

Chapter 114

Administration of Estates Generally

114.005 to 114.085

LAW REVIEW CITATIONS: 6 WLJ 449-483.

114.015

NOTES OF DECISIONS

1. Under former similar statute

The right of the probate court to make an order allowing an amount for the support of the widow could not be controverted, when it sufficiently appeared that the estate was sufficient to satisfy all debts and pay the expenses of administration. *Re Dekum's Estate*, (1895) 28 Or 97, 41 P 159.

The rights of a widow to maintenance allowance was, under former statute, withheld from a surviving spouse who feloniously caused the death of a decedent. *Wenker v. Landon*, (1939) 161 Or 265, 88 P2d 971.

An allowance of \$1,000 to a widow who was not well was not excessive where there was no homestead exemption and the estate amounted to \$3,795.27, mostly cash. *Ballard v. Mays*, (1947) 181 Or 7, 179 P2d 732.

A widow did not waive her right to a widow's allowance where she had involuntarily left her husband 12 years prior to his death because of his cruel and inhuman treatment and where if properly treated, she had been willing to return. *Id.*

The surviving spouse did not have to reside with the deceased spouse at the time of death in order to be eligible for support under the statute. *Aamoth v. Larson*, (1953) 197 Or 267, 253 P2d 268, 34 ALR2d 1051.

Value of the widow's separate property, however great or derived, whether cash or not, was not in itself a basis for determining the amount of her allowance, although the income from such property could form a basis. *Booth v. First Nat. Bank*, (1960) 220 Or 534, 349 P2d 840.

The right to a widow's allowance was a mere privilege and did not create a property right which would pass to her heirs unless she exercised her privilege and property was set aside during her lifetime. *United States Nat. Bank v. United States*, (1960) 188 F Supp 332.

FURTHER CITATIONS: *Leonard v. Grant*, (1880) 8 Or 276; *Luverne Holding Co. v. Mead*, (1934) 147 Or 400, 34 P2d 346; *In re Shepherd's Estate*, (1935) 152 Or 15, 41 P2d 444, 49 P2d 448; *In re Hattrem's Estate*, (1943) 170 Or 652, 135 P2d 792; *Biersdorf v. Putnam*, (1947) 181 Or 522, 182 P2d 992; *Windle v. Flinn*, (1952) 196 Or 654, 251 P2d 136; *Walker v. Sherriff*, (1970) 2 Or App 322, 468 P2d 655.

ATTY. GEN. OPINIONS: Widow's allowance as a deduction from gross estate of decedent for tax purposes, 1942-44, p 466.

114.025

CASE CITATIONS: *Leonard v. Grant*, (1880) 8 Or 276; *McAtee v. McAtee*, (1893) 23 Or 469, 32 P 297; *Iltz v. Krieger*, (1922) 104 Or 59, 202 P 409, 206 P 550; *Ferguson v. Holborn*,

(1923) 106 Or 566, 211 P 953; *Kane v. Kane*, (1930) 134 Or 79, 291 P 785; *Moody v. Baker*, (1933) 142 Or 559, 20 P2d 1069; *In re Potter's Estate*, (1936) 154 Or 167, 59 P2d 253; *In re Lewis' Estate*, (1939) 160 Or 496, 85 P2d 1032; *Biersdorf v. Putnam*, (1947) 181 Or 522, 182 P2d 992; *Jenning v. Jenning*, (1953) 197 Or 366, 253 P2d 276; *Benedict v. Lee*, (1953) 198 Or 378, 256 P2d 507; *McCan v. First Nat. Bank*, (1956) 139 F Supp 224; *Pfifer v. First Nat. Bank*, (1963) 235 Or 561, 385 P2d 1007; *McFadden v. McFadden*, (1964) 237 Or 125, 390 P2d 671.

ATTY. GEN. OPINIONS: Homestead as a deduction from gross estate of decedent for tax purposes, 1920-22, p 561, 1938-40, p 507, 1940-42, p 278, 1942-44, p 466; homestead set apart without authority as security for loan, 1928-30, p 157; authority to set homestead apart, 1928-30, p 185; application of section to certain social security payments, 1936-38, p 590; claims for old-age assistance being paid from homestead exemptions, 1938-40, p 552.

LAW REVIEW CITATIONS: 34 OLR 1.

