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The Curative Act and the Probate Code

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NOTES

THE CURATIVE ACT AND THE PROBATE CODE

Curative acts have long been a source of litigation. Their scope has been recently considered by the Wyoming Supreme Court in *Addison v. Fleenor*[1] wherein the court, treating Wyo. Comp. Stat. 1945 sec. 6-2309[2] as a curative act, said: "A curative enactment may validate any proceeding which the legislature might have authorized previously, or may make immaterial anything which it might have omitted in the original act.[3] . . . The statute in question here is all-inclusive and creates a conclusive presumption that all notices required by law have been published for the times and in the manner required by law. That includes notices which are jurisdictional, that is to say, notices which are essential in order to constitute due process of law, and in that respect, the statute considered as a curative act cannot be upheld." The court thereby stated the general rule as to curative acts. Such acts are generally defined as retrospective laws passed to cure irregular legal proceedings[4] but ineffective to cure omissions or defects in

1. 196 P. (2d) 991 (Wyo. 1948).
2. "Presumption after ten years notices properly published.—In any estate, wherein a decree of final settlement and distribution is or has been entered by any court of this State it shall, after ten (10) years from the date of such decree, be conclusively presumed that all notices required by law have been published for the times and in the manner required by law."
3. Citing State v. Snyder, 30 Wyo. 287, 219 Pac. 735 (1923). See also 2 Cooley, Constitutional Limitations 775-6 (8th ed. 1927), universally cited; Patton, Titles sec. 58 (1938).
4. Patton, op. cit. supra; Web v. Den, 17 How. 576, 15 L. Ed. 35 (U. S. 1854); Forster v. Forster, 129 Mass. 559 (1880); Fuller v. Hager, 47 Ore. 242, 83 Pac. 782, 114 Am. St. Rep. 916 (1905); McCullough v. Estes, 20 Ore. 349, 25 Pac. 724 (1891).

procedure necessary to give the court jurisdiction or to enable the proceedings to constitute due process of law.[5]

The notice which is requisite of due process seems generally conceded to be "reasonable notice and reasonable opportunity to be heard."[6] The notice is to be reasonably designed to give notice to persons whose rights are to be affected or, "fair and just to the parties involved."[7] Where possible, personal service is necessary to constitute due process[8] except that where the proceeding is purely in rem personal notice is not necessary since the proceeding is against propertly only.[9] The Wyoming Court has said that probate proceedings are of the "nature of proceedings in rem"[10] but treat them as strictly "in rem."[11] Thus, by giving notice by publication the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate.[12]

In Wyoming, since District Courts are courts of general jurisdiction, their orders need not recite jurisdictional facts, even in probate proceedings.[13] A presumption of regularity applies to such proceedings so that they are not susceptible to collateral attack except for defects showing upon the face of the record.[14] If, then, all orders of probate are presumed regular, and constructive service is sufficient to give notice and effect jurisdiction of the rights of all the world to any portion of the estate, wherein might section 6-2309 be unconstitutional? Obviously the failure to give notice must first appear from the face of the record. Second, there must be a failure to meet the requirements of due process of law.

The action in *Addison v. Fleenor*[15] was for a declaratory judgment as to merchantable title to property which had been set off as a homestead under the probate code. The records in the estate did not show that the publication of notice to creditors[16] or the publication of the order to show cause in connection with setting off the homestead[17] had ever been given or published as required by

