

Statutes  
1878

THE  
GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY  
GEORGE B. YOUNG.

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CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF  
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CHAPTER LVII.

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SALES BY EXECUTORS AND ADMINISTRATORS.

§ 1. Sale of real estate to pay debts. When the personal estate of a deceased person is insufficient to pay his debts, with the charges of administration, his executor or administrator may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding as herein provided.

§ 2. License to sell, how obtained—petition. To obtain such license, the executor or administrator shall present a petition to the probate court from which he received his appointment, setting forth the personal estate that has come into his hands, the disposition thereof, and how much, if any, remains undisposed of; the debts outstanding against the deceased, as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized; the condition and value of the respective portions or lots, the persons interested in said estate, with their residences if known, and, if unknown, that fact shall be stated; which petition shall be verified by the oath of the party presenting the same.

19 M. 117, 338.

§ 3. Order to show cause, on petition. If it appears by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the judge of probate shall thereupon make an order directing all persons interested in the estate to appear before him, at a time and place therein to be specified, not less than six weeks nor more than ten

weeks from the time of making such order, to show cause why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

§ 4. **Order, how published and served.** Every such order shall be published at least four successive weeks in such newspaper as the court directs, the last of which publications shall be at least fourteen days before the day of hearing; and a copy of such order shall be served personally on all persons interested in the estate residing in the county where the application is made, at least fourteen days before the day of hearing, and on all other persons interested by depositing forthwith a copy of such order in the post-office, with postage prepaid, directed to them respectively at their place of residence, unless it appears that their residence is unknown: *provided*, that if all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

§ 5. **Proceedings on hearing.** The judge of probate, at the time and place appointed in such order, or at such other time as the hearing is adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing to such sale of all the persons interested, shall proceed to the hearing of such petition, and, if such consent is not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate who oppose the application.

§ 6. **Whole estate may be sold, when.** If it appears to the court that it is necessary to sell a part of the real estate, and that, by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may license a sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned.

§ 7. **License to be refused, if bond to pay debts is given.** License shall not be granted, if any of the persons interested in the estate gives bond to the judge of probate, in such sum and in such sureties as he directs and approves, with condition to pay all the debts and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased are insufficient therefor, within such time as the judge of probate directs.

§ 8. **Bond, how prosecuted.** The bond mentioned in the preceding section shall be for the security, and may be prosecuted for the benefit, of the creditors, as well as the executor or administrator.

§ 9. **Judge shall make order of sale, when.** If the judge of probate is satisfied, after a full hearing upon the petition, and an examination of the proof and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale is assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole, or so much and such part of the real estate described in the petition, as he deems necessary or beneficial.

§ 10. **Contents of order.** The order shall specify the lands to be sold; and the judge of probate may therein direct the order in which several tracts, lots or parcels, shall be sold; and if it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the judge of probate shall order that part descended to heirs to be sold before that so devised; and if it appears that any lands devised or descended have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

§ 11. **License to sell extends to reversion of dower.** License to sell real estate, as provided in this chapter, may extend to the reversion of the dower of the widow of a deceased person; and if such reversion is not sold with the other real estate, it may be sold after the expiration of the widow's term.

§ 12. **Sale of real estate to pay legacies.** When a testator has given a legacy which, with his debts and the charges of administration, his goods, chattels, rights and

credits are insufficient to pay, the executor, or administrator with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter in the case of a sale for the payment of debts.

§ 13. **Sale of interest of deceased under contract of purchase.** If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land, and under such contract, may be sold, on the application of his executor or administrator, in the same cases, in the same manner, and upon like terms and conditions, as are prescribed in respect to land of which he died seized, except as hereinafter provided.

§ 14. **Same—sale, how made—purchaser to give bond.** Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there are any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate until the purchaser executes a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of probate approves.

§ 15. **Same—bond, how conditioned.** The bond shall be conditioned that such purchaser will make all payments for such land that shall become due after the date of such sale, and fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, charges and expenses by reason of any covenant or agreement contained in such contract; but if there is no payment thereafter to become due on such contract, no bond shall be required of the purchaser

§ 16. **Same—assignment of contract to be made.** Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract, which shall invest in the purchaser, his heirs and assigns, all the right, interest and title of the persons entitled to the interest of the deceased in the land sold, at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had, if living.

§ 17. **Same—proceeds of sale, how disposed of.** The proceeds of every such sale of the interest of the deceased persons in the lands under contract, as hereinbefore mentioned, shall be disposed of in all respects in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this chapter.

§ 18. **Sales and conveyances subject to all charges, etc.** All sales and conveyances of land made by executors or administrators, pursuant to the provisions of this chapter, shall be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased is in any way liable for the amount secured by any such mortgage, or for any such charge, the sale shall not be confirmed by the judge of probate, until the purchaser executes a bond to the executor or administrator, as required in the case of a sale of a contract for the purchase of lands on which payments are to become due.

#### SALES BY FOREIGN EXECUTORS.

§ 19. **Filing of copy of appointment—license to sell—power of attorney.** An executor or administrator appointed in another state, upon whose estate there is no executor or administrator appointed in this state, may file an authenticated copy of his appointment in the probate court for any county in which there is real estate of the deceased; after which he may be licensed by the same probate court to sell real estate for the payment of debts, legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this

state, except as hereinafter provided. And such foreign executor or administrator may act by his attorney in fact, thereto by him duly appointed under his hand and seal, and executed and acknowledged in the same manner as is required for the conveyance of real estate, which power of attorney shall be recorded in the office of the register of deeds for the county in which the real estate is situated. (*As amended 1868, c. 65, § 1.*)

See *post*, §§ 20-22.

#### FOREIGN EXECUTORS, ADMINISTRATORS AND GUARDIANS.\*

\*§ 20. Foreign executors, etc., may file exemplification of appointment—evidence. That an exemplification of the record of the appointment of any executor, administrator or guardian, in another state or in a foreign country, may be filed and recorded in the office of the register of deeds of any county in this state; and such record in the register's office, or a transcript thereof duly certified, shall in all cases be *prima facie* evidence of such appointment. (*1869, c. 63, § 1.*)

\*§ 21. Discharge of mortgages, etc., by such executor, etc. That any such executor, administrator or guardian, may release, and fully discharge of record, any judgment or mortgage of land in this state belonging to the estate, or to the minor children represented by him; and may also release and fully discharge any land in this state from the lien of such judgment or mortgage. (*Id.* § 2.)

\*§ 22. Such executor, etc., may act by attorney. That any such executor, administrator or guardian may act by his attorney in fact, thereto by him duly appointed, by a power or attorney, executed and acknowledged in the same manner as is required for a conveyance of real estate, and recorded in the office of the register of deeds of the county in this state in which such act may be performed (*Id.* § 3.)

See *ante*, § 19; *post*, § 32; c. 59, § 31.

#### SALES BY GUARDIANS, FOR THE PAYMENT OF DEBTS.

§ 23. (SEC. 20.) License to sell real estate of ward. When the goods, chattels, rights and credits, in the hands of a guardian, are insufficient to pay all the debts of the ward, with the charges of managing the estate, the guardian may be licensed to sell his real estate, in like manner, and upon like terms and conditions, as are prescribed in this chapter in the case of a sale by executors or administrators, except as hereinafter provided.

*Moutour v. Purdy*, 11 M. (384.)

§ 24. (SEC. 21.) Whole estate to be sold, when. If it is represented in the petition and appears necessary to sell some part of the real estate of the ward, and that, by such partial sale, the residue of the estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as it deems necessary, and most for the interest of all concerned.

#### FOR MAINTENANCE AND INVESTMENT.

§ 25. (SEC. 22.) Sale of real estate for support of ward. When the income of the estate of a ward is insufficient to maintain him and his family, or to educate the ward, when a minor, or the children of any ward, or when it appears that it would be for the benefit of a ward that his real estate, or any part thereof, should be sold, and the proceeds thereof put out on interest, or invested in some productive stock, his guardian may sell the same, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

§ 26. (SEC. 23.) Proceeds of sale, how applied or invested. If the estate is sold for any purpose mentioned in the preceding section, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until

\*As to foreclosure of mortgages by foreign executors, see *post* c. 81 § 25

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

§ 27. (SEC. 24.) **Investment, how made.** If the estate is sold in order to invest the proceeds, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

§ 28. (SEC. 25.) **Petition for sale, to show what.** To obtain a license for such sale, the guardian shall present to the probate court a petition, setting forth the estate of his ward, real and personal, its condition, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

§ 29. (SEC. 26.) **Notice of hearing to be given.** If it appears to the court, from such petition, that it is necessary, or would be beneficial to the ward, that such real estate, or some part of it, be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court, at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

§ 30. (SEC. 27.) **Proceedings on hearing.** The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service of the order, and upon filing the certificate of approbation of the commissioners of the county, when necessary, shall hear and examine the proofs and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

§ 31. (SEC. 28.) **License to sell—its contents.** If, after a full examination, it appears to the court, either that it is necessary, or that it would be for the benefit of the ward, that the real estate, or any part of it, be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be invested as aforesaid.

