

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

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CHAPTER 71.

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PUBLIC SALES OF RESIDENT ESTATES.

In what cases judges of probate may license sales and exchanges of real estate. 8 Greenl. 220. R. S., c. 112, § 1. 1844, c. 116, § 1. 1846, c. 199, § 1, 2. R. S., c. 108, § 28.

SEC. 1. Judges of probate, in the counties where the applicants hereinafter named were appointed, may license the sale or exchange of real estate and certain interests therein, including land held in mortgage and possession thereof taken for condition broken, and land taken on execution, although the right of redemption is not foreclosed, in whatever county the same is situated, in the following cases, on application:

First.—Of executors or administrators, for power to sell so much of such estate of the deceased as is necessary to pay debts, legacies, and expenses of sale and of administration.

Second.—Of guardians of minors and other incapacitated persons, to sell so much of such estate of their wards as is necessary to pay debts, and expenses of sale and of guardianship; and when there is not sufficient personal estate for the support of their wards.

Third.—Of guardians, to sell so much as is necessary to pay debts, and expenses, and not exceeding one hundred dollars, more in anticipation of accruing expenses, although there is a reserve of personal property of their wards, if it appears more for the advantage of such wards and their families.

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

Fifth.—Of the friends or guardians of minors and other incapacitated persons, that the guardians or some other suitable persons may be authorized to sell such estate of the wards, or any trees or timber standing thereon, and place the proceeds at interest; or to exchange any such estate, when it fully appears that such sale or exchange would be for the benefit of the wards.

Sixth.—Of a husband of an insane wife resident in the county, to sell, 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 rights of dower.

Seventh.—Of executors and administrators, in the case described in section twenty-four of chapter sixty-five.

Eighth.—Of public administrators, in cases defined by section twenty-two of chapter sixty-four.

SEC. 2. All the sales aforesaid shall be at public auction, except as hereinafter provided, and the decision of the judge of probate on such applications may be appealed from, as in other

Sales to be at auction, &c. 8 Greenl. 220.

cases; and the supreme judicial court shall have original and concurrent jurisdiction with the probate court in all the cases aforesaid.

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SEC. 3. All persons licensed as aforesaid, before proceeding to make such sales or exchanges, shall give bond to the judge of probate for a sum, with sureties to his satisfaction, with the following conditions:

R. S., c. 112, § 2, 3, 4.
1846, c. 199, § 1, 2.
Persons making sales to give bond, &c.
39 Maine, 15.
R. S., c. 112, § 5, 38.
1844, c. 116, § 2.

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

Second. — That they will truly apply and account for the proceeds of sale according to law.

SEC. 4. Before fixing upon the time and place of sale or exchange, they shall be duly sworn before the judge of probate, or before some justice of the peace, whose certificate shall be returned to the judge, and filed and recorded by the register.

To be sworn.
26 Maine, 224.
R. S., c. 112, § 6.

SEC. 5. No license shall be granted for the sale of any such real estate, unless by the written consent of all persons interested therein, until after at least fourteen days previous notice of the time and place of hearing is given personally, or by publication three weeks successively, in such newspaper as the court orders, to all persons interested in the property to appear and object if they see cause. If any party interested resides without the state, such special notice may be given as the court directs.

Notice previous to granting license.
R. S., c. 112, § 7.

SEC. 6. Nor shall such license 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 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.

No license to be granted, if parties interested give bond of indemnity, &c.
R. S., c. 112, § 8.

SEC. 7. Every person licensed as aforesaid, previous to such sale, shall give thirty days notice thereof, by posting up notifications in some public place in the town where the estate lies, and in two adjoining towns, and in the town where the said deceased last dwelt, or where the ward resides, if within the state; or by causing an advertisement thereof to be published three weeks successively in such newspaper as the court, authorizing the sale, orders; the first publication to be thirty days before the sale.

Notice of sale, how given.
R. S., c. 112, § 9.

SEC. 8. Every application for the sale of any estate, under the provisions of the fourth specification of the first section, made to the supreme judicial court, 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 require it; and also the opinion of such judge of probate, 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 the fifth specification aforesaid, a certificate must likewise be produced from the judge of probate in the county where such

When certificate of judge necessary, &c.
R. S., c. 112, § 10.

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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.

Petitioners and others may be examined under oath.
R. S., c. 112, § 11.

When certificates of overseers of poor necessary.
R. S., c. 112, § 12.

