

## Further supplement.

Approved April 7, 1891.

P. L. 1891, p. 335.

Salary of crier of courts in counties having population between 68,000 and 150,000.

**124. SEC. 1.** That in each county of this state having a population within their senatorial limits exceeding sixty-eight thousand inhabitants and under one hundred and fifty thousand inhabitants, the crier of the circuit and court of common pleas, court of general quarter sessions of the peace, and orphans' court, shall receive and be paid an annual salary of nine hundred dollars in lieu of the per diem compensation now provided by law, and such compensation shall be paid monthly to said crier by the county collector of such county upon the certificate of the county clerk; *provided*, that no person who shall hold the position of sergeant-at-arms and crier of the courts of such county shall receive any compensation for his services as sergeant-at-arms.

Proviso.

Repealer.

**125. SEC. 2.** That all acts and parts of acts, general, special or local, inconsistent with the provisions of this act, be and the same are hereby repealed, and this act shall take effect immediately.

## Sale of Land.

## I. GENERAL ACT CONCERNING SALE OF LAND.

## 1. ADVERTISEMENT OF SALE.

1. Amended by section 35.
2. Fees for advertising.

*Adjournments.*

3. Power to adjourn.
4. By executors, &c., selling under order of court.
5. By sheriff or other officer, selling under execution.
6. Adjournments, how advertised. Fees.

## 2. SALES UNDER EXECUTION.

7. Officer selling to make deed.
8. What deed shall recite.
9. Lands sold clear of judgments, &c., on which executions have not issued.
10. Reversal of judgment or execution only to affect plaintiff in action.
11. In case of death or disqualification of a sheriff after sale, successor to make deed.
12. Amended by section 42.
13. Affidavit annexed to deed by officer selling. Certificate. Effect of conveyance.
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15. Recitals in deeds and declarations of sales by municipal authority evidence.
16. After seven years no evidence of certain defects to be received against *bona fide* purchaser.

## 3. SALES BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

17. Death of executor or administrator after confirmation of sale. Deed to be made by successor.

## 4. SALE FREE FROM DOWER OR CURTESY.

18. Court may order sale free from claim of dower or curtesy. Notice.
19. But shall direct compensation or investment.

## 5. SALE OF LANDS DESCENDED FREE FROM LIEN OF DEBTS.

20. Chancellor may order land sold free from lien of debts.

## 6. DEATH OF PURCHASER AFTER SALE.

21. If purchaser die after sale, deed may be made to him or devisee.

## 7. RECEIPTS RECORDED.

22. Commissioner, master, receiver or trustee may have receipts recorded.

## 8. SALE FOR PAYMENT OF TAXES OR ASSESSMENTS.

23. Chancellor may order lands held in trust to be sold to pay taxes or assessments. How surplus held.

24. Sale of lands to pay assessments when there is a life estate.
25. Proceeds, how applied.
26. Land devised or conveyed in trust when chargeable with taxes, &c., may be ordered sold.

## II. SUPPLEMENTS.

27. Advertisement may be published in paper printed in German language.
28. Same fees allowed.
29. Lands may be sold under direction of orphans' court free from dower or curtesy.
30. After order for, and upon sale, dower or curtesy may be relinquished.
31. If sale approved, purchaser to hold premises free from such estate.
32. Court to direct payment of proceeds of sale.
33. Adjournments of sale, how made by master in chancery.
34. On refusal of purchaser to comply with conditions, resale may be ordered.
35. Sales, how advertised.
36. Lands, &c., by order of court of chancery, may be sold at either public or private sale.
37. Provisions of act to apply to all sales.
38. Repealer.
39. Lands, &c., by order of orphans' court, may be sold at either public or private sale.
40. Applies to sales heretofore authorized.
41. Repealer.
42. In case of death or disqualification of a master in chancery or sheriff after sale, court may appoint another to make deed.
43. Executors, &c., may adjourn sale unless court limit time.
44. No sale invalidated because of adjournment.
45. Proceedings when dower cannot be assigned or set off without prejudice.

## III. SALE OF LANDS LIMITED OVER TO INFANTS.

46. When chancellor may direct land limited over, &c., to be sold in fee.
47. Proceedings to be by petition.
48. Petition to be referred to a master to inquire into merits.
49. Chancellor may direct master to sell.
50. Proceeds of sale to be paid into court.
51. Chancellor may direct part of interest only to be paid to tenant, &c.
52. Costs and expenses to be paid out of proceeds.
53. Chancellor may make rules, &c.
54. Chancellor may direct mode of sale.

- 55. Money arising from sale, how to be invested.
- 56. Lands may be sold where the proceeds may be wholly or in part limited over.
- 57. Proceedings in case names or existence of parties in interest cannot be ascertained.
- 58. Chancellor may order land sold clear of all incumbrances.
- 59. When life tenant, &c., not to be liable for payment of taxes, &c.
- 60. When taxes, &c., may be ordered paid out of proceeds of portion of land sold.
- 61. Lands may be ordered sold clear of disputed taxes, &c.
- 62. Buildings may be ordered sold separate from land.
- 63. What requisite to entitle property to such exemption.
- 64. Proceedings if officer of opinion that premises are worth over \$1,000.
- 65. If property cannot be divided and surplus not paid, it may be sold.
- 66. Proceeds of sale, how disposed of.
- 67. Costs of selling off homestead.
- 68. In case property declared a homestead it shall not be sold, &c.

V. MISCELLANEOUS ACTS.

IV. HOMESTEAD EXEMPTION.

- 63. Lot and residence, by debtor occupied as a residence, exempt from sale.

- 70. When legal advertisements may be printed in German language.
- 71. Executors and trustees may make application to court to sell, convey or mortgage lands.
- 72. Repealer.
- 73. Sales shall not be invalidated by failure to advertise, &c.

I. General act concerning sale of land.

An act relative to sales of lands under a public statute, or by virtue of any judicial proceedings.

R. S. 669.  
 P. L. 1854, p. 384.  
 " 1855, p. 49.  
 " 1859, p. 84.  
 " 1864, p. 100, 498.  
 " 1867, p. 762.  
 " 1869, p. 1238, 1445.  
 " 1870, p. 15, 28.  
 " 1871, p. 107.  
 " 1873, p. 163.

Revision—Approved March 27, 1874.

1. ADVERTISEMENT OF SALE.

- 1. [Amended by Sec. 35, *post.*]
- 2. That the said officer or officers, person or persons so advertising in the newspapers, shall be entitled therefor, in addition to his or their other fees, to the sum of one dollar and fifty cents, unless where it is otherwise specially provided.

Fees for advertising.  
 R. S. 669, § 1.

*Adjournments.*

- 3. That every such officer or officers, person or persons, shall be vested with power to adjourn such sale or sales, from time to time, subject only to such limitation and restriction upon the exercise of such power, as may by law be specially provided. (a)
- 4. That executors and administrators selling lands under any order of the orphans' court may adjourn the sale from time to time, not exceeding two months in the whole.
- 5. That the sheriff or other officer selling under process of execution, may make two adjournments, and no more, of the sale of lands, tenements, hereditaments, and real estate by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time without permission in writing, previously obtained of the party at whose instance the said writ of execution was issued, he shall be and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner as is now or may hereafter be prescribed by law for neglect of duty in other

Power to adjourn.  
 Ib., § 2.  
 By executors, &c., selling under order of court.  
 R. S. 660, § 17.  
 By sheriff or other officer selling under execution.  
 Ib., § 6.  
 Penalty for adjourning for a longer time or oftener.

(a) An adjournment is discretionary with the sheriff. *Skilman v. Holcomb*, 1 *Beas.* 131, 132. *Morris v. Woodward*, 10 *C. E. Gr.* 32. P. L. 1876, p. 121. If there is a failure of bidders, or the circumstances of the sale are such as to show that the property will be sold for a price unreasonably inadequate, it is the duty of the sheriff to adjourn the sale for another opportunity, unless otherwise ordered, and where the creditor is likely to be benefited. *Todd v. Hoagland*, 7 *Vr.* 352, 8 *Vr.* 544. The sheriff may adjourn the sale to a place other than that specified in the advertisement. *Penn v. Craig*, 1 *Gr. Ch.* 495, 499. A sale by a sheriff in violation of a promise to adjourn, does not affect a bona fide purchaser. *Outcalt v. Disborough*, 2 *Gr. Ch.* 214, 219. The adjournment of a sale need not be advertised in a newspaper. Public proclamation made at the time at which the sale was published to take place, is all that the law requires. *Allen v. Cole*, 1 *Stock.* 286. *Cove v. Halsted*, 1 *Gr. Ch.* 311. *Infra*, Sec. 6. An adjournment of a sale of real estate under a public statute, for any period not exceeding one week, need not be advertised in the newspapers. A formal adjournment of the sale from week to week is sufficient. *Hewitt v. Montclair Ry. Co.*, 10 *C. E. Gr.* 382. The act of a sheriff in adjourning a sale under foreclosure proceedings, is not a judicial act, nor in any way forbidden by the "Act in relation to legal holidays," P. L. 1876, p. 78. *White v. Zust*, 1 *Stew.* 107. When the day (not a legal holiday)

fixed for the sale of mortgaged premises is afterwards appointed a legal holiday, the sheriff should adjourn the sale. In such case, the advertisement is not rendered invalid. *Ib.* The court refused to set aside sheriff's sale because of his alleged refusal to adjourn it, so that the petitioner (a subsequent mortgagee) might have an opportunity to ascertain the amount of the incumbrances subject to which the property was to be sold, it appearing that such reason for adjournment was not given, and that a written statement of the exact amount due on those incumbrances was exhibited at the sale. *Cline v. Prall*, 12 *C. E. Gr.* 415. When a sheriff, without instructions, adjourned the sale of a valuable property from week to week in his office and then sold without any further advertisement, it appearing that the owner of the property sold had been misled by such course and was unaware of the sale—*Held*, that it was proper to set such sale aside upon equitable terms. *Chamberlain v. Larned*, 5 *Stew.* 236, affirming *Trustees, &c. v. N. J. West Line E. R. Co.*, 3 *Stew.* 494. Where an officer, who conducts a public sale pursuant to an order of the chancellor, in the intelligent and bona fide exercise of his discretion refuses an adjournment, his action will not constitute a reason why the sale shall not be confirmed. *Bethlehem Iron Co. v. Philadelphia and Seashore Ry. Co.*, 4 *Dick.* 356.

cases on writs of execution ; *provided always*, that if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court from which such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

6. That if any sale of lands made under the directions of this act be adjourned for more than one week, such adjournment shall be published in the same two newspapers in which the notice of sale was published, for the publication of which not more than five dollars shall be allowed in any case as against the defendant in execution ; *provided*, that in publishing any adjournments it shall not be necessary to continue the publication of the original advertisement of sale, but a statement of the parties to the cause, and the time and place of such adjournment shall be sufficient.

Adjournments,  
how advertised.  
F. L. 1867, p. 762.

Fees for such  
publication.

What advertise-  
ment of adjourn-  
ment to contain.

## 2. SALES UNDER EXECUTION.

7. That the sheriff or other officer, who by virtue of any writ of execution, shall sell any lands, tenements, hereditaments and real estate levied on, shall make to the purchaser thereof a deed of conveyance for the lands, tenements, hereditaments so sold ; which deed of conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned as the person against whom the said writ or writs of execution were issued, was seized of or entitled to, at or before the said judgment, and as fully to all intents and purposes as if such person has sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed and delivered a deed for the same. (a)

8. That the deed made by any sheriff or officer under and by virtue of any execution shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid ; but the same, whether heretofore made or hereafter to be made, shall be good and valid, and received in evidence as such, notwithstanding any variance between the recital in said deed and the execution or executions by virtue of which the sale was made, and notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued ; *and further*, that it shall be lawful for any court of this state, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by a sheriff or other officer who may have sold any lands, tenements, hereditaments or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered, or out of which the said execution was issued ; and the said judgment or execution shall have the same force and effect as if it was amended accordingly. (b)

Officer selling to  
make deed.  
R. S. 660, § 8.

What it shall  
convey.

What deed shall  
recite.  
Ib., § 8.

Shall not be  
avoided by vari-  
ance in recital.

(a) A purchaser of lands at a sheriff's sale under a judgment recovered against a debtor who had given a prior mortgage on such lands, which had never been registered and of which the judgment creditor had no notice, but of which such purchaser had actual notice, takes the title free of the lien of such mortgage. *Sharp v. Shea*, 5 *Stew.* 65. *Rutgers v. Kingstand*, 3 *Hal. Ch.* 178, 658. *Coleman v. Barklew*, 3 *Dutch.* 357. See *Conover v. Beckett*, 11 *Stew.* 393. A sheriff's deed on a sale upon a common-law execution takes effect in equity from the date of the sale. *Hackensack Savings Bank v. Morse*, 1 *Dick.* 181. Such a deed has the same effect in all respects as a deed of bargain and sale of that date made by the party against whom the execution issued. *Ib.* A sheriff's deed on the sale of lands under an execution takes effect as an actual conveyance from the date of the sale, and not from the date of the execution and delivery of the deed. *Morse v. Hackensack Savings Bank*, 2 *Dick.* 279.

