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CHAPTER 51.

OF THE SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

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When guardian may sell real estate of ward.

SEC. 1. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall not be sufficient to maintain the ward and his family, or to educate the ward when a minor, or the children of such insane person or spendthrift; his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein as provided in this chapter.

When guardian may sell and put out proceeds on int.

SEC. 2. When it shall appear satisfactory to the court upon the petition of any such guardian, that it would be for the benefit of his ward that his real estate, or any part thereof should be sold, and the proceeds thereof put out on interest or invested in some productive stock, his guardian may sell the same for that purpose, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

Application of proceeds of sale, &c.

SEC. 3. If the estate is sold for the purpose mentioned in the first section of this chapter, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of proceeds.

SEC. 4. If the estate is sold for the purpose of putting out or investing the proceeds as provided in the second section of this chapter, the guardian shall make the investment according to his best judgment; or in pursuance of any order that may be made by the probate court.

Residue on final settlement considered as real estate.

SEC. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any remaining, upon the final settlement of the account of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons,

and in the same proportions as the real estate would have been, if it had not been sold.

SEC. 6. In order to obtain a license for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

Petition for license.

SEC. 7. If it shall appear to the court from such petition that it is necessary, or would be beneficial to the ward that such real estate, or some part of it, should be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Order to show cause.

SEC. 8. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in such newspaper circulating in the county, as the court shall specify in such order.

Service of order.

SEC. 9. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioners of the county in which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

When certificate of county com. necessary.

SEC. 10. 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 of the order, and upon filing the certificate of approbation of the commissioners of the county, when necessary, shall hear and examine the proofs and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate, who shall think proper to oppose the application.

Hearing of petition.

SEC. 11. On such hearing, the guardian 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.

Examination of guardian, &c.

SEC. 12. If, after a full examination, it shall appear to the court either that it is necessary, or that it would be for the benefit of the ward, that the real estate, or any part of it, should be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be put out or invested as aforesaid.

When license to be granted, &c.

SEC. 13. Every guardian licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate, with sufficient surety or sureties, to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale, in the manner provided by law.

Bond to be given by guardian.

SEC. 14. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath in substance like that required in the succeeding chapter, to be taken by an executor, administrator, or guardian, when licensed to sell real estate pursuant to the provisions of that chapter.

Guardian to take oath, &c.

SEC. 15. He shall also give public notice of the time, and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian in the succeeding chapter, and the evidence

Notice of sale.

of the giving of such notice may be perpetuated in like manner and with the same effect as is provided in like cases in that chapter.

License, how long in force.

SEC. 16. No license granted in pursuance of this chapter, shall be in force more than one year after granting the same.

When foreign guardian may file copy of his appointment.

SEC. 17. When any minor, insane person, or spendthrift, residing without this territory, shall be put under guardianship in the territory or county 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 in any county in which there may be any real estate of the ward.

Foreign guardian may be licensed to sell.

SEC. 18. After filing such authenticated copy of his appointment, such foreign guardian may be licensed by the probate court of the same county, to sell the real estate of the ward in this territory, 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 hereinafter mentioned.

Manner of conducting sale.

SEC. 19. Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath required in the like case of guardians appointed in this territory; and shall give notice of the time and place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of notice in the same manner.

Disposition of residue.

SEC. 20. Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been according to the laws of this territory, if it had not been sold; and such foreign guardian shall, in every case before making the sale, give bond with satisfactory surety or sureties; to the judge of probate, with conditions to account for and dispose of the same accordingly.

When the court may award costs to prevailing party.

SEC. 21. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and it shall appear to the court, that either the petition or the objection thereto, is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

Limitation of suits by ward, &c., to recover estate sold by guardian.

SEC. 22. No action for the recovery of any estate sold by a guardian under the provisions of this chapter, shall 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, excepting only that persons out of the territory, and minors, and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the territory.

Sale not avoided on account of certain irregularities.

SEC. 23. In case of an action relating to any estate, sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,

1. That the guardian was licensed to make the sale by a probate court of competent jurisdiction:
2. That he gave a bond which was approved by the judge of probate, in case any bond was required by the court upon granting the license:
3. That he took the oath prescribed in this chapter:
4. That he gave notice of the time and place of sale as prescribed by law, and,

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

SEC. 24. 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.

SEC. 25. 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 52.

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

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