

# MAINE STATE LEGISLATURE

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# **REPORT**

OF THE

## **COMMISSIONERS**

APPOINTED TO REVISE THE

## **PUBLIC LAWS**

OF THE

## **STATE OF MAINE.**

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### **TITLE IX.**

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**Augusta:**

WM. R. SMITH & Co., PRINTERS TO THE STATE.

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1840.



# TITLE NINTH.

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## OF COURTS OF PROBATE, AND THE SETTLEMENT OF THE ESTATES OF PERSONS DECEASED.

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- Chap.* 105. Of the court of probate.
106. Of granting probate and administration, and the general obligations and powers of executors and administrators.
  107. Of public administrators, special administrators, executors in their own wrong, and administrators of persons deceased out of the State, and proceedings of surviving partners.
  108. Of the modes of distributing real and personal estate, and lands held in mortgage or taken on execution.
  109. Of insolvent estates.
  110. Of guardians.
  111. Of testamentary trustees.
  112. Of sales of real estate by executors, administrators, guardians and others under special license of court.
  113. General provisions respecting probate bonds and remedies on the same.
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### CHAPTER 105.

#### OF THE COURT OF PROBATE.

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- Sect.*
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  2. Vacancies to be supplied.
  3. Jurisdiction of the court.
  4. Same subject.
  5. May issue processes, and have a seal.
  6. Officers to obey his precepts.
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36. Acceptance of probate bonds, by the judge, to be certified on bond.
37. Of local probate districts.
38. Oaths in certain cases, to be administered under a special commission.
39. Cases in which no probate, nor administration, shall be granted.
40. How the property shall vest in such cases.

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SECT. 1. All judges of probate now in office, shall continue  
2 to hold their offices, according to the tenor of their commissions.

SECT. 2. Whenever a vacancy in the office, shall happen in  
2 any county, there shall be appointed, pursuant to the constitu-  
3 tion of the State, some able and learned person to be judge of  
4 probate for such county. 1821, 51, § 1.

SECT. 3. The judge of probate for each county shall have  
2 power to take the probate of wills, and grant letters testamen-  
3 tary or administration of the estates of all persons deceased,  
4 who were, at the time of their decease, inhabitants of or resident  
5 in the same county, and of all who shall die without the State,  
6 leaving any estate to be administered within such county, or  
7 whose estate may afterwards be found in said county; and also  
8 to appoint guardians to minors and others, in the cases pre-  
9 scribed by law. The said judge shall also on application grant  
10 administration on the estate of any person, who shall, by due  
11 course of law, be under sentence of imprisonment for life in the  
12 state prison, either by commutation of a previous sentence or  
13 otherwise. 1821, 51, § 1. 1837, 292, § 3.

SECT. 4. He shall have jurisdiction of all matters relating to  
2 the settlement of such estates, and to such persons, under guar-  
3 dianship and to whatever else, by the provisions of law may come  
4 under his cognizance and jurisdiction, and when a case shall be  
5 originally within the jurisdiction of the probate court, in two or  
6 more counties, the court which shall first take cognizance thereof,  
7 by the commencement of proceedings, shall retain the same  
8 throughout exclusively.

1821, 51, § 1. 5 Pickering, 519, 370.

SECT. 5. He shall have authority to issue whatever processes  
2 may be necessary for the discharge of his office, and he shall  
3 have an official seal.

SECT. 6. Sheriffs and their deputies, coroners and constables  
2 shall serve and execute all legal warrants and processes by him  
3 directed to them. 1821, 51, § 1. 5 Pickering, 519, 370.

SECT. 7. Contempt of his authority in any cause or hearing before him may be punished in like manner, as such contempt may be punished in the district court. Any person summoned to appear as a witness before him, and who shall refuse to appear and give evidence, shall be liable to the like penalty or damage, as for refusing to appear and give evidence before any district court.

1821, 51, § 1. 5 Pickering, 519, 370, § 75.

SECT. 8. The judges of probate in their respective counties shall have certain fixed days, and places for holding their courts and making and publishing their orders and decrees, where no express provision is made by standing laws; and such days shall be made known, by public notifications thereof in the several counties.

1821, 51, § 5.

SECT. 9. Registers of probate, shall continue to hold their offices according to the tenor of their commissions; and as vacancies occur, there shall be appointed in the manner provided by the constitution, a suitable person in each county or probate district, to be register of probate therein, to hold the office for the term prescribed by law, and who shall be duly sworn.

1821, 51, § 3.

SECT. 10. The register shall have the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills proved in said office, letters of administration, or guardianship granted, accounts allowed, and all orders and decrees of the judge, and such other matters as the judge may direct.

1821, 51, § 3.

SECT. 11. Every register before he enters upon the duties of his office, shall give bond to the treasurer of the county to which the office pertains, in a sum not less than one hundred, nor more than one thousand dollars, with one or more sufficient sureties, at the discretion of the judge of probate, who shall certify his approval thereon; and the bond shall be conditioned for the keeping up seasonably and in good order, the records of the same court and for making and keeping convenient and correct alphabets of the records in the custody of said register, and for the faithful discharge of all the other duties of the office.

1821, 108, § 1.

SECT. 12. If such register, shall incur a forfeiture of his said bond, he shall thenceforth be disqualified from holding said office or being reappointed; and if he shall neglect to complete his records for more than six months at any one time, sickness or any extraordinary casualty excepted, such neglect shall be adjudged a forfeiture of his said bond.

1821, 108, § 2.

SECT. 13. In case of the death or absence of the register, the judge of probate shall appoint a suitable person to officiate as register, until the standing register shall be able to perform his duty, or until another shall be appointed by the governor and council.

1821, 51, § 3.

SECT. 14. Such temporary register shall be duly sworn and if the judge of probate shall require it, shall give bonds as in case of a standing register.

SECT. 15. Every judge of probate shall constantly inspect the conduct of the register, whether permanent or temporary, with respect to his records, and the duties of his office, and give information in writing of any breach of the bond of such register to the county treasurer having the same in keeping, whose duty it shall be, to put the same in suit on receipt of such information. The records of the registers of probate, shall be examined annually, under the direction of the supreme court of probate, as is provided in the ninety-sixth chapter.

1826, 343, § 6.

SECT. 16. The money recovered on such bond, shall in the first instance be applied for the expenses of duly completing the records of such register, under the direction of the judge, in whose office such deficiency shall happen, and the overplus if any, shall enure to the use of the county.

1826, 343, § 3.

SECT. 17. If the whole penalty of such bond be not sufficient to defray the expenses of completing such records, the treasurer may recover the amount of such deficiency of the register on a special action on the case.

1826, 343, § 3.

SECT. 18. Whenever any judge of probate, shall be interested as heir, legatee, creditor or debtor, or within the degree of kindred, by means of which by law he might by any possibility be heir to any part of the estate of any person deceased, such estate shall be settled in the probate court of the most ancient adjoining county or probate district; provided that the amount of the interest of such judge shall not be less than one hundred dollars in such estate. If his interest commence at any time, after he shall regularly have assumed jurisdiction of such estate, further proceedings therein shall be transferred to the probate court held in the most ancient adjoining county.

1821, 51, § 2. 1822, 193.

SECT. 19. The will, of any of such deceased, may be there proved or administration granted, as the case may require, and all subsequent proceedings be had thereon, in like manner, as if the deceased had died in that county.

1821, 51, § 2.

SECT. 20. No judge of probate shall have a voice in judging and determining, nor be of council or attorney in or out of court in any civil action or matter whatever, which may depend or relate to any sentence or decree made by him in his office; nor be of council or attorney in any civil action for or against any executor, administrator, trustee under any last will and testament, or guardian as such within his county.

1821, 51, § 4.

SECT. 21. No register of probate shall be of counsel or attorney in or out of court in any suit or matter whatever pending in the court of which he is register, nor in any appeal there-

4 from; nor shall he be executor, administrator, trustee, guardian,  
5 commissioner of insolvency, appraiser or divider, of or upon  
6 any estate, or in any case, that is within the jurisdiction of the  
7 court, of which he is register, nor be in any manner inter-  
8 ested in the fees or emolument arising from any of the said  
9 offices.

SECT. 22. The jurisdiction assumed in any case by a judge  
2 of probate, except in cases of fraud, so far as it depends on the  
3 place of residence of any person or the locality or amount of  
4 the property to be administered upon, shall not be contested in  
5 any suit or proceeding whatever, except in an appeal from the  
6 probate court in the original case, or when the want of jurisdic-  
7 tion appears on the same record. M. R. S. 83, § 12.