(b) A sheriff has no estate or interest in lands levied upon and sold by him. He has a naked power to sell given by statute, and the validity of his deed depends upon the directions of the statute

being complied with, and it must positively appear, either by recitals in the deed or proof *abundante*, that such directions as advertising, &c., have been complied with. *Den, Todd v. Philhower*, 4 *Zab.* 796, 804. A sheriff's deed, as between the defendant and the purchaser, may be fairly considered as the defendant's own deed made by the sheriff as his legally-constituted agent for that purpose. *Den v. Winans*, 2 *Gr.* 1. A variance between the recital of an execution in a sheriff's deed and the judgment on which it was issued, is cured by the act of the 28th of November, 1831. *Den, Arrowsmith v. Taylor*, 1 *Har.* 532. *Den v. Downum*, 1 *Gr.* 135. The statute and supplement (F. L. 1869, p. 1238), directing that the recitals in a deed given by a public officer shall be *prima facie* evidence of the truth of the facts recited, do not affect the title under the deed, but only change the rule of evidence as to the manner of proving the facts required to constitute a valid sale, and apply where a deed given before the passage of the act is offered in evidence. *Campbell v. Devick*, 5 *C. E. Gr.* 188. A sheriff's deed may be admitted in evidence although it contains no recitals of advertisements, but the

9. Whereas, other judgments, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments, and real estate so sold, if no provision be made to remedy the same; and whereas, the persons who have not taken, or will not take out executions upon their judgments, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof—therefore be it enacted, that the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments, and real estate by him or her purchased as aforesaid, free and clear of all other judgments and recognizances, whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased. (a)

10. That if any judgment or execution (the said execution being recorded as required by the act respecting executions), by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands so bona fide purchased, notwithstanding such reversal, if it be after the said purchase.

11. That if any sheriff or coroner who hath made or shall make sale of any lands, or real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or be otherwise incapable to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, in which such lands or real estate are situate, on receiving a certificate from the court of common pleas of such county, signed by the clerk by order of the said court, setting forth that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase-money, or if the purchase-money or any part of it has been paid, then on proof of such payment and on tender of the residue, if any there be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands and real estate, so sold; which deed shall be as good and valid and shall have the same force and effect as if the sheriff or coroner who made such sale, had signed, sealed

Lands sold clear of judgments, &c., on which executions have not issued.  
R. S. 660, § 9.

Reversal of judgment or execution only to affect plaintiff in action.  
Ib., § 10.

And not to operate against bona fide purchaser.

In case of death or disqualification of a sheriff after sale, his successor to make deed.  
R. S. 660, §§ 11, 12. Amended.

On certificate from court of common pleas.

Effect of such deed.

grantee must prove that due public notice was given. *Den v. Downam*, 1 Gr. 135. *Osborne v. Tunis*, 1 Dutch. 633, 662. *Den v. Thibault*, 1 Har. 25; affirmed, Feb., 1838. A sheriff's deed takes full effect only from the time of delivery, and does not relate back to the time of sale, so as to sustain an intermediate sale and conveyance by the sheriff, of the lands therein mentioned. *Den v. Steelman*, 5 Hal. 193. A deed, executed and acknowledged by a sheriff in this state for lands sold by him under execution, may be delivered in another state. *Walker v. Hill*, 7 C. E. Gr. 513, affirming 6 C. E. Gr. 192. A refusal by the sheriff to deliver a deed to the purchaser at a sheriff's sale, when rightfully demanded, will not release the purchaser from his obligation to comply with his contract, if after such refusal the purchaser offer to accept the deed and upon a tender thereof he declines to receive it. *Ely v. Perrine*, 1 Gr. Ch. 396. A defendant is not estopped by a sheriff's deed, from showing collusion between the sheriff and the purchaser. *Lot v. Thomas*, Pen. \*407 e, \*412 e. What defects in entering a judgment were formerly deemed sufficient to invalidate a sale. *Den, Fearson v. Hopkins*, Pen. \*195, \*203. The legal title of land is not affected by a sheriff's deed, where at the time of levy and sale the title was not in the defendant in execution. *Belford v. Crane*, 1 C. E. Gr. 285. Title cannot be derived through a sheriff's deed, unless it appears affirmatively by recitals in the deed, or by proof *invidie*, that the sheriff has advertised the sale according to law. *Henderson v. Hoys*, 12 Vr. 387. This established rule was not changed by the act of March 25th, 1864 (P. L. 1864, p. 498). *Ib.* The recital of a decree of foreclosure, contained in a duly-acknowledged master's deed is *prima facie* evidence of the existence of the decree. *N. Y. and Greenwood Lake E. R. Co. v. State*, 21 Vr. 303. (a) The word "executed" means "levied." *Den v. Young*, 7 Hal. 300. On a bill to foreclose a mortgage, it appeared that C., one of the defendants, recovered a judgment against K., the mortgagor, on the 23d of January, 1853, but took out no execution thereon until June 25th, 1862. Complainant's mortgage was recorded on the 26th of December, 1859, and in June, 1861, several other judgments were recovered against the mortgagor, on which executions were promptly taken out and levied on the mortgaged premises. On a dispute about the priority of these several incumbrances—*Held*, that C., by neglecting to issue an

execution on his judgment until after executions had been issued on the junior judgments, had lost his priority, not only over the younger judgments, but also over the complainant's mortgage, which was entitled to priority over the younger judgments. *Clement v. Kaighn*, 2 McCart. 47. The history of the legislation of this state regulating the priority of executions reviewed. *Ib.* Although the statute, in terms, relates merely to the title which the purchaser by virtue of a sheriff's sale under an execution at law shall acquire, yet the operation of it cannot be limited to the case of a sale under the junior judgment, where no execution has been sued out upon the senior judgment, and levied on the land. *Ib.* The junior judgment creditor, by suing out and levying the first execution upon the land, acquires a priority of lien, which cannot be affected by any execution subsequently issued, nor by any mode in which the land may be sold. The issue of the execution upon the junior judgment, and its delivery, duly recorded, to the sheriff, destroys the priority which was enjoyed by the older judgment, and transfers it to the junior judgment. *Ib.* The plaintiff, in a junior judgment, by suing out and levying the first execution upon land, acquires a priority of lien. It is essential for the maintenance of a priority of lien on land under execution by a senior over a junior judgment, that there should be a levy on it, after recording and delivering the writ to the sheriff. *Wills v. McKinney*, 12 Vr. 120. Alterations made in the levy after return, without the authority or knowledge of the sheriff or plaintiff, diminishing the number of acres in the levy, held void and the original number restored. *Ib.* The description of the land levied on in the return will exclude parol proof that the sheriff intended to levy on all the lands of the defendant in execution. *Ib.* The lien of a prior judgment acquired under the statute will be destroyed and supplanted by the lien of a junior judgment on which an execution has been sued out, delivered to the sheriff and levied before the delivery and levy on an execution sued out on the prior judgment. *Bogert v. Lydecker*, 16 Vr. 314. The lien thus acquired by the vigilant junior judgment creditor will entitle him to a priority of right to the proceeds of lands sold under such an execution and levy. *Ib.* *Lovejoy v. Lovejoy*, 4 Steu. 59. *Williams v. Gilbert*, 10 Steu. 88.

and delivered a deed or conveyance for the same in due form of law ; and the purchase-money received by the sheriff making the deed, shall be paid to the person entitled thereto by law. (a)

12. [Amended by Sec. 42, *post.*]

Affidavit annexed to deed by an officer selling under judgment or decree.  
P. L. 1864, p. 498, § 1.

13. That when a sheriff, or other officer or auditors in attachment, shall make sale of any lands or real estate, in pursuance of a decree, judgment, execution or order of any court, the said sheriff, officers or auditors shall make and sign an affidavit, indorsed on or added to the conveyance therefor, before the chancellor, one of the justices of the supreme court, or a master in chancery (for which the said chancellor, justice or master shall be entitled to a fee of one dollar), to the effect following, viz :

Form of affidavit.

I, A. B., sheriff, &c., do solemnly swear (or affirm) that the land and real estate described in this deed made by me to C. D., was by me sold by virtue of a good and subsisting execution (or order) as is therein recited, that the money ordered to be made has not been to my knowledge or belief paid or satisfied, that the time and place of the sale of said land and real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

Certificate of chancellor, judge or master.

Sworn (or affirmed) before me, one of the, &c., on this ——— day of ———, A. D. ———, and I having examined the deed above mentioned do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described. E. F.

Effect of such conveyance.

Which said conveyance approved by the said chancellor, justice, or master, may be recorded as if duly acknowledged, and the said conveyance or the record thereof, or a certified copy of such record, shall be evidence of a good and valid sale and conveyance of said land and real estate, as if the same had been reported to and approved by the court in pursuance of whose decree, judgment, execution or order the same was made. (b)

Recital in deed prima facie proof. *Ib.*, § 2.

14. That the conveyance of any land or real estate sold by any sheriff or other officer, or by auditors, in pursuance of a decree, judgment, execution or order of a court, heretofore or hereafter made and duly acknowledged or approved, and the record thereof, or a certified copy of such record, shall be good and sufficient prima facie evidence of the truth of the recital, in the said deed or conveyance contained. (c)

Recitals in deeds and declarations of sale by municipal authority, evidence.  
P. L. 1889, p. 1238.

15. That the provisions of the last preceding section shall apply to all deeds, declarations of sale and conveyances, duly acknowledged or proved, heretofore or hereafter made by or by authority of any public or municipal authority, authorized or empowered by any law of the state to make and execute or to direct or procure the making and execution of any deed, declaration of sale or conveyance ; and the proceedings upon which such deeds, declarations of sale and conveyances are founded shall not be subject to be questioned collaterally, but may be at any time reviewed by certiorari or other proper proceeding in the supreme or circuit courts. (d)

(a) To enable a sheriff to execute a deed for lands sold by his predecessor, the certificate of the common pleas should show on its face everything necessary to authorize the court to make such order. *Den. Watson v. Mulford*, 1 Zab. 500. A deed made under such certificate, should contain every requisite of a sheriff's deed, and should therefore recite the execution upon which the sale was made. *Ib.* There must be proof *abunde* of the facts necessary to sustain such deed, as of the death or incapacity of the sheriff, the payment of the money and the legality of the sale. In a deed by a sheriff, who made the sale, the recital of advertising and of the hour when sale was had, is sufficient prima facie proof, these facts being within his knowledge—but not in a deed given by another sheriff. *Ib.* See *Read v. Stevens*, *Cove* 264.

(b) See *Meyer v. Bishop*, 12 C. E. Gr. 141, 145. *Meyer v. Patterson*, 1 Stev. 239. *Zinssem v. Kidd*, 2 Stev. 523. *Hunt v. Swayze*, 26 Vr. 39.

(c) In making title to lands under a sheriff's sale, the judgment as well as the execution must be shown in evidence. *Swan v. Despraux*, 7 Hal. 182. The statute has not dispensed with proof of either as a requisite to title under a sheriff's deed ; it has only made the recitals in the deed prima facie evidence of the judgment and execution. *Blackford v. Conover*, 13 Stev. 217.

(d) Declarations of sale, &c., cannot be questioned collaterally, but must be reviewed directly by certiorari. *State, Evans v. Jersey City*, 6 Vr. 381. Merely because his land has been sold, does not entitle a party to take advantage, by certiorari, of those objections to municipal proceedings, which, because of his laches, and the consequent expenditure of public moneys for his bene-

fit, he ought, in equity and sound policy, to be estopped from setting up. *State, Spear v. Perth Amboy*, 9 Vr. 425. Query—Whether a certiorari in such case is a writ of right. *State, Graham v. Paterson*, 8 Vr. 380. This section makes the recitals in a deed, declaration of sale or conveyance, made by public or municipal authority, prima facie evidence of the truth of the facts recited, wheresoever such proof is material or necessary, provided the deed, declaration of sale or conveyance has been duly acknowledged or proved. *Woodbridge v. State, Alden, pros.*, 14 Vr. 282. By the same section the deed, declaration of sale or conveyance is made the evidence of title in ejectment or any other action where the title is directly in issue. The proceedings on which the deed is founded can only be called in question by certiorari. *Ib.* In ejectment or any other action in which such title is involved, if the deed, declaration of sale or conveyance is proper in form and purports to have been made pursuant to a public or municipal authority, competent to order or make a sale of lands for that purpose generally, and has been executed with proper formalities, it is conclusive evidence of the title it purports to convey. *Ib.* On certiorari brought in aid of an ejectment, to review the proceedings on which a tax title is founded, the recitals in the certificates of sale are prima facie evidence of the facts recited. *Ib.* *Doremus v. Cameron*, 4 Dick. 1. Where the record of proceedings is in the supreme court, a writ of certiorari may be used, as auxiliary to the former writ, to bring in other parties, to conclude them by the record. *Alden v. Newark*, 11 Vr. 92. See *Cleveland v. Essex Public Road Board*, 4 Stev. 473. *Smith v. City of Newark*, 5 Stev. 1. *Bellows v. Wilson*, 5 Stev. 481. *Baldwin v. Elizabeth*, 15 Stev. 11.

16. That when a conveyance of any land or real estate sold as aforesaid, shall hereafter be duly made and acknowledged, or approved as aforesaid, or shall have been heretofore duly made and acknowledged more than seven years before the same shall be offered in evidence, no evidence shall be received or be of any force or avail against any bona fide purchaser holding under such conveyance, or his heirs or assigns, that the execution had not been duly recorded before it was delivered to the sheriff, or that the sale of said land or real estate had not been duly advertised, or that the money recovered or ordered to be made by the decree, judgment, or execution, had been paid before the sale, unless the payment or satisfaction of such decree, judgment, or execution shall have been entered of record before said sale.

After seven years no evidence of certain defects to be received against bona fide purchaser.  
P. L. 1864, p. 498, § 3.

[For liability of lands to be sold by execution, see JUDGMENTS. For lien and priority of executions, see EXECUTIONS.]

