

An act entitled an act defining the duties of
the Clerks of the Probate Courts of this nation

Section: 1. Be it enacted by the General Council
of the Choctaw Nation. That the clerks of the
Probate Courts of the several counties of this nation
shall be elected by the qualified electors of the respec-
tive counties at the times and places of holding the
general elections in such counties and shall hold their
offices for the term of two years, unless sooner removed
for mal-conduct in office, or other disqualifying cause
provided for by the constitution.

Section: 2. Be it further enacted. That before entering
upon the duties of their offices the clerks of the courts
of probate in every county in this nation, shall take
and subscribe the oath prescribed in the constitution
before any judge or Justice of the peace, which oath,
when taken and subscribed, shall be recorded on the
minutes of the court. On failure or refusal to take
said oath within twenty days after his election, any
clerk thus failing or refusing, shall be deemed dis-
qualified under the said election, to hold the office
for which he was elected, and the vacancy shall be
filled in the same manner with other vacancies in
said offices, and the clerk of the probate court of each
county in this nation, before he enters upon the duties
of his office, ^{shall} enter into bond payable to the Governor
of the Choctaw nation, and his successors in office,
in the same manner, in the same penalty, and with
the same condition as is required of the Clerks of the
Several Circuit Courts of this nation; which bond shall
be recorded and filed as is prescribed for the
said Circuit Clerks bonds.

Section 3. Be it further enacted That it shall be the duty of the Clerk of the probate courts in each county to keep and preserve all records, files, papers, and the proceedings of said court: to record all last wills and testaments duly proved and approved; all accounts finally allowed; all inventories and appraisements duly made and sworn to; to issue all citations, subpoenas and other process as issue of course; and all such as are directed by the court in term time, or the Judge in vacation; and to do and perform all those things that appertain to the office of a clerk of the probate court; and the said clerk's office shall be under the direction of the court in term time, and of the said Judge in vacation; and the clerk of the probate court for each county of this nation shall be the clerk of the Board of Police of the same county.

Section 4. Be it further enacted That the clerks of the courts of probate in this nation shall keep their offices at the places of holding court of the counties in which they are ~~or may be~~ clerks; but, in all cases where offices have not been provided for the clerks of the said courts such clerks may keep the records, books, and papers belonging to their offices, at such places as the Board of Police of the county shall think fit, and so enter of record.

Section 5. Be it further enacted. That the several Probate Clerks may appoint deputies in the same manner as is provided by law for the appointment of deputy clerks of the Circuit Courts, and that such deputies of the probate clerks shall have power to act in the name of their principals; and the said clerk, or his deputies may, either in vacation or term time, administer oaths in relation to the Probate of

accounts; and as to all matters connected with the proceedings of the Probate Court, or of the Board of Police, and also to administer oaths in all cases wherein an affidavit is necessary as the foundation of any official act to be performed by any such clerk.

Section 6. Be it further enacted That whenever the office of clerk of any probate court shall become vacant by any cause whatsoever, the records, papers, books, stationary, and everything belonging to or appertaining to said office, shall be demanded, delivered over, and received in the manner, and (in case of refusal or detention) under the penalties prescribed in the act passed at the present session of the General Council defining the duties of the Clerks of the Circuit Courts of this nation.

Section 7. Be it further enacted That if any clerk of ~~the~~^a probate court shall knowingly make any false entry, or forge a letter, or change any record in his keeping, belonging to his office, every such clerk so offending, shall, on conviction thereof, be fined and imprisoned at the discretion of the court, and shall, moreover, be liable to the action of the party aggrieved.

Section 8. Be it further enacted That in case the clerk of the probate court in any county shall be at any time unable from sickness or any other unavoidable cause, to attend said court, it shall be lawful for the Judge of Probate, in case there is no deputy clerk of said court, to appoint a person to act as clerk pro tempore, who shall take the an oath faithfully to discharge all the duties of his office; and for services rendered by the said clerk, he shall be entitled to be allowed by law to the Clerk of said court.

Section: 9. Be it further enacted. That the Court of Probate in each county shall make allowances of all sums necessary for furnishing the clerk's office with tables, chairs, & papers to preserve papers, to be paid out of the county treasury of the proper county under direction of the Board of Police thereof.

Section: 10. Be it further enacted That it shall be the duty of each clerk of the probate court to record in the books provided for his office, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any tenements or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in his office.

Section: 11. Be it further enacted That each clerk of the probate court shall record in books to be provided for that purpose, all marriage contracts and marriage certificates, and all commissions and official bonds, required to be recorded in his office.

Section: 12. Be it further enacted That when any deed, mortgage, deed of trust, bond, conveyance, or other instrument of writing, authorized by law to be recorded, shall be deposited in the probate clerk's office of any county for record, the clerk shall enter in a book to be provided for that purpose, in alphabetical order, the names of the persons, and date and nature thereof, the time of delivery for record, and shall give to the person delivering the same, if required, a receipt, specifying the particulars thereof.

Section: 13. Be it further enacted That each clerk of the probate court shall without delay record every deed, mortgage, conveyance, deed of trust, bond or

after writing delivered to him for record, with the acknowledgment, proofs and certificates written on or attached to the same, and all other papers herein referred to and thereto annexed, in the order, and as of the time when the same shall have been delivered for record, by entering them word for word, and letter for letter, and noting at the foot of each record all interlineations, erasures and words visibly written on erasures, and noting at the foot of the record, the day of the month and year when the instrument so recorded was delivered to him or deposited in his office for record.

Section: 14. Be it further enacted That every deed, mortgage, conveyance, deed of trust, bond, or other instrument of writing shall be considered as recorded from the time it was delivered for record, and the clerk shall certify and attach to every such deed, mortgage, conveyance, deed of trust, bond and other instrument of writing so recorded, the day, month and year when he received it, and the book and page or pages in which it is recorded, and when recorded, deliver the same to the party entitled thereto or his order.

Section: 15. Be it further enacted That each clerk shall provide and keep in his office, a well bound book, and make and enter therein an index in alphabetical order, to all books of record wherein deeds, mortgages, or other instruments in writing are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

Section: 16. Be it further enacted That such index shall contain the names of the several grantors and

after receiving the same, or shall record any deed or instrument of writing before another first deposited in his office and entitled to be recorded, or shall record any deed or other writing, ^{incorrectly} ~~incorrectly~~ or shall neglect or refuse to provide and keep in his office, such indexes, as required by this act, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered by action of debt, one half to the use of the county, and the other half to the use of the person who shall sue for the same, and also be liable to any person injured, for all damages he may have sustained thereby, to be recovered by action of debt on the official bond of such clerk, or by special action on the case.

Section: 20. Be it further enacted That if any clerk shall wilfully neglect to perform any of the duties required of him by this act, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly.

Section: 21 Be it further enacted, That no clerk shall be bound to record any deed or other instrument of writing for which a fee may be allowed by law, until such fee shall have been paid or tendered to him by the party requiring the record to be made.

Section: 22. Be it further enacted That the clerks of the several county courts, under the old constitution, shall deliver over to the clerks of the Courts of Probate of the respective counties, all books, records, and papers belonging to said county courts, so far as they appertain to the jurisdiction of said courts.

An act entitled an act to establish a court of Probates in the several counties of this nation and defining the duties of the Judges thereof.

Section: 1. Be it further enacted by the General Council of the Choctaw Nation. That there shall be established in each county of this nation, a Court of Probates, to be styled "The Probate Court of the county of _____" with such jurisdiction to said courts within their respective counties as is prescribed to them in the fourth article of the constitution and hereinafter more fully recited.

Section: 2. Be it further enacted That the Judges of the Probate Court in each county in this nation, shall be chosen by the ^{qualified} electors thereof, at the time and place of holding the general elections in each county and shall hold their offices for the term of two years unless sooner removed for mal-conduct in office or other disqualifying cause provided for in the constitution; and shall be President of the Board of Police of the same county.