114.035

NOTES OF DECISIONS

Under former similar statute, whether the widow occupied the premises under the statute or adversely under a claim of title was a question of fact. *Clark v. Bundy*, (1896) 29 Or 190, 44 P 282.

FURTHER CITATIONS: *Leonard v. Grant*, (1880) 8 Or 276, 278; *Aiken v. Aiken*, (1885) 12 Or 203, 6 P 682; *Re Dekum's Estate*, (1895) 28 Or 97, 41 P 159; *McCan v. First Nat. Bank*, (1956) 139 F Supp 224.

LAW REVIEW CITATIONS: 16 OLR 271.

114.055

NOTES OF DECISIONS

The purpose of a former similar statute to make provision for the support and maintenance of the family, those demands of the family being deemed superior to those of heirs or creditors, and the statute was liberally construed to attain its objectives. *Brown v. Miles*, (1951) 193 Or 466, 238 P2d 761.

FURTHER CITATIONS: *Wycoff v. Snapp*, (1914) 72 Or 234, 143 P 902; *In re Frizzell's Estate*, (1920) 95 Or 681, 188 P 707; *Iltz v. Krieger*, (1922) 104 Or 59, 202 P 409, 206 P 550; *Leet v. Barr*, (1922) 104 Or 32, 202 P 414, 206 P 548; *Ferguson v. Holborn*, (1923) 106 Or 566, 211 P 953; *Glover v. Glover*, (1923) 108 Or 61, 215 P 990; *Slattery v. Newell*, (1925) 115 Or 22, 236 P 268; *Overland v. Jackson*, (1929) 128 Or 455, 275 P 21; *In re Estate of Brizzolari*, (1929) 129 Or 307, 275 P 17; *Banfield v. Schulderman*, (1931) 137 Or 167, 296 P 1066, 298 P 905, 89 ALR 504; *Banfield v. Small*, (1932) 139 Or 134, 8 P2d 779; *In re Potter's Estate*, (1936) 154 Or 167, 59 P2d 253; *Winslow v. Becker*, (1936) 154 Or

336, 58 P2d 620; In re Dunlap's Estate, (1939) 161 Or 93, 87 P2d 225; Wenker v. Landon, (1939) 161 Or 265, 88 P2d 971; Kinney v. Uglow, (1940) 163 Or 539, 98 P2d 1006; Benedict v. Lee, (1953) 198 Or 378, 256 P2d 507; Moore v. Schermerhorn, (1957) 210 Or 23, 307 P2d 483, 308 P2d 180; United States Nat. Bank v. United States, (1960) 188 F Supp 332; Kosik v. George, (1969) 253 Or 15, 452 P2d 560; Walker v. Sherriff, (1970) 2 Or App 322, 468 P2d 655.

114.075

CASE CITATIONS: Mansfield v. Hill, (1910) 56 Or 400, 107 P 471, 108 P 1007; Wycoff v. Snapp, (1914) 72 Or 234, 143 P 902; In re Frizzell's Estate, (1920) 95 Or 681, 188 P 707; Leet v. Barr, (1922) 104 Or 32, 202 P 414, 206 P 548; Iltz v. Krieger, (1922) 104 Or 59, 202 P 409, 206 P 550; Kane v. Kane, (1930) 134 Or 79, 291 P 785; Banfield v. Schulderman, (1931) 137 Or 167, 296 P 1066, 298 P 905; Banfield v. Small, (1932) 139 Or 134, 8 P2d 779; Stewart v. Black, (1933) 143 Or 291, 22 P2d 336; In re Potter's Estate, (1936) 154 Or 167, 59 P2d 253; In re Dunlap's Estate, (1939) 161 Or 93, 87 P2d 899; Kinney v. Uglow, (1940) 163 Or 539, 98 P2d 1006; Brown v. Miles, (1951) 193 Or 466, 238 P2d 761; Jenning v. Jenning, (1953) 197 Or 366, 253 P2d 276; Varner v. Portland Trust Bank, (1957) 210 Or 658, 313 P2d 444.

ATTY. GEN. OPINIONS: Value of homestead as a deduction from gross value of estate for tax purposes, 1920-22, p 561; authority of probate court to set apart homesteads, 1928-30, p 185; when homestead conveyed in contemplation of death is exempt from estate taxation, 1938-40, p 507, 1940-42, p 278; claim for old-age assistance being paid from homestead exemptions, 1938-40, p 552.