3. SALE BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

17. That where any sole or surviving executor or administrator, who hath heretofore sold, or may hereafter sell any lands or real estate for the payment of debts of his testator or intestate, by virtue of an order of any orphans' court, shall have died or may hereafter die, after such sale has been confirmed by said court, and before the delivery of the deed or deeds for the said lands or real estate, to the purchaser or purchasers, and said lands or real estate, have not been heretofore resold, the said court at any term shall, on the application of anyone interested in the sale of said real estate, by rule of court, direct the administrator or administrators de bonis non of such testator or intestate or the survivor or survivors of them, to execute good and sufficient conveyances in the law to said purchaser or purchasers, for the tracts or tract of lands or real estate so sold; and it shall be the duty of the said court, before granting such rule, to take of such administrator or administrators de bonis non, a bond, with sufficient sureties, the same in effect as is required to be given by any executor or administrator who may be ordered to sell land or real estate.

Death of executor or administrator after confirmation of sale.  
P. L. 1859, p. 207.

Deed to be made by successor.

[For proceedings to sell lands for payment of debts, see ORPHANS' COURT, Secs. 70 to 81. For proceedings for sale of lands of an infant by his guardian, see GUARDIANS, Sec. 3, and also INFANTS, Sec. 3. For power to sell under a will, see EXECUTORS AND ADMINISTRATORS.]

4. SALE FREE FROM DOWER OR CURTESY.

18. That in proceedings for the partition of lands in any court of this state, or for the sale of any lands by executors, administrators, or guardians, by order of the orphans' court, if it shall appear to the court in which such proceedings are pending, that any person is entitled to an estate in dower or by the curtesy in the whole or any part or share of the premises, it shall be lawful for the said court at the time of making the order for the sale of such premises to consider and determine under all the circumstances of the case, having regard to the interests of all persons interested, whether such right or estate in dower or by the curtesy should be excepted from such sale, or whether the same should be sold, and to order and decree accordingly; and if the sale of the premises including such estate shall be ordered, the estate and interest of every such person shall pass thereby, and the purchaser, his heirs and assigns shall hold such premises free and discharged from all claims by virtue thereof; *provided, however*, that notice shall be given to the party entitled to the said estate in dower or by the curtesy of the intended application for the sale of said lands free and discharged of such estate at least twenty days prior to such application, or by publishing such notice at least four weeks next preceding the

In partition or sale of lands by executors.  
P. L. 1855, p. 49.  
" 1870, p. 28.  
Amended.

Sale may be ordered of premises, including estate in dower or by curtesy.

Notice to doweress or tenant by the curtesy.

time of making such application, in one of the newspapers printed and published in the county where such lands are situate. (a)

Compensation to dowress or tenant by the curtesy.

19. That upon such sale being made of such estate in dower or by the curtesy under the last preceding section, the said court shall direct the payment of such sum in gross out of the proceeds of the sale of the premises to the person entitled to such estate, as shall be deemed a just and reasonable satisfaction for such estate or interest, and which the person so entitled shall consent in writing to accept in lieu thereof; but in case no such consent be given before the making the order confirming such sale or for the distribution of the proceeds thereof, then the court shall ascertain and determine what proportion of such proceeds will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate, in dower or by the curtesy, and shall order the same so be put at interest, on sufficient security of real property or invested in public stock, or deposited in some safe and reliable savings institution, by order and under the direction and control of said court for the benefit of the parties entitled, and the interest thereon to be paid to them as the same may become due as a compensation for, and in lieu of the said estate in dower or by the curtesy, and at the decease of the person entitled to the same, the principal sum shall be paid to or distributed among the parties entitled thereto. (b) [See Secs. 29 and 32, *post.*]

Or investing part of proceeds.

[Lands of infants may also be sold free from estates for life or years devised in lieu of dower. See INFANTS, Sec. 6.]

#### 5. SALE OF LANDS DESCENDED FREE FROM LIEN OF DEBTS.

Chancellor, in suits in chancery, may order lands descended to be sold freed from lien of debts of ancestors. P. L. 1869, p. 1445.

20. That in all suits in the court of chancery for the partition or sale of lands, where the personal estate of the ancestor from whom said lands descended is insufficient to pay his just debts, it shall be lawful for the chancellor to direct such lands to be sold, freed from the lien of such debts, and to make such order touching the disposition of the proceeds of sale as may be necessary for the ascertainment and payment of such deficiency thereout before the distribution of the fund.

#### 6. DEATH OF PURCHASER AFTER SALE.

If purchaser die after sale, deed may be made to heir or devisee. P. L. 1854, p. 384. " 1864, p. 100.

21. That when any purchaser of real estate at any commissioners', executors', administrators' or guardians' sale, shall die, after such sale has been made and the conditions thereof subscribed and agreed to, but before the same has been confirmed by the court, or after such sale has been confirmed and before the deed for such real estate has been delivered, it shall and may be lawful for such commissioners, executors, administrators or

(a) On a bill for partition of three separate tracts of land, the court has no power to order that a widow's dower therein be set off in one tract and that the remainder of that tract, and also the other two tracts, be sold free and clear of the incumbrance of her dower. *Hardin v. Lawrence*, 13 *Stev.* 154. Where the proceedings for the sale of land to pay a decedent's debts are regular, and the orphans' court orders the land to be sold free from the widow's right of dower, the sale thereunder divests her of all claim upon the land, and transfers her interest to the money derived from such sale. *Schmitt v. Willis*, 13 *Stev.* 515. (b) In partition, where the widow consents to take a gross sum in lieu of dower, and then dies, the fact of her death cannot affect the valuation to be made of her interest in the lands. It is her expectancy which is to be valued, and not the actual value of her life estate as it has turned out to be. *McLaughlin v. McLaughlin*, 7 *C. E. Gr.* 505, reversing 5 *C. E. Gr.* 190. When a sale is made under proceedings in partition, the dowress is entitled to a just and reasonable satisfaction for her estate. This means full compensation for the loss which she sustains by having her estate taken from her by the decree of the court. The value of her estate must be computed from the use and profits she was entitled to derive from it if not sold. *Haulenbeck v. Cronkright*, 8 *C. E. Gr.* 407. It was not intended that the interest of one-third of the net proceeds was to be paid the dowress, or a sum in gross computed from the interest of such one-third, as a compensation for the sale of her estate. *Ib.* Under the facts of this case, the premises directed to be sold subject to the widow's dower. *Bleeker v. Hennion*, 8 *C. E. Gr.* 123. Where the order of the orphans' court directing the sale was made without the tenant by the curtesy having been made a party to the proceedings, and without any adjudication whatever,

respecting his estate, the lands sold under such order were subject to his curtesy. *Jacques v. Ennis*, 10 *C. E. Gr.* 402. When the estate is ordered to be sold, and the widow agrees to accept a gross sum in lieu of dower, and dies while a part of the estate is still unsold, her estate in that portion is not determined by her death. *McLaughlin v. McLaughlin*, 5 *C. E. Gr.* 190, 7 *C. E. Gr.* 505. So, as to such part of the estate which has been sold before her death. *Ib.* *Mulford v. Hiers*, 2 *Beas.* 13. In ascertaining the proper sum to be paid in gross to a tenant in dower, in computation of such interest, the 184th and 185th rules of the court of chancery on the subject, should not be taken as an absolute guide; but, irrespective of the result of the application of the rule to the case in hand, the court should determine what, in that case, under the circumstances thereof, is a reasonable sum to be paid in commutation. *Cronkright v. Haulenbeck*, 8 *C. E. Gr.* 407, 10 *C. E. Gr.* 513. *Chiswell v. Morris*, 1 *McCurt.* 101. Where lands subject to curtesy are sold by commissioners, free of such curtesy, the interest of the proceeds will belong to the tenant by curtesy, for life. *Jacques v. Ennis*, 10 *C. E. Gr.* 402. Where the portion of money arising from the sale of lands, in which the widow has a right of dower, is put out by the commissioners, the bond should be taken in the name of the commissioners, and not in that of the widow. *Stevenson's Case*, 5 *Hal.* 60. If a widow has relinquished her dower, and a sum has been invested in the names of commissioners designated by the court, they are not taxable as "trustees." *State, Parker v. Irons*, 6 *Vr.* 464. The amount of interest due and unpaid, is taxable to the widow. *State, Hill v. Hansom*, 7 *Vr.* 50. *State, Gano v. Appgar*, 12 *Vr.* 230. *Wyckoff v. Nunn*, 10 *Vr.* 422. *Wyckoff v. Jones*, 10 *Vr.* 650. *Willis v. Lippincott*, 21 *Vr.* 349.

guardians (such sale being confirmed by the court) to execute and deliver to the heirs or devisees of the purchaser a deed for the real estate so sold, which deed, when delivered to the heirs of a purchaser dying intestate, or to the devisee or devisees of a purchaser leaving a will, who by said will would be entitled thereto, shall have the same force and effect as if delivered to the purchaser when living; *provided*, the said heirs or devisees shall perform the conditions of sale, subscribed and agreed to by the purchaser.

7. RECEIPTS RECORDED.

22. That it shall be lawful for every commissioner ordered to sell lands or real estate, receiver, master in chancery, or trustee, who, in the due and lawful execution of the trust reposed in him, shall pay any share or shares or sums of money to any person entitled by law to receive the same, his, her or their executors, administrators or legal representatives, to have the receipts and discharges therefor recorded in the surrogate's office of the county where he resides, or where the property relating to the trust reposed in him, was situate, in a book to be kept by the surrogate for the record of receipts and discharges; *provided*, that the same be first proved or acknowledged in the manner that deeds of conveyance of land are by law required to be proved or acknowledged; and the record or a copy thereof shall be received in evidence in all cases in which receipts of executors, administrators or guardians, recorded under the provisions of the act entitled "An act respecting the orphans' court and relating to the powers and duties of the ordinary and the orphans' court, and surrogates," are competent evidence. [See ORPHANS' COURT, Sec. 140.]

Commissioner, master, receiver or trustee may have receipts recorded.  
P. L. 1869, p. 84

When record thereof to be evidence.

8. SALE FOR PAYMENT OF TAXES AND ASSESSMENTS.

23. That in case any lands or real estate held in trust by any trustee with power to sell at a specified time, or upon the happening of some event, shall be or become charged with or liable for any tax or assessment for the payment of which no adequate and available provision exists, and such lands or real estate shall be or become liable to be sold for such tax or assessment by virtue of any law of this state, whereby the interests of the cestuis que trust or any of them may be injured or impaired, it shall be lawful for the court of chancery upon application of the trustee or trustees, or of any cestui que trust, upon consideration of the circumstances of the case, to order and decree that such trustee or trustees, or the survivor or survivors of them shall sell and convey such land and real estate or any part thereof; and whenever such decree shall be made, the said trustee or trustees may sell and convey said lands or real estate free, clear and discharged of the said trust, and as fully and effectually to all intents and purposes as could be done if the time limited in the instrument creating the trust had elapsed, or the event therein named had happened; and after the payment of such tax or assessment the proceeds of such sale which may remain, shall be held by such trustee upon the same trusts as were originally declared or shall be invested in such manner as the chancellor may direct.

Chancellor may order lands held in trust sold to pay taxes or assessments.  
P. L. 1871, p. 107.  
" 1873, p. 163.  
Amended.

Surplus to be held on same trusts.  
Or invested.

24. That in case any lands or real estate in which there is an estate for life, either in dower, by the curtesy or otherwise, shall be or become chargeable with any assessment for local or public improvements, whereby, by force of any statute of this state, the same shall be or become liable to be sold for the payment of such assessment, it shall be lawful for the chancellor in his discretion upon the application of any person interested, to order that a sale be made by a master in chancery of such lands or real estate, either in whole or in part, as shall be deemed for the best interests of the persons interested therein; and such sale, being made and reported to the chancellor, and by him approved and confirmed, the said master shall execute and deliver to the purchaser a deed of conveyance for the lands

Sale of lands for payment of assessments.

May in certain cases be ordered by the chancellor.

How made.

Conveyance to vest an estate in fee-simple.  
Notice to parties interested in esse.

and real estate so sold, which deed shall convey to and vest in such purchaser an estate in fee-simple in the lands or real estate so sold and conveyed; *provided*, that thirty days' previous notice of such application shall be given to all persons in esse who are entitled to any estate in such lands, either in possession, remainder or reversion, by service or publication as the chancellor may direct.

How proceeds applied.

**25.** That out of the proceeds arising from such sale as aforesaid, the said master shall pay and satisfy the said assessment and the costs and expenses of such sale, and shall present a statement of such payments and disbursements to the chancellor for his allowance and approval; and if any surplus moneys arising from such sale remain in the hands of the said master, the same shall be paid into the court of chancery, to be by the order of the chancellor apportioned among the persons having estates or interests in such lands or real estate, or invested, as is provided in other cases where lands are sold by order of a court, freed and discharged from estates in dower or by the curtesy.

Surplus, if any, to be apportioned or invested.

Court of chancery may decree sale of lands devised or conveyed in trust, &c., when chargeable with taxes or assessments.  
P. L. 1874, p. 13.

**26.** That whenever by any last will and testament, lands and real estate are devised to, or whenever by any deed, lands and real estate are conveyed to or in trust for any person or persons for life, or until the happening of some event in such will or deed named, and said lands and real estate so devised or conveyed, shall or have become chargeable with or liable to taxes or assessments, for the payment whereof no adequate provision is made in such will, or afforded by the estate of the testator, or provided for in such deed, and such lands and real estate have been sold or shall be liable to be sold for such taxes or assessments by virtue of any laws of this state, whereby the interests of the owner or owners of the particular estate or of the estate in remainder in said lands and real estate, and named in said will, or said deed, may be injured or impaired, it shall be lawful for the court of chancery of this state, upon application of any such owner or owners, and upon consideration of the circumstances of the case to appoint a trustee or trustees for all said owners, and to order and decree that such trustee or trustees or the survivor of them, shall sell and convey such land and real estate or any part thereof, which trustee or trustees shall give such bonds for the faithful performance of his or their trust, and shall make such sale as said chancellor may direct; and when such decree shall be made and such bond given, said trustee or trustees or survivor may sell and convey said lands and real estate free, clear, and discharged of any interest of said owners therein; and the proceeds of such sale, after the payment of said taxes or assessments, shall be held by such trustee, subject to the provisions of said will or said deed relating to said lands and real estate, in such manner as the chancellor may direct.