Section: 3. Be it further enacted That before entering upon the duties of their offices, the Judges of probate in every county of this nation, shall take and subscribe the oath prescribed in the constitution before any judge or Justice of the peace, which oath when thus taken and subscribed, shall be recorded on the minutes of the court. On failure or refusal to take said oath within twenty days after his election, any Judge of probate thus failing or refusing, shall be deemed disqualified under the said election, to hold the office for which he was elected, and the vacancy shall be filled in the same manner as other vacancies in said office. Provided, This section does not refer to those first holding the

Section: 4. Be it further enacted That the Court of

probate in each county shall procure a seal of said court, with the style of the court around the margin and an eagle in the center, which shall be kept by the clerk thereof, and shall be affixed to all letters testamentary of administration and guardianship; to all certificates of the court or the clerk, and to every writ and process of every kind issued from said court. And the Judge of probate shall certify the cost of the seal of the court, which amount shall be paid by the direction of the Board of Police out of the county treasury.

Section: 5. Be it further enacted That it shall be the duty of the clerk of the county courts, as organized under the old constitution, to deliver over when demanded, to the clerk of the Courts of Probate, books, papers, records, and all other matters pertaining to the office of probate clerk, and on failure or refusal so to do, any county court clerk so offending, shall be fined in the sum of one hundred dollars, to be collected before any court of competent jurisdiction, and paid into the county treasury for county purposes.

Section: 6. Be it further enacted That all suits, causes, and proceedings whatever, which may be pending in the county courts, in relation to matters properly belonging to the Probate Court, shall be, and the same are hereby transferred to the Probate court of the proper county, there to be proceeded in and conducted according to law.

Section: 7. Be it further enacted That the courts of probate in the several counties of this nation shall have jurisdiction in the following cases: First, of all cases relative to probate of last wills and testaments, the granting of letters testamentary and of administration, and revoking the same; second, the appointment and displacing of

guardians of orphans, minors and persons of unsound ^{or idiotic} mind; third, in the settlement and allowance of accounts of executors, administrators and guardians; fourth, to hear and determine all controversies respecting last wills and testaments, the right of executorship, administration or guardianship, or respecting the duties or accounts of executors, administrators and guardians; fifth, to award process, and cause to come before such court all persons, whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians, or otherwise, shall be interested, or in anywise accountable for any lands, tenements, goods, chattels, moneys or effects, belonging to any minor, orphan, or person of unsound mind or idiotic, or the estate of any deceased person.

Section 8. Be it further enacted That the ~~probate~~ Courts of probate in this nation shall have power to punish any person, who may be guilty of a contempt of such court, in like manner, as if such contempt had been committed against a Circuit Court of law.

Section 9. Be it further enacted That any person who has been, is, or may hereafter be, elected to the office of Judge of any Probate Court of any county in this nation, and who shall at the time of his election, be executor, administrator, or guardian, in such court, and not having settled his final account thereof, shall be disqualified from acting as Judge of Probate in such cases; but it shall be his duty to apply to the Probate Judge of an adjoining county, who shall have full authority to proceed therein, and shall cause his proceedings thereon to be recorded in the clerk's office of the Probate Court of the county from which the same shall

have been so removed

Section: 10 Be it further enacted That it shall be the duty of the Probate Judges to keep in their courts respectively, a docket book of all cases pending in their courts, on which docket, shall be entered in the order in which they are made, all applications for letters testamentary of administration and guardianship, and all other suits or causes in said courts, whether commenced by bill, petition, or motion, and whether the same be ex parte or between two or more parties litigant in said courts: and at each term of said courts it shall be the duty of the Judges thereof, to take up and dispose of the business pending between them in the order in which the same is entered upon their docket.