SECT. 23. All oaths required to be taken by executors,  
2 administrators, trustees or guardians (excepting to the truth of  
3 inventories or accounts by them rendered) and all oaths required  
4 of commissioners of insolvency, appraisers and dividers of  
5 estates, or of any other persons, in relation to any proceeding  
6 in the probate court, or to perpetuate the evidence of the pub-  
7 lication of any order of notice, or of any notice of the time  
8 and place of sale of real estate by executors, administrators,  
9 guardians, or others by license of any judicial court or court of  
10 probate, may, at any convenient time and place, be administered  
11 by the judge of probate or by any justice of the peace and a  
12 certificate thereof when taken out of court, shall be returned  
13 into the registry of probate and there filed and recorded.

M. R. S. 83, § 30. 1833, 62, § 2.

SECT. 24. The supreme judicial court shall be the supreme  
2 court of probate, and shall have appellate jurisdiction in all  
3 matters determinable by the judges of probate in their respec-  
4 tive counties. 1821, 51, § 6.

SECT. 25. Any person aggrieved by any order, sentence,  
2 decree, or denial of a judge of probate, may appeal therefrom  
3 to the said supreme court of probate, to be held within and for  
4 the same county, provided the appeal be claimed before the  
5 expiration of thirty days from the date of the proceeding  
6 appealed from. 1821, 51, § 64.

SECT. 26. Within ten days after claiming his appeal, the  
2 appellant shall make his bond to the adverse party for such sum  
3 and with such sureties as the judge shall approve, conditioned  
4 for the prosecution of his appeal with effect, at the next term  
5 of the supreme court of probate, where the same may be entered,  
6 and to pay all intervening costs and damages, and such costs as  
7 the said supreme court shall tax against him—and shall file said  
8 bond in the probate office for the use of the adverse party;  
9 provided that in case of any controversy between a supposed  
10 insane person or other person under guardianship, with his guar-  
11 dian, the supreme court of probate, may at their discretion,  
12 sustain an appeal on the part of the ward although no bond  
13 may have been executed or filed as aforesaid.



SECT. 27. Such appeal shall be cognizable at the next term  
2 of the supreme court, which shall be holden after the expiration  
3 of thirty-four days after such appeal shall be made; and the  
4 appellant shall file the reasons of appeal with the register of  
5 the court appealed from, within ten days after the bond is filed,  
6 and shall serve the adverse party with a copy of such reasons  
7 attested by such register, fourteen days at least before the sit-  
8 ting of the court to which the appeal is made.

1821, 51, § 64.

SECT. 28. If the appellant in any case shall fail to enter and  
2 prosecute his appeal, the supreme court may upon the complaint  
3 of any person, interested in the case, affirm the former sentence,  
4 assess reasonable costs for the complainant, and take such fur-  
5 ther order thereon, as law and justice shall require.

1821, 51, § 64.

SECT. 29. Any person beyond sea, or out of the United States,  
2 having no sufficient attorney within the State, at the time of any  
3 such proceeding for which he might claim an appeal, shall have  
4 thirty days after his return or constitution of such attorney to  
5 claim and prosecute his appeal as aforesaid.

1821, 51, § 64.

SECT. 30. If any person aggrieved by any act of the judge  
2 of probate, shall from any accident, mistake, defect of notice or  
3 otherwise, without default on his part, have omitted to claim or  
4 to prosecute his appeal according to the foregoing provisions,  
5 the supreme court, if it shall appear to them, that justice requires  
6 a revision of the case, may upon the petition of the party  
7 aggrieved, and upon such terms as they shall think reasonable,  
8 allow an appeal to be entered and prosecuted with the same  
9 effect, as if it had been done seasonably.

1821, 51, § 65.

SECT. 31. No such appeal shall be allowed without due notice  
2 to the party adversely interested, nor unless the petition there-  
3 for, be filed with the clerk of the supreme court of probate,  
4 within one year after the decision, from which the appeal is  
5 sought, to be heard at the term next succeeding the filing  
6 thereof.

1821, 51, § 65.

SECT. 32. After an appeal is claimed, the bond filed and the  
2 notice thereof given at the probate office with the reasons of the  
3 appeal, all further proceedings, in pursuance of the order, sen-  
4 tence, decree or denial appealed from, shall cease, until the  
5 determination of the supreme court of probate shall be had  
6 thereon.

1821, 51, § 66.

SECT. 33. The supreme court of probate, may reverse or  
2 affirm, in whole or in part the sentence or act appealed from,  
3 and may pass such decree thereon, as the judge of probate ought  
4 to have passed, and may remit the case to the probate court,  
5 for further proceedings, or may take any order therein, as law  
6 and justice shall require.

M. R. S, 83, § 44.

SECT. 34. If upon the hearing of an appeal, in the supreme  
2 court, any question of fact shall occur, that is proper for a trial

3 by jury, the court may cause it to be so tried upon an issue to be  
4 formed for the purpose, under the direction of the court.

1831, 51, § 64. M. R. S. 46.

SECT. 35. In all cases that are contested, either at a probate  
2 court of original, or appellate jurisdiction, the said courts res-  
3 pectively may, at their discretion, award costs to either party to  
4 be paid by the other, or to either or both parties, to be paid out  
5 of the estate, which is the subject of the controversy, as justice  
6 and equity shall require; and may issue executions for the same  
7 in like manner as is practised in the courts of common law.

M. R. S. 83, § 47.

SECT. 36. No bond required by law to be given to the judge  
2 of probate, or to be filed in the probate office, shall not be  
3 deemed sufficient, unless it shall have been examined and ap-  
4 proved by the judge, and his approval thereof under his official  
5 signature, written thereon.

1821, 51, § 9.

SECT. 37. Where local districts, parts of a county, have been  
2 or may be hereafter designated by law, for the purpose of having a  
3 judge and register of probate, for their separate accommodation,  
4 such districts shall be considered counties for the purposes of  
5 this chapter, and in other chapters where applicable, and  
6 appeals from the judge of probate thereof shall be cognizable  
7 by the justices of the supreme court in the county, where such  
8 district is situate.

1835, 159, § 1, 2. 1831, 146.

SECT. 38. If any person required to make oath to any inven-  
2 tory or any account, which is to be settled by the judge of  
3 probate, shall be unable by reason of infirmity or otherwise, or  
4 shall reside more than thirty miles from the place where the  
5 court of probate is holden, it shall be lawful for said judge by a  
6 commission issued for the purpose to authorize any disinterested  
7 justice of the peace to administer such oath, who shall return a  
8 certificate thereof to the judge, together with such commission  
9 and inventory, or account annexed, and the vouchers to prove  
10 the same.

1821, 51, § 57.

SECT. 39. No probate of any last will, nor administration on  
2 the estate of any person deceased, shall be originally granted  
3 after the expiration of twenty years, from his decease; nor shall  
4 any administration be granted at any time, unless it satisfactorily  
5 appear to the judge, that there is personal estate of the deceased,  
6 amounting to at least twenty dollars, or that the debts due from  
7 him, amount to that sum, and that he left that amount in value  
8 of real estate.

1821, 51, § 20.

SECT. 40. In the cases described in the preceding section,  
2 the personal estate left by any person deceased shall become the  
3 property of his widow, if any; otherwise the next of kin, who  
4 may appropriate the the same, without being chargeable as  
5 executors in her or his own wrong.

## NOTES.

SECT. 18. An alteration of the law is proposed in this section to meet the case of an interest accruing in any estate to the judge of probate after he shall have had jurisdiction thereof.

SECT. 22. Under the construction given to the existing laws by legal decisions a mistaken exercise of jurisdiction on the part of the judge of probate renders all proceedings consequent thereon void—vi. Mass. rep. 547, 5 Pick. 20. The inconveniences likely to follow from this principle not only as it respects the parties directly interested, but also innocent purchasers, debtors who have paid their dues and others, are very obvious. The right of appeal as preserved and guarded in our probate system is presumed by the commissioners to afford sufficient remedy to all parties aggrieved, and they recommend, that an appeal should be the only remedy in the cases specified in this section, fraud being of course excepted—vi. sections 29, 30 and 31.

