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# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE  
THE STATUTES OF THE STATE, BY ACT OF THE  
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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1 SECT. 23. When any estate is assigned by decree of the  
 2 court, or distributed by commissioners, as provided in this C. S. p. 452, Sect. 22.  
 3 chapter, to any person residing out of this state, and having c 46  
 4 no agent therein, and it is necessary that some person should  
 5 be authorized to take possession and charge of the same,  
 6 for the benefit of such absent person, the court may appoint  
 7 an agent for that purpose, and authorize him to take charge  
 8 of such estate, as well as to act for such absent person, in the  
 9 partition and distribution.

1 SECT. 24. Such agent shall give a bond to the judge of  
 2 probate, to be approved by him, faithfully to manage and C. S. p. 452, Sect. 23.  
 3 account for such estate, before he is authorized to receive Amended.  
 4 the same, and the court appointing such agent may exam-  
 5 ine and allow his account, on application made by him or  
 6 any person interested, and may allow a reasonable sum out  
 7 of the estate for his services and expenses.

CHAPTER LVII.

SALES OF LANDS BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

SALES BY EXECUTORS AND ADMINISTRATORS.

1 SECTION 1. When the personal estate of a deceased per-  
 2 son is insufficient to pay his debts, with the charges of ad- C. S. p. 418, Sect. 1.  
 3 ministration, his executor or administrator may sell his real Amended.  
 4 estate for that purpose, upon obtaining a license therefor,  
 5 and proceeding as herein provided. c 39

1 SECT. 2. To obtain such license, the executor or ad-  
 2 ministrator shall present a petition to the probate court,  
 3 from which he received his appointment, setting forth the  
 4 personal estate that has come to his hands, the disposition  
 5 thereof, and how much if any, remains undisposed of; the  
 6 debts outstanding against the deceased, as far as the same C. S. p. 418, Sect. 2.  
 7 can be ascertained; a description of all the real estate of Amended.  
 8 which the testator or intestate died seized, the condition  
 9 and value of the respective portions or lots, the persons in-  
 10 terested in said estate, with their residences if known, and  
 11 if unknown that fact shall be stated; which petition shall  
 12 be verified by the oath of the party presenting the same.

1 SECT. 3. If it appears by such petition, that there is C. S. p. 418, Sect. 3.  
 2 not sufficient personal estate in the hands of the executor or

3 administrator to pay the debts outstanding against the de-  
 4 ceased, and the expenses of administration, and that it is  
 5 necessary to sell the whole, or some portion of the real es-  
 6 tate for the payment of such debts, the judge of probate  
 7 shall thereupon make an order directing all persons inter-  
 8 ested in the estate to appear before him at a time and place  
 9 therein to be specified, not less than six weeks and not more  
 10 than ten weeks from the time of making such order; to  
 11 show cause why a license should not be granted to the ex-  
 12 ecutor or administrator applying therefor, to sell so much  
 13 of the real estate of the deceased as shall be necessary to  
 14 pay such debts.

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C. S. p. 418, Sect. 4.  
Amended.

1 SECT. 4. Every such order shall be published at least  
 2 four successive weeks in such newspaper as the court di-  
 3 rects, the last of which publications shall be at least four-  
 4 teen days before the day of hearing, and a copy of such or-  
 5 der shall be served personally on all persons interested in  
 6 the estate residing in the county where the application is  
 7 made, at least fourteen days before the day of hearing, and  
 8 on all other persons interested by depositing forthwith a  
 9 copy of such order in the post office with postage prepaid,  
 10 directed to them respectively at their place of residence,  
 11 unless it appears that their residence is unknown; *Provided*,  
 12 That if all persons interested in the estate signify in writing  
 13 their assent to such sale, the notice may be dispensed with.

C. S. p. 418, Sect. 5.

1 SECT. 5. The judge of probate, at the time and place  
 2 appointed in such order, or at such other time as the hear-  
 3 ing is adjourned to, upon proof of the due service or publi-  
 4 cation of a copy of the order or upon filing the consent in  
 5 writing, to such sale of all the persons interested, shall pro-  
 6 ceed to the hearing of such petition, and if such consent is  
 7 not filed shall hear and examine the allegations and proofs  
 8 of the petitioner, and of all persons interested in the estate,  
 9 who oppose the application.

