

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 581

H. P. 1578 House of Representatives, Mar. 1, 1929.

Referred to Committee on Revision of Statutes and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Stone of Biddeford.

STATE OF MAINE

**IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE**

AN ACT Relative to the Sale of Real Estate under License
of the Probate Court.

Be it enacted by the People of the State of Maine, as follows:

Chapter seventy-six of the revised statutes is hereby
2 amended by adding at the end thereof the following sec-
3 tions to be numbered thirty-one to thirty-six inclusive.

‘Sect. 31. If a license is granted by a probate court for
2 a sale or mortgage of real estate to pay the debts and
3 charges of a deceased person or of a person under guard-
4 ianship or conservatorship, the adjudication of said court
5 as to the existence of such debts and charges shall be final
6 so far as the same may affect any title acquired by virtue of

7 such license, but shall not affect the right of the executor,
8 administrator, guardian or conservator to contest the valid-
9 ity of such debts and charges.

‘Sect. 32. No action for the recovery of property sold
2 by an executor or administrator under this chapter shall be
3 maintained by an heir or other person claiming under the
4 deceased unless commenced within five years next after the
5 sale; and no action for property sold by a guardian or con-
6 servator under said chapter shall be maintained by the
7 ward or by any person claiming under him unless com-
8 menced within five years next after the termination of the
9 guardianship or conservatorship; but persons out of the
10 state and minors and others under legal disability to sue
11 when their right of action first accrues may commence such
12 action at any time within five years after the removal of
13 the disability or after their return to the state. No entry,
14 unless by judgment of law, shall be made upon land so sold,
15 with a view to avoid the sale, unless within the times of
16 limitation before prescribed for the commencement of an
17 action.

‘Sect. 33. If an act or proceeding of a person acting as
2 executor, administrator, guardian, conservator or trustee
3 under an appointment or license of a probate court is void
4 or voidable by reason of an irregularity or of want of
5 jurisdiction or authority in the court which made the ap-
6 pointment or granted the license, any person interested in
7 or affected by such act or proceeding may have the matter

8 heard and determined by the supreme judicial court in
9 equity, which may confirm or set aside, in whole or in part,
10 the act or proceeding.

'Sect. 34. If the authority or validity of an act or pro-
2 ceeding of the probate court or of a person acting as execu-
3 tor, administrator, guardian, conservator, receiver appointed
4 by the probate court, or trustee is drawn in question by
5 reason of an alleged irregularity, defective notice or want
6 of authority, any party interested in or affected by such
7 act or proceeding may apply to the probate court having
8 jurisdiction of the subject matter relative to which the act
9 or proceeding has been had, and the court, after notice to
10 all parties interested, and to the persons who may be the
11 parents of such parties not in being, with power to appoint
12 a guardian or next friend to represent the interests of any
13 person unborn or unascertained, may hear and determine
14 the matter and confirm the act or proceeding, in whole or
15 in part, and may authorize and empower the executor, ad-
16 ministrator, guardian, conservator, receiver appointed by
17 the probate court, or trustee, or any successor or other
18 person who may be legally appointed to act in the same
19 capacity, to ratify and confirm such act or proceeding and
20 to execute and deliver such deeds, releases, conveyances
21 and other instruments as may be found necessary there-
22 for; but no act or proceeding shall be ratified or confirmed
23 which the court might not have passed or authorized in
24 the first instance upon due proceedings.

'Sect. 35. An executor, administrator, guardian, conservator or trustee whose appointment is invalid by reason of an irregularity or of want of jurisdiction or authority in the court which made it, shall account for all money, property or assets coming to his hands in said capacity as if the appointment had been regular and valid; and any bond given in pursuance of such appointment shall be valid and binding on the principals and sureties; and payments to or by a person so appointed, if in other respects properly made, may with the approval of the probate court be ratified and confirmed by the executor, administrator, guardian, conservator or trustee who is afterward legally appointed.

Sect. 36. If an executor, administrator, guardian, conservator or trustee, or a person employed by him to give notice of sale of real estate, has failed to file an affidavit of such notice in the probate court and such affidavit cannot be obtained, the court may, upon petition of any person interested in real estate the title to which may be affected thereby, stating the particular failure complained of and averring that the affidavit cannot be obtained, order notice by publication to creditors of, and others interested in, the estate in the settlement of which the failure complained of occurred. If, upon return of such notice and after hearing, the court is satisfied that such notice was in fact given, it may make a decree to that effect.'