5. Patton, op. cit. supra; Gregory v. Keenon, 256 Fed. 949 (Ore. 1919); Roche v. Waters, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533 (Ct. of App. 1890); Lamont v. Vinger, 61 Mont. 530, 202 Pac. 769 (1921); Richards v. Rote, 68 Pa. 248 (1871).
6. Missouri ex rel. Hurwitz v. North, 271 U. S. 40, 46 Sup. Ct. 384, 70 L. Ed. 818 (1926); Twining v. New Jersey, 211 U. S. 78, 29 Sup. Ct. 14, 53 L. Ed. 97 (1908).
7. ". . . a form of substituted service not adapted to bring home notice to party to be charged is not due process." In re Bergman's Survivorship, 60 Wyo. 355, 151 P. (2d) 360 (1944); Cantor v. Sacha, 18 Del. Ch. 359, 162 Atl. 73 (1932); Naisbitt v. Herrick, 76 Utah 575, 290 Pac. 950 (1930).
8. In re Bergman's Survivorship, supra note 7; Leigh v. Green, 193 U. S. 79, 24 Sup. Ct. 390, 48 L. Ed. 623 (1904); Hunstock v. Estate Development Co., 126 P. (2d) 932 (Dist. Ct. of App. 1942); affirmed 22 Cal. (2d) 205, 138 P. (2d) 1 (1943).
9. Leigh v. Green, supra note 8; Roseman v. Fidelity and Deposit Co., 154 Misc. 320, 277 N. Y. Supp. 471 (N. Y. City Ct. 1935); In re Bergman's Survivorship, supra note 7. But see Hunstock v. Estate Development Co., supra note 8.
10. Rice v. Tilton, 14 Wyo. 101, 82 Pac. 477 (1905).
11. Addison v. Fleenor, supra note 1; In re Lane's Estate, 50 Wyo. 119, 58 P. (2d) 415 (1936), rehearing denied 60 P. (2d) 360 (1936); see In re Bergman's Survivorship, supra note 7.
12. Roseman v. Fidelity and Deposit Co., supra note 9; In re Lane's Estate, supra note 11, Rice v. Tilton, supra note 10.
13. In re Lane's Estate, supra note 11; Rice v. Tilton, supra note 10.
14. In re Davis' Estate, 151 Cal. 318, 86 Pac. 183 (1906); In re Lane's Estate, supra note 11; Rice v. Tilton, supra note 10.
15. Supra note 1.
16. Wyo. Comp. Stat. 1945 sec. 6-1601.
17. Wyo. Comp. Stat. 1945 sec. 6-1505.

statute. The court held that these two notices were not jurisdictional. Since claims of creditors may be presented before the giving of notice and could be barred by the general statute of limitations, the provisions of section 6-2309 did not invade any constitutional rights. The failure to give notice of setting aside the homestead was determined to be non-jurisdictional by reason of the fact that jurisdiction of the parties and subject matter was acquired by general notice given in the admission of the will to probate and the appointment of an administrator. The court adopted the holdings of the California[18] and Missouri[19] courts that, "These notices constitute due process of law and are sufficient to give the court jurisdiction to make all the subsequent orders in the proceeding as to which special additional notice is not required." What notices required by the probate code would be jurisdictional, in view of this holding which the Wyoming Court specifically confined to notice to creditors and notice to set aside a homestead?[20] The possibilities include the following:

(1) Notice of Probate of Wills and Notice to Heirs and Executor[21]

Although the courts generally say that power to proceed attaches on meeting the requirements of the statute, including publication of notice,[22] the Wyoming Court, in *Rice v. Tilton*[23] stated: "It is generally held that an order of the probate court granting letters testamentary or of administration without statutory notice, will not make the order void *ab initio,* but such defect is an irregularity merely, for which letters may be revoked."[24] In that case, however, notice by publication was given, and such notice is necessary to the application of *Addison v. Fleenor* to subsequent provisions of the statute.[25] It is probably a correct statement of the law, however.[26] When notice is given, it need be only for 20 days, but that is sufficient to prevent a denial of due process, since any person interested may at any time within six months after such probate "contest the same or the validity of the will."[27] Although executors and heirs are entitled to service under the statute,

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18. In re Bump's Estate, 152 Cal. 274, 92 Pac. 643 (1907). The court here was considering a contention that the failure of the statute to require notice was unconstitutional and not the omission of the notice required by statute. The holding herein applied to the rights of heirs, devisees, and legatees.
19. First National Bank v. Cook, 74 S. W. (2d) 846 (Mo., Springfield Ct. of App. 1934); Limb v. Bevins, 236 Mo. App. 556, 155 S. W. (2d) 508 (Kansas City Ct. of App. 1941). Here also the statute did not require any notice of the admeasurement of the homestead. These Missouri courts applied the rule to creditors.
20. "We are here dealing with notice to creditors and notice to set aside a homestead, and the decision herein is confined to them."
21. Wyo. Comp. Stat. 1945 secs. 6-208, 6-209.
22. In Matter of Warfield, 22 Cal. 51 (1863); In re Lane's Estate, supra note 11.
23. Supra note 10.
24. The cases cited do not directly support the proposition from the viewpoint of notice and due process. ". . . in the preliminary proceeding for the appointment the res is the status of the officer." State v. Fidelity and Deposit Co., 317 Mo. 1078, 298 S. W. 83 (1927). Cf. Farmers and Merchants National Bank v. Superior Court, 25 Cal. (2d) 842, 155 P. (2d) 823 (1945).
25. ". . . assuming that the will was admitted and the appointment of an administrator with will annexed was made pursuant to notice previously given, so as to duly initiate the probate proceedings in the estate. We are basing the decision herein upon that assumption, . . ." 196 P. (2d) 991, 993 (1948).
26. See the discussion following relative to the granting of letters of administration.
27. Wyo. Comp. St. 1945 sec. 6-408. In re Davis' Estate, supra note 14; Simpson v. Cornish, 196 Wisc. 125, 218 N. W. 193 (1928).

and it is error to proceed without proof of such service as required,[28] the publication of notice being notice to all the world, the failure to set forth the names of the heirs in the petition and failure to serve them personally is not such a deprivation of due process as to make the proceeding void.[29] The fact that the hearing is not had on the day provided in the notice[30] or that the will is not admitted on the day specified,[31] is a mere irregularity and even though no order is made adjourning the proceeding to a later date, no new notice is necessary as there was irregularity occurring after jurisdiction had been acquired.[32]

(2) Contest of Wills. Citation to Parties Interested.[33]

Although it has been said that the citation is "to give the court jurisdiction of the parties who would be affected by its revocation,"[34] the proceeding is in rem and service of the citation is not essential to the jurisdiction of the res and might have been omitted from the statute.[35] The absence of personal notice, then, although an irregularity[36] would not make such a proceeding void. But, is even constructive notice required? Although the decision of *Addison v. Fleenor* was confined to notice to creditors and notice to set aside a homestead, by analogy thereto, jurisdiction of the proceedings has already been acquired by other notices and the proceeding could be entertained without any notice whatsoever, leaving the proceeding merely irregular and subject to the operation of the curative act.[37] The executor has been held to be a necessary party defendant,[38] however, and perhaps the fact that his status is involved, as well as interests in the property, would require notice to him.[39]

(3) Appointment of Administrators.[40]

The statute provides for the issuance of letters of administration at a hearing,

28. Wyo. Comp. Stat. 1945 sec. 6-211. Estate of Mary Cobb, 49 Cal. 599 (1875).
29. Murray v. Superior Court, 207 Cal. 381, 278 Pac. 1033 (1929), later distinguished in Farmers and Merchants Nat'l Bank v. Superior Court, supra note 24, (Where the name of the error was not shown upon the face of the petition, the error was not apparent upon the face of the judgment, but if the order includes the names of heirs who have not been notified, the judgment is void upon its face.); Roseman v. Fidelity and Deposit Co., supra note 9; In re Lane's Estate, supra note 11; Rice v. Tilton, supra note 10.
30. In re Davis' Estate, supra note 14; Curtis v. Underwood, 101 Cal. 661, 36 Pac. 110 (1894).
31. In Matter of Will of Warfield, supra note 22.
32. Gray v. Hall, 203 Cal. 306, 265 Pac. 246 (1928); In re Devis' Estate, supra note 14.
33. Wyo. Comp. Stat. 1945 sec. 6-409.
34. In re Maescher's Estate, 78 Cal. App. 189, 248 Pac. 537 (Dist. Ct. of App. 1926); In re Logan's Estate, 171 Cal. 357, 153 Pac. 388 (1915); Estate of Simmons, 168 Cal. 390, 143 Pac. 697 (1914).
35. In re Maescher's Estate, supra note 34; Estate of Simmons, supra note 34.
36. Wyo. Comp. Stat. 1945 sec. 6-410.
37. But, where notice of probate of one will was given, the court was without jurisdiction to probate a second will which revoked the first without further notice, although the contestant could have had himself appointed administrator without further notice. Williams v. White, 105 S. W. (2d) 1105 (Tex. Civ. App. 1937).
38. In re Bernheim's Estate, 82 Mont. 198, 266 Pac. 378, 57 A. L. R. 1169 (1928). Necessary parties were defined as "Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." Personal jurisdiction was required. Shields v. Barrow, 17 How. 130, 15 L. Ed. 158 (U. S. 1854).
39. See discussion following regarding the removal of an executor or administrator.
40. Wyo. Comp. Stat. 1945 secs. 6-906 to 6-910.

but makes no provision for giving notice. Such procedure, while probably not found with frequency, seems acceptable.[41] In such case, however, the notices presumed to have been given in *Addison v. Fleenor* not having been made, the decision of that case would not apply and the subsequent notices required by statute would seem necessary.[42]

(4) Notices Required Before the Revocation of the Letters of an Executor or Administrator.[43]

Although the proceedings are still in rem, it is the status of the officer which is being adjudicated,[44] and it has been held that the probate court had no power to appoint a special administrator if the executrix of the will had never been suspended or removed, and an order appointing a special administrator would not operate as a removal of the executrix if "she has never been cited to appear, nor did she appear, to show cause why her letters should not be revoked."[45] It is generally held that a new administrator cannot be appointed without notice of hearing as required by statute,[46] though no specific decisions upon the requirement of due process were found.

(5) Proceedings to Collect Assets—Embezzlement.[47]

The proceedings provided for in this article require personal jurisdiction of the person to be examined and notice would be essential to due process.

(6) Transfer of Title of Motor Vehicle Without Administration.[48]

The notice required in this section, since it is the only notice contemplated in the transfer and settlement of the decedent's estate would appear to be essential to due process. It is a moot problem, however, as after ten years few people would find it worthwhile to attempt any recovery of the car.[49]

(7) Sale or Disposition of Property.[50]

The statutes make no provision for notice before the issuance of an order to sell personal property, requiring only ten days publication of notice of the sale before it is made, and this is not always required for the court may order a private sale.[51] Where real property is to be sold, an order to show cause and accompanying notice are required. Here there seems to be two distinct lines of thought. The

41. No instance wherein this procedure was contested was found. See note 24 supra and the statement noted. Also, perhaps there is no question of due process for the statute affords adequate opportunity to revoke such letters to anyone with a prior right thereto. Wyo. Comp. Stat. 1945 sec. 6-911.
42. Where a party was not served with notice of the proceedings appointing the administrator, ". . . nothing could be done affecting her interests until the provisions of the law as to notice had been complied with. . . ." Morris v. Foster, 278 Fed. 321 (App. D. C. 1922).
43. Wyo. Comp. Stat. 1945 secs. 6-912, 6-1009, 6-1013, 6-1017, 6-1018, 6-1210, 6-1212, 6-1307, 6-1308, 6-1749, 6-2201.
44. Cf. State v. Fidelity and Deposit Co., supra note 24.
45. Schroeder v. Superior Court, 70 Cal. 343, 11 Pac. 651 (1886).
46. State v. District Court, 113 Mont. 318, 124 P. (2d) 1010 (1942); In re Fellin's Estate, 108 Wash. 626, 185 Pac. 604 (1919); see, In re Dietrich's Estate, 39 Wash. 520, 81 Pac. 1061 (1905).
47. Wyo. Comp. Stat. 1945 secs. 6-1402 to 6-1404.
48. Wyo. Comp. Stat. 1945 sec. 6-1510.
49. Any creditor should also be estopped by his laches or the statute of limitations.
50. Wyo. Comp. Stat. 1945 secs. 6-1708, 6-1711, 6-1716, 6-1722, 6-1724, 6-1733, 6-1739.
51. Wyo. Comp. Stat. 1945 sec. 6-1708.