LAW REVIEW CITATIONS: 20 OLR 328; 34 OLR 1.

114.105 to 114.165

LAW REVIEW CITATIONS: 6 WLJ 449-483.

114.205

LAW REVIEW CITATIONS: 6 WLJ 450.

114.215

NOTES OF DECISIONS

1. Under former similar statute

The executor or administrator had no such legal estate in the property as would enable him to maintain ejectment. Humphreys v. Taylor, (1874) 5 Or 260; Kohn v. McKinnon, (1898) 90 Fed 623.

Title to real property of the intestate descended at once and directly to the heirs. State v. O'Day, (1902) 41 Or 495, 69 P 542; Murphy v. Tillson, (1913) 64 Or 558, 130 P 637.

Subject to the administrator's possession to pay debts, the title to realty passed directly to the heirs as tenants in common. De Bow v. Wollenberg, (1908) 52 Or 404, 96 P 536, 97 P 717; In re Witherill's Estate, (1946) 178 Or 253, 166 P2d 129.

The title to realty passed to devisees or heirs subject only to the right of the executor or administrator to the possession thereof for the payment of debts and bequests of the decedent. Blake v. Blake, (1934) 147 Or 43, 31 P2d 768; In re Witherill's Estate, (1946) 178 Or 253, 166 P2d 129; Hindman v. United States, (1950) 190 Or 63, 223 P2d 393.

If the administrator took actual possession, the running of the statute of limitations against the heir was suspended during such possession; but the mere appointment of the administrator did not affect the operation of the statute. Clark v. Bundy, (1896) 29 Or 190, 44 P 282.

An executor was a proper party defendant to a suit to

enforce an alleged oral contract by decedent to sell land. Goff v. Kelsey, (1915) 78 Or 337, 153 P 103.

An administratrix could lease premises to a third person. Boyer v. Anduiza, (1918) 90 Or 163, 175 P 853.

An executor or administrator had the right to possession of realty belonging to the estate. Banfield v. Schulderman, (1931) 137 Or 256, 299 P 323, 3 P2d 116, 89 ALR 504.

Title to realty having vested in the devisee could not be divested by a waiver or renunciation in favor of another nor by the order of the probate court based upon such waiver or renunciation distributing the property to the person in whose favor it was made. Blake v. Blake, (1934) 147 Or 43, 31 P2d 768.

Upon the death of the owner testate, the title passed to his devisees. Id.

The heir was the owner subject by statute only to the lien of such debts as could be proved against the estate and not solvable from personal property. D'Arcy v. Snell, (1939) 162 Or 351, 91 P2d 537.

Title, having vested in the devisee, could not be divested by a waiver in favor of another nor by the order of the probate court based upon such waiver. Id.

FURTHER CITATIONS: Hanner v. Silver, (1868) 2 Or 336; Leonard v. Grant, (1880) 8 Or 276; Butler v. Smith, (1890) 20 Or 126, 25 P 381; In re John's Will, (1896) 30 Or 494, 47 P 341, 50 P 226, 36 LRA 242; State v. O'Day, (1902) 41 Or 495, 69 P 542; Casto v. Murray, (1905) 47 Or 57, 81 P 388, 883; In re Noon's Estate, (1907) 49 Or 286, 88 P 673, 90 P 673; De Bow v. Wollenberg, (1908) 52 Or 404, 96 P 717; Thorsen v. Hooper, (1910) 57 Or 75, 109 P 388; Murphy v. Tillson, (1913) 64 Or 558, 130 P 637; Hadley v. Hadley, (1914) 73 Or 179, 144 P 80; Mahon v. Harney County Nat. Bank, (1922) 104 Or 323; 206 P 224; Re Faling Estate, (1924) 113 Or 6, 228 P 821, 231 P 148; Security Inv. Co. v. Miller, (1950) 189 Or 246, 218 P2d 966.

LAW REVIEW CITATIONS: 49 OLR 348, 353-356, 371.

114.225

NOTES OF DECISIONS

The possession of the executor or administrator could be tacked to that of his decedent in order to establish an estate by adverse possession. Rowland v. Williams, (1893) 23 Or 515, 32 P 402.

The heir was entitled to possession unless the administrator took actual possession and then the running of the statute of limitations against the heir was suspended; but the mere appointment of the administrator did not affect the operation of the statute. Clark v. Bundy, (1896) 29 Or 190, 44 P 282.

The administrator of a purchaser in possession of realty in pursuance of a contract was entitled to possession. Zeuske v. Zeuske, (1912) 62 Or 46, 124 P 203.

FURTHER CITATIONS: Hillman v. Young, (1913) 64 Or 73, 127 P 793, 129 P 124; Stadelman v. Miner, (1917) 83 Or 348, 155 P 708, 163 P 585, 983; Brown v. Laird, (1930) 134 Or 150, 291 P 352, 73 ALR 877; Banfield v. Schulderman, (1931) 137 Or 256, 299 P 323, 3 P2d 116; Staiger v. Holman, (1933) 144 Or 67, 6 P2d 43, 18 P2d 591, 23 P2d 917; In re Going's Estate, (1948) 183 Or 346, 193 P2d 529; State v. Black, (1951) 193 Or 295, 236 P2d 326.

ATTY. GEN. OPINIONS: Possession of money recovered for wrongful death under Federal Employers' Liability Act, 1924-26, p 263; validity of sale of realty by administrator, 1930-32, p 623.

114.265

NOTES OF DECISIONS

1. Under former similar statute

An administrator or executor was a quasi trustee and should be a person who, while guarding the interests of the estate, would stand at least indifferent between it and claimants of the property. In re Mills' Estate, (1892) 22 Or 210, 29 P 443.

Suit to quiet title could be maintained by the administrator. Ladd v. Mills, (1904) 44 Or 224, 75 P 141.

In the absence of statutory provisions touching the method of investment, executors and administrators were bound to employ in the investment of the funds of the estate such prudence and diligence as prudent men of intelligence and discretion employ in their own affairs. In re Roach's Estate, (1907) 50 Or 179, 92 P 118.

The loss of trust funds lent without any security or on manifestly inadequate security rendered an executor personally liable. Id.

A devisee could not maintain ejectment until the estate was settled and the administration closed. Bilger v. Nunam, (1912) 118 CCA 23, 199 Fed 549.

An administratrix could lease the realty and transfer possession thereunder. Boyer v. Anduiza, (1918) 90 Or 163, 175 P 853.

FURTHER CITATIONS: Hanner v. Silver, (1868) 2 Or 336; In re Witherill's Estate, (1946) 178 Or 253, 166 P2d 129.

LAW REVIEW CITATIONS: 49 OLR 348.

114.275

LAW REVIEW CITATIONS: 49 OLR 349, 352, 364-367.

114.285

NOTES OF DECISIONS

1. Under former similar statute

An executor should be charged on the settlement of his final accounts with all debts due from him to the testator as so much money in his hands. In re Mason's Estate, (1902) 42 Or 177, 70 P 507, 95 Am St Rep 734; United Brethren v. Akin, (1904) 45 Or 247, 77 P 748, 2 Ann Cas 353, 66 LRA 654.

An executor's note given to a testatrix prior to her death was not transmuted into money by appointment as executor under the statute so as to pass under a specific bequest to the executor as cash on hand. Banfield v. Schulderman, (1931) 137 Or 256, 299 P 323, 3 P2d 116, 89 ALR 504.

The purpose of the statute was to prevent a debtor of an estate from avoiding payment of his debt by accepting an appointment as executor. Id.

114.305

NOTES OF DECISIONS

1. Under former similar statute

(1) **Similar to subsection (4).** Where plaintiff sought specific performance of an alleged oral contract by deceased to sell land, the statute was not clearly invoked by the plaintiff imploding the executrix. Goff v. Kelsey, (1915) 78 Or 337, 153 P 103.

Petition failed to sustain burden of proof of payment under written contract to convey where he invoked the statute. In re Scramlin's Estate, (1944) 173 Or 143, 144 P2d 324.

(2) **Similar to subsection (14).** The statute authorizing executors and administrators to mortgage the real property of estates conferred also the authority to execute a promissory note for the loan with such provisions as were in

common use in the community. Lawrey v. Sterling, (1902) 41 Or 518, 69 P 460.

An order authorizing an administrator to mortgage the real property of an estate was not subject to collateral attack as being excessive in amount. Id.

Authority of an estate's representative to borrow money with which to discharge a homestead interest could be conferred by stipulation. In re Baker's Estate, (1937) 156 Or 256, 67 P2d 185.