SECT. 23. This section provides certain facilities in the transaction of probate business beyond those furnished by the existing law, but similar to many of them. As the returns must be made to the register's office we have deemed the alterations safe, as well as convenient.

SECT. 26. An exception is here introduced of the case of a supposed insane person having a controversy with his guardian. Such person is incapacitated in some respects from giving a bond and the object of his claim may be to have his legal incapacity removed, in which case he would otherwise be without any right of appeal. Vi. 1 Mass. rep. 543.

SECT. 40. Certain personal property on which there can be no administration under the present laws, remains under the control of any person happening to be in possession, from necessity, there being no person entitled to claim it otherwise; an amendment is here proposed which shall place such property where it would go if remaining after an estate has been settled.

## CHAPTER 106.

## OF GRANTING PROBATE AND ADMINISTRATION, AND THE GENERAL OBLIGATIONS AND POWERS OF EXECUTORS AND ADMINISTRATORS.

- Sect. 1. To whom administration shall or may be granted.  
 2. Same subject.  
 3. Of the administrator's bond.  
 4. Duty of persons having in custody wills before probate.  
 5. When and how depositions of witnesses to wills may be taken.  
 6. Examination of only one witness in certain cases.  
 7. Of letters testamentary.  
 8. Of the executor's bond.  
 9. Same to be varied, if executor be residuary legatee, &c.  
 10. Co-executors not to act as such, unless they give bond.  
 11. Provisions for administration, when bond shall not be given.  
 12. Administration during the minority of any executor.  
 13. Administrators with the will annexed to give bonds.  
 14. Foreign wills may be allowed and recorded in this State.  
 15. Proceedings in probate court and the effect thereof.  
 16. Same subject.  
 17. Same subject.  
 18. Restrictions on the probate of nuncupative wills.

- Sect.* 19. Notice of appointment to be given by executors and administrators.  
 20. Same, when deceased died, a non-resident in the State.  
 21. Notice to be proved by affidavit filed and recorded.  
 22. Inventory to be returned within three months.  
 23. Appointment of the appraisers and their return.  
 24. Same subject.  
 25. Additional inventories may be required.  
 26. What may be omitted in the inventory.  
 27. When the judge may require new or additional bonds.  
 28. When a sale of the personal estate may be ordered.  
 29. Of the election of the administrator or executor to hold the personal estate, as appraised.  
 30. Of proceedings in cases of suspected embezzlement.  
 31. Same subject.  
 32. Same subject.  
 33. When debts due the deceased may be compounded.  
 34. Of the removal of executors and administrators resident without the State, if delinquent, and in other cases, if incapable, &c.  
 35. Proceedings where an unmarried executrix, or administratrix, afterwards marries.  
 36. The executor of a deceased executor, to derive no authority as such.  
 37. Remedies at law, in case of a delinquent executor or administrator.  
 38. Chancery remedies in certain cases of co-executors or co-administrators.  
 39. Waste may be committed by neglecting to raise money to pay debts out of the estate, and subjecting the same to execution.  
 40. Of the settlement of administration accounts.  
 41. Same subject.  
 42. Income of real estate, how to be accounted for.  
 43. Allowance of claims of executor or administrator.  
 44. When the authority of an executor or administrator is taken away, what previous acts are valid.

SECT. 1. Upon the decease of any person intestate, the judge of probate, having jurisdiction for the purpose, under the provisions of the third section of chapter one hundred five, shall grant administration of such intestate's goods or estate, to the widow, husband or next of kin of the deceased, or to two or more of them, as he shall think fit, if the applicant be over the age of twenty-one years, and in other respects, in his opinion, suitably qualified for the trust, except as provided in the next section. 1821, 51, § 7.

SECT. 2. After thirty days from the decease of such intestate, if such husband, widow or next of kin, being resident in the county, and cited before the judge for the purpose, shall neglect or refuse to take out letters of administration, or if in the opinion of the judge, they shall be unsuitable for the trust, he may commit administration on such estate to one or more of the principal creditors, or to such other person or persons, as he shall deem suitable. 1821, 57, § 1. 1828, 401, § 2.

SECT. 3. Every administrator shall, before entering on the execution of his trust, give bond with good and sufficient sureties, resident within this State, in such sum as the judge shall order, payable to the said judge, or his successors, with condition in substance as follows:

1821, 51, § 7. M. R. S. 64, § 5.

6 *First*—To make and return into the probate court within three  
7 months, a true inventory of all real estate, and all the goods,  
8 chattels, rights and credits of the deceased, which have or shall  
9 come to his possession or knowledge.

10 *Secondly*—To administer according to law, all the goods, chat-  
11 tels, rights and credits of the deceased.

1 Pick. 230. 8 Pick. 526.

12 *Thirdly*—To render upon oath a true account of his adminis-  
13 tration within one year, and at any other times when required  
14 by the judge of probate ;

15 *Fourthly*—To pay and deliver any balance, on any goods and  
16 chattels, rights and credits, remaining in his hands, upon the  
17 settlement of his accounts, to such persons, as the judge of pro-  
18 bate shall direct ;

19 *Fifthly*—To deliver the letters of administration into the pro-  
20 bate court, in case any will of the deceased, shall be thereafter  
21 duly proved and allowed ;—and

22 *Sixthly*—To account, in case the estate should be represented  
23 insolvent, for three times the amount of any injury done to the  
24 real estate of the deceased by him, or with his consent, between  
25 the time of the representation of the insolvency, and the sale of  
26 such real estate for the payment of debts, by waste or trespass,  
27 committed upon any building thereon, or any trees standing and  
28 growing thereon except as may be necessary for repairs or fuel  
29 for the family of the deceased, or by waste or trespass of any  
30 other kind ; and also for such damages, as he may recover of  
31 any heir or devisee of the said estate, or other person for the  
32 like waste or trespass committed on any such real estate.

1835, 191, § 4.

SECT. 4. Every person, having the custody of any will, shall  
2 within thirty days after notice of the death of the testator, deliver  
3 the same into the probate court, which has jurisdiction of the  
4 same, or to the executors named in the will ; and if he shall,  
5 without any reasonable cause neglect so to do, after being duly  
6 cited for that purpose by the judge of probate, he may be com-  
7 mitted to the jail of the county, by warrant of the said judge,  
8 there to be kept in close custody, until he shall deliver the will,  
9 as above directed ; and he shall be further liable to the action  
10 of any party, aggrieved for the damage, which may be sustained  
11 by such neglect. 1821, 51, § 11. M. R. S. 62, § 14.

SECT. 5. When a will shall be offered for probate to the judge  
2 and the witnesses, or any of them, live out of the State, or more  
3 than thirty miles distant, or by reason of age or indisposition of  
4 body are unable to attend court, the deposition of such witnes-  
5 ses taken in writing, under oath, before any person authorized  
6 by commission from such judge, shall be competent evidence in  
7 the absence of such witness. M. R. S. 62, § 12.

SECT. 6. When it shall clearly appear to the judge, either by  
2 the consent of the heirs at law in writing, or otherwise, that there  
3 is no objection to the probate of any will, the said judge may

4 decree probate thereof, upon the testimony of one or more of  
5 the three subscribing witnesses required by law he, or they, sub-  
6 stantiating all the requisite facts. 1821, 51, § 13.

SECT. 7. When any will shall have been duly proved and  
2 allowed, the judge of probate shall issue letters testamentary  
3 thereon to the executor, if any named therein, if he is legally  
4 competent, and if he shall accept the trust, and shall give bond  
5 to discharge the same. 1821, 51, § 15.

SECT. 8. Every executor, whether resident within the State  
2 or not, before entering upon the execution of his trust, shall  
3 give bond with sufficient sureties, resident in this State, in such  
4 sum as the judge of probate shall order payable to the judge, or  
5 his successor, with condition in substance, as follows:

1821, 51, § 15. M. R. S.

6 *First*—To make and return to the probate court, within three  
7 months, a true inventory of all the real estate, and all the goods,  
8 chattels, rights and credits of the testator which are by law to  
9 be administered, and which shall have come to his possession or  
10 knowledge.

11 *Secondly*—To administer according to law, and to the will of  
12 the testator, all his goods, chattels, rights and credits.

13 *Thirdly*—To render upon oath a just and true account of his  
14 administration, within one year, and at any other times when  
15 required by the judge of probate.

