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Presumptions upon Sales of Land in Probate Court

Oscar C. Ronken

PRESUMPTIONS UPON SALES OF LAND IN PROBATE COURT

By Oscar C. Ronken*

The probate courts of this state are courts of record and of superior jurisdiction. Their records import absolute verity. Their proceedings possess the same presumptions of jurisdiction and regularity possessed by superior courts of common law jurisdiction, and their records and judgments cannot be impeached in collateral proceedings.[1]

To this general rule, however, there are certain exceptions. These follow from section 7369, General Statutes 1913, which is as follows:

"In case of an action relating to any estate sold by a representative in which an heir or person claiming under the decedent, or a ward or person claiming under him, shall contest the validity of the same, it shall not be avoided on account of any irregularity in the proceedings if it appears:

1. That the representative was licensed to make the sale by the probate court having jurisdiction.
2. That he gave a bond which was approved by the court.
3. That he took the oath prescribed in this chapter.
4. That he gave notice of the time and place of sale as in this chapter prescribed, if such notice was required by the order of license.
5. That the premises were sold in the manner required by the order of license, and the sale confirmed by the court, and that they are held by one who purchased them in good faith."

The effect of this statute is to abolish the usual presumptions in so far as these five points are concerned. As to these, the proceeding cannot be aided by any presumption, but must stand or fall solely by the matter contained in the record. Upon these points, the proceeding may be questioned collaterally, and the proceeding must fail unless the record itself affirmatively shows a full and complete compliance with the law.[2]

Some curious results follow from this statute. The bond is for the benefit of those who are entitled to the proceeds of the sale, and not for the benefit of the purchaser. Aside from this

*Of the Rochester, Minnesota, Bar.

[1]Minn., constitution, art. 6, p. 7; Dayton v. Mintzer, (1876) 22 Minn. 393; Kurtz v. St. Paul & Duluth Ry. Co., (1895) 61 Minn. 18, 63 N.W. 1.

[2]Babcock v. Cobb, (1866) 11 Minn. 347; Cater v. Steeves, (1905) 95 Minn. 225, 103 N.W. 885.

statute, it would seem, therefore, that where a sale has been made and the proceeds properly accounted for, it would be immaterial that a bond had not been made and filed. But under this statute, though the proceeds have been properly accounted for, the sale, when attacked, must be set aside if the record fails to show affirmatively that a bond was in fact made and filed.[3] The taking of the oath is for the purpose of greater certainty that the executor and administrator will faithfully execute his trust. But under this statute, though the representative has executed his trust with the most scrupulous fidelity, and though the sale has been confirmed by the court, yet it must be set aside, when questioned, if the record fails to show affirmatively that the oath was taken.[4]

If on the other hand an objection is made to the sale because of failure to give notice of the appointment of a guardian who has undertaken to sell land,[5] or because of the failure to give the prescribed notice for a hearing on the petition for license to sell land,[6] or to the allowance of claims not properly allowable against the estate,[7] or to the failure to post notices in three of the most public places in the city,[8] the objection cannot be heard unless on an appeal or in an action brought directly for the purpose of setting the sale aside. Notice is generally considered as of fundamental importance in any legal proceeding; but under this statute it seems that the fundamentals may be supplied by presumption, while the absence from the record of trivial details renders the entire proceeding utterly void.

Clearly, these results could not have been intended. Why, then, was this statute passed? A brief review of the history of this piece of legislation will shed some light on this question. As this statute found its way into our laws from the state of Massachusetts, a reference to its history in that state will also be necessary.

By the charter granted to Massachusetts Bay colony by William and Mary in 1691 it was provided:

"And we do of our further Grace, certain knowledge and mere motion, grant, establish, and ordain, for us, our heirs and successors, that the Great and General Court or Assembly of our said province or territory for the time being, convened as afore-

[3]Babcock v. Cobb, (1866) 11 Minn. 347.
[4]Hugo v. Miller, (1892) 50 Minn. 105, 52 N.W. 381.
[5]Davis v. Hudson, (1881) 29 Minn. 27, 11 N.W. 136.
[6]Dayton v. Mintzer, (1876) 22 Minn. 393.
[7]O'Brien v. Larson, (1898) 71 Minn. 371, 74 N.W. 148.
[8]Hugo v. Miller, (1892) 50 Minn. 105, 52 N.W. 381.

said, shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of us, our heirs and successors, for the hearing, trying and determining of all manner of crimes, offences, pleas, proceedings, plaints, actions, matters, causes and things whatsoever, arising or happening within our said province or territory, or between persons inhabiting or residing there, whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixed. . . .

"And we do for us, our heirs and successors grant, establish and ordain that the governor of our said province or territory for the time being, with the counsel or Associates, may do, execute or perform all that is necessary for the probate of wills, and granting of administration for, locating or concerning any interest or estate which any person or persons shall have within our said province or territory."

By this provision, then, the probating of wills, or the granting of administration, was not intrusted to any court to be established; it was simply made a part of the duties of the governor of the colony and his associates. An attempt was made to pass a law providing for county courts of probate, but it was vetoed by the crown. In this way matters stood until after the beginning of the Revolution. Under this organization, what was called courts of probate was established and judges of probate appointed. But although the term court was used, it is apparent that the judges of probate were in fact only surrogates of the governor and his associates.[9] There was up to this time no statute prescribing or regulating their powers.

