GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
WEST PUBLISHING CO.
1888.

designating the proportion that each shall receive; such sale to be made and conducted in the same manner as provided by law for the sale of lands by executors and administrators for the payment of debts. (*As amended* 1883, *c.* 42, § 1.)

See State v. Probate Court, 25 Minn. 22, 25.

§§ 13–19. Procedure—Appeals—Effect of partition.

See State v. Probate Court, 25 Minn. 25.

*§ 19*a*. Opening decree made without notice.

In any case where a decree has heretofore been made, or shall hereafter be made, without notice, by a probate court, purporting to assign the estate of a deceased person, or the residue thereof, to the person or persons entitled thereto, any person interested in any real estate embraced within the terms of such decree, whether as heir or devisee of such deceased person, or as grantee of any heir or devisee, may apply to said court to have the said real estate of such deceased person, or the portion thereof in which the applicant is interested, assigned to the person or persons entitled thereto; and thereupon such court shall by order appoint a time for hearing said application, and shall direct notice of such hearing to be given by publication of said order in a newspaper published in the county where said court is held, and named in the order, for three weeks successively, at least once in each week; and upon the hearing, unless it appears that there are debts or claims existing against the deceased or the estate, not paid or provided for, the probate court shall enter a decree assigning said real estate to the person or persons entitled thereto, and the share or shares so assigned shall be held by the respective owners free from all debts, claims, or demands against the estate, except that the same shall not affect the lien of any mortgage upon said real estate. (1883, *c.* 113, § 1, *as amended* 1885, *c.* 49.)

§§ 20–24. Expenses—Reversions—Absentees.

See State v. Probate Court, 25 Minn. 25.

CHAPTER 57.

SALES OF LANDS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

SALES BY EXECUTORS AND ADMINISTRATORS.

§ 1. Sale to pay debts.

See Creswell v. Slack, (Iowa,) 26 N. W. Rep. 42; Toner v. Collins, (Iowa,) 25 N. W. Rep. 287.

§ 2. Petition.

If there are several executors or administrators, all must join in the petition, and a license granted on the petition of one is invalid. Hannum v. Day, 105 Mass. 33.

The petition need not show that there are no mortgages or incumbrances on the land, that it is not cultivated or improved, or that there are no water privileges or other natural advantages thereon. Spencer v. Sheehan, 19 Minn. 338, (Gil. 292.)

The petition need not necessarily set forth the value of the real estate to be sold. Yeomans v. Brown, 8 Metc. 51.

The statement of outstanding debts of the deceased need not be in detail. A statement of such indebtedness in the aggregate is sufficient to confer jurisdiction. State v. Probate Court Ramsey Co., 19 Minn. 117, (Gil. 85.)

§ 4. Order—Publication—Service.

Necessity of notice to the wife of the devisee. Harrington v. Harrington, 13 Gray, 513. Necessity of notice to one wrongfully in possession by disseizin. Yeomans v. Brown, 8 Metc. 51. To tenants in possession under a fraudulent conveyance from decedent. Id. Where an executor made application for license to sell real estate, and the court directed notice thereof to be given, causing a copy of the order for hearing to be published, etc., held that, under §§ 3 and 4, such service was good as against a devisee of the deceased, though not named in the notice or personally served. Spencer v. Sheehan, 19 Minn. 338, (Gil. 292;) followed, Greenwood v. Murray, 28 Minn. 124, 9 N. W. Rep. 629.

§ 9. Order of sale—Supplemental order—Private sale.

If the judge of probate is satisfied, after a full hearing upon the petition, and on examination of the proofs 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; and he may, by said order, or by a supplemental order in case an order of license has already been granted, direct the executor or administrator to sell any lot or tract of land in as many subdivisions, parts, or portions as in the opinion of the judge of probate may be best calculated to secure purchasers and produce the most money on such sale; and if it appears to the judge of probate necessary or beneficial to the interests of all parties interested, he may direct and require the executor or administrator to subdivide any tract or parcel of land into lots, and to lay off such streets or alleys, or both, as may be necessary or desirable; and upon the approval of a plat of such subdivision by the judge of probate, the executor or administrator shall thereupon proceed to comply with the then existing law in relation to town plats; and where [when] a plat of such subdivision is duly recorded in the office of the register of deeds of the county in which such real estate is situated, according to law, and said executor or administrator shall thereafter sell according to said plat: *provided* that, in case the executor or administrator has been licensed to sell such real estate at private sale, the judge of probate shall require that each and every part, tract, or lot to be sold shall be appraised as required by law, and no such tract or lot shall be sold for less than its full appraised value. (*As amended* 1881, c. 43, § 1.)

In case of debts barred by the statute of limitations. Ex parte Allen, 15 Mass. 58; Wellman v. Lawrence, Id. 330; Heath v. Wells, 5 Pick. 139.

Sale of equitable title. Woods v. Monroe, 17 Mich. 238.

The averment of the administrator in his petition and his oral admission that a certain debt is due are not evidence to establish the same on the hearing. Chamberlin v. Chamberlin, 4 Allen, 184.

Effect of failure to appoint guardian *ad litem* of infant heir. Holmes v. Beal, 9 Cush. 223.

Necessity of recitals in the order or record of such facts as warrant the order. Clapp v. Beardsley, 1 Aiken, 168, 1 Vt. 151.

Validity of license to sell the whole of the real estate granted upon a petition for the sale of specific portion. Verry v. McClellan, 6 Gray, 535.

License to sell sufficient to pay a larger sum than that represented in the petition to be the amount of debts and charges. Tenney v. Poor, 14 Gray, 500.

License to a stranger to make the sale. Crouch v. Eveleth, 12 Mass. 503.

Conclusiveness of order as to compliance with prerequisites. Chase v. Ross, 36 Wis. 267; Sitzman v. Pacquette, 13 Wis. 291.

Sufficiency of the notice as to the time of the sale. Wellman v. Lawrence, 15 Mass. 326.

Misdescription of the premises. New England Hospital v. Sohier, 115 Mass. 50.

Where the executor, under a license to sell sufficient real estate to raise a certain sum,

sold one parcel with the privilege of a foot-pass over another, held, that the conveyance of the foot-pass was unauthorized, and created no incumbrance upon the second parcel, a license to sell not authorizing the creation of an incumbrance. Brown v. Van Duzee, 44 Vt. 529.

§ 13. Sale of interest under contract.

Cited, Paine v. First Div. St. Paul, etc., R. Co., 14 Minn. 65, (Gil. 49.)

§ 18. Sales of incumbered property.

Sales and conveyances of land made by executors or administrators, pursuant to the provisions of this chapter, may be made 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 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, or unless the land or interest therein so sold shall be first released, discharged, and made clear from such incumbrance or charge by the owner or holder thereof, upon the payment to him of the proceeds of the sale, or so much thereof as may be necessary to satisfy such incumbrance or charge; or the executor or administrator may sell the whole or any part, subdivision, or portion of the interest and estate of the deceased in any lot or tract of land charged with any lien or incumbrance, and, upon the release of the lot, tract, or part so sold from such lien or incumbrance, apply the proceeds of such sale or sales towards the payment of such charge, lien, or incumbrance, until the same is fully paid; and the executor or administrator shall account for any balance remaining after such payment as proper proceeds of the estate; and in all such cases the purchaser shall not be required to give any bond. (*As amended* 1881, *c.* 43, § 2.)

The administrator has no power to bind the estate by any covenants that may be contained in the deed. Hall v. Marquette, (Iowa,) 28 N. W. Rep. 647.
See Curran v. Kuby, 33 N. W. Rep. 907; Culver v. Hardenbergh, 33 N. W. Rep. 792.

FOREIGN EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

See Brown v. Brown, 35 Minn. 191, 192, 28 N. W. Rep. 238.

*§ 20. Foreign executor, etc.—Evidence of appointment.

That a duly-authenticated copy of letters testamentary, or of administration or guardianship, of any executor, administrator, or guardian appointed in any other state or territory, or the District of Columbia, or in a foreign country, or other ex[em]plification of the record of any such appointment, 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, *as amended* 1885, *c.* 61.)

*§ 21. Mortgages and judgments—Assignment, discharge, etc.

That any such executor, administrator, or guardian may sign or release and fully discharge of record any judgment or mortgage of lands 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 any such judgment or mortgage. (1869, *c.* 63, § 2, *as amended* 1881, *Ex. Sess.* *c.* 34, § 1.)

SALES BY GUARDIANS FOR THE PAYMENT OF DEBTS.

§ 23. (Sec. 20.) License.

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, or any lien, by way of mortgage or otherwise, upon the real estate of such ward, the guardian may be licensed to sell or mortgage the real estate of his ward in like manner and upon like terms and conditions as are prescribed in this chapter in case of a sale by executors or administrators, except as hereinafter provided: *provided*, that no guardian shall be licensed to mortgage the real estate of his ward for any purpose, except to pay the debts of his ward contracted prior to his appointment as guardian, or to pay any lien, by way of mortgage or otherwise, which may then be upon the real estate of his ward: *provided, further*, that no guardian shall be licensed to mortgage the real estate of his ward for a longer period than five years from the granting of such license. (*As amended* 1885, *c.* 128; 1887, *c.* 67.)

See Washburn v. Van Steenwyk, 32 Minn. 336, 346, 20 N. W. Rep. 324.

FOR MAINTENANCE AND INVESTMENT.

See Washburn v. Van Steenwyk, 32 Minn. 336, 346, 20 N. W. Rep. 324.

BY FOREIGN GUARDIANS.

§ 32. (Sec. 29.) License—Sale.

Under the provisions of this section proceedings for the sale of lands by a foreign guardian were authorized to be conducted through an attorney in fact; and the oath required to be taken before fixing the time and place of sale might properly be taken by such attorney in fact. Jordan v. Secombe, 33 Minn. 220, 22 N. W. Rep. 383.

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

§ 37. (Sec. 33.) Bond.

Bond in case of lands situated in different counties. Sitzman v. Pacquette, 13 Wis. 291.
Neglect to file bond. Reynolds v. Schmidt, 20 Wis. 374.
Whether the proper or any bond was given or not is a question for the jury or the trial court. The supreme court will not consider that matter, in the absence of a finding thereon in the court below. Jordan v. Secombe, 33 Minn. 222, 22 N. W. Rep. 383.

§ 38. (Sec. 34.) Order—Time for making sale.

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 described, within one year after the making of such order, or within such further time, not exceeding two years, as may be allowed by said judge of probate, by an order entered of record, and indorsed upon such certified copy of the original order to that effect, dated and signed by him. (*As amended* 1879, *c.* 18, § 1.)

Amendment operates to repeal § 3, *c.* 37, Laws 1876, (Gen. St. 1878, *c.* 46, § 3, subd. 10.) Culver v. Hardenburgh, 33 N. W. Rep. 792.

§ 39. (Sec. 35.) Notice of sale—Publication and posting.

Where the statute requires a notice of sale to be published "for three weeks, successively, next before such sale," an allegation in a pleading that the notice was published "for three successive weeks previous" to the sale, does not show a compliance with the statute. Montour v. Purdy, 11 Minn. 384, (Gil. 279.)

This section is satisfied by three publications in a daily paper, at the rate of one a week, on regular publication days, separated by intervals of a week. Dayton v. Mintzer, 22 Minn. 393; followed Greenwood v. Murray, 28 Minn. 123, 9 N. W. Rep. 629.

The notice of a sale was published on the 6th, 13th, and 20th of October, for a sale to be made November 1st. Held, that the three-weeks publication required by the statute became complete October 27th, and that the sale, having been made within the week following, was valid. Wilson v. Thompson, 26 Minn. 299, 3 N. W. Rep. 699.

Where nine days elapse between the completion of the publication and the time of sale, the sale is void. In re Hartley, (Minn.) 37 N. W. Rep. 449.

A notice designating the place of sale as "Duluth, in said county of St. Louis," is insufficient. In re Hartley, (Minn.) 37 N. W. Rep. 449.

Defective notice. Blodgett v. Hitt, 29 Wis. 169; Chase v. Ross, 36 Wis. 267; McCrubb v. Bray, Id. 333.

Within 30 years there is no presumption as to notice in the absence of evidence that such notice was given. Thomas v. Le Baron, 8 Metc. 355.

§ 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: *provided*, that, unless the order of license to sell at private sale expressly directs that notice of sale shall be given, no such notice shall be required. (*As amended* 1872, *c.* 65, § 2; 1881, *c.* 43, § 3.)

Regularity of sale. Osman v. Traphagen, 23 Mich. 80.

§ 41. (Sec. 37.) Executor, etc.—Purchase by, forbidden.

Cited, Davis v. Hudson, 29 Minn. 39, 11 N. W. Rep. 136.

At a guardian's sale the real estate was bid in by one H., and, after the sale was confirmed, was conveyed by the guardian to him. About six months after H. conveyed the property to the guardian. Both deeds were recorded on the same day. Held, that this alone was not sufficient to charge a purchaser from the guardian with notice that the property was bid in for the benefit of the guardian. If, at a sale of real estate by an executor, administrator, or guardian, he purchases through another, or is interested in the purchase of the real estate, contrary to this section, the sale is not absolutely void, but is only voidable by the parties interested in the estate sold, and cannot be avoided by them as against a *bona fide* purchaser. White v. Iselin, 26 Minn. 487, 5 N. W. Rep. 359.

See Taylor v. Brown, (Mich.) 21 N. W. Rep. 901.

§ 42. (Sec. 38.) Credit—Security.

On such sale the executor, administrator, or guardian may give such length of credit, not exceeding three years, and for not more than two-thirds of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed or approved by the judge of probate; and shall secure the money for which credit is given, with interest, by a bond or note of the purchaser, and a mortgage of the premises sold. (*As amended* 1879, *c.* 20, § 1.)

§ 44. (Sec. 40.) Confirmation of sale.

Refusal of joint administrator to execute conveyance—Giving deed before the purchase money is paid—Collateral attack. Osman v. Traphagen, 23 Mich. 80.

The deed need not recite the authority for executing it. Langdon v. Strong, 2 Vt. 234; Pierce v. Brown, 24 Vt. 173.

See Dawson v. Helmes, 30 Minn. 107, 111, 14 N. W. Rep. 462.

§ 45. (Sec. 41.) Oath—Form.

This section is to be interpreted in connection with § 32, *supra*. Jordan v. Secombe, 33 Minn. 222, 22 N. W. Rep. 383.

This section is shown to be complied with by a pleading, alleging an oath taken at the date of the license to sell, that "in conducting the sale of the real estate of said minors, under the order of the probate court, that I will, in all respects, conduct the same according to law, and for the benefit and best interests of the wards." Montour v. Purdy, 11 Minn. 384, (Gil. 279.)

§ 48. (Sec. 44.) Adjournment—Notice.

Cited, Dayton v. Mintzer, 22 Minn. 396.

§ 50. (Sec. 46.) Action to recover property sold—Limitation.

This section construed together with §§ 51 and 53, *infra*, and held, that the legislature did not intend that in any case of sale by the trustees named the validity of the sale should be open to attack at any time, however remote, by any person, even though not interested; but that a stranger might question the sale only if there was no license by the proper court, or no deed of conveyance by the executor, administrator, or guardian; and a person claiming under the deceased or the ward, or a person claiming under him, should question it only if one or more of the conditions mentioned in § 51 be wanting. White v. Iselin, 26 Minn. 487, 5 N. W. Rep. 359.

This section does not necessarily require a party desiring to avail himself of such limitation to establish a valid sale. Spencer v. Sheehan, 19 Minn. 338, (Gil. 292.)

This provision is not, in terms, applicable to the case of a party in possession *defending* a title derived from a ward against the affirmative attack of one relying on a guardian's sale. Dawson v. Helmes, 30 Minn. 113, 14 N. W. Rep. 462.

The exception is general, and applies as well to those who have always resided abroad as to those who have been residents of or been in the state, and returned after absence therefrom. Jordan v Secombe, 33 Minn. 220, 22 N. W. Rep. 383. The grantee or heir of a ward is not within the exception, but the time limited commences to run as to him immediately on the transfer of the estate; but if the ward continued to be entitled thereto, such grantee or heir succeeds to his right therein, unaffected by previous lapse of time. Id.

See Smith v. Swenson, 32 N. W. Rep. 784.

§ 51. (Sec. 47.) Sales 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.

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

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

Fourth. That he gave notice of the time and place of sale, as in this chapter prescribed, if such notice was required by the order of license; and,

Fifth. That the premises were sold in the manner required by the order of license, and the sale confirmed by the court, and that they are held by one who purchased them in good faith. (*As amended* 1881, c. 43, § 4.)

Substantial compliance with the statutory provisions will support the sale as between the grantee and the heirs at law. Jackson v. Astor, 1 Pin, 137.

Irregularities in proceedings. Coon v. Fry, 6 Mich. 506; Howard v. Moore, 2 Mich. 226; Palmer v. Oakley, 2 Doug. (Mich.) 433; Woods v. Monroe, 17 Mich. 238.

See Curran v. Kuby, 33 N. W. Rep. 907; Culver v. Hardenbergh, 33 N. W. Rep. 792.

The words "probate court of competent jurisdiction" signify "the probate court whose jurisdiction it is proper to invoke in the particular case in hand," and do not refer to the steps preliminary to the obtaining of license. So, where the license is granted by the probate court which appointed the guardian, it is immaterial whether such preliminary steps were taken or not. Montour v. Purdy, 11 Minn. 384, (Gil. 279.) The license to sell having been granted by the probate court which appointed the administrator, it is immaterial that there was or was not a proper petition for license to sell. Following Montour v. Purdy, 11 Minn. 384, (Gil. 278;) Rumrill v. First National Bank St. Albans, Vt., 28 Minn. 202, 9 N. W. Rep. 731.

Under this section the proceedings of a probate court in reference to a guardian's sale may be drawn in question by a ward in an action collateral to such proceedings. Davis v. Hudson, 29 Minn. 27, 11 N. W. Rep. 136. The appointment of a guardian not being a proceeding in reference to a guardian's sale, its validity is not collaterally assailable under this section, but its proof is governed by the rules of evidence applicable in other analogous cases. Id.

The fact that no bond was given may be proved by showing that the record is silent as to such bond, and, by the administrator, that none was executed. Babcock v. Cobb, 11 Minn. 347, (Gil. 247.)

The general presumption in favor of the jurisdiction and verity of the records of the courts of probate, enjoyed by them in common with other courts of record and superior jurisdiction, appears to be somewhat modified by this section. Davis v. Hudson, 29 Minn. 28, 11 N. W. Rep. 136. See, also, Dayton v. Mintzer, 22 Minn. 393; Streeter v. Wilkinson, 24 Minn. 288.

A writ of prohibition will issue to restrain the probate court from reviewing the proceedings for a sale, after a confirmation, at the instance of any one claiming under the sale. State v. Probate Court Ramsey Co., 19 Minn. 117, (Gil. 85.)

See White v. Iselin, 26 Minn. 487, 5 N. W. Rep. 359.

*§ 51*a*. Provisions also applicable to guardians' sales.

That all the provisions of this act† shall apply as well to guardians' sales as to executors' or administrators' sales of real estate. (1881, *c.* 43, § 5.)

§ 53. (Sec. 49.) Validity of sale as to adverse occupant.

See White v. Iselen, cited in note to § 50, *supra*.

*§ 54. Confirmation of defective or irregular sales.

This section is inapplicable to a void sale, and does not authorize the confirmation of the same. In re Hartley, (Minn.) 37 N. W. Rep. 449.

*§ 62. Certified copies of papers—Recording.

There appears to be no statute authorizing the recording of a certified copy of an order of a probate judge made before the passage of Laws 1873, *c.* 57. Dawson v. Helmes, 30 Minn. 107, 14 N. W. Rep. 462.

SALE AND CONVEYANCE OF REAL ESTATE BELONGING TO LUNATICS.

*§ 76. Husband or wife—Petition—Order.

Whenever the husband or wife of any insane person, or the person having an interest in the estate of such insane person, make petition to the probate court of the county wherein such petitioner resides, showing that such insane person has an interest in the real estate of said petitioner, and showing that it is desirable that such real estate [should] shall be mortgaged or sold, such probate court may make an order directing the guardian of such insane person to execute such mortgage or deed for and on behalf of such insane person. Such petition shall contain a description of the real estate to be mortgaged or sold, and the amount for which said mortgage or deed is to be executed, to whom, and such reasons as may exist for mortgaging or selling the same. If the real estate to be mortgaged or sold be situated in another county than that in which the petitioner resides, the petition shall be made to the probate court of the county wherein said real estate is situated. (1885, c. 223, § 1.‡)

†§§ 9, 18, 40, (proviso,) 51, *ante*.

‡"An act to provide for the disposition of the estate of insane persons." Approved March 5, 1885.

*§ 77. **Notice.**

Before such order is made, notice of the time and place of the hearing upon the petition shall be given as now provided by law for the hearing upon the petition of executors and administrators for the sale of lands. (*Id.* § 2.)

CHAPTER 59.

GUARDIANS AND WARDS.*

OF MINORS.

See Davis v. Hudson, 29 Minn. 27, 31, 11 N. W. Rep. 136.

§ 2. Who are minors.

It is legally competent for a *feme sole*, 18 years of age, to make and execute within this state a valid deed of lands belonging to her, and situate therein. Cogel v. Raph, 24 Minn. 194.

§ 5. Powers of guardians.

A guardian may sell to a *bona fide* purchaser the personal property of his ward without any leave of court. Humphrey v. Buisson, 19 Minn. 221, (Gil. 182.)

When funds are held as executor and when as guardian in case of same person acting in both capacities. Conkey v. Dickinson, 13 Metc. 51. And see Bennett v. Overing, 16 Gray, 267.

OF INSANE PERSONS AND SPENDTHRIFTS.

§ 8. Appointment of guardian—Petition.

The jurisdiction of probate courts in the matter of the guardianship of insane persons is as indisputable as its jurisdiction in the matter of the guardianship of minors or any other class. State v. Wilcox, 24 Minn. 148.

A petition alleging that the party for whom the guardian is desired "is mentally incompetent," "and has been for some time past," is sufficient to give the court jurisdiction. Norton v. Sherman, (Mich.) 25 N. W. Rep. 510.

§ 10. Hearing—Appointment.

As to a finding of the jury sufficient to sustain the appointment of a guardian, see Norton v. Sherman, (Mich.) 25 N. W. Rep. 510.

*§ 12*a*. Inebriates under guardianship — Commitment to hospital.

That when any person is, or hereafter shall be, under guardianship on account of excessive drinking, and a verified petition by the guardian of such person, or by the chairman of the board of county commissioners of the county in which such person resides, or any relative of such person, showing that such person is a proper subject for medical treatment on account of excessive drinking, shall be presented to the probate court appointing such guardian, then such probate court shall cause the person so alleged to be a proper subject for medical treatment to be examined by a jury consisting of three reputable physicians, to ascertain the fact whether said person is a proper subject for medical treatment on account of excessive drinking; and if such person is

* Orphan asylums as guardians, see *ante*, c. 34, § 181.