#### BY FOREIGN GUARDIANS.

§ 32. (SEC. 29.) **Duty and power of foreign guardians.** When a minor, or other person, residing out of this state, is under guardianship in the state or county in which he resides, and has no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court for any county in which there is real estate of the ward; after which he may be licensed to sell real estate of the ward in any county, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter in the case of a guardian appointed in this state, except as hereinafter provided. And such foreign guardian may act by his attorney in fact, thereto by him duly appointed under his hand and seal, and executed and acknowledged in the same manner as is required for the conveyance of real estate, which power of attorney shall be recorded in the office of the register of deeds for the county in which the real estate is situated. (*As amended 1870, c. 63, § 1.*)

*See ante, §§ 20-22; post, c. 59, § 31.*

#### PROVISIONS COMMON TO SALES BY GUARDIANS.

§ 33. (SEC. 30.) **Condition of granting license.** No license shall be granted to any guardian to sell real estate of his ward, except in case of minors, unless the commissioners of the county of which the ward is an inhabitant, or in which he resides, certify to the judge of probate, in writing, their approbation of such proposed sale, and that they deem it necessary.

§ 34. (SEC. 31.) **Notice of hearing, on whom to be served.** All those who are next of kin, and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear and answer to the petition of the guardian; and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales by executors and administrators.

§ 35. (SEC. 32.) **Notice, how published and served.** Such notice shall be published at least four successive weeks, in such newspaper as the court directs, the last of which publications shall be at least fourteen days before the day of hearing; and a copy of such order shall be served personally on all persons interested, as aforesaid, residing in the county where the application is made, at least fourteen days before the day of hearing, and on all other persons interested, by depositing forthwith a copy of such notice in the post-office, with postage prepaid, directed to them respectively at their place of residence, unless it appears that their residence is unknown.

#### CONVEYANCES BY GUARDIANS TO RAILROAD COMPANIES.

\*§ 36. **Proceedings to effect conveyance.** Whenever any railroad company has located the line of its road upon a crop, or contiguous to any land or lots belonging to infant heirs, or other wards, or in which such heirs or wards have any interest, it shall be lawful for the guardian of such heirs or wards to sell and convey to such railroad company, upon such terms as may be agreed upon between said guardian and said company, such portion of said lands or lots as may be deemed necessary or required by said company, and the right of way upon and across the same, together with all necessary grounds for depots, engine and station-houses and side-tracks, subject only to the approval and confirmation of the probate court of the county having jurisdiction of the matter of the guardianship of such heirs or wards. Such approval and confirmation shall be endorsed upon or annexed to the deed or other instrument between the parties, and shall be recorded with and as a part of such deed or instrument, in the office of the register of deeds in the proper county, and shall be notice to all parties interested of the facts therein stated: *provided*, that before granting such approval and confirmation, the judge of probate shall require a petition, subscribed and verified by such guardian, and signed by some officer of said company, to be filed in said probate court, setting forth the names of such heirs or wards, the name of such railroad company, a description of the lands or lots to be conveyed, the terms of sale, and that the price to be paid is the just and full value of the lands or lots intended to be conveyed to said company; and upon the filing of such petition, the judge of probate shall determine the matter, without any further formality, notice, order or delay whatever. (1869, c. 62, § 1, as amended 1870, c. 18, § 1.) 2

#### PROVISIONS COMMON TO SALES BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

§ 37. (SEC. 33.) **Bond to be given in all cases.** Every executor, administrator and guardian licensed to sell real estate for any purpose whatever, whether appointed in this state or elsewhere, shall, before sale, give bond to the judge of probate, with sufficient surety or sureties, to be approved by said judge, conditioned to sell the same, and account for and dispose of the proceeds, as provided by law; and a further bond may be required by said judge whenever he considers one necessary.

*Babcock v. Cobb*, 11 M. (347).