16 *Fourthly*—To account, in case the estate should be repre-  
17 sented insolvent, for three times the amount of any injury done  
18 to the real estate of the deceased, by him or with his consent  
19 between the time of the representation of insolvency, and the  
20 sale of such real estate for the payment of debts, by waste or  
21 trespass, committed by any building thereon, or on any trees  
22 standing and growing thereon, except as may be necessary for  
23 repairs, or fuel.

SECT. 9. If such executor be a residuary legatee, the condi-  
2 tion of his bond, instead of that required in the preceding  
3 section, shall be, to return an inventory as required in the first  
4 clause of the preceding condition and to pay all the debts and  
5 legacies of the testator, unless the estate of the testator, from  
6 some unexpected event, should prove insufficient for the pay-  
7 ment of the same. 1830, 470, § 7.

SECT. 10. When there are two or more persons named  
2 co-executors in any will, none shall have authority to act as such,  
3 or intermeddle, except those who give bonds as aforesaid.

1821, 51, § 15.

SECT. 11. If any person, who is appointed an executor, shall  
2 refuse to accept the trust, on being duly cited for the purpose,  
3 or if he shall neglect, for twenty days after probate of the will,  
4 to give bond, as before prescribed, the judge shall grant letters  
5 testamentary to the other executors, if there be any capable and  
6 willing to accept the trust; and if there is no such other exec-  
7 utor, the judge shall commit administration of the estate, with

8 the will annexed, to such person as he would be authorized to  
9 do, if the deceased had died intestate. 1821, 51, § 15.

SECT. 12. When an executor is under the age of twenty-one  
2 years, at the time of the probate of the will, administration may  
3 be granted with the will annexed during the minority of such  
4 executor; unless there be another executor, who shall accept  
5 the trust, in which case the estate shall be administered by such  
6 other executor, until the minor shall arrive at full age, when he  
7 may be admitted as joint executor with the former, upon giving  
8 bond, as before provided. M. R. S.

SECT. 13. Every person who is appointed administrator with  
2 the will annexed, shall, before entering upon the execution of  
3 his trust, give bond to the judge of probate, in like manner,  
4 and with like condition, as is required of an executor.

M. R. S. 63, § 8.

SECT. 14. Any will that shall have been proved and allowed  
2 in any other of the United States, or in any foreign country,  
3 according to the laws of such State or country, may be allowed  
4 and recorded in this State in the manner and for the purposes,  
5 mentioned in the following sections—

1821, 51, § 14. 4 Greenleaf, 134.

SECT. 15. A copy of the will and the probate thereof, duly  
2 authenticated, shall be produced by the executor, or by any  
3 person interested therein, to the judge of probate in any  
4 county, in which there is any estate, real or personal, on which  
5 the will may operate; whereupon the judge shall assign a time  
6 and place of hearing the case, and shall cause notice thereof, to  
7 all persons interested, to be given in some public newspaper,  
8 three weeks successively, the first publication to be thirty days  
9 at least before the time so assigned.

1821, 51, § 14. 4 Greenleaf, 134.

SECT. 16. If on hearing the case, it shall appear to the judge,  
2 that the instrument ought to be allowed in this State, as the last  
3 will and testament of the deceased, he shall order the copy to  
4 be filed and recorded; and the will shall then have the same  
5 force and effect, as if it had originally proved and allowed in  
6 the same court in the usual manner; provided however that  
7 nothing herein contained shall be construed to make valid any  
8 will that is not executed, attested and subscribed in the manner  
9 prescribed by the laws of this State, nor to give any operation  
10 and effect to the will of an alien, different from what it would  
11 have had, if originally proved and allowed within this State.

1821, 51, § 14. 4 Greenleaf, 134.

SECT. 17. After allowing and recording of any will pursuant  
2 to the three preceeding sections, the judge of probate shall  
3 grant letters testamentary thereon—or letters of administration  
4 with the will annexed, and shall proceed in the settlement of  
5 the estate, that may be found in this State, in the manner pro-  
6 vided in chapter one hundred and seven with respect to the  
7 estates of persons, who were inhabitants of any other State or

8 country; and the letters testamentary or of administration, thus  
9 granted shall extend to all the estate of the deceased within  
10 this State, and shall exclude the jurisdiction of the probate court  
11 in every other county.

SECT. 18. No letters testamentary or probate of any nuncu-  
2 pative will, shall pass the seal of any court of probate, until  
3 fourteen days after the decease of the testator, nor shall such  
4 will be approved and allowed at any time, unless due notice  
5 shall have been given to all persons interested, and specifying  
6 that such will to be proved, is a nuncupative will.

1821, 38, § 6.

SECT. 19. Every executor or administrator, shall, within three  
2 months after giving bond for the discharge of his trust, cause  
3 notice of his appointment to be posted up in two or more public  
4 places, to be specified by the judge, in the town where the  
5 deceased last dwelt, if in this State; and such further notice as  
6 the judge shall in writing direct.

1821, 51, § 18.

SECT. 20. If the deceased was neither an inhabitant, nor resi-  
2 dent in this State at the time of his decease, such notice shall  
3 be given, by publishing in such newspaper, or in such other mode,  
4 as the judge under the circumstances of the estate shall direct.

SECT. 21. An affidavit of the executor or administrator or  
2 of the person employed by him to give such notice, being made  
3 before the judge of probate, or before any justice of the peace,  
4 and filed and recorded, together with a copy of the notice, in  
5 the probate court, within one year after giving bond, as afore-  
6 said, shall be admitted as evidence of the time, place and man-  
7 ner, in which the notice was given.

SECT. 22. Every executor and administrator, shall, within  
2 three months, after his appointment make and return upon oath  
3 into the probate court, a true inventory of the real estate, and  
4 all the goods and chattels, rights and credits of the deceased,  
5 which are by law to be administered, and which shall come to  
6 his possession or knowledge.

1821, 51, § 7.

SECT. 23. The real estate and goods and chattels comprised  
2 in the inventory, shall be appraised by three suitable disinter-  
3 ested persons, appointed by the judge of probate, and duly  
4 sworn; and when any part of such estate is situated or found in  
5 any other county, than where probate or administration is  
6 granted, the judge at his discretion may appoint three other  
7 appraisers for every such county to return an inventory thereof,  
8 and who shall also be sworn.

1821, 51, § 7.

SECT. 24. Such of the credits of the deceased, and rights to  
2 personal property not in possession, as the appraisers may judge  
3 to be in whole or part available, as assets, shall be enumerated  
4 in a schedule, part of said inventory, with the names of the  
5 debtors or parties obligated, and the respective sums supposed  
6 to be due thereon; and the nature of the rights aforesaid,  
7 whether absolute or conditional; and the appraisers shall state  
8 in one general sum, at the foot of such schedule, such amount



9 as in their judgment may probably be realized from the same  
10 exclusive of expenses and risk of settlement or collection.

SECT. 25. The judge of probate at his discretion, may at any  
2 time afterward, whenever any estate or effects, rights or credits  
3 shall come to the knowledge or possession of any executor or  
4 administrator, require of him an additional inventory, and ap-  
5 praisers in like manner, shall be appointed and sworn, and  
6 return shall be made within such time, as the judge in his war-  
7 rant shall direct. 1830, 470, § 3.

SECT. 26. The following articles shall be omitted in making  
2 the inventory, and shall not be administered upon as assets, to  
3 wit: M. R. S. 65, § 4.

4 *First*, All the articles of apparel or ornament of the widow,  
5 according to the degree and estate of the husband and also the  
6 apparel and school books of minor children of the deceased ;

7 *Secondly*, The wearing apparel of the deceased, not exceed-  
8 ing one hundred dollars in value, provided that before the  
9 return of the inventory, such executor or administrator, shall  
10 have distributed the same amongst the widow and minor chil-  
11 dren of the deceased, which he is authorized to do at his  
12 discretion, and shall return to the judge a certificate of such  
13 distribution, from the widow or next of kin, being of age to  
14 such children ;

15 *Thirdly*, Such provisions and other articles, not exceeding  
16 twenty dollars in value, as may have necessarily been consumed  
17 in the family of the deceased before the appraisal of such  
18 estate.

SECT. 27. If after the return of any inventory, or in the pro-  
2 gress of the settlement of the estate of any person deceased,  
3 the judge shall find that the bonds given by any executor or  
4 administrator, are too small in amount, or insecure for want of  
5 responsibility in the sureties, he may at his discretion require  
6 additional or larger bonds or other sureties ; and if said execu-  
7 tor or administrator shall not furnish the same, his authority may  
8 be revoked and some other person appointed in his place.

