

58-2606. Action by resident surviving partner; proceedings; judgment. In case of the death of a partner, heretofore or hereafter, leaving minor heirs, or in case of the adult heirs residing in the county where the lands are, refusing to acknowledge and file a plat of such townsite, or in case of the nonresidence of any surviving partner or of any joint owner not a partner in such townsite, the resident surviving partner may commence an action in the district court where the land or the greater part thereof is situated, against such heirs or nonresident partners or joint owners, and may join them all in one action; and if it should be made to appear to the court that the plaintiff and said decedent in his or her lifetime by their mutual agreement devoted such land or any part thereof to division or sale as town or city lots, blocks or shares, for the profit of said plaintiff and said decedent, that said decedent died without having executed the conveyance necessary to convey his or her interest therein to the several purchasers of lots, blocks or shares, and that a part of the defendants are heirs of such decedents, and it not appearing that such mutual agreement was abrogated or annulled during the lifetime of the decedent, the court shall render a judgment stating who of said defendants are heirs of said decedent, and the time of the death of the decedent, and adjudging that the plaintiff is surviving partner of such decedent, and held said land as such, and as such entitled to sell and convey all the right, title and interest of the defendants therein.

The same proceedings shall be had in the case of nonresident joint owners, they holding a minority of interest in said land, whether they have agreed to the laying out and sale of said land as town lots, or not, provided those holding a one-half or greater interest in said lands have so agreed; and if such is made to appear to the court, the same judgment shall be rendered as in the case of the heirs of a deceased partner or joint owner, and the parties defendant to such proceedings may be served with process, actually or constructively, as is prescribed in the code of civil procedure in cases where defendants are unknown or are nonresidents.

Such judgment shall describe the lands adjudged to be conveyed; and thereafter the deed of such plaintiff holding the title purporting to convey all the interest of said heirs or of said deceased partner, at the time of his or her death, or of said adult joint owner, shall be sufficient to convey to the purchaser all the interest and title of said heirs and joint owners; and such judgments may be recorded by the register of deeds of the county where the lands lie, and when so recorded shall have the same force and effect as a deed.

History: G.S. 1868, ch. 109, § 17; Oct. 31; R.S. 1923, 67-606.