(3) **Similar to subsection (15).** The power of an administrator as to unliquidated claims for damages remained as at common law; he could liquidate and accept settlement of such a claim without authority from the county court. Olston v. Ore. Water Power & Ry., (1908) 52 Or 343, 96 P 1095, 97 P 538, 20 LRA(NS) 915.

An administrator could not sue for or settle a claim under the Employers' Liability Act for the death of his intestate; that right was vested by law in the surviving widow. Franciscovich v. Walton, (1915) 77 Or 36, 150 P 261.

FURTHER CITATIONS: Re Estate of Denning, (1924) 112 Or 621, 229 P 912; Bank of Commerce v. Ryan, (1936) 152 Or 614, 52 P2d 1139; Lelek v. Hemshorn, (1948) 184 Or 364, 198 P2d 597.

ATTY. GEN. OPINIONS: Whether a renewal of mortgage was within section, 1924-26, p 620; conveyance by administrator of land sold under fully performed contract of sale, 1926-28, p 37; renewal of loan by executrix, 1928-30, p 603.

LAW REVIEW CITATIONS: 49 OLR 350, 351.

114.325

NOTES OF DECISIONS

1. Under former similar statute

- (1) In general
- (2) Application for order of sale
- (3) Citation to interested persons
- (4) Sales by personal representative

1. Under former similar statute

(1) **In general.** A claim for the payment of which real property could be ordered sold had to be based upon the personal obligation or liability of the decedent and must have accrued against him during his life or been of such a nature that it would have accrued against him had he lived. Weill v. Clark's Estate, (1881) 9 Or 387.

The common-law power of the executor or administrator to sell or dispose of the visible and tangible personal property of the decedent was curtailed by the statute. Weider v. Osborn, (1891) 20 Or 307, 25 P 715.

The settlement of the estate so as to show whether there was any residue of estate to pass after paying claims was prerequisite to judgment of escheat. Oregon v. Simmons, (1905) 46 Or 159, 79 P 498.

The debts of the testator which were secured by mortgage had to be satisfied first out of the mortgaged property. Howe v. Kern, (1912) 63 Or 487, 125 P 834, 128 P 818.

Taxes accruing after the death of the owner would not justify an order for the sale of real estate by an administrator. In re Webster's Estate, (1915) 74 Or 489, 495, 145 P 1063.

The administrator had no authority to enter into a contract not amounting to a sale of the property. Fry v. Bryant, (1940) 165 Or 61, 103 P2d 760.

Where defendant's judgment lien was not mentioned in the administrator's petition for sale of realty, and citation was not served nor did defendant appear, the lien was not affected by the sale. Petke v. Pratt, (1942) 168 Or 425, 123 P2d 797.

(2) **Application for order of sale.** The jurisdictional power of the probate court to issue an order of sale was invoked

by the averment of facts in the verified petition. *Wright v. Edwards*, (1882) 10 Or 298; *Browne v. Coleman*, (1912) 62 Or 454, 125 P 278.

The executor or administrator did not need to apply to the court to sell choses in action and negotiable instruments. *Weider v. Osborn*, (1891) 20 Or 307, 25 P 715; *Hofer v. Gofner*, (1930) 134 Or 46, 292 P 1027.

A sale of real property was not necessarily void although the petition for the order of sale, the citation to the heirs, and the service of the citation, were defective. *Mitchell v. Campbell*, (1890) 19 Or 198, 24 P 455.

(3) **Citation to interested persons.** The service of citation upon heirs and devisees was essential to the validity of an order of sale of realty to pay debts of the estate. *Fiske v. Kellog*, (1869) 3 Or 503; *Wright v. Edwards*, (1882) 10 Or 298; *Smith v. Whiting*, (1910) 55 Or 393, 106 P 791; *Browne v. Coleman*, (1912) 62 Or 454, 125 P 278; *Gregory v. Keenan*, (1919) 256 Fed 949.

(4) **Sales by personal representative.** When the sale was void merely in consequence of a failure to comply with the statutory conditions, the legislature could by the adoption of a statute legalize it. *Mitchell v. Campbell*, (1890) 19 Or 198, 24 P 455.

Where the administrator had received and misappropriated a part of the purchase price, the administrator *de bonis non* could be held liable only for the balance of the price which he had received; the purchaser was entitled to a deed upon the payment of the balance of the price. *Dray v. Bloch*, (1895) 27 Or 549, 41 P 660.