SECT. 28. The judge of probate whenever he may deem it  
2 necessary for the speedy payment of the debts of the deceased,  
3 or for the benefit of all parties interested, that all or any of the  
4 goods and chattels, rights and credits, named in the inventory,  
5 the same not having been distributed, should be sold, may order,  
6 either a public or private sale of the same, and in such manner,  
7 as he shall direct, and the executor or administrator shall account  
8 for the same, as sold ; saving the legal rights of persons, to whom  
9 specific legacies are bequeathed and those of the executor or  
10 administrator under the provisions of the succeeding section.

1821, 51, § 10. 1830, 470, § 7.

SECT. 29. Every executor or administrator, shall be held to  
2 account for all the goods and effects named in the inventory  
3 other than rights to personal property, not in possession, and  
4 credits of the deceased, and such articles as may be the subject

5 of specific legacies, at the rate at which the same shall be  
6 appraised, unless within three months after the return of the  
7 inventory, he shall in writing signify to the judge, his election  
8 to the contrary, or unless the judge on the application of some  
9 party interested, shall have previously ordered a sale thereof;  
10 provided that for special reasons, the judge may allow him,  
11 the further term of six months to make such election.

1821, 51, § 10. 1830, 470, § 7.

SECT. 30. Upon complaint made to the judge of probate by  
2 any executor or administrator, or by any heir, legatee, creditor,  
3 or other person interested in the estate of any person deceased,  
4 against any one suspected of having concealed, embezzled or  
5 conveyed away any of the money, goods or effects of the  
6 deceased, the judge may cite such suspected person to appear  
7 before him, and to be examined upon oath, upon the matter of  
8 such complaint.

1821, 51, § 24. 4 Mass. 322. 7 Greenleaf, 467.

SECT. 31. Upon complaint of either of the said parties, inter-  
2 ested in such estate, that any person, who may have been  
3 entrusted by any executor or administrator with any part of the  
4 estate of the testator, or intestate, refuses to render a full  
5 account thereof, to such executor or administrator when required,  
6 the judge of probate may cite such person to appear before him,  
7 and to render a full account under oath of any money, goods or  
8 chattels, bonds or accounts, or other papers belonging, to such  
9 estate, taken into his custody, and of his doings under or in  
10 behalf of such executor or administrator. 1821, 51, § 23.

SECT. 32. If any person duly cited, as provided in the two  
2 preceding sections, shall refuse to appear and submit to such  
3 examination, or to answer such interrogatories, as shall be law-  
4 fully propounded to him, the judge may commit him to the  
5 common jail of the county, there to remain until he submit to  
6 the order of the court, or be discharged by the complainant or  
7 by order of the supreme judicial court. 1821, 23, § 24.

SECT. 33. Whenever any debtor of a deceased person, shall  
2 be unable to pay all his debts, the executor or administrator  
3 with the approbation of the judge of probate, may compound  
4 with such debtor and give him a discharge on receiving a fair  
5 proportion of the same. 1821, 23, § 30.

SECT. 34. When an executor, or administrator, residing out  
2 of this State, shall after being duly cited by the judge of pro-  
3 bate, neglect to render his accounts, and to settle the estate  
4 according to law; or when any executor or administrator shall  
5 become insane, or otherwise incapable of discharging his trust,  
6 or evidently unsuitable therefor, the judge of probate may  
7 remove him, and if there be no other executor or administrator,  
8 to discharge the trust, the judge may commit administration  
9 with the will annexed, or otherwise as the case may require, of  
10 the estate not already administered, to such persons as he shall  
11 think fit, in like manner as if the one, so removed, were dead,

12 and such administrator, shall have the same authority, and be  
13 liable to the same obligations, as other administrators.

1821, 23, § 19.

SECT. 35. When an unmarried woman, who is executrix or  
2 administratrix, either alone or jointly with another person, shall  
3 marry, her husband shall not exercise such trust in her right,  
4 but the marriage shall operate as an extinguishment of her  
5 authority; and the other executor, or administrator, if there be  
6 any, may proceed in discharging the trust as if she were dead.  
7 If there be no other, administration with the will annexed, or  
8 otherwise, may be granted, as authorized in the case provided  
9 for in the preceding section.

1821, 23, § 19.

SECT. 36. The executor of an executor, shall have no au-  
2 thority, as such, to administer the estate of the first testator;  
3 but on the death of the sole or surviving executor of any last  
4 will, administration of the estate of the first testator, not  
5 already administered, may be granted, with the will annexed, to  
6 such person, as the judge of probate shall think fit.

1821, 23, § 19.

SECT. 37. When there is more than one executor or adminis-  
2 trator, and either of them shall be removed from office by the  
3 judge of probate, the others may proceed to discharge the trust  
4 reposed in them, in the same manner, as if the person so removed  
5 were dead; and they may bring actions of account against him,  
6 and recover by any proper legal process such effects and assets,  
7 as remain in his hands, unadministered. Like actions or process  
8 may be brought by one executor or co-administrator against an-  
9 other to recover a proportional share of the estate, under their  
10 administration, when the latter retains an undue proportion  
11 thereof, or refuses either to account to the other, or to pay the  
12 debts, legacies, or other charges on such estate, or where the  
13 aggrieved executor is a residuary legatee.

1821, 23, § 19.

SECT. 38. The supreme judicial court, may hear and deter-  
2 mine in equity all disputes and controversies, between co-execu-  
3 tors and co-administrators, and between their respective legal  
4 representatives, in all cases where there is not a plain, adequate  
5 and complete remedy at law; and in such case the court shall  
6 have the same power, and may proceed in like manner, as is  
7 provided in cases between co-partners.

M. R. S. 70, § 35. 1837, 301, § 1.

SECT. 39. When any executor or administrator, shall neglect  
2 or unreasonably delay to raise money out of the testator's or  
3 intestate's estate, or shall neglect to pay the same where due,  
4 and shall thereby subject the estate under his care to be taken  
5 in execution, he shall be deemed guilty of waste and unfaithful  
6 administration.

1821, 51, § 29.

SECT. 40. Every executor or administrator, shall render his  
2 accounts agreeably to the condition of his bond; and the judge  
3 of probate may require him to account whenever he may deem  
4 it necessary, whether with or without a special application from

5 the parties interested ; but no such account shall be settled  
6 without reasonable notice to such parties. On the examination  
7 of such account the accountant may be interrogated under oath  
8 in relation to the same, and such record of his answers made,  
9 as the judge may require. 7 Pickering 14.

SECT. 41. Every executor and administrator, shall be charge-  
2 able, in his account with all goods, chattels, rights, and credits  
3 of the deceased, which shall come to his hands which are by  
4 law to be administered, whether included in the inventory or  
5 not ; also with all the proceeds of real estate, sold for the pay-  
6 ment of debts or legacies and incidental expenses, and with all  
7 the interest, profit and income, that shall in any way come to  
8 his hands in his said capacity from any estate of the deceased.

M. R. S. 67, § 6. 4 Mass. 318.

SECT. 42. If any part of the real estate, shall have been used  
2 or occupied by the executor or administrator, he shall account  
3 for the income thereof, to the devisees or heirs in such manner  
4 as shall be ordered by the judge of probate, with the assent of  
5 the accountant, and such of the other parties as may be present,  
6 at the settlement of his account ; and if the parties do not agree  
7 on the sum to be allowed, it shall be determined by three dis-  
8 interested persons to be appointed for that purpose by the judge  
9 of probate, whose award being accepted by the judge, shall be  
10 final. 1821, 51, § 22. 16 Mass. 287.

SECT. 43. No claim of any executor or administrator—  
2 against the estate of his testator or intestate, shall be allowed  
3 in his account, unless particularly stated in writing, and if any  
4 such claim, not being for charges of administration, shall be dis-  
5 puted by any person interested adversely in the allowance  
6 thereof, the determination of such dispute may be submitted to  
7 such referees as the parties or their agents or guardians, inter-  
8 ested and present, may in writing under their hands, agree upon ;  
9 and the judge of probate may receive, approve and allow, or, if  
10 necessary, recommit the report of such referees, made in writing  
11 pursuant to the submission, and decree accordingly.

1821, 51, § 21.

