

James C. Child
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
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COMMISSIONERS.

PUBLISHED BY STATE AUTHORITY.

SAINT PAUL:
THE PIONEER PRINTING COMPANY.

1859.

5. That the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

(24.) SEC. XXIV. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in a suit on the bond of such guardian, or otherwise, as the case may require.

Liability of guardian for misconduct.

(25.) SEC. XXV. If the validity of any sale made by a guardian under the provisions of this chapter, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the guardian was licensed to make the sale by the proper probate court; and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

When sale not held void, in case of adverse claimant.

CHAPTER 39.

SALE OF LANDS FOR THE PAYMENT OF DEBTS, BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

Chapter 53 Revised Statutes

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When real estate may be sold for payment of debts.

(1.) SEC. I. When the personal estate of any deceased person in the hands of his executor or administrator, shall be insufficient to pay all his debts, with the charges of administering his estate, his executor or administrator may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Petition to be presented; what to set forth.

(2.) SEC. II. In order 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 amount of personal estate that has come to his hands, and how much thereof, 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, and the condition and value of the respective portions or lots; which petition shall be verified by the oath of the party presenting the same.

Order to show cause why license should not be granted.

(3.) SEC. III. If it shall appear 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 and not 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.

Copy of order to be served or published; when notice dispensed with.

(4.) SEC. IV. A copy of such order to show cause shall be personally served on all persons interested in the estate, at least fourteen days before the time appointed for hearing the petition; or shall be published at least four successive weeks in such newspaper as the court shall order: *provided, however*, if all persons interested in the estate shall signify, in writing, their assent to such sale, the notice may be dispensed with.

Hearing.

(5.) SEC. V. 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 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 be not filed shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application.

Petitioner and witnesses may be examined, &c.

(6.) SEC. VI. The executor or administrator may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner, and with the like effect, as in other cases.

Probate court may license sale of whole or part of real estate.

(7.) SEC. VII. If it shall appear 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 authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned.

Executor, &c., to give bond in certain cases before sale.

(8.) SEC. VIII. When the executor or administrator is authorized to sell more than is necessary for the payment of debts, he shall before the sale give bond to the judge of probate with sufficient sureties to account for all the proceeds of the sale that shall remain after the payment of the debts and charges, and to dispose of the same according to law; and in all cases where license is granted for the sale of real estate, the judge of pro-

bate may require a further bond from the executor or administrator when he shall deem it necessary.

(9.) SEC. IX. The proceeds of any real estate sold, for the payment of debts and the charges of administration as provided in this chapter, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased, and the executor or administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

Proceeds of sale deemed assets, and to be accounted for as such

(10.) SEC. X. No license to sell real estate shall be granted, if any of the persons interested in the estate shall give bond to the judge of probate, in such sum and with such sureties as he shall direct and approve, 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 shall be insufficient therefor, within such time as the judge of probate shall direct.

No license to sell to be granted, if bond given for payment of debts.

(11.) SEC. XI. 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.

For whose benefit bond may be prosecuted.

(12.) SEC. XII. If the judge of probate shall be 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 be 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 shall judge necessary or beneficial.

When court may order sale.

(13.) SEC. XIII. 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 appear 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 appear 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.

Order of sale what to specify.

(14.) SEC. XIV. Upon the making of such order, and the filing with the judge of probate of such bond as is required by the provisions of this chapter, a certified copy of the order of sale shall be delivered by the judge of probate to the executor or administrator, who shall thereupon be authorized to sell the real estate as therein directed within one year after the making of the order, but not after that period.

Certified copy of order to be delivered to executor, &c.

(15.) SEC. XV. 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 be not sold with the other real estate, it may be sold after the expiration of the widow's term.

Sale of reversion of dower.

(16.) SEC. XVI. When a 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 be one printed in the same county, and if there be 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.

Notice of sale.

(17.) SEC. XVII. Such sale shall be in the county where the lands are situated, at public vendue, between the hours of nine o'clock in the morning, and the setting of the sun the same day.

Where, when and how sale to be made.

(18.) SEC. XVIII. The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or

Executor or guardian not to purchase.

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.

Credit on sale. (19.) SEC. XIX. On such sale, the executor or administrator may give such length of credit, not exceeding three years, and for not more than three-fourths 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, by a bond of the purchaser, and by a mortgage of the premises sold.