C. S. p. 418, Sect. 7.

1 SECT. 6. If it appears to the court that it is necessary to  
 2 sell a part of the real estate, and that by a sale of such part  
 3 the residue of the estate or some specific part or piece there-  
 4 of, would be greatly injured, said court may license a sale  
 5 of the whole estate, or of such part thereof as may be judg-  
 6 ed necessary, and most for the interest of all concerned.

C. S. p. 418, Sect. 10.

1 SECT. 7. License shall not be granted, if any of the  
 2 persons interested in the estate gives bond to the judge of  
 3 probate, in such sum and in such sureties as he directs and  
 4 approves, with condition to pay all the debts, and the ex-  
 5 penses of administration so far as the goods and chattels,  
 6 rights and credits, of the deceased are insufficient therefor,  
 7 within such time as the judge of probate directs.

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1 SECT. 8. The bond mentioned in the preceding section  
 2 shall be for the security, and may be prosecuted for the  
 3 benefit of the creditors, as well as the executor or admin-  
 4 istrator.

C. S. p. 419, Sect. 11.

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1 SECT. 9. If the judge of probate is satisfied, after a full  
 2 hearing upon the petition, and an examination of the proof  
 3 and allegations of the parties interested, that a sale of the  
 4 whole or some portion of the real estate is necessary for the  
 5 payment of valid claims against the deceased, and charges  
 6 of administration, or if such sale is assented to by all per-  
 7 sons interested, he shall thereupon make an order of sale,  
 8 authorizing the executor or administrator to sell the whole  
 9 or so much, and such part of the real estate described in  
 10 the petition, as he deems necessary or beneficial.

C. S. p. 419, Sect. 12.

1 SECT. 10. The order shall specify the lands to be sold;  
 2 and the judge of probate may therein direct the order in  
 3 which several tracts, lots or parcels, shall be sold; and if  
 4 it appears that any part of such real estate has been devis-  
 5 ed, and not charged in such devise with the payment of  
 6 debts, the judge of probate shall order that part descended  
 7 to heirs, to be sold before that so devised; and if it appears  
 8 that any lands devised or descended, have been sold by the  
 9 heirs or devisees, then the lands in their hands remaining  
 10 unsold shall be ordered to be first sold.

C. S. p. 419, Sect. 13.

1 SECT. 11. License to sell real estate, as provided in this  
 2 chapter, may extend to the reversion of the dower of the  
 3 widow of a deceased person; and if such reversion is not  
 4 sold with the other real estate, it may be sold after the ex-  
 5 piration of the widow's term.

C. S. p. 419, Sect. 15.

1 SECT. 12. When a testator has given a legacy which  
 2 with his debts and the charges of administration, his goods,  
 3 chattels, rights and credits are insufficient to pay, the execu-  
 4 tor or administrator, with the will annexed, may be licensed  
 5 to sell his real estate for that purpose, in the same manner,  
 6 and upon the same terms and conditions as are prescribed  
 7 in this chapter, in the case of a sale for the payment of  
 8 debts.

C. S. p. 420, Sect. 26.  
Amended.

1 SECT. 13. If a deceased person, at the time of his death,  
 2 was possessed of a contract for the purchase of land, his in-  
 3 terest in such land, and under such contract, may be sold  
 4 on the application of his executor or administrator, in the  
 5 same cases in the same manner and upon like terms and  
 6 conditions as are prescribed in respect to land of which he  
 7 died seized, except as hereinafter provided.

C. S. p. 421, Sect. 27.  
Amended.

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C. S. p. 421, Sect. 28.

1 SECT. 14. Such sale shall be made subject to all pay-  
 2 ments that may thereafter become due on such contract;  
 3 and if there are any such payments thereafter to become  
 4 due, such sale shall not be confirmed by the judge of pro-  
 5 bate until the purchaser executes a bond to the executor or  
 6 administrator, for his benefit and indemnity, and for the  
 7 benefit and indemnity of the persons entitled to the inter-  
 8 est of the deceased in the lands so contracted for, in double  
 9 the whole amount of payments thereafter to become due on  
 10 such contract, with such sureties as the judge of probate  
 11 approves.