One who paid money on a legitimate transfer of property by an executor or trustee was not bound to see that it was rightfully applied; but if the transfer appeared by the record to be unauthorized he took nothing. *Beakey v. Knutson*, (1919) 90 Or 574, 174 P 1149, 177 P 955.

An executor's conveyance did not comply with the conditions of a contract calling for a marketable title unless it was established that he had good title and a right to convey. *Thorp v. Rutherford*, (1935) 150 Or 157, 43 P2d 907.

FURTHER CITATIONS: *Russell v. Lewis*, (1871) 3 Or 380; *Levy v. Riley*, (1873) 4 Or 392; *Tustin v. Gaunt*, (1873) 4 Or 305; *Humphreys v. Taylor*, (1874) 5 Or 260; *Gager v. Henry*, (1878) 5 Sawy 237, Fed Cas No. 5172; *Brown v. Brown*, (1879) 7 Or 285; *Winkle*, (1879) 8 Or 193; *Sprigg v. Stump*, (1881) 7 Sawy 280, 8 Fed 207; *Northrup v. Marquam*, (1888) 16 Or 173, 18 P 449; *Re Estate of Houck & Meyer*, (1888) 23 Or 10, 17 P 461; *Worley v. Taylor*, (1892) 21 Or 589, 28 P 903, 28 Am St Rep 771; *House v. Fowle*, (1892) 22 Or 303, 29 P 890; *In re John's Will*, (1896) 30 Or 494, 47 P 341, 50 P 226, 36 LRA 242; *In re Osburn's Estate*, (1899) 36 Or 8, 58 P 521; *Steel v. Holladay*, (1890) 20 Or 70, 25 P 69, 10 LRA 670; *In re Smith's Estate*, (1903) 43 Or 595, 73 P 336, 75 P 133; *Haun v. Martin*, (1906) 48 Or 304, 86 P 371; *In re Noon's Estate*, (1907) 49 Or 286, 88 P 673, 90 P 673; *Roach's Estate*, (1907) 50 Or 179, 92 P 118; *Olston v. Ore. Water Power & Ry.*, (1908) 52 Or 343, 96 P 1095, 97 P 538, 20 LRA(NS) 915; *Zeuske v. Zeuske*, (1912) 62 Or 46, 124 P 203; *Seidel v. Chick*, (1913) 64 Or 321, 130 P 53; *Yeaton v. Barnhart*, (1915) 78 Or 249, 150 P 742, 152 P 1192; *Jones v. Ross*, (1917) 82 Or 706, 162 P 974; *Stadelman v. Miner*, (1917) 83 Or 348, 155 P 708, 163 P 585, 983; *Finley v. Morrison*, (1918) 87 Or 160, 169 P 781; *Gregory v. Keenan*, (1919) 256 Fed 949; *Grignon v. Shope*, (1921) 100 Or 611, 197 P 317, 198 P 520; *Re Estate of Denning*, (1924) 112 Or 621, 229 P 912; *Re Dixon Estate*, (1925) 114 Or 349, 234 P 1106; *Mumper v. Matthes*, (1949) 186 Or 357, 206 P2d 82; *Jamieson v. Hanna*, (1950) 189 Or 177, 217 P2d 780; *Henderson v. State Tax Comm.*, (1963) 1 OTR 390; *Russell v. Congregation Neveh Zedeck*, (1964) 236 Or 291, 388 P2d 272.

ATTY. GEN. OPINIONS: Attempted sale of realty for purposes other than the payment of claims, 1930-32, p 623;

application of section to sale by executor where sale is commanded by the will, 1936-38, p 259; sufficiency of petition for sale of real property to the state, service of citation on spouse of heir and incompetent heirs, 1936-38, p 281; effect of postponement of sale of realty by executor, 1936-38, p 365; validity of constructive service on nonresident alien enemies, 1944-46, p 282.

LAW REVIEW CITATIONS: 17 OLR 326; 49 OLR 345-372.

114.335

NOTES OF DECISIONS

Under former similar statute, the order to sell was the judgment in the proceeding. *Wright v. Edwards*, (1882) 10 Or 298; *Browne v. Coleman*, (1912) 62 Or 454, 125 P 278.

114.355

NOTES OF DECISIONS

1. Under former similar statute

Purchase by the executor or administrator from an heir or legatee was not prohibited. *Lombard v. Carter*, (1899) 36 Or 266, 59 P 473; *First Nat. Bank v. Connolly*, (1943) 172 Or 434, 138 P2d 613, 143 P2d 243; *Mills v. Mills*, (1893) 57 Fed 873.