Return of by executor; proceedings of the court thereupon. (20.) SEC. XX. The executor or administrator 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 or administrator, or any other person, on oath, touching the same; and if he shall be of 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 in all respects as if no previous sale had taken place.

If sale legal, to be confirmed. (21.) SEC. XXI. If it shall appear 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.

Executor, &c., to take oath before sale. (22.) SEC. XXII. Every executor or administrator authorized to sell real estate, as provided in this chapter, shall, before making such sale, take and subscribe an oath before the judge of probate, or some other officer authorized to administer oaths, that in disposing of the real estate which he is licensed to sell, he will exert his best 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.

Affidavit of notice of sale. (23.) SEC. XXIII. An affidavit of the executor or administrator, 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 before the judge of probate, or some other officer authorized to administer oaths, 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.

Postponement of sale. (24.) SEC. XXIV. If, at the time appointed for any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice of adjournment of sale. (25.) SEC. XXV. In case of such adjournment, notice thereof shall be given by a public declaration, at the time and place first appointed for the sale, and if the adjournment shall be more than one day, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

Sale for payment of legacies may be authorized. (26.) SEC. XXVI. When a testator shall have given any legacy by a will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with his debts, and the charges of administration, the executor or administrator, with the will annexed, may be licensed to sell his real estate for that pur-

pose, 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.

(27.) SEC. XXVII. 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 and in the same manner as if he had died seized of such land; and the same proceedings may be had for that purpose as are prescribed in this chapter, in respect to lands of which he died seized, except as hereinafter provided.

Interest in land held under contract may be sold.

(28.) SEC. XXVIII. Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate until the purchaser shall execute a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interests 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 shall approve.

How sale to be made; indemnity to be given.

(29.) SEC. XXIX. Such 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 will 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 be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

Condition of bond of indemnity.

(30.) SEC. XXX. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract, which assignment shall vest 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 he were living.

Assignment of contract, and rights of purchaser.

(31.) SEC. XXXI. The proceeds of every such sale of the interest of the deceased person in 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.

Proceeds of sale, how disposed of.

(32.) SEC. XXXII. 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 shall be in any way liable for the amount secured by any such mortgage or for any such charge, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor or administrator, as required in this chapter in the case of a sale of a contract for the purchase of lands, on which payments are to become due.

Sales, how made.

(33.) SEC. XXXIII. When an executor or administrator shall be appointed in any state or other territory or in any foreign country, on the estate of any person dying out of this territory, and no executor or administrator thereon shall be appointed in this territory, the foreign executor or administrator may file an authenticated copy of his appointment in the probate court in any county in which there may be any real estate of the deceased.

Foreign executor may file copy of his appointment.

(34.) SEC. XXXIV. Upon filing such authenticated copy of his appointment, such foreign executor or administrator may be licensed by the same probate court to sell real estate for the payment of debts or legacies

May be licensed to sell lands for the payment of debts and 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 territory excepting in the particulars in which a different provision is hereinafter made.

When no further bond necessary.

(35.) SEC. XXXV. When it shall appear to the court granting the license that such foreign executor or administrator is bound by sufficient surety or sureties in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts or legacies and charges of administration, and a copy of such bond duly authenticated shall be filed in such probate court, no further bond for that purpose shall be required of him by the court.

When bond required, and what to contain.

(36.) SEC. XXXVI. If an authenticated copy of such bond shall not be filed as mentioned in the preceding section such foreign executor or administrator before making such sale shall give bond with sufficient sureties to the judge of probate, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased and the charges of administration according to the law of the state or country in which he was appointed.

When licensed to sell more than is necessary to pay debts, &c., bond to be given.

(37.) SEC. XXXVII. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this chapter, he shall, before making the sale give bond with sufficient sureties to the judge of probate, with condition to account to him for all proceeds of the sale that shall remain after payment of the said debts, legacies and charges, and to dispose of the same according to law.

Guardian, when may be licensed to sell real estate of ward.

(38.) SEC. XXXVIII. When the goods, chattels, rights and credits in the hands of the guardian of any minor, or of any idiot or insane person or any person under guardianship on account of excessive drinking, gaming, idleness or debauchery, shall be insufficient to pay all the just debts of his ward, with the charges of managing his estate, the guardian may be licensed by the probate court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner, and upon the same terms and conditions as are prescribed in this chapter in the case of a sale by executor or administrator, except as in the particular in which a different provision is hereinafter made.

Court may license sale of whole or part of ward's estate.

(39.) SEC. XXXIX. If it shall be represented to the court that it is necessary to sell some part of the real estate of the ward, and by such partial sale the residue of the real estate, or if 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 the court shall judge necessary, and most for the interest of all concerned.

Guardian to give bond.

(40.) SEC. XL. The guardian shall give bond to the judge of probate to account for the surplus of the proceeds of the sale, in like manner as is prescribed in this chapter, in the case of a like sale by an executor or administrator.

When license not to be granted without the approbation of county commissioners.

(41.) SEC. XLI. No license shall be granted to any guardian to sell real estate of his ward as provided in this chapter in any case excepting that of minors, unless the commissioners of the county of which the ward is an inhabitant, or in which he resides, shall certify to the judge of probate in writing, their approbation of such proposed sale, and that they deem it necessary.

Who entitled to notice of hearing.

(42.) SEC. XLII. 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, contained in this chapter.

(43.) SEC. XLIII. When any minor, insane person or spendthrift, residing out of this territory, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be any real estate of the ward.

Foreign guardian may file copy of his appointment.

(44.) SEC. XLIV. After filing an authenticated copy of his appointment, such foreign guardian may be licensed to sell the real estate for the payment of the debts of the ward, and the charges of managing his estate, 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 territory, excepting in the particulars wherein a different provision is hereinafter made.

May be licensed to sell real estate of ward.

(45.) SEC. XLV. When it shall appear to the judge of probate, that the foreign guardian is bound, with sufficient surety or sureties, in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the probate court, no further bond shall be required here; otherwise he shall give bond in like manner as is prescribed in this chapter, in the case of sales by foreign executors or administrators.

When bond required, and when not.

(46.) SEC. XLVI. When such foreign guardian is authorized to sell more than is necessary to pay the debts and charges, he shall, before making the sale, give bond with sufficient surety or sureties, to the judge of probate, with condition to account, before such judge, for all the proceeds of the sale that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

When licensed to sell more than is necessary to pay debts, bond to be given.

(47.) SEC. XLVII. In all cases of sale by an executor, administrator, or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any probate court, by virtue of the provisions of this chapter, whether such executor, or administrator, or guardian was appointed in this territory or elsewhere, the surplus of the proceeds of the sale remaining on the final settlement of the accounts, shall be considered as real estate, and disposed of among the persons, and in the same proportion as the real estate would have been by the laws of this territory, if it had not been sold.

Surplus to be considered real estate.

(48.) SEC. XLVIII. Every guardian, whether appointed in this territory or elsewhere, when licensed to sell real estate as provided in this chapter, shall, before making such sale, take and subscribe an oath like that required in the same case of an executor or administrator; and notice shall be given, and the proceedings shall be conducted in the like manner as is prescribed in the case of an executor or administrator; and the evidence of giving such notice may be perpetuated in the same manner.

Guardian to take oath before sale.

(49.) SEC. XLIX. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, by an executor, or administrator, or guardian; and if it shall appear to the court either that the petition or the objection thereto is unreasonable, the court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof.

When court may award costs.

(50.) SEC. L. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator, or intestate, unless it be commenced within five years next after the sale; and no action for any estate sold in like manner by a guardian, shall

Limitations of actions to recover estate sold.

be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

Minors and others under disability.

(51.) SEC. LI. The preceding section shall not apply to persons out of this territory, nor to minors, or others under any legal disability to sell at the time the right of action shall first accrue; but all such persons may commence such action at any time within five years after the removal of the disability, or their return to this territory.

Sale not avoided on account of certain irregularities when title contested by ward, &c.

(52.) SEC. LII. In case of any 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 shall appear,

1. That the executor, administrator, or guardian was licensed to make the sale by the probate court having jurisdiction:

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

3. That he took the oath prescribed in this chapter:

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

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

Damages recoverable for misconduct in relation to sale.

(53.) SEC. LIII. If there shall be 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 shall suffer damages, such aggrieved party may recover the same in a suit on the probate bond, or otherwise, as the case may require.

Sale not avoided for certain irregularities, when title contested by adverse claimant.

(54.) SEC. LIV. If the validity of a sale made by an executor, administrator, or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator, or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear 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.

Liability of executor, &c., for fraud.

(55.) SEC. LV. Any executor, administrator, or guardian who shall fraudulently sell 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 estate of inheritance therein.