C. S. p. 421, Sect. 29.

1 SECT. 15. The bond shall be conditioned that such pur-  
 2 chaser will make all payments for such land that shall be-  
 3 come due after the date of such sale, and fully indemnify  
 4 the executor or administrator, and the persons so entitled,  
 5 against all demands, costs, charges, and expenses by reason  
 6 of any covenant or agreement contained in such contract;  
 7 but if there is no payment thereafter to become due on such  
 8 contract, no bond shall be required of the purchaser.

C. S. p. 421, Sect. 30.

1 SECT. 16. Upon the confirmation of such sale, the ex-  
 2 ecutor or administrator shall execute to the purchaser an  
 3 assignment of such contract, which shall vest in the pur-  
 4 chaser, his heirs and assigns, all the right, interest and title  
 5 of the persons entitled to the interest of the deceased in the  
 6 land sold, at the time of the sale, and such purchaser shall  
 7 have the same rights and remedies against the vendor of  
 8 such land, as the deceased would have had, if living.

C. S. p. 421, Sect. 31.

1 SECT. 17. The proceeds of every such sale of the inter-  
 2 est of the deceased person in lands under contract as here-  
 3 inbefore mentioned, shall be disposed of in all respects in  
 4 the same manner as the proceeds of the sale of lands of  
 5 which the deceased died seized, according to the provisions  
 6 of this chapter.

C. S. p. 421, Sect. 32.

1 SECT. 18. All sales and conveyances of land made by  
 2 executors or administrators pursuant to the provisions of  
 3 this chapter, shall be subject to all charges thereon, by  
 4 mortgage or otherwise, existing at the time of the death of  
 5 the testator or intestate; and in case the estate of the de-  
 6 ceased is in any way liable for the amount secured by any  
 7 such mortgage or for any such charge, the sale shall not be  
 8 confirmed by the judge of probate, until the purchaser exe-  
 9 cutes a bond to the executor or administrator, as required  
 10 in the case of a sale of a contract for the purchase of lands,  
 11 on which payments are to become due.

BY FOREIGN EXECUTORS.

1 SECT. 19. An executor or administrator appointed in  
 2 another state, or in a foreign country, on the estate of a per-<sup>New.</sup>  
 3 son dying out of this state, upon whose estate there is no  
 4 executor or administrator appointed in this state, may file  
 5 an authenticated copy of his appointment in the probate  
 6 court for any county in which there is real estate of the de-  
 7 ceased; after which, he may be licensed by the same pro-  
 8 bate court to sell real estate for the payment of debts, lega-  
 9 cies and charges of administration, in the same manner and  
 10 upon the same terms and conditions as are prescribed in the  
 11 case of an executor or administrator appointed in this state,  
 12 except as hereinafter provided.

BY GUARDIANS FOR THE PAYMENT OF DEBTS.

1 SECT. 20. When the goods, chattels, rights and credits,  
 2 in the hands of a guardian, are insufficient to pay all the  
 3 debts of the ward, with the charges of managing the estate,  
 4 the guardian may be licensed to sell his real estate, in like  
 5 manner, and upon like terms and conditions as are prescrib-  
 6 ed in this chapter, in the case of a sale by executors or ad-  
 7 ministrators, except as hereinafter provided. C. S. p. 422, Sect. 33.  
Amended. c 39

1 SECT. 21. If it is represented in the petition, and ap-  
 2 pears necessary to sell some part of the real estate of the  
 3 ward, and that by such partial sale, the residue of the estate,  
 4 or of some specific piece or part thereof would be greatly  
 5 injured, the court may license a sale of the whole of the  
 6 estate, or of such part thereof as it deems necessary and  
 7 most for the interest of all concerned. C. S. p. 422, Sect. 39.  
Amended.

FOR MAINTENANCE AND INVESTMENT.