§ 38. (SEC. 34.) **Order—sale to be made, within what time.** After an order of sale is made, and said bond filed with the judge of probate, he shall deliver a certified copy of said order to the executor, administrator or guardian, who shall thereupon be authorized to sell the real estate, as therein directed, within one year

after the making of such order, or within such further time, not exceeding one year, as may be allowed by said judge.

§ 39. (SEC. 35.) **Notice of sale to be posted and published.** When a public sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there is one, printed in the same county, and if there is none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty. (*As amended 1872, c. 65, § 1.*)

*Montour v. Purdy*, 11 M. (384) : 22 M. 393.

§ 40. (SEC. 36.) **Manner of making sale.** Every sale made under the provisions of this chapter shall be made in the county where the lands are situated, and between the hours of nine o'clock in the morning and the setting of the sun the same day, and shall be at public auction, unless in the opinion of the probate judge it would benefit the estate of the deceased or of the wards to sell the whole or any part thereof at private sale, in which case the court, if such sale is asked for in the petition, may order and direct such real estate, or any part thereof, to be sold at private sale by the executor, administrator or guardian. But the same shall not be thus sold until the executor, administrator or guardian shall have had said real estate appraised by two competent persons, to be appointed by the probate court; who, before proceeding to make such appraisal, shall take and subscribe an oath to faithfully and honestly appraise said land at its fair cash valuation, which [oath], together with their appraisement, shall be filed in the probate court; and no such real estate shall be sold at private sale for less than its full appraised value, nor until after such notice of the terms of the sale as said court may direct, shall have been given; nor shall any such sale be made until a bond shall have been filed, as provided in section thirty-three in this chapter; nor shall the executor, administrator or guardian become the purchaser at such sale. (*As amended 1872, c. 65, § 2.*)

§ 41. (SEC. 37.) **Executor, etc., not to be purchaser.** No executor, administrator or guardian making the sale, shall directly or indirectly purchase, or be interested in the purchase of, any part of the real estate so sold; and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

§ 42. (SEC. 38.) **Length of credit to be given—security.** On such sale the executor, administrator or guardian may give such length of credit, not exceeding one year, and for not more than one-half of the purchase-money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved, by the judge of probate; and shall secure the moneys for which credit is given, with interest, by a bond of the purchaser, and a mortgage of the premises sold.

§ 43. (SEC. 39.) **Report of sale—resale.** The executor, administrator or guardian making any sale, shall immediately make a return of his proceedings upon the order of sale in pursuance of which it is made, to the judge of probate granting the same, who shall examine the proceedings, and may also examine such executor, administrator or guardian, or any other person, on oath, touching the same; and if he is of the opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent., exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given; and the sale shall be conducted in all respects as if no previous sale had taken place.

§ 44. (SEC. 40.) **Confirmation of sale.** If it appears to the judge of probate that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or, if disproportionate, that a



greater sum than above specified can not be obtained, he shall make an order confirming such sale, and directing conveyances to be executed.

§ 45. (SEC. 41.) **Executor, etc., to take oath—form of oath.** Every executor, administrator and guardian licensed to sell real estate, as provided in this chapter, shall, before fixing on the time and place of sale, take and subscribe an oath in substance as follows: that in disposing of the estate which he is licensed to sell, he will use his best judgment in fixing on the time and place of sale, and will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested; which oath shall be filed with the judge of probate before confirmation of the sale: *provided*, that when any executor, administrator or guardian, so licensed to sell real estate, resides out of this state, he may take and subscribe such oath before any notary public, or clerk of a court of record, of the state where he resides; and the same, with the seal of the officer before whom the same was taken attached, shall have the same force and effect as if taken before any officer within this state authorized to administer oaths. (*As amended 1873, c. 56, § 1.*)

*Montour v. Purdy*, 11 M., (384.)

§ 46. (SEC. 42.) **Proof of notice of sale to be filed and recorded.** An affidavit of the executor, administrator, or guardian, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this chapter, being made, and filed and recorded in the probate court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving the notice.

§ 47. (SEC. 43.) **Sale may be adjourned.** If, at the time appointed for any such sale, the executor, administrator or guardian deems it for the interest of all persons concerned therein that the sale be postponed, he may adjourn the same from time to time, not exceeding in all three months.

§ 48. (SEC. 44.) **Notice of adjournment, how given.** In cases of adjournment, notice thereof shall be given by a public declaration, at the time and place first appointed for the sale; and if the adjournment is for more than one day, further notice shall be given by posting or publishing the same, or both, as time and circumstances may admit.

§ 49. (SEC. 45.) **Surplus of proceeds of sale, considered real estate.** In all sales by executors, administrators or guardians, appointed in this state or elsewhere, of part or the whole of the real estate of a deceased person or ward, the surplus of the proceeds remaining on the final settlement of the accounts shall be considered as real estate, and be disposed of to the same persons, and in the same proportions, as the real estate would descend or be disposed of by the laws of this state, if not sold.

§ 50. (SEC. 46.) **Limitation of action to recover estate sold.** No action for the recovery of any real estate sold by an executor or administrator, under this chapter, shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale; and no action for any estate so sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship; except that persons out of the state, and minors, and others under legal disability to sue at the time when the right of action first accrues, may commence such action at any time within five years after the removal of the disability, or their return to the state.

19 M., 338.

§ 51. (SEC. 47.) **Sale not to be avoided, when.** In case of an action relating to any estate sold by an executor, administrator or guardian, in which an heir or person claiming under the deceased, or in which the ward or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings: *provided*, it appears—

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

*Montour v. Purdy*, 11 M. (384.)

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

*Babcock v. Cobb*, 11 M. (347.)

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

*Montour v. Purdy*, 11 M. (384.)

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

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

22 M. 393.

§ 52. (SEC. 48.) **Executor, etc., liable for neglect or misconduct.** If there is any neglect or misconduct in the proceedings of the executor, administrator or guardian, in relation to such sale, by which any person interested in the estate suffers damage, he may recover compensation therefor, on the probate bond, or otherwise, as the case may require.

§ 53. (SEC. 49.) **Validity of sale not affected by irregularity, when.** If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased, or the ward, or claiming under a title that is not derived from or through the deceased or ward, the sale shall not be void on account of any irregularity in the proceedings, if it appears that the executor, administrator or guardian was licensed to make the sale by a probate court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

\*§ 54. **Confirmation of defective or irregular sales.** Whenever a sale of real estate or any interest therein has heretofore been made by any administrator, executor or guardian, in good faith, and the purchase-money in fact paid, and any defects or irregularities have occurred in proceedings touching such sale which did not render such sale absolutely void, such defects and irregularities may be rectified, and the sale confirmed, by the district court of the county where such real estate, or some part thereof, is situated, in the manner provided in this act; *provided*, that the provisions of this act shall not apply to sales of property heretofore made by executors, administrators or guardians who have been removed by order of the probate court, or whose appointment has been declared illegal, or is now being contested or litigated. (1871, c. 57, § 1.\*)

\*§ 55. **Application to district court—examination—reference.** Any person interested in such real estate may make application to the district court for the relief provided for in this act, which application shall set forth a description of the real estate, the date of the sale, the defects or irregularities claimed to exist, and the name and residence, if known, of every person interested in such real estate; and thereupon the court may examine, or appoint a referee to examine and report, touching the facts alleged in such application, and the fact of the good faith of such sale. (*Id.* § 2.)

\*§ 56. **Order for hearing—service and notice—publication.** Upon such examination, or coming in of the report of the referee, the court may by an order appoint a time and place for hearing such application, and shall direct that a notice of such application, and the time and place appointed for hearing the same, be published for six weeks successively in some newspaper to be designated in the order, published at the capital of the state, and also, for the same length of time, in some newspaper designated in the order, published in the county where such real estate is situated, or some part thereof, if there be one; and that a copy of the application and order be served personally upon every person interested in the real estate, if a resident of this state, in such manner as

\* An act providing for proceedings in the district courts of this state, to quiet and perfect titles to real estate, sold by executors, administrators and guardians. Approved March 4, 1871. (Laws 1871, c. 57.)

summons in the district court are served, or, if residing out of this state, and their place of residence is known, that a copy of such application and order be served by depositing the same in the post-office, enclosed in an envelope securely sealed, and directed to each of such persons at their places of residence respectively, and the postage required by law paid thereon. The order shall require all persons interested in the real estate to appear before the court, at the time and place so fixed, and show cause, if any exists, why such application should not be granted. (1871, c. 57, § 3.)