In 1780 a constitution was adopted providing for judges of probate who "shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require." There was provision for an appeal to the governor and his associates. Then came the enactment of chapter 47, Laws of 1784. This law provided for the establishment of courts of probate, the appointment of judges and registers of probate, and prescribed their jurisdiction, and vested them with full authority to carry it into effect. By its provisions, appeal no longer lay to the governor and his associates, but to the supreme court of probate of the commonwealth. The act provided that the supreme judicial court should also be the supreme court of probate. By virtue of this act, the organization of the probate courts was complete, and from this time on the probating of wills and the granting of

[9]See note 10.

administration were proceedings conducted exclusively by them, and were no longer prerogatives of the office of the governor and his associates.

It is easy to see from this beginning of the courts of probate in the state of Massachusetts that they could not be regarded in any other light than that of courts of inferior and limited jurisdiction, and as such they were in fact regarded from their beginning until the enactment of chapter 415, Laws of 1891; Revised Laws, chapter 162, paragraph 2. Their records did not import absolute verity. There was no presumption in favor of their jurisdiction, or the regularity of their proceedings and decrees in case the record was silent in essential particulars. It was the accepted doctrine that all the requirements of the statute relating to the sale of real estate in probate court must be substantially complied with, or the proceedings were open to collateral attack.[10]

This was still the rule when chapter 71, paragraph 38, Revised Statutes 1836, was enacted. It was in form and substance like the one found in our own statutes, and quoted above. It was plainly a remedial statute, designed for the purpose of limiting to some extent the scope of the collateral inquiry in such cases. When applied to such a situation it gave to titles so acquired a certain degree of repose and certainty which they otherwise would not have had.

This statute in substantially its original form found its way from Massachusetts into the laws of the state of Michigan, and from there into the laws of the state of Wisconsin, where it was in force at the time the state was admitted into the Union. Minnesota was organized as a territory in 1848. The organic act provided:

"The laws in force in the territory of Wisconsin at the date of the admission of the state of Wisconsin shall continue to be valid and operative therein so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed by the governor and legislative assembly of the said territory of Minnesota."[11]

Thus the statute became a law of the territory of Minnesota when it was first organized. It was re-enacted by one of the first legislatures of the territory and became Chapter 61 of the Laws of 1851.

[10]Peters v. Peters, (1851) 8 Cush. (Mass.) 529; Wales v. Willard, (1806) 2 Mass. 119; Chase v. Hathaway, (1817) 14 Mass. 222.

[11]Organic act, par. 12.

The organic act, which made the laws of the territory of Wisconsin applicable to the territory of Minnesota, also provided for probate courts for the territory. It provided:

"The judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. . . . The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law."[12]

Under this provision the probate courts of the territory were not courts of superior jurisdiction. The presumption of verity and regularity of their records and proceedings did not obtain. The propriety and utility of the statute in question during this period of time is therefore apparent. But when the constitution was adopted it provided:

"There shall be established in each organized county in the state a probate court, which shall be a court of record. . . . A probate court shall have jurisdiction over the estates of deceased persons, and persons under guardianship."[13]

It is now well established that the probate courts thus created by the constitution are courts of superior jurisdiction, whose records and proceedings are protected by the presumptions of verity and regularity. Yet, probably influenced by the fact that they were not so considered at their inception, it seems to have remained doubtful for some time whether they were or were not of superior jurisdiction. It was not until the decision in the case of *Davis v. Hudson,*[14] that the doctrine of superior jurisdiction was firmly established.[15]

Notwithstanding the change that has thus occurred in the constitution of the probate courts of this state since the enactment of this statute, it has been permitted to remain unchanged on the statute books to this day. In its inception it was meant to give repose and certainty to titles derived through sales in probate court, and as long as the probate courts of this state were considered inferior and without protecting presumptions, it had that effect. But since these courts became courts of superior jurisdiction, whose records and proceedings are protected by presumptions of verity and regularity, the effect of this statute is just the reverse. Instead of closing the door to collateral attack, it opens it. Instead of limiting the inquiry, it makes new oppor-

[12]Organic act, par. 9.
[13]Minn. Constitution, art. 6, par. 7.
[14](1881) 29 Minn. 27, 11 N.W. 136.
[15]Buntin v. Root, (1896) 66 Minn. 454, 69 N.W. 330.

tunities for inquiry. Instead of giving real estate titles derived through probate sales repose and certainty, it gives them uncertainty.

An impressive number of titles are derived through sales in probate court. They should be made as certain as it is possible to make them consistent with the rights of those who may have an interest to protect. All the presumptions of jurisdiction and regularity attaching to other proceedings of a probate court should also attach to real estate sales. The same presumption that would attach to a sale in district court should also attach to one in probate court. But for this statute such would be the case. The statute has failed of its original purpose and should be repealed. Thereupon the presumptions of verity and regularity attaching to proceedings in courts of superior jurisdiction would attach to sales of real estate in probate court, and would give them the same degree of security that is given to sales of real estate in district court.