

## CHAPTER 88.

[Published March 26, 1863.]

AN ACT to amend section 3 of chapter 94 of the revised statutes, entitled "of the sale of lands for the payment of debts by executors, administrators and guardians."

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

In cases where the mortgaged premises include the homestead.

Duty of court, executor, &c.

SECTION 1. Section three of chapter ninety-four of the revised statutes, is hereby amended, by adding thereto as follows: "Provided, that in case the homestead constitutes a portion of a farm belonging to the deceased, which farm is mortgaged, and in the opinion of the executor or administrator the same cannot be sold in parcels without serious injury to all parties interested, (which opinion shall be set forth in such petition,) the homestead shall not be excepted from license and sale under the provisions of this chapter. In all cases to which this proviso applies, it shall be the duty of the county judge, after the sale made as in this chapter provided, to take proof of and ascertain the value of the homestead and of the balance of the mortgaged premises; and if the executor or administrators shall have sufficient assets, apart from such value of the homestead, to pay all demands against the estate and the expenses of administration, the value of the homestead shall be invested under the direction of said judge, for the benefit of the family of the deceased, or may be used in the purchase of another homestead, in the discretion and under the order of said judge, which investment or homestead shall, in all respects, stand in the place and instead of the original homestead. In case the executor or administrator shall not have sufficient assets to pay all said demands and expenses, the county judge shall ascertain what proportion of the debt secured by said mortgage is fairly chargeable upon the homestead, which proportion shall be paid out of the value of the homestead as aforesaid, and the balance of the value of the homestead invested or used under the direction of said judge as aforesaid."

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 23, 1863.