessity,	50
Extending letters of administration,	25
Granting a reference of account to auditors or allowing report on,	50
For bond of executor, administrator or guardian,	50
Approval thereof,	25
Drawing a decree upon probate of will or codicil,	50
A quietus,	25
Filing each paper,	05
Administering oath or affirmation, each,	10
Recording all papers required by law, for every hundred words,	10
Appeal bond,	25
Apportioning insolvent estate among creditors,	75
For every impression of seal upon any certificate or other paper,	25
Approving and confirming return of sale of real estate,	50

Copies of record with certificate and seal,	50
For every succeeding page,	10
Examination of record,	10
Producing record for examination of person (other than officers of some court of record,)	10
Appointment of auditors,	50
Fees per day for said auditors,	5 00
Fees for jurors and inquisitors per day,	1 00
Mileage allowed to jurors (calculated per mile,)	08
For holding a special term for any purpose,	1 00

And in all other cases where services are performed by said judges, they shall be entitled to a reasonable allowance to be regulated by fees for services of like nature herein specified; *Provided*, That the parties shall have the right to appeal if they feel that such charges are exorbitant.

Appeal granted, if fees charged are exorbitant.

APPROVED the first day of November, one thousand eight hundred and forty-nine.

CHAP. XXI.—An Act to provide for the Election of Registers of Deeds and to define their duties and powers.

Nov. 1, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That at the first general election in each and every county organized for county purposes, and every two years thereafter, there shall be elected a register of deeds, who shall also be clerk of the board of commissioners in each county, and shall continue in office for the period of two years and until his successor is duly elected and qualified.

Register of deeds, election of every two years—clerk of commissioners.

SEC. 2. Every register of deeds, before he enters upon the duties of his office, shall take and subscribe an oath before the clerk of the district court or judge of probate of his proper county, to support the constitution of the United States and the provisions of the act of Congress organizing the Territory of Minnesota, and faithfully and impartially to perform the duties of his office as prescribed by law, to the best of his abilities, which said oath shall be endorsed on the certificate of his election or appointment, recorded in a book kept for the purpose in his office, and filed in the office of the clerk of the district court of the county, or if there is no such officer, with the clerk of the district court of the county to which his county may be attached for judicial purposes. He shall also give a bond, with good and sufficient securities, in the penal sum of one thousand dollars, to be approved by the board of commissioners of his proper county, conditioned that he will faithfully and impartially fulfil the duties of his office.

Oath of office endorsed on the certificate of his election and recorded and filed, bond in \$1000.

SEC. 3. It shall be the duty of every register of deeds, at the expiration of the term for which he was elected or appointed, on application by his successor duly elected or appointed, and qualified as aforesaid, to deliver over promptly all books, records, papers, and other property pertaining to his office; and if any person, on such application shall refuse to surrender up all books, records, and other property and papers belonging to said office, he shall forfeit and pay to the use of the proper county, fifty dollars for each and every day he shall so refuse, to be recovered before any court in the Territory having competent jurisdiction, for the recovery of which fine his official bond may be put in suit.

Successor of duty of predecessor, and failure of to be fined, etc., books, papers, etc.

SEC. 4. Every register of deeds shall keep a book, each page of which shall be divided into seven columns, in the following form, viz: