

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE
REVISED STATUTES

OF THE
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partnership estate, to the persons entitled to the same, and on complying with all the requirements of the law authorizing a sale of real estate.

See c. 150, §§ 1-6, re granting of license by probate courts for sale etc. of real estate; 74 Me. 339.

Sec. 8. Death of administrator on partnership estate, proceedings. R. S. c. 83, § 8. When the person who has given bond to administer on a partnership estate where one of the partners is deceased dies before completing the administration, the judge may commit administration on the estate of the partnership not already administered to such person as he thinks fit, who shall give the bond required by section 2, with the necessary variations, and comply with all the provisions of this chapter applicable to such cases.

See c. 140, § 44, re compensation of surviving partners.

CHAPTER 149.

THE INSOLVENT LAW.

In accordance with the provisions of chapter 140 of the resolves of 1941 for revision of the statutes, chapter 84 of the revised statutes of 1930, entitled "The Insolvent Law," is incorporated in this revision and printed by title only. It may be cited as chapter 149 of the revised statutes of 1944.

The laws relating to "The Insolvent Law" may be found in chapter 72 of the revised statutes of 1903, as amended by chapter 90 of the public laws of 1923 and chapter 76 of the public laws of 1927.

See c. 143, § 24.

CHAPTER 150.

SALES OF REAL ESTATE BY LICENSE OF COURT.

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Granting of the License

Sec. 1. Sale, lease, mortgage, or exchange of real estate, when to be licensed. R. S. c. 85, § 1. Judges of probate who have jurisdiction of the estate may license the sale, mortgage, lease, or exchange of real estate and any interests therein, in whatever county situated, in the following cases, on application:

8 Me. 222; 20 Me. 395; 44 Me. 47; 52 Me. 195; 62 Me. 543; *96 Me. 573; 129 Me. 74.

I. Of executors and administrators, including public administrators, for power to sell so much of such estate of the deceased as is necessary to pay debts, funeral charges, legacies, expenses of sale and administration, and for the erection of a suitable marker or gravestone.

See c. 142, § 23, re sale of real estate to pay inheritance tax; c. 148, § 7, re sale of copartnership real estate when partner dies; *96 Me. 573; 134 Me. 140.

II. Of the friends or guardians of minors and other incapacitated persons, that the guardians, or some other suitable persons, may be authorized to sell real estate of their wards, or trees or timber standing thereon, for payment of debts, expenses of sale and of guardianship, and for support and education of their wards, and to provide a reasonable sum in anticipation of accruing expenses, when there is not sufficient personal property therefor, exclusive of such as the judge deems proper to reserve for the use of said wards; or to sell the same and place the proceeds at interest; or to sell it for two or more of these purposes; or to lease such real estate for any term of years, or exchange it for other real estate, when it clearly appears that such sale, lease, or exchange would be for the benefit of the wards. When sold in order to place the proceeds at interest, any part thereof may be used for support of the wards if it becomes necessary.

See c. 154, § 10, re entailments may be barred by conveyance in fee simple; 130 Me. 486.

III. Of executors, administrators, or guardians when it appears by the petition and proof that the residue would be greatly depreciated by a sale of any portion under the foregoing authority, to sell the whole or such parts thereof as will not injure the residue.

63 Me. 250; 96 Me. 573.

IV. Of a husband or guardian of an incapacitated wife resident in the county, to sell or mortgage, on such terms and conditions as the judge thinks proper, for a sufficient consideration, any real estate held by him in right of his wife, or any of her right and interest by descent in any real estate owned by him; and of the guardian of an incapacitated husband, resident in the county, to sell in like manner the right and interest by descent, of such ward, in any real estate owned by his wife. For the purposes of this sub-section an insane husband or wife who has been committed to an asylum for insane persons within this state shall be deemed to remain a resident of the county in which he or she had a residence at the time he or she was committed, so long as he or she shall remain in such asylum by virtue of such commitment.

V. Of executors or administrators, to sell wood and timber standing on the real estate of their testator or intestate, for payment of debts, when it clearly appears to the judge to be for the advantage of those interested in the estate.

VI. Of executors or administrators, to sell as real estate the interest which their testator or intestate had in a land warrant issued by virtue of an act of congress, when not disposed of by will, and to distribute the net proceeds thereof among those entitled by law to such interest.

VII. Of guardians, when a highway, railroad, or canal is authorized to be constructed through the lands of any ward, or a dam is constructed by which such lands are liable to be flowed, to give, for a reasonable compensation, a full release of such ward's claim for damages, which shall be binding on the ward and his heirs forever.

See c. 41, § 32, re guardian may release for damages for land taken by railroads.

VIII. Of executors or administrators, to sell real estate held in mortgage or taken on execution and the right of redemption foreclosed, when it appears to be for the benefit of the parties in interest, and to distribute the proceeds as in other cases of personal estate.

See c. 143, § 31, re distribution of lands held by executor etc. in mortgage or on execution if not sold or redeemed; c. 163, § 13, re mortgages are assets in hands of executor etc.

IX. Of public administrators, after 3 years from the granting of administration, to sell any or all of the real estate of the deceased, when it appears to be for the interest of all concerned and that no heir or other person interested therein, except creditors, can be found in the United States.

X. Of a part or all of the heirs or devisees living in different states or countries of a person deceased, who left real estate in this state undivided, or real estate devised in undivided shares to different persons, where the devisees reside in different states or countries, the owners of which cannot dispose of their separate interests without loss, that the executor, administrator, or other suitable person be authorized to sell such estate and distribute the proceeds, after paying expenses, among such heirs or devisees, according to their respective rights therein as determined by the judge of probate; unless, after public notice, the 1st publication being 30 days prior to the hearing, or longer if the judge deems it necessary, any owner objects to such sale; and if so sold, the share of any absent owner shall be placed on interest until called for by him or his legal representatives.

Sales at Auction

Sec. 2. Sales to be at auction; appeal; jurisdiction of superior court. R. S. c. 85, § 2. All sales aforesaid shall be at public auction, except as hereinafter provided, and the decision of the judge on such applications may be appealed from as in other cases; and the superior court shall have original and concurrent jurisdiction with the probate court in all cases aforesaid.

8 Me. 222.

Sec. 3. Bond. R. S. c. 85, § 3. Persons licensed as aforesaid, before proceeding to make such sales, leases, mortgages, or exchanges, except executors exempted therefrom by the provisions of section 10 of chapter 141, shall give bond to the judge for a sum, and with sureties, resident in the state, or with a surety company authorized to do business in the state, as surety, to his satisfaction, with the following conditions:

I. That they will observe all provisions of law for the sale, leasing, mortgaging, or exchange of such real estate or interests therein, and use diligence in executing the trust.

II. That they will truly apply and account for the proceeds of sale, lease, or mortgage according to law.

39 Me. 18; 50 Me. 75; 93 Me. 372; 94 Me. 562; 107 Me. 159.

Sec. 4. Conditions of bond, when deemed to have been performed. R. S. c. 85, § 4. Persons licensed as aforesaid shall be deemed to have performed the conditions of the aforesaid bond when they have complied with all its terms and conditions and shall have charged themselves with the amount received from the sale, lease, or mortgage of said real estate in an account duly filed and allowed by the judge of probate in and for the county having jurisdiction of the estate, which account must be filed within 1 year from the sale, lease, or mort-

gage of the said real estate, and shall have given an additional bond to the said judge of probate, if required by him, to cover the balance of property found in their hands upon the settlement of said account, unless the bond of such person is exempted by the provisions of sections 10 and 20 of chapter 141; and thereafter said persons shall be liable on said bond or bonds for the amount so received from the sale of said real estate as shown in said account.

Sec. 5. Notice, previous to granting license. R. S. c. 85, § 5. No license shall be granted for the sale of any such real estate, of the value of more than \$50, unless by written consent of all persons interested therein, until after public or personal notice of the time and place of hearing to all such persons to appear and object if they see cause; but such notice, when public, may be published in a consolidated form and shall contain the name of the estate or the title of the case, the names of the petitioner and the name of the city, town, or plantation where such real estate is situated; but such notice need contain no other description of the real estate. If any party interested resides without the state, or the real estate is situated in a county other than the county in which the proceedings are pending, such special notice may be given as the court directs.

Sec. 6. No license to issue, if parties give bond. R. S. c. 85, § 6. No such license shall be granted if any of the parties interested in such estate gives bond to the executor, administrator, or guardian in a sum and with sureties, resident in this state, or with a surety company authorized to do business in the state, as surety, approved by the court to pay all sums, for the payment of which license is asked, so far as the goods and chattels, rights and credits of the deceased or ward are insufficient therefor; but such bond shall not bar any future application for the same purposes, if the obligors, on reasonable notice and demand, fail to perform its condition.

Sec. 7. Notice of sale. R. S. c. 85, § 7. Every person licensed as aforesaid, previous to such sale, shall give 30 days' notice thereof, by posting notifications in some public place in the town where the estate lies, and in 2 adjoining towns, and in the town where said deceased last dwelt, or where the ward resides, if within the state; or by causing an advertisement thereof to be published 3 weeks successively in such newspaper as the court, authorizing the sale, orders; the first publication being 30 days before the sale.

Sec. 8. Judge to certify to superior court in certain cases. R. S. c. 85, § 8. Every application for the sale of any estate, made to the superior court under the provisions of subsection III of section 1, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried showing the value of the real and personal estate of the deceased or ward, and the amount of his just debts or legacies, if the case requires it; also the opinion of such judge, whether it is necessary that the whole or a part of the estate should be sold, and, if part only, what part; and in all applications before said court, by guardians of minors under subsection II of section 1, a certificate must likewise be produced from the judge of probate in the county where such minor's estate was inventoried, stating that in his opinion it would be for the interest of such minor that the whole or a part of said estate should be sold for the purpose specified, and, if part only, what part.

Sec. 9. Parties may be examined under oath. R. S. c. 85, § 9. Any court authorized to grant licenses may examine, under oath, the petitioner or any

other person, whether interested or not, touching the truth of the facts set forth in the petition.

Private Sales, and Sales on Offer

Sec. 10. Licenses to sell at private sale, and on offer; proceedings. R. S. c. 85, § 10. In all cases where the courts may license a person to sell real estate at auction, they may license him to sell from time to time at private sale, or to accept any advantageous offer for such estate or any part of it, and to convey the same accordingly, if it appears to be for the interest of all concerned; but when so licensed, he may sell at auction, by complying with all the requirements of law for sales at auction, and with the particular conditions of his license, and he shall give bond as if he were licensed to sell at auction; and the court shall decide what notice, if any, shall be given of such sale, and, if any is required, it shall be inserted in the license and given accordingly.

96 Me. 575.

Sales by Guardians and Wives of Incapacitated Persons

Sec. 11. Wife of incapacitated ward may join in deed with guardian. R. S. c. 85, § 11. When the guardian of an incapacitated person is duly licensed to sell the interest of his ward in any estate held by him in right of his wife, she may, for a sufficient consideration, join with the guardian in the deed thereof, and it shall be as effectual as if made with her husband when under no disability; and when licensed to sell the real estate of his ward, she may release her right and interest by descent therein to the purchaser, by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of such interest in the premises.

See c. 156, § 9, re husband or wife may bar right of descent by deed etc.

Sec. 12. Guardian may invest proceeds of her interest; trust to be enforced. R. S. c. 85, § 12. The guardian, with consent of the judge to whom he accounts, may agree in writing with such wife how to invest or otherwise dispose of a part of the proceeds of the sale of the whole estate for her sole use, equivalent to her interest therein; and the supreme judicial court or the superior court may enforce such agreement in equity, as a trust.

Sec. 13. Deeds executed under license from courts in certain instances shall be valid. 1943, c. 57. Any deed executed and recorded in due form of law, for adequate consideration, in pursuance of a license granted under the provisions of this chapter is effectual to pass to the purchaser all the right, title, and interest in the granted premises which the ward or other person on whose account the license was granted might convey by a like deed if not incapacitated.

Sales of Estates of Non-Resident Owners

Sec. 14. Sale of estate of deceased non-residents or of minors out of the state. R. S. c. 85, § 13. The superior court and the probate court may grant licenses to continue in force for 3 years to executors and administrators of persons dying out of the state or in a foreign country, guardians of wards living out of the state or in a foreign country, conservators of the property of persons living out of the state, committee of the person or property, or any person acting under official appointment by whatever name called, or some other suitable person on their petition to sell and convey real estate or any interest therein in the

state, as if such deceased persons had died and such wards or persons lived in the state, and such executors, administrators, conservators, or guardians had been here appointed; and all proceedings in such cases before any probate court shall be had before the judge of probate for the county where the real estate or any part thereof lies, and the bond required shall be given to him. The person so licensed shall, within 6 months from any such sale, render an account to the probate court, and after payment of expenses and evidence that there are no debts due within the state and that all inheritance taxes due the state, if any, have been paid, on petition the court may decree that the balance of such an account may be transmitted to the foreign representative of the estate, and all future liability of surety or sureties on bond for sale of real estate shall terminate.

11 Me. 101.

Sec. 15. Proof of appointment. R. S. c. 85, § 14. A duly authenticated copy of the appointment of such executor, administrator, conservator, guardian, or committee of the person or property, or any similar official of whatever title, wherever appointed by any court of competent authority having jurisdiction in any state of the United States or any foreign country, filed, examined, and allowed by any judge of probate in this state is sufficient proof of appointment to entitle such official to the benefit of the preceding section.

Authority to Carry into Effect Contracts of Deceased Persons

Sec. 16. Judge of probate may authorize conveyance on contract made by deceased. R. S. c. 85, § 15. When it appears to the judge of probate having jurisdiction that any deceased person had made a legal contract to convey real estate and was prevented by death from so doing, or that such deceased person had made such a contract to convey an estate upon a condition which in its nature could not be fully performed before his decease, and that in either case the person contracted with or the petitioner has performed or is ready to perform the conditions required of him by the terms thereof, he may, on petition of such person, his heirs, assigns, or legal representatives authorize the executor or administrator, or special administrator of the deceased, or when there is no executor or administrator, the guardian of the heirs of the deceased, to execute deeds to carry said contract into effect; and when such conveyance is made to an executor or administrator, he shall stand seized of such estate to the same uses as in case of real estate set off to him on execution.

3 Me. 51; 51 Me. 424; *97 Me. 400, 401.

Sec. 17. Notice and bond to be required. R. S. c. 85, § 16. Before granting such authority, the judge shall cause due notice to be given to the heirs and all other parties interested and require the person authorized to make conveyance, except executors exempted therefrom by the provisions of section 10 of chapter 141, to give bond with sufficient sureties to account for whatever he receives therefor.

General Provisions

Sec. 18. Licenses, how limited; renewable. R. S. c. 85, § 17. No license granted under the provisions of this chapter, except when otherwise provided, remains in force for more than 1 year from its date; but when that time has expired, a new license may be granted, with or without new notice, at the discre-

tion of the judge, for the sale of all or part of the same real estate upon filing a new bond.

19 Me. 151; 22 Me. 329; 36 Me. 576; 105 Me. 493; *107 Me. 159.

Sec. 19. Sales may be adjourned. R. S. c. 85, § 18. Any sale, duly appointed and notified, may be adjourned within the period prescribed by the license, not exceeding 14 days in all, at the discretion of the person licensed, by giving such reasonable notice thereof as circumstances permit.

63 Me. 251.

Sec. 20. Licenses may include lands in other counties. R. S. c. 85, § 19. When the real estate, for the sale of which license is necessary, lies in two or more counties, the superior court or the probate court, in either of said counties, may grant licenses for the sale of the whole, or any part thereof, in any other county.

Sec. 21. License may prescribe the land to be sold. R. S. c. 85, § 20. Any court, granting license to sell real estate for the payment of debts, legacies, or expenses of administration may prescribe therein what particular portions thereof shall be sold, and in what order, according to the last will of the testator or the principles of equity.

84 Me. 95.

Sec. 22. What estate of deceased is liable to sale; effect of deed. R. S. c. 85, § 21. 1943, c. 4, § 2. Lands of which the deceased died seized in fee simple or fee tail, general or special, and all that he had fraudulently conveyed or of which he was colorably disseized to defraud creditors are liable to sale for payment of debts, under any license granted under the provisions of this chapter; and any deed, executed and recorded in due form of law, for adequate consideration, in pursuance of such license, is effectual to pass to the purchaser all the estate, right, title, and interest in the granted premises which the deceased had therein, free from the right of descent of the widow or widower. The executor or administrator shall pay to the widow or widower $\frac{1}{3}$ of the sale price thereof in lieu of the $\frac{1}{3}$ interest in such real estate which descended to such party free from the payment of debts. Such widow or widower shall be given such personal notice of the proposed sale as the court may order.

3 Me. 286; 4 Me. 8; 22 Me. 330; 61 Me. 294; 71 Me. 67; 80 Me. 487; 81 Me. 228.

Sec. 23. Surplus proceeds to be distributed as real estate. R. S. c. 85, § 22. In all sales of real estate or any part or interest therein, by virtue of licenses granted under the provisions of this chapter, the surplus proceeds of sale, remaining on final settlement of the accounts of such proceeds, shall be considered real estate and distributed among the same persons and in the same proportions as real estate would be.

Sec. 24. Who must be notified; who may appear. R. S. c. 85, § 23. All heirs apparent or presumptive of the ward shall be considered interested in the estate and may appear and answer to the petition of any guardian or other person for the sale of his estate; and when personal notice is required, they shall be notified.

39 Me. 396; 86 Me. 101.

Sec. 25. Costs, when license is contested. R. S. c. 85, § 24. When the granting of a license is contested, if the petition or objection to it appears unreasonable, the court may award costs to the prevailing party.

Sec. 26. Proof of notice of sale, certificate, and record. R. S. c. 85, § 25. The affidavit of any person licensed as aforesaid, or of any person employed by him, made within 18 months after the sale and filed in the probate office with one of the original advertisements of the time, place, and estate to be sold, or with a copy of such advertisement, and recorded, or such an affidavit made afterwards by any person, and filed and recorded with such copy by permission of the court, upon satisfactory evidence that the notice was given as ordered, is sufficient proof that such notice was given, and a copy of such affidavit certified by the register, is competent evidence thereof.