1 SECT. 22. When the income of the estate of a ward is  
 2 insufficient to maintain him and his family, or to educate  
 3 the ward when a minor, or the children of any ward, or  
 4 when it appears that it would be for the benefit of a ward  
 5 that his real estate, or any part thereof should be sold, and  
 6 the proceeds thereof put out on interest or invested in some  
 7 productive stock, his guardian may sell the same upon ob-  
 8 taining a license therefor, and proceeding therein as here-  
 9 inafter provided. C. S. p. 414, Sects. 1  
& 2, combined. c 38

1 SECT. 23. If the estate is sold for any purpose men-  
 2 tioned in the preceding section, the guardian shall apply  
 3 the proceeds of the sale to such purpose, so far as necessary,  
 4 and shall put out the residue, if any, on interest, or in-  
 5 vest it in the best manner in his power, until the capi- C. S. p. 414, Sect. 3.

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6 tal shall be wanted for the maintenance of the ward and his  
7 family, or for the education of the ward when a minor, or  
8 the children of any ward, in which case the capital may be  
9 used for that purpose, as far as may be necessary, in like  
10 manner as if it had been personal estate.

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C. S. p. 414, Sect. 4

1 SECT. 24. If the estate is sold in order to invest the  
2 proceeds, the guardian shall make the investment according  
3 to his best judgment; or in pursuance of any order that  
4 may be made by the probate court.

C. S. p. 415, Sect. 6,  
Amended

1 SECT. 25. To obtain a license for such sale, the guar-  
2 dian shall present to the probate court a petition, setting  
3 forth the estate of his ward, real and personal, its condition  
4 and the facts and circumstances on which the petition is  
5 founded, tending to show the necessity or expediency of  
6 a sale; which petition shall be verified by the oath of the  
7 petitioner.

C. S. p. 415, Sect. 7

1 SECT. 26. If it appears to the court from such petition  
2 that it is necessary, or would be beneficial to the ward that  
3 such real estate, or some part of it, be sold, the court shall  
4 thereupon make an order directing the next of kin of the  
5 ward, and all persons interested in the estate, to appear be-  
6 fore such court at a time and place therein to be specified,  
7 not less than four, nor more than eight weeks from the time  
8 of making such order, to show cause why a license should  
9 not be granted for the sale of such estate.

C. S. p. 415, Sect. 10.

1 SECT. 27. The judge of probate at the time and place  
2 appointed in such order, or at such other time as the hear-  
3 ing shall be adjourned to, upon proof of the due service of  
4 the order, and upon filing the certificate of approbation of  
5 the commissioners of the county, when necessary, shall hear  
6 and examine the proofs and allegations of the petitioner and  
7 of the next of kin, and of all other persons interested in the  
8 estate, who oppose the application.

C. S. p. 415, Sect. 12.

1 SECT. 28. If, after a full examination, it appears to the  
2 court either that it is necessary, or that it would be for the  
3 benefit of the ward, that the real estate, or any part of it,  
4 be sold, such court may grant a license therefor, specifying  
5 therein whether the sale is to be made for the maintenance  
6 of the ward and his family, or for the education of the ward  
7 or his children, or in order that the proceeds may be in-  
8 vested as aforesaid.

## BY FOREIGN GUARDIANS.

1 SECT. 29. When a minor or other person residing out of

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2 this state is under guardianship in the state or country in  
 3 which he resides, and has no guardian appointed in this C. S. p. 423, Sects. 43  
 4 state, the foreign guardian may file an authenticated copy of & 44, combined. *c 39*  
 5 his appointment in the probate court for any county in  
 6 which there is real estate of the ward; after which, he may  
 7 be licensed to sell real estate of the ward, in any county, in  
 8 the same manner, and upon the same terms and conditions  
 9 as are prescribed in this chapter in the case of a guardian  
 10 appointed in this state, except as hereinafter provided.

## PROVISIONS COMMON TO SALES BY GUARDIANS.

1 SECT. 30. No license shall be granted to any guardian to  
 2 sell real estate of his ward except in case of minors, unless the C. S. p. 422, Sect. 41.  
 3 commissioners of the county of which the ward is an inhab-  
 4 itant, or in which he resides, certify to the judge of pro-  
 5 bate in writing, their approbation of such proposed sale, and  
 6 that they deem it necessary.

1 SECT. 31. All those who are next of kin, and heirs ap-  
 2 parent or presumptive of the ward, shall be considered as C. S. p. 422, Sect. 42.  
 3 interested in the estate, and may appear and answer to the  
 4 petition of the guardian, and when personal notice of the  
 5 time and place of hearing the petition is required to be  
 6 given, they shall be notified as persons interested, accord-  
 7 ing to the provisions respecting similar sales by executors  
 8 and administrators.