first is that the proceeding is not in rem; therefore, by failure to give notice the court fails to acquire jurisdiction and the sale is void.*52* Being void, it could not be made valid by curative act.*53* In those jurisdictions following the other view the proceeding is considered as one in rem.*54* In California, although the proceeding has been called in rem, it is in the nature of an action, independent of the general jurisdiction over the administration of the estate*55* and where the statute provides for the service of notice, the same rule applies as in civil actions.*56* Where the statute was amended to require notice to be given only upon the filing of a return of sale, that was sufficient to constitute due process.*57* In Washington, it has been held that the court's action in the sale of real estate could not be void for want of jurisdiction, for upon the appointment and qualification of the administrator, the court acquired jurisdiction for the purposes of administration, and the legislature having power to dispense with the notice in such a proceeding, the lack thereof could be cured by curative act.*58* A later decision, although admitting the proceeding to be in rem, and that the probate court had jurisdiction for the purpose of administration, held that ". . . still, the substantial requirements of the statute must be complied with," and a curative act was ineffective to cure a sale by an administrator without notice to minor heirs.*59* Title to the real estate vests in the heirs upon the death of the decedent subject to the provisions of the probate code,*60* and it would seem that it would be just as much subject to the provisions allowing a sale for the satisfaction of debts as it is for setting over the homestead, thus, if the proceedings are in rem, the reasoning of *Addison v. Fleenor* should apply equally well here. The Supreme Court of the United States has held that where the property was subject to debts, there were no absolutely vested rights and the sale was subject to the provisions of a curative act without any deprivation of due process,*61* and there is substantial dicta to support this theory.*62*

52. Montgomery v. First Nat'l Bank, 114 Mont. 395, 136 P. (2d) 760 (1943); Lamont v. Vinger, supra note 5; Robinson v. Spittler, 191 Okla. 278, 129 P. (2d) 181 (1942); Stadelman v. Miner, 83 Ore. 348, 155 Pac. 708 (1916), rev'd on other grounds 163 Pac. 585 (1917), appeal dismissed 245 U. S. 636, 38 Sup. Ct. 359, 62 L. Ed. 524.
53. Gregory v. Keenan, 256 Fed. 949 (Ore. 1919); Lamont v. Vinger, supra note 5; Stadelman v. Miner, supra note 52; Browne v. Coleman, 62 Ore. 454, 125 Pac. 278 (1912).
54. Lessee of Grignon v. Astor, 2 How. 319, 11 L. Ed. 283 (U. S. 1844); McPherson v. Cunliff, 11 Serg. & R. (Pa.) 422, 14 Am. Dec. 642 (1824); Furth v. U. S. Mortgage & Trust Company, 13 Wash. 73, 42 Pac. 523 (1895); Ball v. Clothier, 34 Wash. 299, 75 Pac. 1099 (1904); Campbell v. Drais, 125 Cal. 253, 57 Pac. 994 (1899).
55. Pryor v. Downey, 50 Cal. 388, 19 Am. Rep. 656 (1875).
56. Campbell v. Drais, supra note 54; see Pryor v. Downey, supra note 55.
57. In re Benvenuto's Estate, 183 Cal. 382, 191 Pac. 678 (1920).
58. Ackerson v. Orchard, 7 Wash. 377, 35 Pac. 605 (1894).
59. Ball v. Clothier, supra note 54.
60. Wilkinson v. Leland, 2 Pet. 627, 7 L. Ed. 542 (U. S. 1829); In re Packer's Estate, 125 Cal. 396, 58 Pac. 59 (1899); In re Bump's Estate, supra note 18; Swanberg v. National Surety Co., 86 Mont. 340, 283 Pac. 761 (1930).
61. Wilkinson v. Leland, supra note 60. Also, Sohier v. Massachusetts General Hospital, 57 Mass. (3 Cush.) 483 (1849).
62. "It may be admitted, perhaps, that a general law would be valid which authorized executors or administrators to obtain orders of sale on ex parte applications; or to sell real property, for the payment of debts, without notice to the heir, or applicatiin to any court." Pryor v. Downey, supra note 55; A rule ". . . different from the one we have adopted prevails in every jurisdiction in which a proceeding of this character is held to be strictly in rem, wherein seizure of the property itself constitutes notice to all persons interested." Lamont v. Vinger, supra note 5; Stadelman v. Miner, supra note 52.

