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LEGISLATIVE ASSEMBLY,

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CONVEYANCE OF LANDS BY EXECUTORS, &c.

furnish to the applicant, on his paying the legal fee, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

Judgment in suit for benefit of particular persons.

SEC. 8. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought for the benefit of any particular person, the court shall award execution for the amount due to such person, with costs of suit.

Judgment, &c., in other cases.

SEC. 9. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought by the judge of probate for any breach thereof, in not performing any order or decree of the judge of probate, as mentioned in the fifth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased, that shall have come to the hands of such executor or administrator, and for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or mal-administration, with costs of suit.

Disposition of moneys collected.

SEC. 10. All moneys received on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such person other than the defendant therein, as shall then be the rightful executor or administrator, and such moneys shall be assets in his hands, to be administered according to law.

When scire facias may be prosecuted, &c.

SEC. 11. Any person who may be injured by the breach of the conditions of such bond, may afterwards, from time to time, sue out and prosecute a scire facias in his own name, on the judgment which may have been rendered for the penalty of such bond, and in such scire facias, shall assign and set forth the breaches on which he relies, and may therein recover such damages as he may prove, with costs.

By whom claims for damages for breach of condition may be prosecuted, &c.

SEC. 12. Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator, or guardian, in behalf of those he may represent, in the same manner as by persons living and of full age; and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

CHAPTER 61.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

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1. When court may decree conveyance by executor, &c.
2. Notice of petition and hearing.
3. Examination of petitioner, &c.
4. When decree for conveyance to be made.
5. Appeal from decree; executing conveyance, &c.
6. When petition to be dismissed, &c.
7. Bills in chancery for specific performance by heirs, &c.

SECTION

8. Decree in chancery.
9. Who to be authorized to make conveyance.
10. Effect of conveyance.
11. Certified copy of decree may be recorded; effect of record.
12. Decree may be enforced by process.
13. In case of death of person entitled, his heirs, &c., may commence or prosecute proceedings, &c.

SEC. 1. When any person, who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance.

When court may decree conveyance by executor, &c.

SEC. 2. On the presentation of a petition, by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the judge of probate shall appoint a time and place for hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks before such hearing, in such newspaper or newspapers in this territory, as he may deem necessary.

Notice of petition and hearing.

SEC. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit, of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate, may appear before the probate court and defend against such petition; and the court may examine on oath, the petitioner, and all others who may be produced before them for that purpose.

Examination of petitioner, &c.

SEC. 4. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of probate shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of this chapter, he shall thereupon make a decree authorizing and directing the executor or administrator to make and execute a conveyance thereof to such petitioner.

When decree for conveyance to be made.

SEC. 5. Any person interested may appeal from such decree to the district court for the same county, as in other cases, but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree; and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds, in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Appeal from decree; executing conveyance, &c.

SEC. 6. If, upon a hearing in the probate court, as hereinbefore provided, the judge of probate shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to rights of the petitioner, who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract, as hereinafter provided.

When petition to be dismissed, &c.

SEC. 7. Whenever any person, who is bound by any contract in writing to convey any real estate, shall die before making the conveyance, the person entitled thereto may have a bill in the court of chancery to enforce a specific performance of the contract, by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

Bill in chancery for specific performance by heirs, &c.

SEC. 8. The court of chancery shall hear and determine every such case brought in said court, according to the course of proceedings in chancery, and shall make such decree therein, as justice and equity shall require.

Decree in chancery.

SEC. 9. If it shall appear that the complainant is entitled to have a conveyance, the court may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased party might and ought to have done if living, and if the

Who to be authorized to make conveyance.

heirs or devisees of such deceased person, or any of them, shall be with-
in this territory, and competent to act, the court may require them, or
either of them, instead of the executor or administrator, to convey the
estate in the manner before mentioned; or may require them, or either
of them, to join in such conveyance with the executor or administrator.

Effect of convey-
ance.

SEC. 10. Every conveyance made in pursuance of a decree of the
probate court, or the court of chancery, as provided in this chapter,
shall be effectual to pass the estate contracted for, as fully as if the con-
tracting party himself was still living, and then executed the convey-
ance.

Certified copy of
decree may be re-
corded; effect of
record.

SEC. 11. A copy of the decree for conveyance made by the probate
court, and duly certified and recorded in the registry of deeds, in the
county where the lands lie, or a copy of the decree of the court of chan-
cery for that purpose, duly certified by the register, or clerk of said
court, and recorded as aforesaid, shall give the person entitled to such
conveyance, a right to the possession of the lands contracted for, and to
hold the same according to the terms of the intended conveyance, in like
manner as if they had been conveyed in pursuance of the decree.

Decree may be en-
forced by process.

SEC. 12. The recording of any decree, as provided in the preceding
section, shall not prevent the court making such decree, from enforcing
the same, by any proper process, according to the course of proceedings
therein.

In case of death of
person entitled, his
heirs, &c., may
commence or prose-
cute proceedings,
&c.

SEC. 13. If the person to whom the conveyance was to be made,
shall die before the commencement of proceedings, according to the pro-
visions of this chapter, or before the conveyance is completed, any per-
son who would have been entitled to the estate, under him as heir, de-
visee, or otherwise, in case the conveyance had been made, according to
the terms of the contract, or the executor or administrator of such de-
ceased person, for the benefit of the person so entitled, may commence
such proceedings, or may prosecute the same, if already commenced,
and the conveyance shall thereupon be so made as to vest the estate in
the same persons who would have been so entitled to it, or in the ex-
ecutor or administrator for their benefit.

CHAPTER 62.

OF FRAUDULENT CONVEYANCES AND CONTRACTS
RELATIVE TO LANDS.

SECTION

1. Fraudulent conveyances void.
2. What not deemed a fraudulent conveyance.
3. Conveyance, &c., containing power of revocation, void.
4. Conveyance executed by person to whom revocation given valid.
5. Conveyance executed by person to whom

SECTION

6. revocation given valid.
6. Conveyance, &c., of land, to be in writing.
7. Limitation of preceding section.
8. Contracts for sale, and leases for more than one year void, unless in writing.
9. Agent may sign instrument.
10. Powers of courts of equity not abridged.

SEC. 1. Every conveyance of any estate or interest in lands, or the