1 SECT. 32. Such notice shall be published at least four  
 2 successive weeks in such newspaper as the court directs,  
 3 the last of which publications shall be at least fourteen days New.  
 4 before the day of hearing, and a copy of such order shall be  
 5 served personally on all persons interested, as aforesaid,  
 6 residing in the county where the application is made, at  
 7 least fourteen days before the day of hearing, and on all  
 8 other persons interested, by depositing forthwith a copy of  
 9 such notice in the post office, with postage pre-paid, di-  
 10 rected to them respectively at their place of residence, un-  
 11 less it appears that their residence is unknown.

PROVISIONS COMMON TO SALES BY EXECUTORS, ADMINISTRATORS  
AND GUARDIANS.

1 SECT. 33. Every executor, administrator and guardian  
 2 licensed to sell real estate for any purpose whatever, whether New.  
 3 appointed in this state or elsewhere, shall before sale, give  
 4 bond to the judge of probate with sufficient surety or sure-  
 5 ties to be approved by said judge, conditioned to sell the  
 6 same and account for and dispose of the proceeds as pro-  
 7 vided by law, and a further bond may be required by said  
 8 judge whenever he considers one necessary.



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C. S. p. 419, Sect. 14.  
Amended.

1 SECT. 34. After an order of sale is made, and said bond  
2 filed with the judge of probate, he shall deliver a certified  
3 copy of said order to the executor, administrator or guar-  
4 dian, who shall thereupon be authorized to sell the real es-  
5 tate as therein directed, within one year after the making  
6 of such order, or within such further time, not exceeding  
7 one year, as may be allowed by said judge.

C. S. p. 419, Sect. 16.

1 SECT. 35. When a sale is ordered, notice of the time  
2 and place of holding the same shall be posted up in three  
3 of the most public places in the county in which the land is  
4 situated, and shall be published in a newspaper, if there is  
5 one printed in the same county, and if there is none, then  
6 in such paper as the court may direct, for three weeks suc-  
7 cessively next before such sale; in which notice the lands  
8 and tenements to be sold shall be described with common  
9 certainty.

C. S. p. 419, Sect. 17.  
Amended.

1 SECT. 36. Every sale under the provisions of this chap-  
2 ter shall be made by public auction in the county where the  
3 lands are situated, between the hours of nine o'clock in the  
4 morning, and the setting of the sun the same day.

C. S. p. 419, Sect. 18.

1 SECT. 37. No executor, administrator or guardian mak-  
2 ing the sale, shall directly or indirectly purchase or be in-  
3 terested in the purchase of any part of the real estate so  
4 sold; and all sales made contrary to the provisions of this  
5 section shall be void; but this section shall not prohibit any  
6 such purchase by a guardian for the benefit of his ward.

C. S. p. 420, Sect. 19.  
Amended.

1 SECT. 38. On such sale, the executor, administrator or  
2 guardian may give such length of credit, not exceeding one  
3 year, and for not more than one-half of the purchase money,  
4 as shall seem best calculated to produce the highest price,  
5 and shall have been directed, or shall be approved by the  
6 judge of probate, and shall secure the moneys for which  
7 credit is given, with interest, by a bond of the purchaser,  
8 and a mortgage of the premises sold.

C. S. p. 420, Sect. 20.

1 SECT. 39. The executor, administrator or guardian  
2 making any sale, shall immediately make a return of his  
3 proceedings upon the order of sale, in pursuance of which  
4 it is made, to the judge of probate granting the same, who  
5 shall examine the proceedings, and may also examine such  
6 executor, administrator or guardian, or any other person,  
7 on oath, touching the same; and if he is of opinion that the  
8 proceedings were unfair, or that the sum bid is dispropor-  
9 tionate to the value, and that a sum exceeding such bid, at  
10 least ten per cent. exclusive of the expenses of a new sale,  
11 may be obtained, he shall vacate such sale, and direct an-

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12 other to be had, of which notice shall be given; and the  
13 sale shall be conducted in all respects as if no previous sale  
14 had taken place.