Trustee may be appointed.

Proceeds of sale.

## II. Supplements.

### Supplement.

Approved March 11, 1875.

P. L. 1875, p. 25.

Advertisements may be published in paper printed in German language.

**27. SEC. 1.** That hereafter one of the newspapers required to be designated by the act to which this is a supplement, for the publication of advertisements of sales and of adjournments thereof may be printed and published in the German language; or the officer having charge of any sale of real estate, may, in addition to the publication required by the act to which this is a further supplement, select a newspaper printed in the German language, circulating in the neighborhood of the property to be sold, whenever the sale, in his opinion, will be promoted by the publication of the advertisement thereof in said newspaper.

Same fees allowed.

**28. SEC. 2.** That the same fees shall be allowed and paid for the publications under this act as in other cases, and this act shall take effect immediately.

Supplement.

Approved April 4, 1876.

P. L. 1876, p. 69.

**29. SEC. 1.** That in all proceedings for the sale of lands hereafter to be made by executors, administrators, or guardians, or by commissioners on proceedings in partition under the direction of the orphans' court, whenever any person shall be entitled to an estate in dower, or by the curtesy in the whole or any part or share of the premises in question, any such person entitled to such estate, shall, before or at the time of the making of the order by the said court for the sale of said lands and real estate, by writing under his or her hand and seal, signifying his or her assent and determination to relinquish his or her estate in the same, so that the same may be sold free of the incumbrance of such estate, it shall be lawful for the court to order and decree such estate to be sold.

Lands may be sold under direction of orphans' court, free from dower or curtesy.

Assent to relinquish to be in writing.

**30. SEC. 2.** That whenever any person entitled to an estate in dower or by the curtesy as above mentioned, shall at any time after the making of the order for the sale of such lands by the orphans' court, and before the sale thereof, signify in writing under his or her hand and seal to the executors, administrators, guardians or commissioners making such sale, his or her desire and determination to relinquish his or her estate in the same, so that the same may be sold free of the incumbrance of such estate, such executors, administrators, guardians or commissioners, may sell the said lands including such estate, and the executors, administrators, guardians or commissioners, in their report of such sale to the orphans' court, shall also report that the said lands were sold free and discharged of such estate, and shall file therewith the request of such tenant in dower or by the curtesy, and the court may in their discretion approve or disallow the same, and order the confirmation of such sale accordingly.

After order for and before sale, dower and curtesy may be relinquished.

Report.

**31. SEC. 3.** That if the sale of the premises including such estate shall be made and approved as above provided, the estate and interest of every such person shall pass thereby, and the purchaser, his heirs and assigns, shall hold such premises free and discharged from all claims by virtue thereof.

If sale approved, purchaser to hold premises free from such estate.

**32. SEC. 4.** That upon such sale being made of any such estate in dower or by the curtesy, the said court shall direct the payment of the proceeds of the sale of the premises in the same manner as is already provided where lands are sold free and discharged of any estate in dower or by the curtesy, by the order of said court.

Court to direct payment of proceeds of sale.

Supplement.

Approved April 13, 1876.

P. L. 1876, p. 121.

**33. SEC. 1.** That it shall be lawful for any master of the court of chancery to whom any execution or order of sale of any lands or real estate is now or hereafter may be directed, to continue such sale or sales by public adjournment, subject to such limitations and restrictions as are or may be provided specially therefor, either in person or by authority in writing, under his hand, and commissioning or appointing a master of said court, or sheriff of the county in which such lands are situated, to make such adjournment in the name and stead of the master to whom such writ or order of sale is directed, and such authority for such adjournment shall be returned by said master with the statement made by him of the proceedings under and by virtue of any writ of execution or order of sale as aforesaid. (a)

Adjournments of sale, how to be made by masters in chancery.

Supplement.

Approved March 3, 1881.

P. L. 1881, p. 75.

**34. SEC. 1.** That when any purchaser of real estate at any commissioner's executor's, administrator's or guardian's sale shall, after such sale has been made, and the conditions thereof subscribed and agreed to, and the same has been confirmed by the court, or after such sale has been confirmed and before the deed for such sale of real estate has been delivered

When purchasers refusing to comply with conditions of sale, court authorized to set aside confirmation and order a resale.

(a) An executor or administrator, ordered by a court to make sale of land, may lawfully adjourn the sale through the instrumentality of an attorney or agent. *Hicks v. Willis*, 14 S'ew. 518.

to the purchaser, refuse or neglect to comply with any of the conditions of such sale, including the receiving of the deed and the payment of all the consideration money, it shall be lawful for any such commissioners, executors, administrators or guardians, to apply to the court making the order of sale, or making the order of confirmation of sale, as the case may be, by petition, and the said court is hereby authorized to set aside such confirmation of sale or sales, and further order such commissioners, executors, administrators or guardians, as the case may be, to make resale of the said real estate; *provided, nevertheless*, that such order or orders of resale shall not in any way relieve the first purchaser from liability to make good and pay any deficiency or reduction of price, and interest, cost and expenses incurred in or resulting from making a resale of such real estate under this act.

Proviso.

#### Amendatory act.

P. L. 1887, p. 23.

Approved March 17, 1887.

**35. SEC. 1.** That section one of the act to which this is an amendment be and the same is hereby amended so as to read as follows :

Sales, how advertised.

[That in all cases whatsoever, where any sheriff, coroner, master in chancery, executor, administrator, guardian, commissioners, auditors, or other officer or person, is now or hereafter shall be authorized or required by any public statute, or the direction of any court of competent jurisdiction in this state, to make sale of any lands, tenements, hereditaments or real estate, such officer or officers, person or persons, unless specially directed by law, shall give notice by public advertisements, signed by himself, herself, or themselves, and set up at five or more public places in the county, one whereof shall be in the township, ward or city where such real estate is situate, of the time and place of such sale, at least four weeks next before the time so appointed, and shall likewise cause the same to be published in two of the newspapers printed and published in the county in which the lands are situate, of which one shall be a newspaper printed and published at the county seat of said county, if a newspaper be published at such county seat, and if no newspaper be published at the county seat, then in any two newspapers published in the county and circulating in the neighborhood of said lands, at least four weeks successively, once a week, next preceding the time appointed for selling the same, (a) and at the time and

By advertisements set up.

And publication in newspapers.

(a) A sheriff has no authority to sell real estate under a writ which has not been in his hands two months, and under which he has made no advertisement. *Mushback v. Ryerson*, 6 Hal. 346. Query—Whether this must be construed to mean lunar months. *4 Grif. Law Reg.* 1218, note (1). See *Ellis' Case*, 3 Hal. 232. The sheriff must advertise the land which he undertakes to sell by virtue of an execution at law. If, by mistake, he omits to advertise any part of it, and gives a deed to a purchaser for the part not advertised, the mistake is one which the court cannot correct for the protection of the purchaser against whom an ejectment is brought. *Philhower v. Todd*, 3 Stock. 312. *Swayze v. Carter*, 14 Steu. 231. See *Ryerson v. Boorman*, 3 Hal. Ch. 167, 640. If the advertisement of the sheriff sufficiently identifies the property to be sold, it is a compliance with the law. It need not describe the number of buildings or their character. *Allen v. Cole*, 1 Stock. 286. A mistake in the description of the land, will not vitiate the sale, if it may be fully understood from such description what property is to be sold. *Den v. Zellers*, 2 Hal. 153. Where a sheriff advertises lands without abutments, as "the farm on which W. T. now lives," and in the description in his deed includes a tract which, although formerly a part of the farm of W. T., yet at the time of the advertisement and sale had been sold by him, and was in possession of his grantee, it is a question of fact for the jury to determine whether such tract is included in the description in the advertisement, and a charge from the court directing the jury to find in favor of the sheriff's grantee, is erroneous. *Den, Philhower v. Todd*, 4 Zab. 796. Where the sheriff's advertisement, after specifying sundry parcels of land to be sold by the sheriff, adds, "together with all his [the defendant's] other real estate in the county of Atlantic, of which a more particular description will be given on the day of sale," it seems that the advertisement is defective, and insufficient to authorize the sale of any lands except those specified in the advertisement. *Merritt v. Smith*, 1 Gr. Ch. 182. Some description, by which the property may be known, though imperfect in itself, is necessary. *Ib.* See *Rodman v. Zilley*, Sax. 320. *Cummins v. Little*, 1 C. E. Gr. 48, 55. Under conditions of a vendue "for the sale of the property of S. R.," it is no objection to the execution of the contract, that a part instead of the whole of a lot of land was sold, provided it was made known what part was to be sold at the time it was set up. *Rodman v. Zilley*, Sax. 320. It is not necessary that advertisements of the sale or real estate by a sheriff or a master in chancery, should be signed by the officer with his own proper signature. Whether the officer's name is

signed to the advertisement by himself, or printed, or signed by another, is immaterial. In either case it is a virtual signing by the officer. *Coxe v. Halsted*, 1 Gr. Ch. 311. Where a sale is advertised for a specified day, between the hours of twelve and five o'clock in the afternoon, and the property is sold in pursuance of such advertisement, the sale will not be set aside, although there is a propriety and convenience in specifying a particular hour between twelve and five o'clock for the sale. *Ib.* A sale by an administrator, advertised to take place at ten o'clock and actually made at twelve, although not within the statute, was set aside because held at an unusual hour. *Fowell v. Sebring*, 1 McCurt. 84, 91. An advertisement in one newspaper was formerly sufficient. *Skilman v. Holcomb*, 1 Beas. 131. That is a public and proper place for setting up advertisements contemplated by the act regulating sales of real estate, which is likely to give information to those interested, and who may become bidders at the sale. *Cummins v. Little*, 1 C. E. Gr. 48. The sheriff is bound to conduct the sale so as to protect the rights and promote the interests of all parties, and to this end to secure, as far as practicable, the utmost publicity of the notice of sale. *Ib.* The true test of a proper exercise of discretion by the sheriff in setting up notices is, whether he has acted as a discreet man, desirous of effecting a sale of his property to the greatest advantage. *Ib.* If one of the notices is not set up the length of time required by law, the title of the purchaser is worthless. *Cummins v. Little*, 1 C. E. Gr. 58. The act requires the first publication of the notice in the newspapers, to be made four whole weeks next preceding the day appointed for the sale. *Parsons v. Lanning*, 12 C. E. Gr. 70. A sheriff, on sale of lands, cannot charge to the defendant the fee for acknowledging the sheriff's deed, or the printer's bill for advertising; all the law allows for advertising in the newspapers is one dollar and fifty cents. *Anonymous*, 2 Zab. 211. The sale may be set aside if the description is defective. *Hodgson v. Farvel*, 2 McCurt. 88. The fact that the advertisement was so framed as to mislead, so that one unacquainted with the premises could not have conjectured, from the advertisement, what the property was that was intended to be sold, in connection with the fact that there were no bidders at the sale but the purchaser, and that the property was sold at a very inadequate price, makes the sale constructively fraudulent, as against the defendant in execution or others having liens upon the property, and on that account constitutes a ground of equitable relief, although the advertisement may be a technical compliance with the requirement of the statute, so far as to vest a valid title in the purchaser. *Hodgson*

place so appointed, between the hours of twelve and five in the afternoon, such officer or officers, person or persons shall sell the same by public vendue to the highest bidder. (a) [See Sec. 27, ante, and Sec. 38, post.]

v. *Farrel*, 2 *McCart*. 88. *Merwin v. Smith*, 1 *Gr. Ch.* 183. *Waldron v. Lelton*, 2 *McCart*. 126. *Eyerson v. Boorman*, 3 *Hal. Ch.* 167, 640. See *Coxe v. Halsted*, 1 *Gr. Ch.* 311. *Allen v. Cole*, 1 *Stock*. 286. In the absence of fraud or unfair practice, erroneous information of the day fixed for a sale of mortgaged premises will not operate to set aside the sale on the ground of surprise, where the mistake was corrected, and the party informed of the hour of sale in ample time to have been present, if he had so elected. *Hazard v. Hodges*, 2 *C. E. Gr.* 123. Assurances by the solicitors of the mortgagor and a subsequent mortgagee, of their ability to obtain an adjournment, and the sheriff's refusal to adjourn on their application, constitute surprise sufficient to set aside a sale. *Large v. Dilmars*, 12 *C. E. Gr.* 408. See *Williams v. Doran*, 8 *C. E. Gr.* 385. A refusal to adjourn a sale, in the exercise by the sheriff of a reasonable discretion, is not sufficient ground for setting it aside. *Ib.* *Skullman v. Holcomb*, 1 *Beas.* 131. *Meyer v. Bishop*, 12 *C. E. Gr.* 141, 1 *Stew.* 239. See *Penn v. Craig*, 1 *Gr. Ch.* 495, 499. *Aliter* where the reason for refusing to adjourn was, that the defendant would have an opportunity to gather the crops on the premises, *Large v. Dilmars*, 12 *C. E. Gr.* 408. Application to set aside a sheriff's sale on the ground of unfairness, arising from an alleged misunderstanding as to the manner of sale and the amount and apportionment of incumbrances, refused. *Bullock v. Woodward*, 10 *C. E. Gr.* 279. That a party is so far deprived of his eyesight as not to be able to read a newspaper, and alleges that consequently he did not see the advertisement, is not good ground for setting aside a sale. *Parkhurst v. Cory*, 3 *Stock*. 233. A writ of assistance may be refused because of a defect in the advertisement of one of the tracts sold. *Vanmeter v. Borden*, 10 *C. E. Gr.* 414. An assignee must advertise the sale of the real estate of an insolvent debtor. *Den, Sloan v. Appgar*, 4 *Zab.* 608. The sheriff's sale under foreclosure set aside, on the ground of surprise, where the petitioner was an old German woman but little acquainted with the English language, who lived on the premises, and expected that the notice of the sale would be posted on her house and waited therefor. The sale produced \$1,380, while the premises were claimed to be worth \$2,000. *Schilling v. Lintner*, 16 *Stew.* 444. Where the time appointed for a sale was the 10th day of February, and the last insertion of the notice of sale, in one of the newspapers selected for its publication, was on the 2d day of February—Held illegal for non-compliance with the requirement providing that the notice should be published four weeks successively, once a week, next preceding the time appointed for the sale. *Tappan v. Dayton*, 6 *Dick.* 280.