A sale of decedent's interest in partnership estate by executors to one of them who was decedent's partner was void. *Adams v. Kennard*, (1927) 122 Or 84, 222 P 1092, 227 P 738, 253 P 1048; *Young v. Lee*, (1929) 132 Or 1, 271 P 994, 279 P 850, 280 P 342.

Sales to himself by an administrator or executor were absolutely void although a fair price may have been paid. *Wells v. Wood*, (1928) 125 Or 38, 263 P 54; *Young v. Lee*, (1929) 132 Or 1, 271 P 994, 279 P 850, 280 P 342.

An executor or administrator was held to strict compliance with the statute. *Acton v. Lamberson*, (1922) 102 Or 472, 202 P 421, 732.

In order to maintain an action, the representative could take title. *Gilbert v. Branchflower*, (1925) 114 Or 508, 231 P 982.

A sale of sheep belonging to deceased partner's estate was void when made by his copartner as executor to his son with whom he was a partner, the real purchaser being the partnership. *Young v. Lee*, (1929) 132 Or 1, 271 P 994, 279 P 850, 280 P 342.

It was immaterial that the administratrix was not actuated by a fraudulent purpose in purchasing the estate property indirectly. *Dahlhammer v. Schneider*, (1953) 197 Or 478, 252 P2d 807.

An appraiser, being in a fiduciary relationship to the estate, could not acquire estate property. *Taylor v. Rubey*, (1970) 2 Or App 277, 467 P2d 132, Sup Ct review denied.

FURTHER CITATIONS: *Mills v. Mills*, (1894) 63 Fed 511; *Mumper v. Matthes*, (1949) 186 Or 357, 206 P2d 82.

LAW REVIEW CITATIONS: 9 OLR 95, 97.

114.385

LAW REVIEW CITATIONS: 49 OLR 350, 371.

114.395

LAW REVIEW CITATIONS: 49 OLR 350, 364, 366.

114.425

NOTES OF DECISIONS

1. Under former similar statute

The right of the executor or administrator to possession

of the deceased's property was for purposes of administration and the statute was in aid of that purpose. *Humphreys v. Taylor*, (1874) 5 Or 260.

While a county court could entertain proceedings in the nature of a discovery against persons charged with secreting or refusing to account for property belonging to an estate, yet its power ended with the discovery; an issue of title had to be litigated in courts of ordinary jurisdiction. *Gardner v. Gillihan*, (1891) 20 Or 598, 27 P 220; *Dray v. Bloch*, (1896) 29 Or 347, 45 P 772; *Re Bolander's Estate*, (1901) 38 Or 490, 63 P 689; *Harrington v. Jones*, (1909) 53 Or 237, 99 P 935.

114.435

NOTES OF DECISIONS

1. Under former similar statute

The object of the statute was to declare that an executor or administrator must not upon his own motion and without any showing of a necessity for the purposes of administration institute or maintain suits to determine questions affecting the title to the real estate of decedent. *King v. Boyd*, (1873) 4 Or 326; *Butts v. Purdy*, (1912) 63 Or 150, 125 P 313, 127 P 25.

When land of the value of \$2,000 was conveyed for a consideration of \$100, as against existing creditors such deed was constructively fraudulent. *Scoggin v. Schloath*, (1887) 15 Or 380, 15 P 635.

Where the estate of the deceased was insolvent and it appeared that he made a conveyance of land in his lifetime which there was reasonable ground to believe fraudulent, the creditors had a right to insist that the administrator should proceed as directed by the statute. *Marks v. Coats*, (1900) 37 Or 609, 62 P 488.

The transfer would be set aside only to the extent it was in fraud of creditors. *Hillman v. Young*, (1913) 64 Or 73, 127 P 793, 129 P 124.

The widow or heir could apply in equity to reduce to the possession of the administrator the outstanding assets of the estate where the administrator refused to act. *Hadley v. Hadley*, (1914) 73 Or 179, 144 P 80.

A creditor could cause proceedings to be instituted by the administrator under the statute. *Borge v. Traaen*, (1938) 158 Or 454, 75 P2d 939, 76 P2d 1127.

FURTHER CITATIONS: *Windle v. Flinn*, (1952) 196 Or 654, 251 P2d 136.