\*§ 57. **Proof of service and publication to be made before hearing.** No hearing shall be had upon such application until it shall be made to appear to the court, by satisfactory proof, that the application and order have been served, and notice published, as required by this act, at least twenty days prior to such hearing; and in all cases, before making any order for such service by depositing the same in the post-office, as herein provided for, it shall be made to appear to the court, by satisfactory proof, that the persons so to be served reside out of this state: *provided*, that it shall in like manner appear that such persons' place of residence is unknown, and cannot with reasonable diligence be ascertained, the publication of notice, as provided in this act, shall be deemed sufficient service as to such persons. (*Id.* § 4.)

\*§ 58. **Hearing—order of confirmation—record thereof.** If, upon the hearing of such application, and the examination of the proceedings, it shall appear to the satisfaction of the court that the purchase-moneys were paid to the administrators, executors or guardians, in good faith, and that no intention existed by the purchaser at the administrator's, executor's or guardian's sale, to defraud or injure the heirs or devisees, the court may make an order or judgment confirming such sale, on such terms as it shall deem equitable; and such sale shall from that time be confirmed and valid, according to the terms of the order or judgment; and the court may, in its discretion, order any further conveyance or assurance of title; and the order or judgment of the court shall be sufficient to pass the title to such real estate, and may be recorded in the office of register of deeds. (*Id.* § 5.)

\*§ 59. **Appeals.** Any party aggrieved by any order or judgment made by the district court may appeal to the supreme court, in the same manner and within the same time as in civil actions; and on such appeal, the supreme court may reverse, affirm or modify any order or judgment of the district court, in any respect, and pass upon the equities involved in the application, to the same extent as the district court. (*Id.* § 6.)

§ 60. (SEC. 50.) **Fraudulent sale by executor, etc.—penalty.** Any executor, administrator or guardian who fraudulently sells any real estate of his testator, intestate or ward, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in a civil action, by the person having an inheritance therein.

\*§ 61. **Certified copies from probate court.** It shall be the duty of the judge of probate to furnish to any person applying therefor, a certified copy, under his official seal, of any paper on file in his office, relating to, or in any way connected with, the sale of any real estate by any executor, administrator or guardian. (1873, c. 57, § 1.)

\*§ 62. **Register of deeds may record such copies.** The register of deeds of the county where such real estate is situated, or of the county to which it is attached for judicial purposes, may record any such certified copy in the book of miscellaneous records. (*Id.* § 2.)

\*§ 63. **Such copies to be evidence.** Such certified copy, or the record thereof, shall, in case of any action concerning the title to said real estate, or the validity of said sale, be *prima facie* evidence of the original; and, in case of the loss or destruction of the original, shall be conclusive evidence thereof. (*Id.* § 3.)

## SALE AND CONVEYANCE OF REAL ESTATE BELONGING TO LUNATICS.

§ 64. (SEC. 51.) **Application to probate court.** Any lunatic seized of any real estate, or entitled to any term for years in lands, or having any tenancy by the curtesy, or any tenancy by the curtesy initiate, may, by guardian duly appointed, or if such lunatic is a married woman, having any real estate held by her as her separate estate, or having any dower admeasured, or right of dower, or inchoate right of dower, in any real estate, she may, by her guardian duly appointed, or by her husband, apply to the probate court of the county in which such real estate or some part thereof is situate, or, if such lunatic is a married woman, in the county in which her husband resides, for the sale or disposition of the same, in the manner hereinafter directed. (*As amended 1867, c. 73, § 1.*)

§ 65. (SEC. 52.) **Bond of guardian.** On such application, said guardian or said husband shall give bonds to the judge of probate of the county in which such proceedings are had, for the benefit of such lunatic (in addition to any bond given on appointment as guardian), to be filed with the judge of said probate court, in such penalty, with sureties, and in such form, as the said probate court shall direct, conditioned for the faithful performance of the trust reposed, for the paying over, investing and accounting for all moneys that shall be received by such guardian or husband, according to the order of any court having authority to give directions in the premises, and for the observance of the orders and directions of the court in relation to the trust. (*As amended 1867, c. 73, § 2.*)

§ 66. (SEC. 53.) **Bond prosecuted, when.** If such bond is forfeited, the court shall direct it to be prosecuted for the benefit of the party injured.

§ 67. (SEC. 54.) **Application, how considered.** Upon the filing of such bond, the court may proceed in a summary manner, by reference to a referee, to inquire into the merits of such application.