SEC. 9. Any court, hereby authorized to grant licenses, may examine, under oath, the petitioner or any other persons, whether interested or not, touching the truth of the facts set forth in the petition.

SEC. 10. No license to sell the estate of any ward, not a minor or insane, shall be granted, unless the applicant produces to the court a certificate under the hands of the overseers of the poor of the town where the ward resides, if in this state, giving their consent to the sale, and their opinion as to the amount proper to be raised thereby, excluding debts contracted by gaming; and if applicable to the case, whether it is necessary to sell a greater amount in value of land to prevent injury to the residue.

SALES OF NON-RESIDENT ESTATES.

Proceedings for sale of estate of persons deceased without the state, &c.
11 Maine, 99.
R. S., c. 112, § 13, 14.
1852, c. 261.
1853, c. 20.

SEC. 11. The supreme judicial court and the probate courts may grant licenses, to continue in force for three years, to executors and administrators of persons deceased out of the state, guardians of wards living out of the state, or some other suitable persons on their petition, to sell and convey such real estate or interest therein in this state, as if such deceased persons had died, and such wards lived in this state, and such executors, administrators, 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 lies, and the bond required shall be given to him.

Evidence of appointment of executor, &c., in another state.
R. S., c. 112, § 15.

SEC. 12. A certified copy of the appointment of such executor, administrator, or guardian, by any court of probate having jurisdiction in any other of the United States, examined and allowed by any judge of probate in this state, and ordered to be filed and recorded in his county, shall be sufficient proof of appointment to entitle him to the benefit of the preceding section.

PRIVATE SALES.

Licenses to sell at private sale, &c.
5 Greenl. 240.
20 Maine, 393.
R. S., c. 112, § 20, 21, 24.
1850, c. 270, § 2.

SEC. 13. In all cases where the courts, by the provisions of this chapter, may license a person to sell real estate at auction, they may license him to sell from time to time at private sale, if it appears to be for the interest of all concerned; but when licensed to sell at private sale, he may sell at auction, by complying with all the requisitions of law for sales at auction, and with any particular conditions of his license; and he shall be sworn and give bond as if he was licensed to sell at auction; and the court shall decide what public notice, if any, shall be given of the time and place of such private sale, and if any is required, it shall be inserted in the license and given accordingly.

License to accept offer to purchase.

SEC. 14. When it appears by the petition to sell real estate at private sale, and the evidence adduced, that an advantageous

offer has been made for such estate, or any part of it, and that the interest of all concerned would be promoted by its immediate acceptance, the court may authorize such acceptance, and the sale of the estate accordingly, with or without public notice, at the discretion of the person licensed, by his taking the oath and giving the bond, as in other cases.

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R. S., c. 112,
§ 22.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

SEC. 15. 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 him 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 of dower therein to the purchaser, by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of dower in the premises.

Wife of
incapacitated
ward may join
in sale of
estate held in
her right, &c.
R. S., c. 112,
§ 25, 26.

SEC. 16. The guardian, with the consent of the judge of probate 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 may enforce such agreement in equity, as a trust.

Guardian may
contract to
invest pro-
ceeds of her
interest, &c.
R. S., c. 112,
§ 27.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

SEC. 17. When it appears to the judge of probate having jurisdiction, that any deceased person in his lifetime made a legal contract to convey real estate, and was prevented by death from so doing, and that the person contracted with or petitioner has performed, or is ready to perform the conditions required of him by the terms thereof, he may, on the petition of such person, his heirs, assigns, or his legal representatives, authorize the executor or administrator 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.

When judges
may authorize
deeds to carry
into effect
contracts of
deceased to
convey real
estate.
3 Greenl. 50.
R. S., c. 112,
§ 28.

LICENSE TO GUARDIANS TO RELEASE CERTAIN DAMAGES.

SEC. 18. When a highway, railroad, or canal, is authorized to be constructed through the lands of any ward, or a dam is erected, by which such lands are liable to be flowed, the courts aforesaid may authorize the guardian, for a reasonable compensation, and by giving the same notice and accounting for the money so received in the same way, as in cases of sales of real estate by guardians, to give a full release of his ward's claim for damages, which shall be binding on him and his heirs forever.

When lands of
wards are
taken for high
ways, &c.
1843, c. 1,
§ 1, 2.

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GENERAL PROVISIONS.