SECT. 44. When any letters of administration shall be  
2 revoked, or when any executor or administrator, shall be removed,  
3 all previous sales, whether of real or personal estate, made in a  
4 legal manner by the executor or administrator, and with good  
5 faith on the part of the purchaser, and all other acts, in due  
6 course of administration done by such executor or adminis-  
7 trator in good faith, shall remain valid and effectual, he being  
8 accountable in the same manner, as if he had not been  
9 removed.

## NOTES.

SECT. 24. As there is considerable diversity in practice as to the mode of inventorying the kind of property described in this section, a new provision is here introduced for the purpose of effecting more uniformity. As however the judgment of the appraisers upon the debts individually must be quite vague and uncertain, a general estimate is here proposed as being less liable to objection from the bearing a minute estimate might have upon the feelings of individual debtors and as more likely to furnish satisfactory information to the judge of probate of the value of the estate, than he would be likely to obtain in any other mode.

SECT. 25. Some amendments are introduced into this section intended to render the duty of an administrator, when under obligations to return under oath a true and perfect inventory, more consistent with the circumstances under which such inventories are usually taken, and to limit by some uniform rule an indulgence which is frequently practised towards the family of a person deceased. The articles here excepted are not such as could add much to the amount of available assets; the paraphernalia of the widow and clothing of the children being presumed to be heretofore excepted.

SECT. 28, 29. If by our present law, as is supposed by many, an administrator to whom the judge of probate may have refused to grant a license to sell the personal estate is therefore to become chargeable with the amount of the appraisal in money and so to become the absolute owner of the property appraised, much injustice may be done either to the administrator, in case of a high appraisal, or to those entitled to distribution, if the appraisal be low. The commissioners are of the opinion that on a proper construction of the administration bond, vi. 1821, ch. 51, s. 7, it is competent for the judge of probate on final settlement to order a specific distribution of all the goods and chattels, rights and credits, not otherwise disposed of, amongst the next of kin or residuary legatees, as the case may be, and they have in chapter 108, s. 22, of this report, expressly provided for such a distribution. It seems reasonable that the administrator should have a right to decline accepting property at the appraisal of men appointed by the judge; it may be against his consent, merely because the judge should think it "more for the benefit of the parties interested" that it should not be sold.

SECT. 33. An administrator by the present law may be authorized by the judge of probate to *join with other creditors* in compounding with a debtor to the estate. This section proposes to dispense with the restriction as to joining with other creditors.

SECT. 38. The proposed remedy in equity in cases arising between co-executors and co-administrators is viewed by the commissioners as conforming to the principle already admitted into our statute book of such a remedy between copartners. Vi. 1837, ch. 301.

SECT. 40, 41. These two sections are intended more distinctly, than heretofore, to define the obligations of executors and administrators to render their accounts and the manner of examination.

SECT. 44. This section is introduced to prevent inconveniences similar to those suggested in the note on section 22, of chapter 105.

CHAPTER 107.

OF PUBLIC ADMINISTRATORS, SPECIAL ADMINISTRATORS, EXECUTORS IN THEIR OWN WRONG, ADMINISTRATORS ON ESTATES OF PERSONS DECEASED, OUT OF THE STATE, AND PROCEEDINGS OF SURVIVING PARTNERS.

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- Sect.* 1. Of *public administrators*, and in what cases they may act.  
 2. Same subject.  
 3. When they shall render an account.  
 4. Excess of money in their hands to be paid to state treasurer for the use of persons lawfully claiming it.  
 5. In case of neglect, bond to be put in suit by the state treasurer.  
 6. After twenty years, such excess forfeited to the State.  
 7. When the next of kin, &c. apply, the authority of the public administrator to be superseded.  
 8. Same subject.  
 9. Form of such administrator's bond.  
 10. Sale of real estate, as in general cases.  
 11. Also after three years, for the benefit of all concerned.  
 12. Proceedings in such cases.  
 13. When *special administrators* may be appointed.  
 14. Of the bond in such cases.  
 15. Their duties and compensation.  
 16. When their duties shall be superseded.  
 17. Not liable to suits of creditors, and how far affected by the statute of limitations.  
 18. Of *executors in their own wrong*.  
 19. Same subject.  
 20. How the estate of persons, *not resident in this State*, shall be administered and distributed.  
 21. Where any residue after payment of debts, may be distributed.  
 22. How distributed in cases of insolvency.  
 23. Same subject.  
 24. Same subject.  
 25. Same subject.  
 26. Appraisal of *partnership* property.  
 27. Same to remain with *surviving partner* on his giving bond.  
 28. Condition of such bond.  
 29. Authority of judge of probate in such case, and remedies on the bond.  
 30. If such partner neglect to give bond, the duty of the executor or administrator of the deceased.  
 31. New bonds required.  
 32. Duty of survivor in this case.  
 33. How he may be compelled.
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SECT. 1. All public administrators, now in office, shall continue to hold the same, according to the tenure of their commissions. 1828, 401, § 1.

SECT. 2. Whenever a vacancy shall occur in said office in any county, the governor and council shall appoint some suitable and discreet person, as public administrator in such county, who shall be entitled, and whose duty it shall be to take out letters of administration, and faithfully administer upon the estate of any person, who may die intestate in such county, not known

7 to have left any heir or kindred in this State, who by law can  
8 inherit such estate. 1828, 401, § 1.

SECT. 3. Such public administrator, shall account to the judge  
2 of probate, like other administrators as often at least as once a  
3 year, until he shall have closed his administration and as much  
4 oftener as the judge shall require.

1828, 401, § 1. 1835, 153, § 4.

SECT. 4. Whenever there shall be in the hands of such pub-  
2 lic administrator an amount of money more than may be neces-  
3 sary for the payment of the deceased's debts, and other purposes  
4 of administration ; he shall be required by the judge of probate  
5 to deposit the same with the treasurer of the State for the time  
6 being, who shall receive the same, and the State shall be respon-  
7 sible for the principal thereof for the benefit of those who may  
8 lawfully claim the same, and the governor and council, on appli-  
9 cation duly proved may order the treasurer to pay it over.

1828, 401, § 1.

SECT. 5. In such case the judge of probate shall give notice  
2 to the treasurer of the State of such amount, and from what  
3 estate receivable ; and if the said administrator, shall neglect  
4 for the term of three months, after the order of the judge there-  
5 for to make such deposit, it shall be the duty of the treasurer to  
6 cause his probate bond to be put in suit for the recovery of the  
7 same.

SECT. 6. If the heirs, widow, or next of kin to any such intes-  
2 tate, or other lawful claimant, shall not demand the sums so  
3 deposited for their benefit, within twenty years from the time of  
4 such deposit, the same shall be forfeited to the use of the State.

1828, 401, § 1.

SECT. 7. If before the estate of such deceased shall have been  
2 fully settled by such public administrator, any last will and  
3 testament of the deceased should be produced and duly proved,  
4 or if any of the heirs or next of kin, or widow of the deceased,  
5 shall make application in writing to the judge of probate, having  
6 jurisdiction of the estate thus administered upon, and claim the  
7 right to administer on the same, or that some other suitable per-  
8 son should be appointed to that trust, it shall be the duty of such  
9 judge to revoke the former administration, and grant letters  
10 testamentary, or a new administration as the case may require.

SECT. 8. Such public administrator, shall be thereupon re-  
2 quired to surrender his letters of administration on said estate  
3 to the judge of probate, and settle his account, and pay over to  
4 his successor all sums of money remaining in his hands, and all  
5 the goods, chattels, rights and credits of said deceased, not  
6 administered upon.

1828, 401, § 1.

SECT. 9. Every public administrator, on taking out letters of  
2 administration on any estate, as provided in the second section of  
3 this chapter, shall give bonds to the judge of probate with like  
4 condition, as in cases of ordinary administration, and with the

5 further condition in substance, that he will comply with the provisions of the foregoing section. 1828, 401, § 1.

SECT. 10. The judge of probate, may grant license to the public administrator, to sell real estate of any intestate whose estate, is under his administration, for the payment of debts and incidental charges, to the same extent, as he is authorized by law to grant to other administrators in like cases. 1828, 401, § 2.

SECT. 11. The judge of probate, may also grant license in like manner to any public administrator, to sell either at public or private sale, all or any of the real estate of his intestate, after the expiration of three years from the granting of administration; although not necessary for the payment of debts; provided it be made to appear that it would be for the interest of all concerned, that said real estate should be sold, and that no heir, nor other person directly interested in said estate, other than creditors, can be found in the United States. 1828, 401, § 3.

SECT. 12. In such cases the judge of probate shall observe all the provisions of law required in the sale of real estate by other administrators; and such administrator shall give like bonds so far as applicable, and like notice, and take the like oath, and proceed in other respects in like manner as is required of other administrators; and the net proceeds of such sale shall be deposited with the treasurer of the State agreeably to the provisions of section fourth, fifth and sixth of this chapter, and to the same uses. 1828, 401, § 3.

SECT. 13. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may, in his discretion appoint a special administrator, who shall nevertheless proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate. M. R. S. 64, § 6.

SECT. 14. Every such administrator shall, before entering on the duties of his trust, give bond with sufficient surety or sureties in such sum as the judge of probate shall order, payable to the said judge or his successor, with condition that he will make and return into the probate court, within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession, or knowledge—and that he will truly account on oath for all the goods, chattels, debts and effects of the deceased, that shall be received by him, as such special administrator, whenever required by the judge of probate, and will deliver the same to the person, who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same. M. R. S. 64, § 7.

SECT. 15. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the



3 same for the executor or administrator, who shall be thereafter  
 4 appointed; and for that purpose may commence and maintain  
 5 suits, as an administrator; and may also sell such perishable  
 6 and other goods, as the judge of probate shall order sold; and  
 7 he shall be allowed such compensation for his services, as the  
 8 judge of probate shall think reasonable, not exceeding the limits  
 9 allowed to other administrators. M. R. S. 64, § 8.

SECT. 16. Upon the granting of letters testamentary, or of  
 2 administration, the power of the special administrator shall  
 3 cease, and he shall forthwith deliver to the executor or admin-  
 4 istrator all the goods, chattels, money and effects of the deceased,  
 5 in his hands, and the executor or administrator may be admitted  
 6 to prosecute any suit commenced by the special administrator,  
 7 in like manner as an administrator *de bonis non*, is authorized to  
 8 prosecute a suit commenced by a former executor or adminis-  
 9 trator. M. R. S. 64, § 9.

SECT. 17. Such special administrator, shall not be liable to  
 2 an action by any creditor of the deceased and the time of lim-  
 3 itation for all suits against the estate, shall begin to run from  
 4 the time of granting letters testamentary or of administration in  
 5 the usual form, in like manner as if such special administration  
 6 had not been granted. M. R. S. 64, § 10.

SECT. 18. If any person shall sell or embezzle any of the  
 2 goods or effects of a deceased person, liable to administration  
 3 before taking out letters testamentary or of administration  
 4 thereon, and given bond as executor or administrator, he shall  
 5 be liable to the actions of the creditors and other persons  
 6 aggrieved, as an executor in his own wrong. 1821, 51, § 44.

SECT. 19. Every executor in his own wrong shall be liable to  
 2 the rightful executor or administrator for the full value of the  
 3 goods or effects of the deceased taken by him, and for all dam-  
 4 ages, caused by his acts, to the estate of the deceased; and he  
 5 shall not be allowed to retain or deduct any part of the goods  
 6 or effects, excepting for such funeral expenses or debts of the  
 7 deceased, or other charges actually paid by him, as the rightful  
 8 executor or administrator might have been compelled to pay.

15 Mass. 322. M. R. S. 64, § 12.

SECT. 20. When administration shall be taken, in this State  
 2 on the estate of any person, who at the time of his decease was  
 3 an inhabitant of any other State or county, his estate found  
 4 here, after payment of his debts, shall be disposed of according  
 5 to his last will, if he left any duly executed according to the  
 6 laws of this State; and if there should be no such will, his real  
 7 estate shall descend according to the laws of this State, and  
 8 his personal estate shall be distributed and disposed of accord-  
 9 ing to the laws of the State or country of which he was an  
 10 inhabitant.

M. R. S. 70, § 21. 9 Mass. rep. 337. 11 do. 256. 3 do. 519.

SECT. 21. Upon the settlement of such an estate, and after  
 2 the payment of all debts for which the same is liable in this

3 State, the residue of the personal estate if any, may be distri-  
4 buted and disposed of in manner aforesaid, by the probate court  
5 in which the estate is settled; or it may be transmitted to the  
6 executor or administrator, if there be any, in the State or coun-  
7 try, where the deceased had his domicile, to be there disposed  
8 of according to the law of the place; as the court under the  
9 circumstances of the case shall think best. M. R. S. 22.

SECT. 22. If such deceased person died insolvent, his estate  
2 found in this State, shall, as far as practicable, be so disposed  
3 of, that all his creditors, here or elsewhere may receive an equal  
4 share, in proportion to their respective debts.

M. R. S. 23. 3 Pick. 128. 6 do. 481. 8 do. 475.

SECT. 23. To this end, his estate shall not be transmitted to  
2 the foreign executor or administrator, until all his creditors, who  
3 are citizens of this State, shall have received the just proportion,  
4 that would be due to them, if the whole estate of the deceased,  
5 wherever found, that is applicable to the payment of common  
6 creditors, were divided among all the said creditors, in propor-  
7 tion to their respective debts, without preferring any one species  
8 of debt to another. M. R. S. § 24.

SECT. 24. In such a case, no creditor not being a citizen of  
2 this State, shall be paid out of the assets found here, until all  
3 those, who are citizens, shall have received their just proportion,  
4 as provided in the preceding section. M. R. S. § 25.

SECT. 25. If there be any residue, after such payment to the  
2 citizens of this State, the same may be paid to any other credi-  
3 tors, who shall duly have proved their debts here in proportion  
4 to the amount due to each of them respectively; provided that  
5 no one shall receive more than would be due to him, if the  
6 whole estate were divided rateably among all the creditors, as  
7 before provided; and the balance, if any, may be transmitted  
8 to the foreign executor or administrator; or if there be none  
9 such, it shall, after the expiration of four years from the appoint-  
10 ment of the administrator be distributed rateably among all the  
11 creditors, both citizens and others, who shall have proved their  
12 debts in this State. M. R. S. § 26.

SECT. 26. The executor or administrator on the estate of any  
2 deceased member of a copartnership, shall include in the inven-  
3 tory, which he is by law required to return to the judge of  
4 probate, the whole of the partnership estate, goods and chattels  
5 rights and credits, appraised at its true value as in other cases,  
6 but the appraisers shall carry out into the footing an amount  
7 equal only to the deceased's proportional part of the copartner-  
8 ship interest. 1835, 191, § 1.

SECT. 27. The property thus appraised shall remain with, or  
2 be delivered over, as the case may be to the surviving partner  
3 or partners or any of them, who may be disposed to undertake  
4 the management thereof agreeably to the conditions of a bond,  
5 which they shall be required to give to the judge of probate, in

6 such sum, and with such sureties as he may think reasonable for  
7 the benefit of all persons interested in the estate, as provided  
8 in the next section. 1835, 191, § 1.

SECT. 28. The condition of such bond, shall be in substance  
2 as follows:

3 *First*, To use due diligence and fidelity in closing the affairs  
4 of the late copartnership.

5 *Secondly*, To apply the property thereof, towards the payment  
6 of the partnership debts.

7 *Thirdly*, To render an account, upon oath to the judge, when-  
8 ever by him thereunto required of all the partnership affairs,  
9 including the property owned by the late firm and the debts due  
10 thereto; as well as what may have been paid by the survivor or  
11 survivors towards the partnership debts, and what may still be  
12 due and owing therefor; and

13 *Fourthly*, To pay over within twelve months, unless a longer  
14 time be allowed by a decree of the judge, to the executor or  
15 administrator, the excess, if any there be, beyond satisfying the  
16 partnership debts. 1835, 191, § 1.

SECT. 29. The judge shall have the same authority to cite  
2 such survivor or survivors, to account and to adjudicate, upon  
3 such account, as in the case of an ordinary administrator; and  
4 the parties interested, shall have the like remedies by means of  
5 such bond, for any misconduct or neglect of such survivor or  
6 survivors, as may be had against administrators.

