

precinct, and shall not vary one-eighth of an inch in breadth from the above specification.

Auditors to
transmit, what.

SEC. 12. That section 423, volume 1, Hill's Annotated Codes and Statutes of Washington, is amended to read as follows: Sec. 423. It shall be and is hereby made the duty of the county auditor in each county of this state, immediately after making abstracts of the vote, given in his county at the general or special election, for members of the legislature, county, state or district officers, or members of congress, to transmit by mail a certified copy of said abstract to the secretary of state, at the seat of government. It shall be the duty of the secretary of state to furnish uniform and proper blanks to each and every county auditor in the state, on which said county auditor shall make returns to the secretary's office. The county auditor shall make returns of all persons voted for for state, county and district officers.

Secretary
of state to
furnish blanks.

SEC. 13. All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

Passed the house March 6, 1895.

Passed the senate March 14, 1895.

Approved March 21, 1895.

CHAPTER CLVII.

[H. B. No. 411.]

TO PROVIDE FOR MORTGAGING OF REAL PROPERTY BY EXECUTORS AND ADMINISTRATORS.

AN ACT to amend sections 998, 1005, 1006, 1007, 1008, 1012, 1013, 1014, 1015, 1025, 1036, 1038, 1039 of chapter 9 of volume 2 of the General Statutes and Codes of Washington, as arranged and annotated by William Lair Hill, relating to sales of property by executors and administrators, and to provide for the mortgaging of real property by executors and administrators, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 998 of chapter 9 of volume 2 of the General Statutes and Codes of Washington, as ar-

ranged and annotated by William Lair Hill, be amended to read as follows: Sec. 998. No sale or mortgage of any property shall be valid unless made under order of the court, unless otherwise provided by law.

SEC. 2. That section 1005 of said chapter be amended to read as follows: Sec. 1005. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family and all the debts and charges of the administration, the executor or administrator may sell or mortgage the real estate for that purpose, upon the order of the court. To obtain such order he shall present a petition to the court setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seized, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

Real estate,
when en-
cumbered.

SEC. 3. That section 1006 of said chapter be amended to read as follows: Sec. 1006. If it should appear from such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased and the expenses of administration, and that it is necessary to sell or mortgage the whole or some portion of the real estate to provide funds for the payment of such debts, the court shall thereupon make an order directing all persons interested to appear at a time and place specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order shall not be granted to the executor or administrator to sell or mortgage the real estate of the deceased, or so much thereof as shall be necessary to pay such allowances, charges and debts.

Notice to
precede.

SEC. 4. That section 1007 of said chapter be amended to read as follows: Sec. 1007. A copy of such order to show cause shall be personally served on all persons inter-

Personal
service re-
quired, when.

ested in the estate at least ten days before the time appointed for the hearing of the petition, or shall be published at least four successive weeks in such newspaper as the court shall order: *Provided, however,* That if all persons interested in the estate shall signify in writing their assent to such sale or the making of such mortgage, the notice may be dispensed with.

Hearing.

SEC. 5. That section 1008 of said chapter be amended to read as follows: Sec. 1008. The court, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of due service or publication of a copy of the order, or upon filing the consent in writing to such sale or to the making of such mortgage of all parties interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner and of all persons interested in the estate who may oppose the application.

Court to determine method of raising funds.

SEC. 6. That section 1012 of said chapter be amended to read as follows: Sec. 1012. If the court shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that it is necessary, in order to raise funds for the payment of the allowance to the family and all valid claims against the estate, and charges of administration, to sell or mortgage the whole or some portion of the real estate, the court shall then proceed to determine which method of raising such funds will be most beneficial to the estate and those interested therein, and shall thereupon make an order authorizing the executor or administrator to sell the whole or so much and such parts of the real estate described in the petition as the court shall adjudge necessary or beneficial, or authorizing the executor or administrator to mortgage the whole or so much and such parts of the real estate described in said petition as the court shall adjudge necessary or beneficial, according as the court shall determine one or the other methods most beneficial to the estate and those interested therein: *Provided,* That if the executor or administrator shall, in his petition, represent to the court that one or the other of such methods of providing

such funds will be most beneficial to the estate, and all parties interested in the estate shall join in such petition, then the court, if it grants such petition, shall order that such funds be raised in the manner petitioned for.

SEC. 7. That section 1013 of said chapter be amended to read as follows: Sec. 1013. The order shall specify the lands to be sold or mortgaged and the terms of the sale or mortgage. If a sale be ordered it may be either for cash or on credit, not exceeding six months, as the court may direct. If a sale has been ordered and it appears that any part of the real estate has been devised and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold before that part devised. If a mortgage be ordered the court shall order the amount to be borrowed, which may be greater or less than the amount prayed for in the petition, and shall prescribe the maximum rate of interest which shall be paid, and the period for which the mortgage shall run, and may require that the interest and part or the whole of the mortgage debt be paid from any part of the estate, and may direct that any buildings on the lands to be mortgaged shall be insured for the further security of the mortgagee, the premiums to be paid from any funds in the hands of the executor or administrator. If a mortgage be ordered the executor or administrator shall at once proceed to negotiate a loan for the amount and upon the terms and upon the security ordered by the court, and upon securing said loan and upon the receipt of the money borrowed, shall execute and deliver to the lender of said money a mortgage of the premises described in the order of the court directing such mortgage, in accordance with said order, setting forth in the mortgage that it is executed by order of the court, and giving the date of such order. Before the delivery of such mortgage the same shall be presented to a judge of the court making the order for his approval, and if he shall approve the same his approval shall be endorsed upon said mortgage. No notice of such presentation need be given. Every mortgage so made and approved shall be effectual to mortgage and hypothecate all the right, title and interest which the decedent had in

Order to specify, what.

Mortgage to contain, what.

the premises described therein at the time of his death or acquired by his estate subsequent to his death. Jurisdiction of the court to administer such estate shall be sufficient to clothe such court with jurisdiction to make an order to mortgage the real property thereof, and such jurisdiction shall inure to the benefit of the mortgagee, his heirs and assigns. No irregularity in the proceedings shall impair or invalidate any mortgage given pursuant to such order and so approved, and the mortgagee, his heirs and assigns, shall have the same rights and remedies by virtue of such mortgage as if it had been duly executed and delivered by the decedent in his life time. Whenever any such mortgage shall be foreclosed and the mortgaged property sold under such foreclosure proceedings, and the proceeds of the sale of such lands shall not be sufficient to pay the costs of such foreclosure proceedings and sale and the amount due upon said mortgage, then the amount of the deficiency shall be stated by the sheriff in his return of said sale, and the same shall stand as an allowed claim against the estate.

Jurisdiction.

Irregularities
no impairment.

Foreclosure.

Application
made, by
whom.

SEC. 8. That section 1014 of said chapter be amended to read as follows: Sec. 1014. If the executor or administrator shall neglect to apply for an order to sell or mortgage the real property of the estate, whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as an executor or administrator, but notice thereof shall be given to the executor or administrator before the hearing.

Clerk to notify
administrator.

SEC. 9. That section 1015 of said chapter be amended to read as follows: Sec. 1015. Upon the making of such order the clerk of the court shall deliver the same to the executor or administrator, who shall thereupon be authorized to sell or mortgage the real estate as directed.

Legacies, how
administered.

SEC. 10. That section 1025 of said chapter be amended to read as follows: Sec. 1025. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell or mort-

gage his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale or mortgage for the payment of the debts.

SEC. 11. That section 1036 of said chapter be amended to read as follows: Sec. 1036. If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him, to redeem the real estate so mortgaged, the court may order the sale of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court.

Sales and loans, when further made.

SEC. 12. That section 1038 of said chapter be amended to read as follows: Sec. 1038. If there should be any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale or mortgage by which any person interested in the estate shall suffer damages, the party injured may recover the same in a suit upon the bond of the executor or administrator, as the case may appear.

Damages, how recovered.

SEC. 13. That section 1039 of said chapter be amended to read as follows: Sec. 1039. Any executor or administrator who shall fraudulently sell or mortgage any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold or mortgaged, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein.

Fraudulent conduct of administrator.

SEC. 14. Whereas, existing laws do not provide for the mortgaging of the estates of descendants, and it is necessary that such provision should be made, an emergency is hereby declared to exist, and this act shall take effect from and after its passage and approval by the governor.

Passed the house March 4, 1895.

Passed the senate March 13, 1895.

Approved March 21, 1895.