One thing perhaps should be noted, however, as it is particularly applicable here and to the discussion of distribution and settlement, *infra*. That is that the principal case is based primarily upon the principle that a curative act may make immaterial anything which might have been ommitted in the original enactment of any statutory proceeding. The court based its determination of the non-jurisdictional character of the notices involved upon the decisions of courts which were considering statutes that required no notice. One of these, the California Court, specifically limited its holding to ". . . all subsequent orders in the proceedings, *as to which special additional notice is not required.*"[63] Many of the decisions of jurisdictions which hold proceedings not to be in rem, emphasize, not whether the proceeding is in rem or not, but that since the statute requires notice, the giving of notice is jurisdictional,[64] and even an "in rem" state, Washington, has held that although the probate court has jurisdiction for the purposes of administration ". . . still, the substantial requirements of the statute must be complied with."[65] The Supreme Court case sustaining the operation of a curative act upon a sale made without notice applied to an instance where no notice to heirs or devisees was necessary by the laws of the state.[66] Then, too, although the property is subject to sale in the administration of the estate, it is not subject to sale without notice to those parties interested.

The provisions of the statutes requiring publication of notice of the time and place of sale of real property,[67] like the similar publication required for personal property, is not always required, for here, too, the court may order a private sale. If the sale is part of the probate proceeding and in rem, there is a stronger argument that the failure to give such notice is not a deprivation of due process, but a mere irregularity which may be remedied by curative act. At least, the discussion of the order to show cause should apply equally well here.

After the sale has been made and confirmed, the court may order a resale of the property if the purchaser neglects or refuses to comply with the terms of the sale.[68] Notice to the purchaser is required and this notice is distinguishable from those discussed above. The title to the property has passed upon the confirmation and therefore would have vested in the purchaser before such an order. Since the

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63. In re Bump's Estate, supra note 18.
64. Gregory v. Keenan, supra note 53; Robinson v. Spittler, supra note 52; Browne v. Coleman, supra note 53; see Montgomery v. First Nat'l. Bank, 114 Mont. 395, 136 P. (2d) 760 (1943); and though the legislature might have originally made the shorter notice sufficient, after sale had been made under notice not sufficiently long to satisfy the existing statute, it could not provide that the shorter notice would be sufficient, Finlayson v. Peterson, 5 N. D. 587, 67 N. W. 953, 33 L. R. A. 532, 57 Am. St. Rep. 584 (1896). A party could rely upon the statute, that nothing would be done affecting her interest until the provisions of the law as to notice had been complied with, Morris v. Foster, supra note 42. Contra, an administrator's sale after only two weeks advertisement instead of the 30 days required by statute was an irregularity which could be cured. Womack v. McCook Bros. Funeral Home, 194 La. 296, 192 So. 756 (La. App. 1940).
65. Ball v. Clothier, supra note 54. See also Texas Co. v. Bank of America Nat'l. Trust & Savings Assn., 5 Cal. (2d) 35, 53 P. (2d) 127 (1936); Campbell v. Drais, supra note 54; Wills v. Pauly, 116 Cal. 575, 48 Pac. 709 (1897).
66. Wilkinson v. Leland, supra note 60.
67. Wyo. Comp. Stat. 1945 secs. 6-1713, 6-1722.
68. Wyo. Comp. Stat. 1945 sec. 6-1730.

property would no longer be part of the estate of which the court had jurisdiction, the notice would seem essential to due process.[69]

Although the statute provides a three-year statute of limitations as to actions for the recovery of any estate sold by an executor or administrator,[70] such statute has been held not to apply to void proceedings.[71]

(8) Specific Performance, Conveyance of Real Estate.[72]

The only notice required to be given upon the presentation of the petition is to the executor or administrator. Failure to give this notice would not defeat the jurisdiction of the court to order the completion of the contract.[73] Although personal jurisdiction of the executor or administrator may be necessary to enforce the order to convey, there would certainly be no difficulty in that respect.