(a) Where a sale by a public officer is conducted in violation of the spirit and policy of the law, and so as in fact to defeat the just claims of incumbrancers, or greatly to prejudice the rights of the defendant in execution, the sale will be set aside, though the formal requirements of the statute have been complied with. *Cummins v. Little*, 1 *C. E. Gr.* 48. A mere error of judgment, or mistaken exercise of discretion, by the sheriff, in the absence of fraud or unfairness in the sale, affords no ground for the interference of the court. *Van Duyne v. Van Duyne*, 1 *C. E. Gr.* 93. *Parkhurst v. Cory*, 3 *Stock*. 233. Nor will a sale by an officer be set aside because the terms of sale are unusually strict or severe, if the circumstances of the case call for rigid measures, and no design is manifested to oppress or injure the defendants. *Coxe v. Halsted*, 1 *Gr. Ch.* 311. See *Stevenson v. Black*, *Sax.* 338. *Cutwater v. Berry*, 2 *Hal. Ch.* 63. A requirement that twenty per cent. of the purchase-money shall be paid at the close of the sale, and satisfactory security be given for the balance, will not suffice to set aside the sale, where no complaint was made of the terms, nor any relaxation of them requested, and where it does not appear that anyone was prevented from bidding by reason of them. *Morris v. Woodward*, 10 *C. E. Gr.* 32. At a sheriff's sale of land on execution, the crer, before the hammer was struck, received a sign which was intended as a bid, and which the crer understood as a bid, and would have received as a bid at any previous stage of the bidding, but which he refused to take as a bid on the ground that the half hour, expiring at a quarter past three o'clock, to which, by the instruction of the sheriff, he had limited the time for bidding, had expired. The sale was set aside. *Parker v. Pratt*, 4 *Hal. Ch.* 104. *Conover v. Walling*, 2 *McCart*. 173. The sheriff, at the sale, said he was selling the right and title of the mortgagor, and the crer of the sale advised a friend of his, who asked his advice aside, privately, to have nothing to do with the property; that whoever bought it would probably buy a lawsuit. The property, for which the complainant had agreed to pay \$2,800, was sold for \$1,400. There was no allegation in the bill that the title was free from dispute, nor that any better offer had been made for the property. The court refused to set aside the sale. *Mervine v. Van Meter*, 3 *Hal. Ch.* 34. A sale of the debtor's interest in real estate declared fraudulent under the circumstances, and the purchaser decreed to account for the rents and profits during the term. *Hays v. Doane*, 3 *Stock*. 84. The evidence in this case held sufficient to establish the charges of fraud and collusion made in the bill, and to warrant a decree that the sale be set aside. *Hovell v. Sebring*, 1 *McCart*. 85. When it is satisfactorily shown that the defendant not only failed to take such measures as would secure the best price for the property, but that the course adopted by him was calculated, if not designed, to operate against the sale, and to prejudice the interests of those whose rights he represented, the sale will be set aside. *Ib.* *Hamburg Manufacturing Co. v. Etsell*, 1 *Hal. Ch.* 249, 659. Mere inadequacy of price is not sufficient to set aside a sheriff's deed, nor is it, *per se*, proof of fraud. *Bank of New Brunswick v. Harsart*, *Sax.* 1. *Crane v. Conklin*, *Sax.* 348. *Smith v. Duncan*, 1 *C. E. Gr.* 240. *Mariatt v. Warwick*, 3 *C. E. Gr.* 108. But even if there has been no fraud, if the inadequacy is gross and the party whose property has been sold, by reason of mistake

or misapprehension, did not attend the sale, and the sacrifice was caused by such mistake or misapprehension, the sale will be set aside. *Klopping v. Stellmacher*, 6 *C. E. Gr.* 328. It has long been the settled doctrine and practice of the courts of this state, that judicial sale made without irregularity or fraud, and not affected by accident or mistake, will not be set aside for mere inadequacy of price. *Morrise v. Inglis*, 1 *Dick.* 306. *Bethlehem Iron Co. v. Phila. and Seashore Ry. Co.*, 4 *Dick.* 356. *Leary's Case*, 5 *Dick.* 383. The sheriff is bound to sell according to law, and the exigency of his writ; he is not justified in imposing terms on the purchaser different from those required by the law. If he undertakes, by any conditions of sale, to vary the relative position of parties and create liabilities which the law does not impose, he exceeds his authority, and the purchaser is not bound. *Stevenson v. Black*, *Sax.* 338. S. L. H. executed to S. W. six bonds and a mortgage to secure payment thereof. After receiving payment of the first bond, W. assigned and delivered the others to several persons, one of whom caused a judgment to be entered up against H. on one of the bonds, and an execution to be issued thereon, by virtue of which the mortgaged premises were levied on and exposed to sale by the sheriff, subject, among others, to the following condition: "the above-described property is sold, subject to the payment of a mortgage from S. L. H. to S. W. dated." &c. After B., the plaintiff, bid one dollar for the premises, the sheriff, at the instance of W., added to the condition these words: "and the several bonds secured by the said mortgage." The premises were struck off to B. at his bid, and he signed the conditions, protesting, however, against the alteration of the conditions, and declaring he would not pay the bonds. *Held*, that this addition to the conditions of sale created no new contract to bind the purchaser personally to pay the bonds held by S. and W., and their bill, seeking to charge him personally, was dismissed. *Ib.* Where, by the conditions of a sheriff's sale, it is provided that "if the purchaser do not comply with the conditions, the property shall be resold," the sheriff is not bound, upon failure of the purchaser to comply with the conditions, to make a second sale, though requested so to do by the defendant in execution. *Woodhull v. Neale*, 1 *Gr. Ch.* 409. The conditions for the sale of lands and buildings provided for the sale of the buildings separately; and one of the conditions was as follows: "the buildings will be sold, to be removed within thirty days from this date from the premises." *Held*, that the purchaser of a building, who also purchased the lot on which it stood, was not bound to remove the building. *Flume v. Small*, 1 *Hal. Ch.* 490, 650. Where it is provided that if a purchaser fail to comply with the conditions of a sheriff's sale, he shall be exposed to sale a second time and the purchaser held liable for any loss that may ensue, the vendor, in an action on such contract, cannot recover the difference between the two sales, unless the conditions of the second sale are the same as those of the first sale, or at least so far as regards the credit, equally beneficial to the purchaser. *Shinn v. Roberts*, *Spen.* 435. Where it is stipulated that the percentage or part paid at the time of the sale, shall be forfeited if the purchaser does not comply with the conditions, such payment cannot be recovered at law or in equity. *Bullock v. Adams*, 5 *C. E. Gr.* 367. A purchaser of premises who has signed the conditions of sale, is bound to pay a check given to the master on the day of sale in part payment of the purchase-money, notwithstanding the neglect and refusal to convey to him a certain easement which the agent of the complainants, had declared and promised should pass with the premises, but which formed no part thereof, was not mentioned in the conditions of sale, and to which neither the agent nor his principal had any right or title. *Allen v. Bank of the United States*, *Spen.* 620. The ordinary method of compelling a purchaser to complete it, after he has signed an acknowledgment of the purchase, is by an order to show cause why an attachment should not issue against him as for contempt. *Bourne v. Ritter*, 11 *C. E. Gr.* 456. Or, the officer may file a bill for specific performance. *Ib.* See *Bozman v. Zilley*, *Sax.* 320. A sheriff who has sold lands under a *fiery facias* out of chancery in a foreclosure suit, may bring an action in his own name against a purchaser who refuses to comply with the conditions of sale. The remedy in the court of chancery to compel the purchaser to complete the purchase by summary process, is not exclusive. *Townshend v. Simon*, 9 *Vr.* 239. The sheriff must account for the money recovered in such action to the persons interested in the process under which the sale was made. *Ib.* The officer is not bound to sue a bidder for non-compliance with the conditions, unless an indemnity bond for costs be given him. *Strong v. Linn*, 2 *South.* 799, 809. *Southard, Jr.* A fieri such bond has been given by the defendant in execution; the sheriff cannot claim the costs of such suit from another execution creditor. *Ib.* By the terms of a foreclosure sale, the purchaser was required to pay ten per centum of the purchase-money at the close of the sale, and if he should not complete his purchase, the premises would be offered for sale again, and the defaulting purchaser should not be benefited by any advance in price at such second sale, but liable for all loss and expense occasioned thereby. A purchaser of the premises for \$9,900 paid the ten per centum but did not pay the balance of the purchase-money, and the premises bought by him were resold by the sheriff and brought \$10,500. *Held*, that he was entitled to recover the ten per centum deposited by him. *Chancellor v. Gummere*, 13 *Stew.* 582. *S. C.* 13 *Stew.* 379. A master struck off the premises to the solicitor of complainant, who signed the conditions as "attorney," and afterwards directed the master to report the sale in the name of another. *Held*, that the defendant could not object to this in the absence of fraud. *Guarantee Trust Co. v. Jenkins*, 13 *Stew.* 451. It is not necessary for an officer, in making sale of lands under the order of a court, to attempt to describe the improvements thereon. *Ib.*

## Supplement.

P. L. 1889, p. 217.

Approved April 8, 1889.

Lands, &c., by order of court of chancery, may be sold either at public or private sale.

Proviso.

**36. SEC. 1.** That in all cases whatsoever, where sale of any lands, tenements, hereditaments or real estate shall be ordered by the court of chancery of this state to be made (except sales for the payment and satisfaction of mortgages), the officer or officers, person or persons authorized or directed by said court to make such sale, may make sale of such lands, tenements, hereditaments or real estate, at public or private sale, in his, her or their discretion, and on such terms as such officer or officers, person or persons may deem to be most advantageous to the parties concerned therein; *provided, however,* that no sale of lands, tenements, hereditaments

It is a matter in the discretion of the officer executing the writ to sell the premises together or in parcels, except in cases where, under the statute, it is decreed that a part of the premises cannot be sold to satisfy the amount due without material injury to the remaining part of the mortgaged premises. *Parkhurst v. Cory, 3 Stock. 233.* On a sheriff's sale of land consisting of different parcels, the general rule is, that if the land is plainly divisible, it should be sold in parcels, so as to secure the highest price. *Cortes v. Lashley, 2 McCurt. 116. Coze v. Halsted, 1 Gr. Ch. 311. Merwin v. Smith, 1 Gr. Ch. 182. Ryerson v. Boorman, 3 Hal. Ch. 187, 640.* Non-compliance with such rule is sufficient ground for setting aside the sale. *Johnson v. Garrett, 1 C. E. Gr. 31.* Where a defendant stands by without objection and permits a sheriff to sell several separate lots of land as one tract, he cannot afterwards object because they were not sold in parcels. *Holmes v. Steele, 1 Stew. 173.* Where a sale is made in violation of this rule, with the approbation of the owner of the property, and thirteen years have elapsed and the property has descended to the heirs of the purchaser, the court will not for this cause alone disturb the title. *Penn v. Craig, 1 Gr. Ch. 495.* One part of a property may be so dependent on the other as to require a sale in large parcels. *Merwin v. Smith, 1 Gr. Ch. 182.* A sale by a sheriff upon execution, in one parcel, of a large quantity of the defendant's property, which is readily susceptible of division, can never be justified upon any other ground than as being the best mode for making it bring the most money. *Id.* Where, in a sheriff's sale, it appears that the premises ought to have been sold in parcels, but were not, the sale cannot be confirmed. *Schilling v. Lintner, 16 Stew. 444.* At sheriff's sale on execution, caveat emptor is the rule. *Mervine v. Vanlier, 3 Hal. Ch. 34.* A buyer may employ an agent to bid for him. *Stellman v. Holcomb, 1 Beas. 131, 132. Silver v. Campbell, 10 C. E. Gr. 465, 466.* A sheriff cannot require security of a duly-authorized agent of the plaintiff in execution for the performance of his contract, nor can he refuse the bid of such agent for want of the required security. *Merwin v. Smith, 1 Gr. Ch. 182.* A buyer may bid for himself, jointly with another. *Den v. Lambert, 1 Gr. 182, 185.* So, several may authorize one person to bid for them, on their joint account. *Nat. Bank of Metropolis v. Sprague, 5 C. E. Gr. 169.* When a bidder, at a master's sale, declares to the master that he is not prepared to comply with the terms of sale, it is not improper for the master to refuse his application for leave to withdraw his bid, and to direct the property to be struck off to him, and thereby compel him to announce openly that he cannot comply. *Id.* Where a bidder offers his bid under a mistake, it seems that he may withdraw his bid. *Strong v. Linn, 2 South. \*799, \*805, Southard, J.* If, at a public sale, the owner fraudulently represents to a bidder that others are bidding, and thereby induces him to raise his bid, the owner cannot enforce the sale and recover the purchase price. *Stryker v. Vanderbilt, 1 Dutch. 482, Elmer, J.* Relief on account of under-bidding was refused one of the owners of the premises, because there could have been no under-bidding without his authority. *Small v. Boudnot, 1 Stock. 381.* An owner may bid at a public sale, without violating it; and he may employ under bidders to prevent a sacrifice of the property. *Wilmurt v. Morgan, March, 1827, Williamson, C.* It is not proper to concert with an auctioneer a private signal denoting a bid. Such a contrivance gives an advantage over the open and fair bidders. *Conover v. Walling, 2 McCurt. 173.* It is the custom, in New Jersey, where a bid is fairly claimed by two or more persons, to put the property up again at the price bid, and as at the bid of the person whom the auctioneer may declare entitled to it. *Id.* A sale will be set aside where a mistake occurs in consequence of such bidding, and it is not rectified by the officer putting up the property again, and less is obtained than would otherwise have been offered. *Id.* If there is collusion between the officer and purchaser, the sale will be set aside and both of them condemned in costs. *Johnson v. Garrett, 1 C. E. Gr. 31.* It is not gross carelessness for a purchaser not to know that the description in a sheriff's deed does not include the entire premises which are understood to be offered for sale. *Waldron v. Letson, 2 McCurt. 126.* What the bidders at the sale understood as to the quantity of land sold, what verbal agreements were made, how the boundaries were ascertained, what was said and done at the survey, and who furnished the description from which the sheriff drew his deed, are matters inadmissible in evidence. *Den, Todd v. Philthover, 4 Zab. 796, 804, Potts, J.* It is error to overrule an offer to prove by parol that the purchaser inquired what estate the commissioners designed to sell, and that they answered an estate for the life of the defendant. *Den, Hinckman v. Clark, Coze 340, 356, 447, note (a).* A sheriff's sale of land declared unlawful by reason of means used to prevent competition, and the consequent sacrifice of the property. *Hamburg Mfg. Co. v. Eidsall, 1 Hal. Ch. 249.* A sheriff, in a sale by virtue of an execution against lands, has no right to reserve the waygoing crops; his duty is to sell the title of the defendant to the lands,

as commanded by the writ; and if he had power to make such reservation, it would be of no avail if not contained in his deed. *Howell v. Schenck, 4 Zab. 89.* The purchaser of land under a sheriff's sale acquires, by virtue of the conveyance, a legal title to the growing crops, against a previous purchaser of the crops from the defendant in execution; such purchase of the crops being made subsequent to the entry of the judgment by virtue of which the land is sold. *Bloom v. Welsh, 3 Dutch. 177.* A sheriff is not obliged to notice the bid of an irresponsible purchaser. *Den v. Zellers, 2 Hal. 158, Ford, J. Merwin v. Smith, 1 Gr. Ch. 182. Den v. Young, 7 Hal. 300, 307.* The court of chancery has power to set aside a sale made under its authority, for fraud, accident or mistake of fact, when the mistake is not the result of the purchaser's own negligence. But this power will not be exercised for mistake of law. *Hayes v. Steiger, 2 Stew. 196.* A purchaser at a judicial sale who abstains from all effort to get correct information, and deliberately assumes the hazard of making a purchase ignorantly, must, as a general rule, bear the consequences of his own negligence. *Id.* Although a bidder at a sheriff's sale under a foreclosure may, by his own willfulness, have put himself in a position where the court would not, on his own application, relieve him from the consequences of his bid, yet the court will refuse to compel the specific performance of such a bid, where its enforcement must be unjust to the bidder and unconscionably advantageous to the mortgagee. *Sullivan v. Jennings, 17 Stew. 11. Twining v. Neil, 11 Stew. 470. See Barker v. Richardson, 14 Stew. 656.* A general verbal direction by a sheriff to an assistant in his office, to make the sales and adjournments necessary on a given day, confers no authority to make a sale, and if made under such direction it will be set aside. *Meyer v. Bishop, 12 C. E. Gr. 141, 1 Stew. 239.* In the absence of statutory provisions, the general rule is that judicial sales should be made in the presence and under the immediate supervision of the officer designated in the decree commanding the sale. The statute, however, held to be declaratory upon the subject. *Id.* If a sale of land be made on foreclosure by a bailiff thus informally appointed, and the sheriff, in conformity thereto, executes a deed to the purchaser, such deed will transfer the title, and will be good in a collateral proceeding as the act of an officer *de facto*, but will be set aside, on a direct application to the chancellor in the course of the same proceeding. *Id.* A sheriff who makes sale of land by a bailiff, or special servant duly appointed, can take the oath required by the thirteenth section of the act relative to the sale of lands. *Id.* Lands seized in execution by a sheriff may, upon his death before sale, be sold by his executor or administrator. *Read v. Stevens, Coze 284.* The execution of the power to sell lands by public officers, must be in strict pursuance of the power, or no title is conveyed. *Osborne v. Tunits, 1 Dutch. 633.* The place of sale is discretionary with the sheriff, and ordinarily the county seat, from its facilities for resort to the records and to counsel, for settling questions respecting title, is the proper place, but the place chosen must depend upon the nature of the property to be sold, and its nearness, &c. *Cummins v. Little, 1 C. E. Gr. 48, 54.* A sheriff is bound to exercise reasonable care and judgment in the management of his sales, so that the property levied on may be sold to the best advantage to make the money, subject, of course, to all the requirements of the statutes affecting sheriff's sales. *Todd v. Hoagland, 7 Vr. 552, 8 Vr. 544.* It is the duty of a sheriff to make the money on an execution, if by fair judgment and skill it can be done according to the modes provided by the law. His discretion should be liberally considered in the absence of bad faith, yet the sheriff is responsible for a clear neglect of its proper exercise. *Id.* The exercise of the sheriff's discretion must be a legal one, and so controlled as to work no injustice or oppression. *Merwin v. Smith, 1 Gr. Ch. 182. Seaman v. Riggins, 1 Gr. Ch. 214.* The discretion of the sheriff will be interfered with only when it is abused by him. But the court will not weigh evidence to ascertain whether the sheriff has sold in the most judicious manner. If the manner of sale is so palpably injudicious as amounts to a breach of trust on the part of the officer, it is a fraud upon the rights of parties interested, and then the court will interfere. *Parkhurst v. Cory, 3 Stock. 233.* As to the question whether a receiver should sell the engine, mining tools and implements with the mine lands or separately, the court left it to the discretion of the receiver, to be determined by inquiries to be made by him as to the probability of finding ore by continuing the works, no ore having yet been found. *Kelly v. Neshanic Mining Co., 3 Hal. Ch. 578.* A sheriff may exercise a reasonable discretion as to the manner of selling property. *Den v. Zellers, 2 Hal. 158, Ford, J.* In the disposition of the trust property in their hands, receivers have a discretion, for the due exercise of which they are responsible to the court, and in the exercise of which they are subject to its control. *Knott v. Receivers of Morris Canal Co., 3 Gr. Ch. 423.* Receivers are not, like executive officers, bound to sell for the highest price, without regard to the purchaser, or to the dis-

or real estate made by such officer or officers, person or persons, at private sale, shall be valid, until such sale shall have been confirmed by the chancellor, upon a report of the terms thereof, by the officer or officers, person or persons making the same.

**37. SEC. 2.** That the provisions of this act shall apply to every sale not under foreclosure of mortgage, heretofore authorized by said court of chancery, except where the order or decree authorizing such sale shall have expressly directed the same to be made at public sale.

Provisions of act to apply to all sales.

**38. SEC. 3.** That so much and such part of the first section of the act to which this is a supplement, as conflicts, or is inconsistent with this act, be and the same is hereby repealed.

Repealer.

Supplement.

Approved March 28, 1892.

P. L. 1892, p. 290.

**39. SEC. 1.** That where any sale of lands, tenements, hereditaments or real estate shall be ordered by the orphans' court of any county of this state, the officer or officers, person or persons authorized or directed by said court to make such sale, may, unless otherwise provided in the order of sale, make sale of such lands, tenements, hereditaments or real estate, at public or private sale, in his, her or their discretion, and on such terms as such officer or officers, person or persons may deem to be most advantageous to the parties concerned therein; *provided, however,* that no sale of lands, tenements, hereditaments or real estate so made at private sale shall be valid until such sale shall have been confirmed by the court upon a report of the terms thereof and proof before the court by affidavit or otherwise that the price obtained at such private sale was a fair price, and the said sale not injurious to the interests of the parties concerned therein.

Lands, &c., by order of orphans' court, may be sold at public or private sale.

Proviso.

**40. SEC. 2.** That the provisions of this act shall apply to all sales heretofore authorized by the orphans' court of any county of this state.

Applies to sales heretofore authorized.

**41. SEC. 3.** That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act take effect immediately.

Repealer.

Supplement.

Approved March 8, 1893.

P. L. 1893, p. 110.

**42. SEC. 1.** That the twelfth section of the act entitled "An act relative to sales of lands under a public statute or by virtue of any judicial proceedings," approved March twenty-seventh, eighteen hundred and seventy-four, be and the same is hereby amended so as to read as follows:

[That if any master in chancery or the sheriff of any county who hath made or shall make sale of any lands, tenements, hereditaments and real estate by virtue of an execution against the same shall abscond or depart from the state or be disqualified by law or shall die or have died, or in any way become incapable of making a deed or conveyance for the same, it shall be lawful for the court out of which the said execution issued, upon satisfactory proof that such sale has been fairly and legally made, to appoint another master in chancery or the then sheriff of the county, who shall have full power on tender of the purchase-money, or if the purchase-money or any part of it has been paid, then on proof of such payment and on tender of the residue if any there be, to sign, seal and deliver to the said purchaser or his legal representative a deed or conveyance of the lands, tenements, hereditaments and real estate so sold, which deed shall be as good and valid and have the same force and effect as if the master or

In case of death or disqualification of a master in chancery or sheriff after sale, the court out of which execution issued may appoint another to make deed, &c.

Effect of such deed.

position he may make of the property. *Ib.* Where the receivers of the Morris Canal and Banking Company advertised that proposals would be received by them until a specified day for leasing the canal for one year—*Held,* that the advertisement did not bind the receivers to take the offer of the highest bidder, nor limit them to a certain time within which to receive bids. *Ib.* Where the complainant's right to priority is disputed, the sheriff will not be permitted to proceed to sale under the execution, and the hearing of the petitioner's claim be deferred and determined in disposing of the proceeds of sale, under the act of March 17th, 1870 (P. L. 1870, p. 40, § 6). *Conrad v. Mills*, 9 C. E. Gr. 65. Two sheriffs cannot, by law, advertise and sell, and convey the property of defendants jointly. *Maffet ads. Den, Tonkins*, 1 Hal. 228. *Query*—Whether their joint deed is absolutely void. *Ib.* The officer acquires no interest; can

neither take nor deliver possession, nor maintain a possessory action. *Den v. Young*, 7 Hal. 300, 301. The surplus after satisfying the execution, must be paid to the defendant, unless the sheriff is otherwise notified by the next incumbrancer, followed by a rule of the court out of which the execution issues, or by an order of the court of chancery. *Maffet ads. Den, Tonkins*, 1 Hal. 228, 229. If the sheriff who has the first levy, neglects or refuses to sell at the first day, then he who has the next levy may sell, subject to such prior execution, but not to raise the money to pay it. *Ib.* Where the object of the bill will be answered, a sheriff's sale should not be restrained by injunction, but the sale should be suffered to proceed, and the money stayed in the sheriff's hands. *Receivers of Morris Canal Co. v. Bidde*, 3 Gr. Ch. 222.

sheriff who made such sale had signed, sealed and delivered a deed or conveyance for the same in due form of law, and the moneys received on such conveyance shall be paid to the person entitled thereto by law.]

**Supplement.**

P. L. 1894, p. 137.

Approved April 25, 1894.

Executors, &c.,  
may adjourn sale  
unless court shall  
limit time.

**43. SEC. 1.** That executors and administrators selling lands under any order of the orphans' court may adjourn the sale from time to time at his and their discretion unless the court making said order therein, or by some subsequent order, limit the time within which such sale shall be made, in which case sale shall be made within the time so fixed and limited or within such further time to which the same may be extended by other order of said court.

No sale invali-  
dated because of  
adjournment.

**44. SEC. 2.** That no sale of lands heretofore made by executors or administrators under any order of the orphans' court shall be invalidated by reason of such sale having been adjourned for a time or times exceeding two months in the whole, but that the purchaser or purchasers of any lands at such sale who has paid or shall pay the price thereof, and has received or shall receive a deed therefor, such sale having been duly reported to and confirmed by the court directing the making thereof, shall have as good and complete a title thereto as if said sale had been adjourned from time to time not exceeding two months in the whole.

Purchaser shall  
have title.

**Supplement.**

P. L. 1894, p. 314.

Approved May 15, 1894.

Proceedings  
when dower  
cannot be  
assigned or set  
off without  
prejudice.

**45. SEC. 1.** That whenever any commissioners who may have been or may hereafter be appointed by an orphans' court of any county in this state, to assign, admeasure and set off any dower in any lands or real estate lying or being in such county, shall be of opinion that the tract or tracts of land or real estate in question are so circumstanced that the said dower cannot be assigned, admeasured and set off without great prejudice to the owners of said lands, then and in such case the same proceedings may be had in regard to their report and the sale of such lands, and the confirmation of such sale, as are now had and are lawful where commissioners are appointed to divide or sell the real estate of any coparceners, joint tenants or tenants in common in any county in this state, and that the said orphans' court may order the said lands sold free from such dower, making compensation for the value of such estate.

**III. Sale of lands limited over to infants.**

An act to authorize the sale of land limited over to infants, or in contingency, in cases when such sale would be beneficial.

P. L. 1857, p. 488.

Approved March 20, 1857:

When chancellor  
may direct lands  
limited over, &c.,  
to be sold in fee.

