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Index of Subject Headings

Dicta Editorial Board

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pendency of action or a certified copy of such decree has been recorded in the Recorder's office of the county where the property is located. Such statute further provided that any limitation established by it shall apply to causes of action which accrued prior to its effective date as well as those accruing thereafter, provided, however, that the right to institute an action shall not be barred by reason of such limitation until the expiration of six months from said effective date.

WILLS—POWERS OF SALE UNDER. In the absence of a statute to the contrary, a power of sale of real estate conferred by will upon an executor cannot be exercised by an administrator with the will annexed unless by the terms of the will the sale of the real estate is mandatory and not discretionary. Because of this there was passed, as a part of the revision made in 1903 of the statutes relating to administration of estates, a section (1903 S. L. 504, Sec. 91; 1908 Rev. Stat. Sec. 7167) providing that whenever any testator shall by his last will direct that his real estate or any of it be sold or otherwise disposed of for the payment of his debts or for any other purpose, and no executor be named therein or if the executor named therein refuse such office or be removed or die, the administrator with the will annexed or *de bonis non* may sell, convey and dispose of such real estate in accordance with the provisions of such will in the same manner and with like effect as the executor in such will and duly qualified might have done. It will be noted that in the early part of this section appeared the words, "shall, by his last will, *direct* that his real estate, or any of it, be sold or otherwise disposed of." Because of this titles were very often objected to because the will did not direct the sale of the real estate in question but merely authorized the sale of the real estate by the executor. By reason thereof the section was amended (1921 S. L. 821, 1935 C.S.A. Ch. 176, Sec. 156) so as to change the words hereinbefore quoted to "shall, by his last will, *confer power* for the sale of his real estate, or any of it, or for its disposition otherwise." In 1947 this section was further amended (1947 S. L. 943, Sec. 11, 1935 C.S.A. Suppl. Ch. 176, Sec. 156) by adding the words "resident or non-resident" and "in the State of Colorado" so as to leave no doubt as to it being applicable to the estates of non-resident testators as well as to estates of resident testators. This section and 1949 S. L. 769-770, Sec. 16 (which amended 1935 C.S.A. Ch. 176, Sec. 62 (d)) relating to the execution of conveyances, encumbrances and contracts by the personal representative or trustee appointed by a court of another state under a will admitted to probate in that state are the basis of Title Standards Nos. 57 and 58.

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“Buy More Christmas Seals”