

## HISTORICAL AND REVISION NOTES

## 1948 ACT

Based on title 28, U.S.C., 1940 ed., § 849 (Mar. 3, 1893, ch. 225, § 3, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 3, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Word “under” was substituted for “ordered pursuant to section 847 of this title by” after “A public sale of realty or interest therein”.

Sections 847 and 848, of title 28, U.S.C., 1940 ed., now sections 2001 and 2004 of this title, relate only to sales under orders or decrees, without any reference to sales under judgments. In 1921 the Supreme Court held, in *Yazoo & M. V. R. Co. v. City of Clarksdale*, 1921, 42 S.Ct. 27, 257 U.S. 10, 66 L.Ed. 104, that such section 847 did not apply to sales under common law executions. At that time such section 849 of title 28, U.S.C., 1940 ed., read as it has been revised above, without any reference to such section 847. However, in 1935, such sections 847, 848 and 849 were amended by one act, ch. 77, 49 Stat. 159, and, in such section 849, the words “pursuant to the provisions of this Act” were inserted, but the word “judgment,” though retained in such section 849, was not inserted in such sections 847 and 848. It is probable that Congress did not intend, in 1935 to make such sections 847 and 848 applicable to sales under judgments in law actions. Hence, to make all three sections consistent, the above-mentioned substitution was made.

Reference to circuit was deleted from first and second paragraphs as unnecessary and inappropriate. Publication in a newspaper in a large circuit remote from the county in which the realty is situate, might be wholly insufficient to give notice to interested parties.

Changes were made in phraseology.

## 1949 ACT

This section corrects a typographical error in section 2002 of title 28, U.S.C.

## Editorial Notes

## AMENDMENTS

1949—Act May 24, 1949, substituted “11” for “II” after “Title” in third par.

**§ 2003. Marshal’s incapacity after levy on or sale of realty**

Whenever a United States marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a court of the United States, and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.

Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, § 101, 63 Stat. 104.)

## HISTORICAL AND REVISION NOTES

## 1948 ACT

Based on title 28, U.S.C., 1940 ed., § 850 (R.S. § 994).

Word “realty” was substituted for “lands, tenements, or hereditaments” in two places, the two terms being synonymous. (See Black’s Law Dictionary, 3d Ed., p. 1969.)

Word “action” was substituted for “suit”, in view of Rule 2 of the Federal Rules of Civil Procedure, prescribing but one form of action.

Changes were made in phraseology.

## 1949 ACT

This section corrects a typographical error in section 2003 of title 28, U.S.C.

## Editorial Notes

## AMENDMENTS

1949—Act May 24, 1949, corrected spelling of “realty” in first par.

**§ 2004. Sale of personalty generally**

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 848 (Mar. 3, 1893, ch. 225, § 2, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 2, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Changes were made in phraseology.

**§ 2005. Appraisal of goods taken on execution**

Whenever State law requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States shall be appraised in like manner.

The United States marshal shall summon the appraisers in the same manner as the sheriff is required to summon appraisers under State law.

If the appraisers fail to attend and perform their required duties, the marshal may sell the goods without an appraisal. Appraisers attending and performing their duties, shall receive the fees allowed for appraisals under State law.

(June 25, 1948, ch. 646, 62 Stat. 959.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 846 (R.S. § 993).

Words “shall be appraised in like manner” were substituted for “the appraisers appointed under the authority of the State may appraise goods taken in execution on a fieri facias issued out of any court of the United States”. The change precludes construction that the State appraisers only are available to appraise such goods in civil actions in the federal courts.

Changes were made in phraseology.

**§ 2006. Execution against revenue officer**

Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that: