

No. 388, S.]

[Published June 17, 1913.]

**CHAPTER 480.**

AN ACT to repeal section 3874a; and to amend sections 3874, 3875, 3876, paragraphs (2), (3) and (4) of section 3881, and the first and last paragraphs of section 3884 of the statutes, all relating to sales of land by executors and administrators.

*The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

**SECTION 1.** Section 3874a of the statutes is repealed.

**SECTION 2.** Section 3874 of the statutes is amended to read: Section 3874. When the personal estate of any deceased person in the hands of his executor or administrator shall be insufficient to pay *the expenses of administering his estate, expenses of his last sickness and funeral, and all his debts, \* \* \** his executor or administrator, *for the purpose of such payment,* may mortgage, lease or sell his real estate, *other than his homestead, \* \* \* and also his homestead when that is subject to or charged with any part of such expenses or debts,* on obtaining a license therefor and proceeding therein in the manner provided in this chapter.

**SECTION 3.** Section 3875 of the statutes is amended to read: Section 3875. In order to obtain such license the executor or administrator shall present a petition verified by himself to the county court from which he received his appointment, setting forth the amount of personal estate that has come to his hands and how much thereof, if any, remains undisposed of; the amount *of the expenses of administration, of the expenses of the last sickness and funeral, and of the debts outstanding against the deceased so far as \* \* \* such expenses and debts* can be ascertained; a description of all the real estate of which the testator or intestate died seized and the condition and value of the respective parcels thereof; and the names of the heirs, designating those that are minors, if any, and if there be unknown heirs, stating the fact.

**SECTION 4.** Section 3876 of the statutes is amended to read: Section 3876. If it shall appear by such petition that the personal estate in the hands of the executor or administrator is insufficient to pay *in full the expenses and debts specified in section 3874, \* \* \** and that it is necessary to sell or encumber the whole or part of the real estate for the payment thereof, *or of some part thereof,* the county court shall make an order fixing the time and place, to be therein named, not less than three weeks from the time of making such order, when and where such petition will be heard.

SECTION 5. Subsection (2) of section 3881 of the statutes is amended to read: (Section 3881) (2) That the debts *or expenses, or both*, for the purpose of satisfying which the application is made are justly due and owing:

SECTION 6. Subsections (3) and (4) of section 3881 of the statutes are consolidated, revised and amended to read: (Section 3881) (3). That the personal estate of the deceased is insufficient for the payment of such debts *or expenses, or such debts and expenses as the case may be*.

SECTION 7. The first paragraph of section 3884 of the statutes is amended to read: (Section 3884) Whenever the homestead of the deceased is part only of a tract of land, the whole of which was subject to a mortgage at the time of the death of the deceased, and it shall appear that all other real estate and personal property of the deceased has been applied to the payment of his debts *and the expenses specified in section 3874* or is insufficient therefor and that the part of the mortgaged premises not included in the homestead cannot be sold separately therefrom without injury to the interests of the parties the court may grant a license for the sale of the whole of the tract; or if a part of the tract can be sold separately, and only a part is necessary to be sold in connection with the homestead to prevent such injury, then a license to sell such part separately first, which can be so separately sold, and the remainder afterwards, may be granted. The order of license, in either case, shall direct that the entire estate or interest, including the interest of the mortgagee, be so sold; but no such license to sell shall be made when the mortgage debt is not wholly due unless the mortgagee shall consent in writing thereto; if such consent is given and the sale is made for less than the amount of such debt with interest and costs of sale the mortgagee shall have the same right to proceed, in an independent action, against every party who may be personally liable for the debt secured by the mortgage and to a personal judgment for any deficiency against such party as if such sale had not been made; the mortgagee may also file his claim for the balance due against the estate of the decedent, but shall be entitled to only one satisfaction thereof.

SECTION 8. Paragraph (4) of section 3884 of the statutes is amended to read: (Section 3884) (4). If there be any residue of the proceeds remaining, the same shall be applied to the payment of \* \* \* *the expenses and debts specified in section 3874 and in the order there enumerated*.

SECTION 9. The last paragraph of section 3884 of the statutes is amended to read: (Section 3884) (5). *The sum set apart as the value of the homestead shall thereafter be applied*

*to the payment of the expenses and debts specified in section 3874 and in the order there enumerated, so far as such homestead shall be subject thereto and chargeable therewith. The remainder of the sum set apart as the value of the homestead shall be paid to the owners thereof, by descent or devise, unless such owners or some of them be minors, in which case the court may, if it can be justly done, separate the amount belonging to such minors and pay the same to their guardian, and pay the amount belonging to any person of full age to such person; or if such separation of the funds cannot be made with certainty and with justice to the interests of such minors the court may order the whole invested until such minors reach majority or such separation of the fund can be made, and meantime apply the income from such investment to the use of the persons entitled thereto according to their rights and interests therein. The proceeds of such homestead shall possess all the privileges and exemptions which appertained by law to the homestead before such sale.*

SECTION 10. This act takes effect when published.

Approved June 14, 1913.

No. 425, A.]

[Published June 17, 1913.]

## CHAPTER 481.

AN ACT to amend subsection 3 of section 573—5 and to create two new subsections of section 573—5 of the statutes, relating to the care and custody of dependent children pending final disposition of their care.

*The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Subsection 3 of section 573—5 of the statutes is amended to read: (Section 573—5) 3. When any child under the age of sixteen years shall be found to be dependent or neglected within the meaning of sections 573—1 to 573—10, inclusive, the court may make an order committing the child to the care, custody and guardianship of some suitable state or county institution as provided by law, or to the care, custody and guardianship of some incorporated association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children; \* \* \* *or the court may make a temporary disposition of such case by placing such child in the care and custody of the probation officer or of some suitable person or institution for such period of time as the court shall see fit, not exceeding three months at one time, not exceeding, however, a total period of time of one year, during which the parent or other person from whose custody*