1 SECT. 40. If it appears to the judge of probate that the  
2 sale was legally made and fairly conducted, and that the  
3 sum bid was not disproportionate to the value of the prop-  
4 erty sold, or if disproportionate, that a greater sum than  
5 above specified can not be obtained, he shall make an  
6 order confirming such sale, and directing conveyances to be  
7 executed. C. S. p. 420, Sect. 21. c 39

1 SECT. 41. Every executor, administrator and guardian  
2 licensed to sell real estate, as provided in this chapter, shall,  
3 before fixing on the time and place of sale, take and sub-  
4 scribe an oath in substance as follows: that in disposing C. S. p. 420, Sect. 22  
5 of the estate which he is licensed to sell, he will use his Amended.  
6 best judgment in fixing on the time and place of sale,  
7 and will exert his utmost endeavors to dispose of the same  
8 in such manner as will be most for the advantage of all per-  
9 sons interested; which oath shall be filed with the judge of  
10 probate before confirmation of the sale.

1 SECT. 42. An affidavit of the executor, administrator or  
2 guardian or of some other person having knowledge of the C. S. p. 420, Sect. 23.  
3 fact, that notice of any such sale was given as provided in  
4 this chapter, being made, and filed and recorded in the pro-  
5 bate court, together with a copy of the notice, shall be ad-  
6 mitted as evidence of the time, place and manner of giving  
7 the notice.

1 SECT. 43. If at the time appointed for any such sale,  
2 the executor, administrator or guardian, deems it for the C. S. p. 420, Sect. 24.  
3 interest of all persons concerned therein, that the sale be  
4 postponed, he may adjourn the same from time to time, not  
5 exceeding in all three months.

1 SECT. 44. In case of adjournment, notice thereof shall C. S. p. 420, Sect. 25.  
2 be given by a public declaration, at the time and place first  
3 appointed for the sale, and if the adjournment is for more  
4 than one day, further notice shall be given by posting or  
5 publishing the same, or both, as time and circumstances  
6 may admit.

1 SECT. 45. In all sales by executors, administrators or C. S. p. 423, Sect. 47.  
2 guardians appointed in this state or elsewhere, of part or Amended.  
3 the whole of the real estate of a deceased person or ward,  
4 the surplus of the proceeds remaining on the final settle-  
5 ment of the accounts shall be considered as real estate and  
6 be disposed of to the same persons, and in the same pro-

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7 portions, as the real estate would descend or be disposed of  
8 by the laws of this state, if not sold.

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C. S. p. 423, Sects. 50  
& 51, combined.

1 SECT. 46. No action for the recovery of any estate sold  
2 by an executor or administrator under this chapter shall be  
3 maintained by any heir or other person claiming under the  
4 deceased, unless it is commenced within five years next af-  
5 ter the sale; and no action for any estate so sold by a guar-  
6 dian shall be maintained by the ward or by any person  
7 claiming under him, unless commenced within five years  
8 next after the termination of the guardianship; except that  
9 persons out of the state and minors, and others under legal  
10 disability to sue at the time when the right of action first  
11 accrues, may commence such action at any time within five  
12 years after the removal of the disability or their return to  
13 the state.

C. S. p. 424, Sect. 52.

1 SECT. 47. In case of an action relating to any estate sold  
2 by an executor, administrator or guardian, in which an heir  
3 or person claiming under the deceased or in which the ward  
4 or any person claiming under him, shall contest the validity  
5 of the sale, it shall not be avoided on account of any irregu-  
6 larity in the proceedings; *Provided*, it appears:

7 *First.*—That the executor, administrator, or guardian  
8 was licensed to make the sale by the probate court having  
9 jurisdiction;

10 *Second.*—That he gave a bond which was approved by  
11 the judge of probate, in case a bond was required upon  
12 granting a license;

13 *Third.*—That he took the oath prescribed in this chapter;

14 *Fourth.*—That he gave notice of the time and place of  
15 sale, as in this chapter prescribed; and,

16 *Fifth.*—That the premises were sold accordingly, by  
17 public auction, and the sale confirmed by the court, and  
18 that they are held by one who purchased them in good faith.

C. S. p. 424, Sect. 53.

1 SECT. 48. If there is any neglect or misconduct in the  
2 proceedings of the executor, administrator, or guardian, in  
3 relation to such sale, by which any person interested in the  
4 estate suffers damage, he may recover compensation there-  
5 for on the probate bond, or otherwise, as the case may re-  
6 quire.

C. S. p. 424, Sect. 54.  
Amended.

1 SECT. 49. If the validity of a sale is drawn in question  
2 by a person claiming adversely to the title of the deceased,  
3 or the ward, or claiming under a title that is not derived  
4 from or through the deceased or ward, the sale shall not be  
5 void on account of any irregularity in the proceedings, if it  
6 appears that the executor, administrator, or guardian was  
7 licensed to make the sale by a probate court having juris-

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8 diction, and that he did accordingly execute and acknow-  
9 ledge, in legal form, a deed for the conveyance of the  
10 premises.

1 SECT. 50. Any executor, administrator, or guardian  
2 who fraudulently sells any real estate of his testator, intes-  
3 tate or ward, contrary to the provisions of this chapter, C. S. p. 424, Sect. 55 c 39  
4 shall be liable in double the value of the land sold, as dam-  
5 ages to be recovered in a civil action, by the person having  
6 an estate of inheritance therein.

SALE AND CONVEYANCE OF REAL ESTATE BELONGING TO LU-  
NATICS.

1 SECT. 51. Any lunatic seized of any real estate, or en-  
2 titled to any term for years in lands, or having any tenan- 1865-p. 112, Sect. 1. c 54  
3 cy by the curtesy, or any tenancy by the curtesy initiate,  
4 may, by guardian duly appointed, or if such lunatic is a  
5 married woman, having any real estate held by her as her  
6 separate estate, or having any dower admeasured, or right  
7 of dower or inchoate right of dower in any real estate, she  
8 may, by guardian duly appointed, or by her husband, ap-  
9 ply to the district court of the district in which such real  
10 estate or some part thereof is situate, or if such lunatic is a  
11 married woman, in the district in which her husband re-  
12 sides, for the sale or disposition of the same in the manner  
13 hereinafter directed.

1 SECT. 52. On such application said guardian or said 1865-p. 113, Sect. 2  
2 husband shall give bond to the judge of probate of the coun-  
3 ty in which such proceedings are had for the benefit of such  
4 lunatic, (in addition to any bond given on appointment as  
5 guardian,) to be filed with the judge of said probate court,  
6 in such penalty, with such sureties, and in such form as the  
7 said district court shall direct, conditioned for the faithful  
8 performance of the trust reposed, for the paying over, in-  
9 vesting and accounting for all moneys that shall be re-  
10 ceived by such guardian or husband, according to the order  
11 of any court having authority to give directions in the  
12 premises and for the observance of the orders and directions  
13 of the court in relation to the trust.

1 SECT. 53. If such bond is forfeited, the court shall 1865-p. 113, Sect. 3.  
2 direct it to be prosecuted for the benefit of the party  
3 injured.

1 SECT. 54. Upon the filing of such bond the court may pro- 1865-p. 113, Sect. 4.  
2 ceed in a summary manner by reference to a referee, to in-  
3 quire into the merits of such application.

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1865—p. 113, Sect. 5.

1 SECT. 55. Whenever it appears satisfactorily that a dis-  
 2 position of any part of the real estate of such lunatic, or of  
 3 any interest in any term for years, or of a tenancy by the  
 4 curtesy, or tenancy by the curtesy initiate in any real es-  
 5 tate, or a disposition of any real estate, or of her interest  
 6 in a term of years of a married woman who is a lunatic,  
 7 held by her as her separate estate, or of any dower admeas-  
 8 ured, or right of dower, or inchoate right of dower of a mar-  
 9 ried woman who is a lunatic, is necessary and proper either  
 10 for the support and maintenance of such lunatic, or for his  
 11 education; or that the interest of such lunatic requires or  
 12 will be substantially promoted by such disposition on ac-  
 13 count of any part of such property being exposed to waste  
 14 and dilapidation, or on account of its being wholly unpro-  
 15 ductive, or when the same has been contracted to be sold  
 16 and a conveyance thereof cannot be made by reason of such  
 17 lunacy, or for any other peculiar reasons or circumstances,  
 18 the court may order the letting for a term of years, or the  
 19 sale or other disposition of such real estate or interest to be  
 20 made by such guardian or husband of such married woman  
 21 who is a lunatic, in such manner and with such restrictions  
 22 as shall be deemed expedient, or may order the fulfillment  
 23 of said contract; by conveyance by such guardian or hus-  
 24 band according to the terms of the contract.