§ 68. (SEC. 55.) **Sale may be ordered, when.** Whenever it appears satisfactorily that a disposition of any part of the real estate of such lunatic, or of any interest in any term for years, or of a tenancy by the curtesy, or tenancy by the curtesy initiate, in any real estate, or a disposition of any real estate, or of her interest in a term of years, of a married woman who is a lunatic, held by her as her separate estate, or of any dower admeasured, or right of dower, or inchoate right of dower, of a married woman who is a lunatic, is necessary and proper, either for the support and maintenance of such lunatic, or for his education; or that the interest of such lunatic requires, or will be substantially promoted by, such disposition, on account of any part of such property being exposed to waste and dilapidation, or on account of its being wholly unproductive, or when the same has been contracted to be sold, and a conveyance thereof cannot be made by reason of such lunacy, or for any other peculiar reasons or circumstances, the court may order the letting for a term of years, or the sale or other disposition, of such real estate or interest to be made by such guardian or husband of such married woman who is a lunatic, in such manner and with such restrictions as shall be deemed expedient, or may order the fulfilment of said contract, by conveyance by such guardian or husband, according to the terms of the contract.

§ 69. (SEC. 56.) **Real estate not to be sold or leased, when.** But no real estate, or term of years, or any interest in real estate hereinbefore named, shall be sold, leased, or disposed of in any manner, against the provisions of any last will, or of any conveyance, by which such estate, or term, or interest was devised or granted to such lunatic.

§ 70. (SEC. 57.) **Report to be made to court.** Upon an agreement for the sale, leasing, or other disposition of such property being made, or upon any conveyance in fulfilment of a contract being executed in pursuance of such order, the same shall be reported to the court, on the oath of the guardian or husband making or executing the same, and, (except in case of a conveyance to fulfil a contract,)

if the report is confirmed a conveyance shall be executed, under the direction of the court.

§ 71. (SEC. 58.) **Effect of such sale, etc.** All sales, leases, dispositions and conveyances, made in good faith by such guardian or husband, in pursuance of such orders, shall be valid and effectual as if made by such lunatic when of sound mind.

§ 72. (SEC. 59.) **Order concerning proceeds of sale—report of investment, etc.** The court shall make order for the application and disposition of the proceeds of such property, and for the investment of the surplus belonging to such lunatic, so as to secure the same for the benefit of such lunatic; and shall direct the ascertainment of the value of such tenancy by the curtesy, or tenancy initiate, or dower, or right of dower, or inchoate right of dower; and shall direct a return of such investment and disposition to be made on oath, as soon as may be; and shall require accounts to be rendered periodically by any committee or other person who may be intrusted with the disposition of the income of such proceeds.

§ 73. (SEC. 60.) **Interest of lunatic in proceeds.** No sale made, as aforesaid, of the real estate or interest therein of any lunatic, shall give to such lunatic any other or greater interest or estate in the proceeds of such sale than such lunatic had in the estate so sold; but the said proceeds shall be deemed real estate of the same nature as the property sold, or the interest therein of the said lunatic, and the court shall make order for the preservation of the same.

§ 74. (SEC. 61.) **Compensation in lieu of dower.** If the real estate of any lunatic, or any part of it, is subject to dower or other life estate, and the person entitled thereto consents, in writing, to accept a gross sum in lieu of such dower or other life estate, or the permanent investment of a reasonable sum, in such manner as that the interest thereof be made payable to the person entitled to such dower or life estate during life, the court may direct the payment of such sum in gross, or the investment of such sum, as shall be deemed reasonable and be acceptable to the person entitled to said dower or other life estate, or right therein, actual or contingent, in manner aforesaid.

§ 75. (SEC. 62.) **Dower to be released.** Before any such sum is paid, or investment made, the court shall be satisfied that an actual release of such right of dower or other life estate, actual or contingent, has been executed.

CHAPTER LVIII.

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

SECTION.

1. Probate court may decree conveyance, when.
2. Petition—notice of hearing.
3. Proceedings on hearing.
4. Decree for conveyance—dismissal of petition.
5. Appeals—decree to be recorded,

SECTION.

6. Effect of decree and conveyance.
7. Effect of record of copy of decree in registry of deeds.
8. Heirs, etc., of purchasers may prosecute proceedings.

§ 1. **Court may decree conveyance of lands, when.** When any person who is bound by a contract in writing to convey any real estate, dies 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,