Licenses in force only one year, &c.
19 Maine, 150.
22 Maine, 321.
36 Maine, 573.
R. S., c. 112, § 16, 17.
1852, c. 270, § 3.

Licenses granted may embrace lands in other counties.
R. S., c. 112, § 23.

Licenses may express what lands shall be sold, &c.
R. S., c. 112, § 29.

What estate of deceased persons is liable to sale, &c.
3 Greenl. 282.
4 Greenl. 1.
19 Maine, 150.
22 Maine, 321.
R. S., c. 112, § 30, 31.

Surplus proceeds of sale distributed as real estate.
R. S., c. 112, § 32.

Presumptive heirs of wards deemed parties interested, &c.
R. S., c. 112, § 33.

Costs when granting of license is objected to.
R. S., c. 112, § 34.

What is sufficient evidence of notice of sale.
R. S., c. 112, § 19.

SEC. 19. No license granted under this chapter, except when otherwise provided, shall remain in force more than one year from its date; and any sale, duly appointed and notified, may be adjourned for a time or times within the time prescribed by the license, not exceeding fourteen days in all, at the discretion of the person licensed, by giving such reasonable notice thereof as circumstances will permit.

SEC. 20. When the real estate, for the sale of which license is necessary, lies in two or more counties, the supreme judicial or probate court, in either of said counties, may grant licenses for the sale of the whole, or any part thereof, in any other county in the state.

SEC. 21. 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.

SEC. 22. 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 the payment of debts, under any license granted under this chapter; and any deed, executed and recorded in due form of law, for adequate consideration, in pursuance of any such license, shall be effectual to pass to the purchaser all the estate, right, title, and interest in the granted premises, which the deceased, the ward, or other person on whose account the license was granted, might convey by a like deed if living and not incapacitated.

SEC. 23. In all cases of the sale of real estate, or any part, or interest therein, by virtue of licenses granted under any of the provisions of this chapter, the surplus proceeds of sale, remaining on the final settlement of the accounts of such proceeds, shall be considered as real estate, and distributed among the same persons and in the same proportions as the real estate would be by law.

SEC. 24. All who are heirs apparent or presumptive of the ward, shall be considered as 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 to be given, they shall be notified.

SEC. 25. When the granting of any license is contested, if it appears that the petition or objection to it is unreasonable, the court may award costs to the prevailing party.

SEC. 26. The affidavit of any person licensed as aforesaid, or of any person employed by him, made within eighteen months after the sale, before the judge of probate, or a justice of the peace, and filed in the probate office, and recorded with one of the original advertisements of the time, place and estate to be sold, or with a copy of such advertisement, shall be sufficient proof that such notice was given; and a copy of such affidavit,

certified by the register of probate, shall be competent evidence thereof.

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SEC. 27. If any person, interested in any estate sold as aforesaid, suffers damage by the neglect or misconduct of the executor, administrator, or guardian, in such proceedings, he may recover a compensation therefor in a suit on the probate bond or otherwise, as the case may require.

Remedy of party damaged by misconduct, &c.
R. S., c. 112, § 37.

ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

SEC. 28. No action shall be brought to recover any estate sold under this chapter, nor entry 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 five years after the sale, or the termination of the guardianship, except that persons out of the state, or under any legal disability at said times, are limited to five years after their return to the state, or the removal of the disability.

Actions or entries to recover back land sold under license, &c.
14 Maine, 344.
R. S., c. 112, § 18.

SEC. 29. In any action brought to contest the validity of any such sale, by the heir or others claiming under the deceased; the wife or her heirs, in case of a sale of her estate by her husband; or the ward or persons claiming under him, no such sale shall be avoided on account of any irregularity in the proceedings, if it appears:

Requisites of a valid sale against persons claiming under deceased or ward.
R. S., c. 112, § 35.

First.—That the license was granted by a court of competent jurisdiction, and the deed duly executed and recorded.

Second.—That the person licensed took the oath, and gave the bond and notice of the time and place of sale required by law.

Third.—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. 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 shall not be held 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.

Also against such as claim adversely to the title sold.
R. S., c. 112, § 36.

CHAPTER 72.

PROBATE BONDS AND REMEDIES THEREON.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

- SEC. 1. Insufficient sureties may be discharged, and new ones required on petition of interested party.
2. When sureties, after six years, may be discharged, at their own request, from subsequent liabilities.
3. If principal does not give new bond when required, to be removed.