

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAP. 71.**CHAPTER 71.****SALES OF REAL ESTATE BY LICENSE OF COURT.****LICENSES TO SELL RESIDENT ESTATES.**

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SEC. 1. Judges of probate, in the counties where the applicants hereinafter named were appointed, may license the sale, leasing or exchange of real estate and any interests therein in whatever county 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 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 any trees or timber standing thereon, for the payment of debts, expenses of sale and of guardianship, and for the support 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 may deem 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. But when licensed to be sold in order to place the proceeds at interest, any part thereof may be used for the support of the wards if it becomes necessary.

Third.—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.

Fourth.—Of a husband or guardian 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.

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

Sixth.—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 any act of congress, when not disposed of by will, and to distribute the net proceeds thereof among those entitled by law to such interest.

Seventh.—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.

CHAP. 71.

In what cases licenses may be granted to sell, lease or exchange real estate.

R. S. c. 71,
§§ 1, 18.
1861, c. 45.
1868, c. 8.
1868, c. 169, § 1.
1870, c. 113,
§§ 17, 18, 19.
8 Me. 220.
20 Me. 393.
44 Me. 45, 57.
52 Me. 192.

R. S. c. 71, § 1.

R. S. c. 71, § 1.
1870, c. 113,
§ 18.

1861, c. 45.

1868, c. 8.

R. S. c. 71, § 18.

CHAP. 71. *Eighth.*—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. 65, § 35. *Ninth.*—Of public administrators, after three 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.

1870, c. 113,
§ 19.

Tenth.—Of a part or all of the heirs living in different states, of a person deceased, who left real estate in this state undivided, 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, amongst such heirs, according to their respective rights therein; unless, after public notice, the first publication to be thirty 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.

Sales to be at auction, saving excepted cases. Appeal Jurisdiction of S. J. C.
R. S. c. 71, § 2.
8 Me. 220.

Bond to be filed. Conditions.
R. S. c. 71, § 3.
1868, c. 169.
39 Me. 15.
50 Me. 74.

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

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

First.—That they will observe all the provisions of law for the sale, leasing 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 or lease according to law.

Oath first to be taken.
R. S. c. 71, § 4.
1868, c. 169.
26 Me. 224.

SEC. 4. Before fixing upon the time and place of sale, leasing 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.

Notice previous to granting license.
R. S. c. 71, § 5.

SEC. 5. No license shall be granted for the sale of any such real estate, of the value of more than fifty dollars, unless by the written consent of all persons interested therein, until after public or personal notice of the time and place of hearing, 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 CHAP. 71.
as the court directs.

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 issue, if parties give bond and fulfil it.
R. S. c. 71, § 6.

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. 71, § 7.

SEC. 8. Every application for the sale of any estate, under the provisions of the third 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 second specification aforesaid, 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.

Judge to certify to S. J. C. in certain cases.
R. S. c. 71, § 8.

SEC. 9. Any court, hereby 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.

Parties may be examined under oath.
R. S. c. 71, § 9.

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.

Overseers of the poor to certify in certain cases.
R. S. c. 71, § 10.

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PRIVATE SALES AND SALES ON OFFER.

Licenses to sell at private sale, and on offer; proceedings. R. S. c. 71, §§ 13, 14. 1869, c. 4. 5 Me. 240. 20 Me. 393.

SEC. 11. 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 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 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 notice, if any, shall be given of such sale, and if any is required, it shall be inserted in the license and given accordingly.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

Wife of incapacitated ward may join in deed with guardian or release dower. R. S. c. 71, § 15.

SEC. 12. 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 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.

Guardian may invest proceeds of her interest; trust to be enforced. R. S. c. 71, § 16.

SEC. 13. 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.

SALES OF NON-RESIDENT ESTATES.

Sale of estate of deceased persons or minors out of the state. R. S. c. 71, § 11. 1870, c. 175. 11 Me. 99.

SEC. 14. 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 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 or any part thereof lies, and the bond required shall be given to him.

Proof of appointment in another state of executor, &c. R. S. c. 71, § 12.

SEC. 15. 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 filed and recorded in his county,

shall be sufficient proof of appointment to entitle him to the benefit of the preceding section. CHAP. 71.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

SEC. 16. 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 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.

Administrators and others may be licensed to fulfill contract of deceased.
R. S. c. 71, § 17.
1863, c. 188.
1869, c. 3.
3 Me. 50.
51 Me. 423.

SEC. 17. 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, to give bond with sufficient sureties to account for whatever he receives therefor.

Notice to be given, and bond required.
1864, c. 263.

GENERAL PROVISIONS.

SEC. 18. No license granted under this chapter, except when otherwise provided, shall remain in force more than one year from its date; but when that time has expired, a new license may be granted, with or without new notice, at the discretion of the judge, for the sale of all or part of the same real estate, on filing a new bond.

Licenses limited to one year; may be renewed.
R. S. c. 71, § 19.
1869, c. 33.
19, Me. 150.
22 Me. 321.
36 Me. 573.

SEC. 19. 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.

Sales may be adjourned.
R. S. c. 71, § 19.

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.

Licenses may include lands in other counties.
R. S. c. 71, § 20.

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.

License may prescribe the land to be sold.
R. S. c. 71, § 21.

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

What estate of deceased is liable to sale. Effect of deed.
R. S. c. 71, § 22.
3 Me. 282.
4 Me. 1.

CHAP. 71. 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.

Surplus proceeds of sale to be distributed as real estate.
R. S. c. 71, § 23.

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.

What parties are to be notified, and may appear.
R. S. c. 71, § 24.

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.

Costs where license is contested.
R. S. c. 71, § 25.

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.

Proof of notice of sale, certificate and record.
R. S. c. 71, § 26.

SEC. 26. The affidavit of any person licensed as aforesaid, or of any person employed by him, made within eighteen 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, 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.

Proof by parol when certificate is not returned.
1859, c. 59.

SEC. 27. When any person, licensed as aforesaid, has duly taken the oath required by law, but no certificate thereof has been retained as provided in the preceding sections, 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 shall have the same effect as if a certificate thereof had been returned, filed and recorded.

Remedy for neglect or misconduct of person licensed.
R. S. c. 71, § 27.

SEC. 28. 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.

ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

Process to recover back land sold by license, limited to five years.
R. S. c. 71, § 28.
14 Me. 344.

SEC. 29. 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 dis-

ability at said times, are limited to five years after their return to the state, or the removal of the disability. CHAP. 71.

SEC. 30. 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 for valid sale, as against persons claiming under deceased or ward.
R. S. c. 71, § 29.

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. 31. 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.

As against such as claim adversely to the title sold.
R. S. c. 71, § 30.
53 Me. 203.