63 Me. 251.

Sec. 27. Proof by parol, when certificate not returned. R. S. c. 85, § 26. When a person, licensed as aforesaid, has taken the oath formerly required by law, but no certificate thereof has been returned to the judge of probate, parol evidence may be received that such oath was administered, in the trial of any action respecting the estate so sold; and if proved, it has the same effect as if a certificate thereof had been returned, filed, and recorded.

63 Me. 251.

Sec. 28. Remedy for neglect or misconduct of person licensed. R. S. c. 85, § 27. If a person, interested in any estate sold as aforesaid, suffers damage by neglect or misconduct of the executor, administrator, or guardian in such proceedings, he may recover compensation therefor in a suit on the probate bond or otherwise as the case may require.

Actions to Try Title of Lands Sold by License

Sec. 29. Limitation of action to recover lands sold by license. R. S. c. 85, § 28. No action shall be brought to recover an estate sold under the provisions of this chapter, nor entry be made thereon, except by judgment of law, with a view to avoid the sale by persons claiming under the deceased, or by the ward or persons claiming under him, unless it is done within 5 years after the sale or the termination of the guardianship, except that persons out of the state, or under legal disability at said times are limited to 5 years after their return to the state or the removal of the disability.

14 Me. 346; 58 Me. 558; 85 Me. 139; *88 Me. 314.

Sec. 30. Requisites for valid sale as against persons claiming under deceased or ward. R. S. c. 85, § 29. In an action brought to contest the validity of any such sale, by the heir or others claiming under the deceased; by the wife or her heirs, in case of a sale of her estate by her husband; or by the ward or person claiming under him; no such sale shall be avoided on account of any irregularity in the proceedings, if it appears:

I. That the license was granted by a court of competent jurisdiction and that the deed was duly executed and recorded;

II. That the person licensed gave the bond and notice of the time and place of sale required by law;

III. That the premises were sold in such manner and within such time as the license authorized and are held by one who purchased them in good faith.

Sec. 31. As against such as claim adversely to the title sold. R. S. c. 85, § 30. If the validity of such sale is contested by one claiming adversely to the title of the wife, ward, or deceased aforesaid, or by a title not derived through

either, the sale is not void on account of any irregularity in the proceedings, if it appears that the license was granted by a court of competent jurisdiction and the deed duly executed and recorded.

See c. 154, § 4, re sales of real estate, subject to contingent remainder, executory devise, or power of appointment; 53 Me. 204; *114 Me. 469.

CHAPTER 151.

PROBATE BONDS AND REMEDIES THEREON.

- Sections 1-5 Sufficiency of Probate Bonds.
 Sections 6-10 Actions on Bonds.
 Sections 11-16 Actions without Authority of Judge.
 Sections 17-19 Actions by Authority of Judge.
 Sections 20-22 Remedies on Other Probate Bonds.

Sufficiency of Probate Bonds

Sec. 1. Approval by judge. R. S. c. 86, § 1. No bond required to be given to the judge of probate, or to be filed in the probate office, is sufficient until it has been examined by the judge and his approval written thereon.

Sec. 2. Insufficient, new required. R. S. c. 86, § 2. When the sureties in any such bond are insufficient, on petition of any person interested, and notice to the principal, the judge may require a new bond with sureties approved by him.

See c. 141, § 63, re additional bonds may be required; c. 145, § 25, re judge may require new bond upon settlement of account; c. 147, § 3, re proceedings when trustee neglects to give bond; c. 149, § 30.

Sec. 3. Surety on bond may be discharged. R. S. c. 86, § 3. On application of any surety or principal in such bond, the judge on due notice to all parties interested may, in his discretion, discharge the surety or sureties from all liability for any subsequent, but not for any prior, breaches thereof, and may require a new bond of the principal with sureties approved by him.

*100 Me. 104; 103 Me. 382.

Sec. 4. Principal to give new bond or be removed. R. S. c. 86, § 4. In either case, if the principal does not give the new bond within the time ordered by the judge, he shall be removed and another appointed.

Sec. 5. Court may reduce penal sum of bond signed by surety company. R. S. c. 86, § 5. If a surety company becomes surety on a bond given to a judge of probate, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond.

Actions on Bonds

Sec. 6. Suits on bonds to be in name of judge. R. S. c. 86, § 6. Suits on probate bonds of any kind payable to the judge shall be originally commenced in the superior court for the county where said judge belongs, and in his