(9) Accounting.[74]

The provisions of the statute for compelling an executor or administrator to account require personal jurisdiction of such executor or administrator. It is rather hard to see how the provisions of 6-2309 could be applicable.

(10) Distribution and Settlement.[75]

The notices required by this section of the statute seem specifically to have been held to be jurisdictional by the Wyoming Court. In *In re Curtis' Estate*[76] the court held that a decree of partial distribution could be attacked upon final settlement and adopted the holding of the Washington court[77] relative to partial and final settlements, that such an order ". . . cannot be binding upon interested parties who were given no notice of its proposed entry and no opportunity to be heard relative to the matters contained in it." Such settlements were held void and subject to collateral attack. They are in rem, however, and no personal notice is required.[78] The California courts have also held a decree of distribution which was obtained without notice to be void by reason of the absence of the juridiction

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69. "It would seem to be elemental that a court could not by its decree cancel the sale by which a person acquired property and order the property so acquired to be returned without giving him an opportunity to be heard." The court was not considering a judicial sale, but the principle would seem to be the same. Nicholson v. Kingery, 37 Wyo. 299, 261 Pac. 122 (1927).
70. Wyo. Comp. Stat. 1945 sec. 6-1747.
71. Campbell v. Drasi, supra note 54; Maxwell v. Goetschius, 11 Vroom. 383, 29 Am. Rep. 242 (Sup. Ct. of N. J. 1878).
72. Wyo. Comp. Stat. 1945 sec. 6-1802.
73. A statute giving the probate court jurisdiction to direct completion of such contracts without any provision for notice did not deny due process of law. Kramer v. Gaskill, 52 N. E. (2d) 674 (Ohio, Ct. of App. 1943). The Wyoming Court in In re Rigby's Estate, 167 P. (2d) 964 (Wyo. 1946) held that the title to the property passed to the heirs upon the landowners death intestate and thus they were entitled to fix the purchase price under any contract of sale where such was yet to be fixed. Due process was not considered, however.
74. Wyo. Comp. Stat. 1945 sec. 6-1905.
75. Wyo. Comp. Stat. 1945 secs. 6-2302, 6-2305, 6-2314, 6-2318.
76. 59 Wyo. 301, 139 P. (2d) 733 (1943).
77. In re Peterson's Estate, 12 Wash. (2d) 686, 123 P. (2d) 733 (1942); In re Krueger's Estate, 11 Wash. (2d) 380, 119 P. (2d) 312 (1941).
78. Cases cited supra note 77; Mulcahey v. Dow, 131 Cal. 73, 63 Pac. 158 (1900); William Hill Co. v. Lawler, 116 Cal. 359, 48 Pac. 323 (1897).

in the court to render it.[79] It would seem, however, that the reasoning used in *Addison v. Fleenor* would apply equally well here, for this is part of the probate proceedings over which the court has acquired jurisdiction,[80] and the *Curtis* holding is distinguishable in that the narrow holding was only that the decree of partial distribution was not res judicata when questioned in the proceedings for final distribution, where no notice of the partial distribution had been given. The conclusive nature of the decree here involved and the final determination of the rights of the parties in the property might possibly furnish grounds to refute the extension of *Addison v. Fleenor* this far.

(11) Notice of Petition for Re-opening.[81]

The notice upon the presentation of this petition would seem to be subject to the same requirements as those for the original probate or administration of an estate.

(12) Probate of Estates of Non-residents.[82]

The notice required before the admission in Wyoming of foreign probate proceedings, as probate of a non-resident's estate, would also seem subject to the provisions of section 6-2309. If the foreign probate was proper, the heirs would be concluded thereby, and the creditors also, as to the property in the foreign jurisdiction. The property of the decedent in this state is a fund for the payment of the debts due residents of this state[83] and since the creditors could have petitioned for letters of administration[84] the reasoning of the court in *Addison v. Fleenor* is equally applicable: the claims could have been presented before the giving of notice and could be barred by the general statute of limitations, thus the provisions of 6-2309 do not invade any constitutional rights.