**46. SEC. 1.** That in all cases when any future or contingent estate in lands, now is or hereafter may be wholly or in part limited over to infants, or persons not in esse, or in such manner that the vesting or duration of such estate may be contingent, and the interest of the owners of the particular and future estates in such lands require, and would be promoted by a sale thereof, it shall be lawful for the chancellor, upon the application of any person owning a vested estate therein, to direct said lands to be sold in fee, and for that purpose to inquire into the situation of such land and the merits of such application; and if upon such inquiry it appears that the situation, and prospective value of said lands are such that it

would be the interest of any person who might own the same in fee to sell the same, then the chancellor shall direct such sale. (a)

47. SEC. 2. That the proceedings in such case shall be in the court of chancery, in vacation or term time, and shall be commenced by petition of some person owning a vested estate in said premises, which petition shall describe the lands to be sold, and the limitations of the same, and shall state the persons who may be entitled to vested or prospective estates therein; and twenty days' notice of the presenting such petition shall be given to each of the persons, if they reside within this state; and if any reside without this state, such notice may be given by twenty days' service, or by advertising the same in a newspaper published in the county where the lands lie, or in case none be published in said county, then in a newspaper of this state published nearest to said lands, and also by mailing such notice, directed to such person at the post-office nearest to his residence, provided his residence be known; and such notices may be served either personally, or by leaving the same at the dwelling-house of such person, and in case such person be an infant under fourteen years of age, the same shall also be served on his or her father, mother, or guardian, if any reside within this state, and in case of any limitation to persons not in being, such notice shall be served upon the ancestor of such person in manner aforesaid.

Proceedings to be by petition of person owning a vested estate in such premises.

48. SEC. 3. That upon proof of notice, the chancellor shall refer such petition to a master to inquire into the merits of the application, who shall proceed to hear the applicant, and other parties, touching the same, giving eight days' notice of the time and place of such hearing to all parties who shall, on or before the day of presenting such petition, have entered their appearance with the clerk, or who shall, ten days before such hearing, give notice of such appearance to the petitioner, or to his or her solicitor; and said master shall have power to adjourn such hearing from time to time; and said master shall reduce to writing all evidence before him, and return the same with his report; and shall report in what manner, and by what limitations such lands are held, and the nature, circumstances and situation of said property, and whether the interests of the owners thereof require, and would be promoted by a sale of the same, and the reasons upon which such opinion is founded.

Petition to be referred to a master to inquire into merits.

49. SEC. 4. That upon such report, if it appear to the satisfaction of the chancellor, that said lands are held or limited over as aforesaid, and that the interest of the owners require, and would be promoted by such sale,

Chancellor may direct master to sell.

(a) It is only when a minor has no other means for his education and maintenance, that the orphans' court is empowered by the statute to order the sale of his lands. *Morris v. Morris*, 2 *McCart*, 239. As a general rule, where the parent is of sufficient ability to maintain and educate the infant, the lands of the latter should not be sold for that purpose. *Ib.* There may be such a disparity between the fortune of the minor and the pecuniary circumstances of the father, as would make it proper that the fortune of the child should contribute to his own support. *Ib.* Lands devised to R. and C. during their natural lives, and after their decease to their children, with proviso that if either of them should die without issue, the survivor should have the entire property during her life, and at her death it should descend to her children, were directed to be sold. *In matter of Mickle*, 10 *C. E. Gr.* 53. The reversionary estate of an infant will not be sold because there may be a great advantage in the sale to the tenant for life, when the benefit to the infant is doubtful or inappreciable. *In matter of Steele*, 4 *C. E. Gr.* 120. Upon an application for the sale of infants' reversion in land, the only question is, will the property bring as much now as it will at the death of the life tenant? If it will not, it is not for the interest of the infants to sell, if the life tenant is to receive a share of the proceeds, or of the income from them, according to the rules of this court. *In matter of Heaton*, 6 *C. E. Gr.* 221. Lands were conveyed in 1810 to D. and E., for their joint lives, and to the survivor for his life, and then to their children. On the 15th of June, 1818, the said D. and his wife were still living, and had then six minor children, and afterwards had two more born. On the said 15th of June, D., as the guardian by nature of his children, obtained a decree of the orphans' court of Essex to sell the said lands for the support of said minors. In an action of ejectment, brought by the children against the purchaser, after the death of D. and wife—*Held*, that the two children born after the sale were not affected by it. *Graham v. Houghstain*, 1 *Yr.* 552. A sale of lands made by order of the chancellor, only conveys the estates of persons having vested or contingent estates in such lands, and who, by the statute, are required to have notice of the proceedings. The rights or liens of incumbrancers who are not required to have notice, or who do not have notice of the proceedings, are not affected by the sale.

The purchaser holds subject to legacies charged on the lands. *Cool v. Higgins*, 8 *C. E. Gr.* 308. The chancellor has no power to order mortgagees or other incumbrancers to be paid out of the proceeds of such sale. The act requires that the whole proceeds shall be invested at interest, and directs specifically to whom the interest shall be paid. No other disposition can be made by the chancellor. *Ib.* Under peculiar circumstances, there was allowed out of the proceeds of sale the amount of certain incumbrances which were upon lands sold under the act "to authorize the sale of lands limited over to infants, or in contingency, in cases where such sale would be beneficial," and clear of which incumbrances the lands were sold by the master. *Cool v. Higgins*, 10 *C. E. Gr.* 117. The court will order the sale of an infant's land under the act entitled "An act to enable infants who are seized or possessed of estates in trust or by way of mortgage, to make conveyances of the same," only when the trusts are created by express declaration, or by decree. *Follen's Case*, 1 *McCart*, 147. The testimony of parents, who have a life interest in the premises, should not be acted on, and hardly received. *Heaton's Case*, 6 *C. E. Gr.* 221. The master should report his own opinion founded on the facts proved by witnesses. *Ib.* Where a remainder in fee is given at the death of the life tenant to "such person or persons as shall be her heir or heirs-at-law of lands held by her in fee-simple," and the land was sold by order of the court of chancery under this act, the proceeds paid into court and invested for the benefit of the parties interested—*Held*, that such proceeds of sale could not be paid over to her children and heirs-at-law, on their own application, exhibiting the release of their mother and her consent thereto; nor can they be paid over until after her death, because it cannot until then be determined who are her heirs-at-law. *Barville's Case*, 6 *Stew.* 46. Under this act, the court has power, in a proper case, to direct a sale of the vested estates of persons legally competent, against their will. *Query*—Whether the court has the power to order sale of estates which were so vested before the statute was passed. *Aggar v. Aggar*, 11 *Stew.* 549. In the present case, it clearly appearing that a sale would be injurious to the interests of the tenant in possession, and it not being evident that it would promote the interests of the remaindermen, the court refused to order a sale. *Ib.*, reversing 10 *Stew.* 501.

- Report of sale. the chancellor may order such lands to be sold in fee by one of the masters of his court, either at public or private sale, and with such limitations of price, and as to credit for purchase-money, as he may deem proper to direct, which sale shall be reported to the chancellor, and when approved and confirmed by him, the said master shall execute a deed thereof to the purchaser, which deed, when given pursuant to such order, shall convey to such purchaser all the estate in said lands, held or limited over as described in the petition, or held by or limited over to any of the persons named or designated therein as present or prospective owners in being or not in being.
- Proceeds of sale to be paid into court. Investment of. **50. SEC. 5.** That the moneys arising from said sale shall be paid into the court of chancery, and the securities and mortgages for any part unpaid, shall be deposited with the clerk of the court; and all such moneys shall be kept at interest, on security by bond and mortgage on real estate within this state, worth, besides destructible improvements, double the amount invested, and the interest thereof, or such part of the interest as the chancellor may direct, shall be paid to the person or persons who would for the time being, according to the limitations of said land, have been entitled to the particular estate therein, in proportion to their respective shares therein; and such securities shall be taken in the name of the chancellor of New Jersey, and the interest shall be paid on the same, half yearly or otherwise, directly to the person entitled to the same, unless otherwise directed by the chancellor, who shall from time to time make such order for the investing of said money and the payment of the interest thereon, as equity and justice may require. [See Sec. 55, *post*.]
- Chancellor may direct part of interest only to be paid to tenant, &c. **51. SEC. 6.** That in any case where justice and equity may so require, the chancellor may direct part of said interest money only to be paid to the tenant of any particular estate, and the residue of such interest to be accumulated for the tenant in remainder in fee; and when, by the limitation of such lands, the absolute fee of the same, or any share therein, would have vested in any person, then the whole or the proper share of such person of the principal of the purchase-money, and the accumulated interest, shall be paid by order of the chancellor to such person.
- Costs and expenses to be paid out of proceeds. **52. SEC. 7.** That the costs and expenses of the proceedings and sale shall be taxed and paid out of the proceeds of such sale, the master to be allowed such percentage on the purchase-money as the chancellor, in the order of sale, shall direct, not to exceed, in any case, one-half the amount allowed by law in sheriff's sales of lands; and that all costs and expenses incurred after such sale in investing money, and re-investing such money, and touching the payment of the interest, shall be paid out of the interest accruing on the same, and not out of the principal sum.
- Chancellor may make rules, &c. **53. SEC. 8.** That the chancellor may from time to time, make such rules and orders for proceedings under this act, not contrary thereto, as shall be most efficient to promote the objects thereof with the least delay and expense.

## Supplement.

Approved March 25, 1864.

P. L. 1864, p. 505.

Chancellor may direct sale in such way and manner as shall be deemed expedient.

**54. SEC. 1.** That whenever it shall appear to the satisfaction of the chancellor, that the lands embraced in any proceedings now pending, or hereafter to be commenced, under the act to which this is a supplement, should be sold in parcels and at different times, the chancellor may, whenever and as often as it shall satisfactorily appear to the court that the interests of the owners require, or will be promoted by a sale of any part or parts of the said lands, order and direct a sale of such part or parts thereof to be made by the master in such way and manner and with such restrictions, limitations of price and credit for purchase-money as shall be deemed expedient, and every such sale shall be reported to the chancellor, as directed in the fourth section of the act to which this is a supplement, and such proceedings may be had thereon, as are directed in said act to be taken upon a sale of lands.

Supplement.

Approved March 7, 1867.

P. L. 1867, p. 147.

55. SEC. 1. That the moneys arising from any sale made under the provision of the act to which this is a supplement, may be invested in real estate within this state, worth with the improvements thereon double the amount invested, or may be invested in the public securities of the United States, or of the state of New Jersey.

Money arising from sale, how to be invested.

Supplement.

Approved April 6, 1868.

P. L. 1868, p. 792.

56. SEC. 1. That the act to which this is a supplement shall be so constructed as to authorize the sale of any lands where the proceeds arising from the sale thereof may be wholly or in part limited over to infants or persons not in esse, in the same manner as if the estate in lands were so limited ; and if upon like proceedings instituted for this purpose, it appears to the satisfaction of the chancellor that the interests of the said infants would be promoted by such sale, the chancellor may make like orders for the sale of the same, and the deed therefor, when given pursuant to such order, shall convey to the purchaser all the estate in said lands held as described in the petition filed pursuant to the provisions of this act and the act to which this is a supplement.

Lands may be sold when the proceeds may be wholly or in part limited over, &c.

Supplement.

Approved March 3, 1874.

P. L. 1874, p. 22.

57. SEC. 1. That whenever it shall appear to the satisfaction of the chancellor that it is impossible after due inquiry to ascertain the names of the owners of any particular or future estate in lands limited in the manner mentioned in the act to which this is a supplement, or to ascertain whether some of such owners are living or dead, it shall be lawful for the chancellor on proceedings instituted under the act to which this is a supplement, to order that said proceedings be continued as if all such owners or their legal representatives were known, making such absent or unknown owner or owners of said real estate a party or parties thereto by such description as the chancellor may in such order prescribe ; said order shall briefly relate the facts set forth in said petition, and call upon such party or parties to appear within such time as the chancellor shall direct, not less than two months from the date of such order, which order shall be published in one or more public newspapers printed in this state, and designated in such order for six weeks successively, at least once in every week, and also in any other manner that the chancellor may see proper to direct ; and upon proof of such publication, and of the performance of the directions contained in said order, the chancellor shall make such order against said unknown owner or owners as if they were known to the court and as may be equitable and just ; and shall have power to make like orders and decrees in the premises as fully in all respects as he is empowered to make upon proof of service of the notice of presenting such petition as prescribed by the act to which this is a supplement.

Proceedings in case the names or existence of parties in interest cannot be ascertained.

Notice to such parties to be published for two months.

Chancellor may make same order as if parties were known.

Supplement.

Approved March 12, 1880.

P. L. 1880, p. 292.

58. SEC. 1. That in any sale heretofore made, or hereafter to be made, under the provisions of the act to which this is a supplement, it shall be lawful for the chancellor to inquire into and ascertain the nature and amount of the incumbrances on the estate applied to be sold, and to ascertain the amounts of the taxes, assessments and water rents chargeable against the lands applied to be sold, and to order the lands to be sold free and clear of all incumbrances, and to order the incumbrance to be paid out of the funds realized by the sale ; and if it shall appear to the satisfaction of the chancellor that the income from the property has not been sufficient to pay the taxes, assessments or water rents, and that the person owning a vested estate

Chancellor may order lands to be sold free and clear of all incumbrances and order incumbrances paid out of proceeds of sale.

in said lands, whether a life tenant or otherwise, has borrowed money to pay the taxes, water rents or assessments chargeable against said premises, and said debt remains unpaid at the time of the sale, it shall be lawful for the chancellor to order said debt, so created to discharge taxes, water rents or assessments, to be paid out of the proceeds of the sale if it shall appear to the chancellor that it is just and equitable that the same shall be paid; *provided*, that no incumbrances, except for taxes, water rents or assessments, shall be affected, or his lien cut off by such sale, unless he is made a party to the petition and served with notice of the same, in accordance with the second section of the act to which this is a supplement.

Proviso.

When life tenant, &c., not to be liable for payment of taxes, water rents, &c.

**59. SEC. 2.** That if it shall appear to the satisfaction of the chancellor that the person holding a life estate, or a vested estate of any nature, created by any deed or last will and testament, is the widow of the person creating the same, and if it shall appear that the creation of such estate was for her maintenance and support, and if such estate is vacant lands which have become unproductive, or the buildings old and dilapidated so that they cease to be of any rental value, or if the buildings should be destroyed by fire, and the property, productive at the time of the making of said will or deed, should become partially or wholly unproductive, such life tenant, or the person holding the vested estate, shall not be liable for the payment of taxes, water rents and assessments, unless the income from the property was adequate to the support of the widow and the payment of the taxes, water rents and assessments, but such taxes, water rents and assessments shall be liens upon the lands so ordered to be sold, and paid out of the fund arising from the sale of the same.

When taxes, &c., may be ordered paid out of proceeds of a portion of lands sold.

**60. SEC. 3.** That if the lands shall consist of different tracts and parcels and the whole become chargeable with taxes, water rents and assessments, and that by a sale of a part of the premises all the taxes, water rents and assessments could be discharged on all the lands charged with such future and contingent estate, it shall be lawful for the chancellor to order the taxes, water rents and assessments on the whole estate to be paid out of the proceeds of the sale of that portion of the lands ordered to be sold, and to free all the balance of the lands from taxes, water rents and assessments.

Chancellor may order lands sold free and clear of any disputed taxes, water rents, &c., and order sufficient sum to be deposited with the clerk of the court.

**61. SEC. 4.** That if any tax, water rent, water charge or assessment is disputed, it shall be lawful for the chancellor to order said lands sold free and clear of such disputed tax, water rent, water charge or assessment, and to order that a sufficient sum to discharge said tax, water rent, water charge or assessment, with the interest to accrue thereon, to be deposited with the clerk of the court to abide the result of the settlement of such disputed tax, water rent, water charge and assessment, and when said tax, water rent, water charge or assessment shall have been declared a legal lien on said lands so ordered to be sold, the chancellor shall order the payment of such tax, water rent, water charge or assessment; and in case said tax, water rent, water charge or assessment shall be set aside or declared not to have been a legal lien on the lands so sold, that then said money so set apart to answer such payment shall be invested by the order of the chancellor, under the provisions of the act to which this is a supplement; *provided*, that in setting aside any tax, water rent, water charge or assessment, if a new assessment is ordered, then said fund shall be held and applied to the payment of the new assessment; *and provided further*, that in ordering such sale and deposit, the chancellor may order that the interest shall cease on the tax, water rent, water charge and assessment from the date of sale, and that the interest after the sale shall be the amount allowed on the deposit made with the clerk of the court.

Proviso.

Proviso.

Chancellor may order buildings to be sold separate from land.

**62. SEC. 5.** That if the estate is so situated that the land is composed of city lots and covered by large, old and dilapidated buildings that require to be removed before the land can be sold to advantage, it shall be lawful for the chancellor to order the buildings to be sold separate from the land, to be removed therefrom; and if, at such sale, no bidders can be found who will bid for and agree to remove said old buildings and material, it shall be the duty of the master to report the facts to the chancellor, who

may order the master to have the buildings torn down and the materials prepared for market and sale, and that the master shall sell the same, and if said materials cannot be sold for enough to pay for pulling down and removing the same, that then it shall be lawful for the chancellor to order the deficiency to be paid out of the proceeds of the sale.

May order master to have buildings torn down and sell materials, &c.

**IV. Homestead exemption.**

An act to exempt from sale or execution the homestead of a householder having a family.

Approved March 17, 1852.

P. L. 1852, p. 222.

**63. SEC. 1.** That in addition to the property now exempt by law from sale under execution, there shall be exempt by law from sale or execution, for debts hereafter contracted, the lot and buildings thereon, occupied as a residence and owned by the debtor, being a householder and having a family, to the value of one thousand dollars; such exemption shall continue after the death of such householder for the benefit of the widow and family, some or one of them continuing to occupy such homestead until the youngest child shall become twenty-one years of age and until the death of the widow; and no release or waiver of such exemption shall be valid.

Lot and residence of debtor occupied as a residence exempt from sale to value of \$1,000.

**64. SEC. 2.** That to entitle any property to such exemption, the conveyance of the same shall show that it is designed to be held as a homestead under this act, or if already purchased, or the conveyance does not show such design, a notice that the same is designed to be so held, shall be executed and acknowledged by the person owning the said property, which shall contain a full description thereof, and shall be recorded in the office of the clerk of the county in which the said property is situate, in a book to be provided for that purpose, and to be known as the "homestead exemption book;" and such notice and description, as aforesaid, shall also be published once in each week, for at least six weeks, in one or more public newspapers in the county in which such property is located; and if no newspaper be published in such county, then in a newspaper published nearest the same; but no property shall, by virtue of this act, be exempt from sale for non-payment of taxes or assessments, or for any labor done thereon, or materials furnished therefor, or for a debt contracted for the purchase thereof, or prior to the recording of the aforesaid deed of notice.

What requisite to entitle property to such exemption.

**65. SEC. 3.** That if, in the opinion of the officer holding an execution against such householder, the premises claimed by him or her as exempt are worth more than one thousand dollars, he shall summon six qualified jurors of the county, who shall, upon oath or affirmation, to be administered to them by such officer, appraise said premises; and if, in the opinion of the jury, the property may be divided without injury to the interests of the parties, they shall set off so much of said premises, including the dwelling-house, as in their opinion shall be worth one thousand dollars, and the residue of said premises may be advertised and sold by such sheriff.

Proceedings if officer of opinion that premises are worth over \$1,000.

**66. SEC. 4.** That in case the value of the premises shall, in the opinion of the jury, be more than one thousand dollars, and cannot be divided as provided for in the last section, they shall make and sign an appraisal of the value thereof, and deliver the same to the officer, who shall deliver a copy thereof to the execution debtor, or to some of his family, of a suitable age to understand the nature thereof, with a notice thereof attached, that unless the execution debtor shall pay to said officer the surplus over and above one thousand dollars within sixty days thereafter, such premises will be sold.

If property cannot be divided and surplus not paid, it may be sold.

**67. SEC. 5.** That in case such surplus shall not be paid within the said sixty days, it shall be lawful for the officer to advertise and sell the said premises, and out of the proceeds of such sale to pay such execution debtor the said sum of one thousand dollars, which shall be exempt from execution for one year thereafter, and apply the balance on such execution; *provided*, that no sale shall be made unless a greater sum than one thou-

Proceeds of sale, how disposed of.

sand dollars shall be bid therefor, in which case the officer may return the execution for want of property.

Costs of setting off homestead.

**68. SEC. 6.** That the costs and expenses of setting off such a homestead, as provided herein, shall be charged and included in the officer's bill of costs upon the said execution.

In case property declared a homestead it shall not be sold, aliened or incumbered by owner, &c.

**69. SEC. 7.** That in case any lot and buildings have been declared, according to the provisions of this act, a homestead, it shall be reserved as such for the use of the family, and shall not be sold, aliened, or incumbered by the owner thereof, nor leased for a longer term than one year; and any such sale, alienation, incumbrance or leasing shall be void, unless the same be made with the full consent of the wife or husband of said owner (if he or she have any), by deed duly acknowledged, and unless the consideration paid for the same be its full fair value, and the same, or one thousand dollars thereof, shall be actually invested in the purchase of other lands and buildings, declared to be a homestead in the manner herein provided; and the title of such purchaser shall not be good until such purchase-money is so invested, and also except in cases when such householder has removed out of the state, nor shall any homestead be rented out or leased for any time without the consent of the wife of the owner.

#### V. Miscellaneous acts.

##### An act relative to the printing of legal notices in the German language.(1)

P. L. 1876, p. 288.

Approved April 21, 1876.

When legal advertisement may be printed in German language.

**70. SEC. 1.** That whenever any legal advertisement or other legal notice, from any sheriff, surrogate, county clerk, or other officer of this state, shall be directed by such sheriff, surrogate, county clerk, or other officer of this state, to be printed and published in any newspaper printed and published in the German language, it may be lawful for such notice to be printed and published in the German language; *provided*, that every such notice shall be published in at least one newspaper in the English language.

Proviso.

##### An act empowering executors or trustees to sell and convey or mortgage land and real estate, where the same is incumbered by taxes or assessments, and to use the proceeds thereof in satisfaction of the same.

P. L. 1889, p. 57.

Approved March 18, 1889.

Executors and trustees may make application to court to sell, convey or mortgage lands.

**71. SEC. 1.** That whenever, by any last will or testament, lands and real estate are devised to, or whenever, by any deed, lands and real estate are conveyed to or are held by any executor or executors, trustee or trustees, in trust for any person or persons for life or until the happening of some event in such will or deed named, and said lands and real estate so devised or conveyed shall or have become chargeable with or liable to taxes or assessments, for the payment of which no adequate provision is made in such will, or afforded by the estate of the testator, or provided for in such deed, except out of the income from said lands and real estate, and the same have been sold or shall be liable to be sold for such taxes or assessments, by virtue of any laws of this state, whereby the interests of the owner or owners of the particular estate, or of the estate in remainder in said lands and real estate and named in said will or deed, may be injured or impaired, it shall be lawful for the executor or executors, trustee or trustees named in said will or deed, to make application by petition to the court of chancery, setting out the facts of the case, which said court, after making such inquiries in the circumstances of the case in such manner as they may direct, shall have power, if in their discretion they shall deem it proper, to make an order or decree directing said executor or executors, trustee or trustees, to sell and convey or mortgage said lands and real estate, whichever under the circumstances may be most beneficial to the parties interested; and

Court authorized to order executors and trustees to sell, convey and mortgage lands.

(1) Is this act in force? See P. L. 1891, p. 161, ch. XCV., which was repealed by P. L. 1894, p. 130, ch. LXXIX.

when such order or decree shall be made, the said executor or executors, trustee or trustees, or the survivors or survivor, may sell and convey or mortgage said lands and real estate, or such part thereof as may be necessary for the purpose, free, clear and discharged of any interest of said owners therein, and the proceeds of said sale or mortgage shall be applied to the payment and satisfaction of said taxes or assessments, and the surplus, if any, to be held by said executor or executors, trustee or trustees, subject to the provisions of said will or deed relating to said lands and real estate, in such manner as the chancellor shall direct.

Proceeds of sale,  
how applied.

**72. SEC. 2.** That all acts or parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act in relation to certain sales of lands, tenements, hereditaments or real estate, under any order, judgment or decree of any court of this state, or by any executor, trustee, assignee or other officer.

Approved May 16, 1894. P. L. 1894, p. 369.

Preamble.

WHEREAS, The provisions heretofore in force relative to the advertisement of sales of lands, tenements, hereditaments or real estate have not been in certain cases in all respects complied with, whereby the titles to certain lands, tenements, hereditaments or real estate are or may be alleged to be defective or uncertain ;

**73. SEC. 1.** That no sale of any lands, tenements, hereditaments or real estate made before this act goes into effect, under any order, judgment or decree of any court of this state, or by any executor, trustee, assignee or any other officer shall be invalidated by reason of any omission to advertise such sale, or any adjournment thereof, in the manner and for the length of time theretofore required by law, or by reason of any other irregularity or default in such advertisement ; but the purchaser of such lands, tenements, hereditaments, or real estate, having paid the price thereof, and having received his or her deed therefor, and his or her heirs and assigns, shall be deemed to have as good and complete a title thereto as if such sale or adjournment had been in all particulars advertised. (1)

Sales shall not be  
invalidated by  
failure to  
advertise, &c.

(1) It has not been deemed necessary to print all the acts validating sales of land. They will be found in the "omitted list," in "Appendix," at the end of the third volume of this work, under the title SALES OF LANDS.

## Savings Banks.

### I. SAVINGS BANKS.

1. General corporate powers.
2. Number required to form organization.
3. Certificate of organization, what to contain.
4. Duplicate certificate to be filed.
5. Notice of intention.
6. Secretary of state to indorse and file certificate.
7. Certificate not to be filed unless in conformity with act.
8. State board, how constituted ; duties of board.
9. State board may issue certificate of authorization.
10. Certificate to be transmitted to secretary of state.
11. Board may refuse to issue certificate.
12. Upon filing certificate, persons named therein a body politic, &c.
13. When to receive deposits.
14. When notice to be given of organization and commencement of business.
15. First managers.
16. Board of managers to elect officers.
17. May make by-laws.
18. Business meetings of managers.
19. Amended by section 68.
20. Managers may require security from officers.
21. Manager not to have any interest save as depositor.
22. Deposits.
23. Repayment of money to depositors.
24. Minors and married women may make deposits free from any control save lien of creditors.
25. When wife may be witness.
26. Manner of investment of deposits.
27. Amended by section 69.
28. Deposits may be made temporarily in banks.
29. Deposits not to be loaned on notes, bills, &c.
30. Policies of insurance to be assigned by mortgagors.
31. Dealings or trading prohibited.
32. Rates of interest or dividends to depositors.
33. Per centum of surplus, how determined.
34. Amended by section 70.
35. Managers to examine books and vouchers.
36. Annual report to secretary of state.
37. What report to contain as to investments.
38. Report shall state all liabilities.
39. Report to be verified by oath.
40. Penalty for failure to furnish report.
41. Annual report to legislature, &c., not required, except as provided.
42. Secretary of state to make statement of condition of such corporations.
43. Secretary of state to examine corporations.
44. Proceedings in case of violation of charter.
45. Amended by section 77.
46. Penalty for soliciting or receiving deposits by unauthorized corporations.