Section: 11 Be it further enacted That in all cases in which any Court of Probates shall make and enter a judgment and decree against any party litigant therein, or against any executor, administrator, or guardian, for payment of a sum of money by said party litigant, executor, administrator, or guardian, to any other party entitled to the same by the terms of said judgment or decree, said court shall have power to enforce a compliance with the terms of such judgment or decree, by process of fiere facias issued by said court returnable to a term of said court not less than six, nor more than eight months from test of said court; which process shall be executed by the Sheriff of the proper county upon the tenements, goods and chattels of the party against whom the same shall issue, or by process of attachment against the person of the party against whom the judgment or decree shall have been rendered. Provided, That no such

attachment shall issue until the party against whom the same is prayed, shall have been cited to appear at some regular term of the court, to show cause why it should not issue; and if upon the service of the citation, the party shall fail to appear, or shall not show good cause against the issuing of the attachment, the court shall issue a preceptory attachment, commanding the Sheriff to imprison the person or persons of the party, until he or they shall comply with the judgment or decree of the court.

Section 12. Be it further enacted. That the Courts of Probate shall have power, and they are hereby required to entertain bills of review, for the correction of any interlocutory order or final decree of said courts, in the same manner and according to the same rules, as the same are entertained by courts of equity. In proceedings for the final settlement of any executor, administrator, or guardian, any person interested, may, by bill of review, open and cause to be examined by the court, any annual or partial settlement made by such executor, administrator or guardian, and discharge and falsify the accounts rendered upon such annual or partial settlement, and any person interested, may, at any time, within two years after final settlement, by bill of review, open the account of any executor, administrator, or guardian, and discharge and falsify the same, and not after, saving to minors and females covert the same time, after the removal of their disability.

Section 13. Be it further enacted That no order or decree affecting the rights or interest of any minor,

shall be valid and binding upon said minor, or his or her interest in any estate administered in any Court of Probate, in this State, unless his or her guardian, if a resident of the county in which the proceedings are had, shall be first personally served with five days' notice to appear and defend the rights of said minor; or if the guardian of such minor be not a resident of said county, and do not appear, or if the guardian, whether resident or not of the county, be a party personally interested, to give validity and effect to any such order or decree, the court shall appoint a guardian ad litem to protect the interest of such minor.

Section: 14. Be it further enacted That when any Judge of Probate shall be related by affinity or consanguinity to any party interested in any proceedings in his court, or shall have any pecuniary interest therein, or shall have been employed therein as counsel or attorney, it shall be the his duty to transfer said proceedings to the court of Probate of some adjoining county; and the further proceedings in such case, by the Judges of Probate of the county to which the same shall have been transferred, shall be as valid and conclusive as if he had had original jurisdiction thereof. Provided, that by consent of all parties interested in such proceedings, which consent shall be entered on the record as part of the proceedings in the case, the disability of such Judge arising from the relationship, or previous employment as counsel or attorney of either party, may be waived, and his competency to try the cause, be restored.

Section: 15. Be it further enacted That the Judge of Probate in each county shall be, and he is hereby

Court of his or any other county within the nation,
and shall make returns thereof, according to the
tenor of the same; and on failure, he shall be liable
to be proceeded against in the same manner as for
the like failure in other cases.

Section: 18. Be it further enacted That it shall be
lawful for the Clerk of the Probate Court to issue
execution for the cost of any suit or proceeding
which may originate in said court, which the said
Clerk and Judge of Probate may be entitled to by law.

Section: 19 Be it further enacted That all books for minutes
records and other matters deemed necessary for the use of the
Clerk, officers of the several courts of probate in this nation,
shall be procured by the Clerks thereof and the accounts
thereof certified to by the Judges of said courts and the Board
of Police of the respective counties shall direct the payment
of the same out of the county treasury.

Section: 20. Be it further enacted That all acts or parts
of acts, ^{in violation of} in any manner coming in conflict with
the provisions of this act be and the same are hereby
repealed and that this act take effect and be in
force from and after its passage.

approve Alfred H. Hall

Oct 28 1857