(13) Proceedings to Determine Heirship to Land.[85]

The notice required to be given upon the petition for the determination of heirship has been held to be required before the court may acquire jurisdiction.[86]

But, as in previous instances, the court has already acquired jurisdiction of the property to determine the interests of the parties thereto, and this section would seem to be of the same effect as the requirement of notice of the petition for distribution. The Wyoming Court has held that when an applicant for public land dies before patent is issued, the land constitutes no part of the estate of the

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79. In re Parsell's Estate, 190 Cal. 454, 213 Pac. 40 (1923); Baker v. Riordan, 65 Cal. 368, 4 Pac. 232 (1884); also In re Porter's Estate, 183 Okla. 511, 83 P. (2d) 541 (1938); Wilmington Trust Co. v. Baldwin, 8 Harr. (Del.) 595, 195 Atl. 287 (Del. Super. 1937).
80. Partial settlements may be ex parte proceedings. In re Krueger's Estate, supra note 77; State v. Hughes, 343 Mo. 827, 123 S. W. (2d) 105 (1939).
81. Wyo. Comp. Stat. 1945 sec. 6-2311.
82. Wyo. Comp. Stat. 1945 sec. 6-2328.
83. McCully v. Cooper 114 Cal. 258, 46 Pac. 82 (1896); In re Card's Estate, 64 Cal. App. 268, 222 Pac. 145 (Dist. Ct. of App. 1923).
84. Wyo. Comp. Stat. 1945 secs. 6-201, 6-915.
85. Wyo. Comp. Stat. 1945 sec. 6-2602.
86. In re Healy's Estate, 6 Cal. Unrep. 780, 66 Pac. 175 (1901). No decision upon due process and the attack upon the proceedings was direct.

decedent[87] and therefore, the notice required by section 6-2605[88] would seem necessary to constitute due process, since the court would have no jurisdiction over the property.

(14) Petition to Establish Rights of Survivorship.[89]

The notice required of the petition to establish rights of survivorship is also necessary to constitute due process. The Wyoming Court has held that such a proceeding is not a part of the probate proceeding, but a "quasi in rem" action and that personal notice upon resident adversaries is necessary.[90]

The foregoing, then, would seem to be the significance of *Addison v. Fleenor* in relation to the probate code. To consider curative acts generally would require the writing of a treatise as cases can be discovered which curative acts effective or ineffective upon almost any general fact situation. The general principles upon which they operate are clear; the particular application is difficult and often conflicting. An attempt has been made to show the application of a curative act to the probate code as such application is indicated by *Addison v. Fleenor* and to indicate those instances wherein the court may vary that application.

Jurisdictional Notice, Required for Due Process, the Absence of Which Cannot be Cured:

1. Revocation of letters.
2. Proceedings to collect assets.
3. Transfer of title of motor vehicle without administration.
4. Notice of order for resale of real property.
5. Accounting.
6. Proceeding to determine heirship to public lands where applicant died before patent issued.
7. Petition to establish rights of survivorship.

Non-jurisdictional Notices, the Absence of Which Can Be Cured Once General Notice for the Admission of the Will to Probate or of the Appointment of an Administrator Is Given:

1. Notice to creditors.
2. Order to show cause re setting off the homestead.
3. Contest of wills.
4. Order to show cause re sale of real property.
5. Petition for specific performance, conveyance of real estate.
6. Distribution and settlement.
7. Admission of foreign probate proceedings.
8. Proceedings to determine heirship except as to public lands where no patent has issued.

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87. Demars v. Hickey, 13 Wyo. 371, 80 Pac. 521 (1905), rehearing denied 81 Pac. 705 (1905).
88. Wyo. Comp. Stat. 1945. "Procedure when applicant for public land dies before patent is issued.—"
89. Wyo. Comp. Stat. 1945 sec. 6-2715.
90. In re Bergman's Survivorship, supra note 7.