1865—p. 114, Sect. 6.

1 SECT. 56. But no real estate or term of years or any in-  
 2 terest in real estate hereinbefore named, shall be sold,  
 3 leased or disposed of in any manner against the provisions  
 4 of any last will, or of any conveyance by which such es-  
 5 tate, or term, or interest was devised or granted to such  
 6 lunatic.

1865—p. 114, Sect. 7.

1 SECT. 57. Upon an agreement for the sale, leasing or  
 2 other disposition of such property being made, or upon any  
 3 conveyance in fulfillment of a contract being executed in  
 4 pursuance of such order, the same shall be reported to the  
 5 court on the oath of the guardian or husband making or ex-  
 6 cuting the same, and, (except in the case of a conveyance  
 7 to fulfil a contract,) if the report is confirmed, a conveyance  
 8 shall be executed under the direction of the court.

1865—p. 114, Sect. 8.

1 SECT. 58. All sales, leases, dispositions, and conveyan-  
 2 ces, made in good faith by such guardian or husband in pur-  
 3 suance of such orders, shall be valid and effectual as if made  
 4 by such lunatic when of sound mind.

1865—p. 114, Sect. 9.

1 SECT. 59. The court shall make order for the applica-  
 2 tion and disposition of the proceeds of such property, and  
 3 for the investment of the surplus belonging to such lunatic,  
 4 so as to secure the same for the benefit of such lunatic,

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5 and shall direct the ascertainment of the value of any such  
 6 tenancy by the curtesy, or tenancy initiate, or dower, or  
 7 right of dower, or inchoate right of dower, and shall direct  
 8 a return of such investment and disposition to be made on  
 9 oath, as soon as may be, and shall require accounts to be  
 10 rendered periodically by any committee or other person who  
 11 may be entrusted with the disposition of the income of such  
 12 proceeds.

1 SECT. 60. No sale made as aforesaid, of the real estate <sup>1865—p. 115, Sect.</sup>  
 2 or interest therein of any lunatic, shall give to such lunatic <sup>10.</sup>  
 3 any other or greater interest or estate in the proceeds of  
 4 such sale than such lunatic had in the estate so sold; but  
 5 the said proceeds shall be deemed real estate of the same  
 6 nature as the property sold, or the interest therein of the  
 7 said lunatic, and the court shall make order for the preser-  
 8 vation of the same.

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1 SECT. 61. If the real estate of any lunatic, or any part <sup>1865—p. 115, Sect.</sup>  
 2 of it is subject to dower or other life estate, and the person <sup>11.</sup>  
 3 entitled thereto consents, in writing, to accept a gross sum  
 4 in lieu of such dower or other life estate, or the permanent  
 5 investment of a reasonable sum, in such manner as that the  
 6 interest thereof be made payable to the person entitled to  
 7 such dower or life estate during life, the court may direct  
 8 the payment of such sum in gross, or the investment of such  
 9 sum as shall be deemed reasonable and shall be acceptable  
 10 to the person entitled to said dower or other life es-  
 11 tate, or right therein, actual or contingent, in manner afore-  
 12 said.

1 SECT. 62. Before any such sum is paid or investment <sup>1865—p. 115, Sect.</sup>  
 2 made, the court shall be satisfied that an actual release of <sup>12.</sup>  
 3 such right of dower or other life estate, actual or contin-  
 4 gent, has been executed.

CHAPTER LVIII.

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

1 SECTION 1. When any person, who is bound by a con-  
 2 tract in writing to convey any real estate, dies before mak- <sup>C. S. p. 455, Sect. 1.</sup>  
 3 ing the conveyance, the probate court may make a decree,  
 4 authorizing and directing the executor or administrator to  
 5 convey such real estate to the person entitled thereto, in all

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