SECT. 30. In case the surviving partner or partners, having  
2 been duly cited for that purpose, shall neglect or refuse to give  
3 the bond in the foregoing twenty-seventh and twenty-eighth  
4 sections, the executor or administrator in the estate of such  
5 deceased partner, in giving a bond, as provided in the following  
6 section, shall forthwith take the whole partnership estate, goods  
7 and chattels, rights and credits, into his own possession, and  
8 shall be authorized to use the name of the survivors or survivor  
9 in collecting the debts due the late firm, if necessary, and shall  
10 with the partnership property pay the debts due from the late  
11 firm with as much expedition, as possible, and return or pay to  
12 the surviving partner or partners his or their proportion of the  
13 excess, if any there be. 1835, 191, § 1.

SECT. 31. Before proceeding to administer upon such part-  
2 nership property, as provided in the preceding section, such  
3 executor or administrator, shall be required by the judge of pro-  
4 bate, to give further bonds to his satisfaction, conditioned that  
5 he will faithfully execute that trust, and with no unnecessary  
6 waste or expense; which bond may be enforced, like other  
7 administration bonds for the benefit of all parties interested.

1835, 191, § 1.

SECT. 32. Every surviving partner on the demand of any  
2 administrator of a deceased co-partner, shall exhibit to the  
3 appraisers the partnership property belonging to the firm at the

4 time of the death of such deceased partner, for appraisement;  
 5 and in case the administration thereof shall devolve upon such  
 6 administrator, as provided in the two preceding sections, the  
 7 said survivor shall surrender to him on demand, all the property  
 8 of such partnership, including their books and papers, and all  
 9 necessary documents pertaining to the same, and shall afford him  
 10 all reasonable information and facilities for the execution of his  
 11 trust. 1835, 191, § 2.

SECT. 33. Every such surviving partner, who shall neglect or  
 2 refuse to comply with the provisions of the preceding section,  
 3 may be cited for such neglect or refusal before the judge of  
 4 probate, and unless he comply with such provision or show suf-  
 5 ficient excuse for his omission, the judge may commit him to the  
 6 common jail of the county there to remain, till he shall consent  
 7 to comply as aforesaid, or be released by the said executor or  
 8 administrator, or by the judge of probate, or by order of some  
 9 judge of the supreme judicial court.

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## NOTES.

SECTS. 13, 14, 15, 16 and 17. The appointment of special administrators to act *ad interim* whilst the probate of a will or the granting of administration on any estate is contested, is provided for in these sections in conformity with similar provisions in New York and Massachusetts. The utility of such a provision seems unquestionable when it is considered that waste and loss is more apt to occur in estates about which there is most litigation.

SECTS. 20, 21, 22, 23, 24 and 25. These sections relate to administration on the estate of persons deceased belonging to other States having effects in this State liable to be administered upon. The principles have been recognized by judicial decisions and since the separation of Maine from Massachusetts cases of the kind have so frequently occurred, in consequence of the commercial intercourse still sustained between the citizens of the two States, that the commissioners deem it important that such administration should be regulated by statute.

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## CHAPTER 108.

### OF THE MODES OF DISTRIBUTING REAL AND PERSONAL ESTATE AND LANDS HELD IN MORTGAGE, OR TAKEN ON EXECUTION.

- Sect. 1. Judge of probate may order partition of *real estate*, in certain cases.  
 2. Including reversions or remainders.  
 3. If not disputed, nor uncertain.  
 4. Appointment of commissioners, and their duties.  
 5. Proceedings where estate lies in different counties.  
 6. Also where an equal division cannot be made.  
 7. Same subject.

- Sect.* 8. Proceedings in case persons not heirs, nor devisees, are interested.  
 9. Same subject.  
 10. Same subject.  
 11. Partition to include all the estate, or such part as any owner may require.  
 12. Who may apply and what notice shall be given.  
 13. How minors and persons without the State shall be represented.  
 14. When the judge may order dower to be assigned to a widow.  
 15. Proceedings where the land lies in common, with that of other persons.  
 16. What notice to be given to the co-tenant.  
 17. Of the recommitment, or acceptance, and recording of the commissioners' return and the right of appeal.  
 18. Allowance to be made to the widow.  
 19. When further allowance may be made.  
 20. Allowance to minor children.  
 21. Distribution of the *personal estate*.  
 22. When a specific distribution of effects may be made.  
 23. Of the collection of debts, so assigned.  
 24. When a refunding bond may be required.  
 25. Actions of debt may be brought for legacies.  
 26. Lands taken by execution, or held in mortgage, when to be considered assets.  
 27. And when to be sold.  
 28. Or how the same may be finally distributed.

SECT. 1. The court of probate, in which the estate of any  
 2 deceased person is settled, or in a course of settlement, may  
 3 make partition of all his real estate, lying within this State  
 4 among his heirs or devisees, and all holding under them in the  
 5 manner and under the restrictions mentioned in this chapter.

1821, 51, § 31. 13 Mass. 413—14 do. 403.

SECT. 2. Any reversion or remainder, vested in the heirs of  
 2 any such deceased person, expectant upon the determination of  
 3 the estate in dower of his widow or other particular estate  
 4 under his will or otherwise, may be in like manner divided,  
 5 either during the existence of such particular estate or after the  
 6 determination of the same.

1821, 51, § 38.

SECT. 3. The partition shall be made by the probate court,  
 2 when the shares, or proportions of the respective parties are in  
 3 dispute between them, or shall appear to the judge to be uncer-  
 4 tain, depending upon the construction or effect of any devise or  
 5 other conveyance, or upon any other questions that he shall  
 6 think proper for the consideration of a jury and a court of com-  
 7 mon law.

1821, 51, § 35.

SECT. 4. The partition shall be made by three disinterested  
 2 persons to be appointed as commissioners for that purpose by  
 3 the judge of probate, and they shall, before proceeding to the  
 4 exercise of their duties, be duly sworn before the said judge, or  
 5 before any justice of the peace; and they shall make such par-  
 6 tition pursuant to the will of the deceased, or the laws regulat-  
 7 ing the descent and distribution of intestate estates, as the case  
 8 may be, among all the parties holding shares, whether they join  
 9 in the petition for the same or not.

1821, 51, § 31.

SECT. 5. If there be estate to be divided lying in different  
2 counties, the judge of probate may, if he shall think fit, issue a  
3 separate warrant, and appoint different commissioners for any or  
4 either of said counties; and in such case the partition shall be  
5 made of the estate in each county in like manner, as if there  
6 were no other estate to be divided. 1821, 51, § 31.

SECT. 6. When the whole or any part of the premises of  
2 which partition is to be made, being of greater value, than  
3 either parties share, cannot be divided without great inconven-  
4 ience, the same may be set off to any one or more of the par-  
5 ties, who will accept it, and pay to any one or more of the others,  
6 such sums of money as the commissioners shall award to make  
7 the partition just, but such partition shall not be established by  
8 the court, until all such sums shall be paid or secured, with  
9 interest to the satisfaction of the party entitled to the same—  
10 nor if inconsistent with the condition of any devise, under which  
11 the parties claim. 1821, 51, § 31, 36. 7 Pick. 209.

SECT. 7. In such assignment as is provided in the preceding  
2 section, males shall be preferred to females, and among the  
3 children of the deceased, elder shall be preferred to younger  
4 children of the same sex. 1821, 51, § 36. 7 Pick. 209.

SECT. 8. No conveyance made or suffered by any heir or  
2 devisee of his interest in the lands of any intestate or testator,  
3 by deed, levy of execution or otherwise, shall take from the judge  
4 of probate, his jurisdiction to divide and assign such lands  
5 amongst the heirs or devisees in manner aforesaid, but the same  
6 shall enure to the use of the equitable owner of the part so  
7 conveyed. 7 Pick. 209. 17 Mass. 82.

SECT. 9. In case of unequal division, as provided in section  
2 sixth of this chapter, the grantee, or execution creditor, repre-  
3 senting the right of any such heir or devisee, shall on the decree  
4 of the judge in his favor, after due notice to such heir or devisee,  
5 be entitled to receive the money payable to such heir or devisee,  
6 or such part thereof, as shall be proportional to his equitable  
7 interest, provided that previously to the acceptance of any such  
8 divisor by the judge he shall have made application in writing  
9 to the judge for the same. 17 Mass. 82.

SECT. 10. If the share of any such heir or devisee, be under  
2 attachment, the judge, on the like application from the plaintiff  
3 in the suit, or of the attaching officer, shall require the money  
4 not exceeding the amount of attachment to be paid over to the  
5 officer, who shall be answerable therefor in his official capacity,  
6 subject to the respective rights of the parties, as if originally  
7 attached.

SECT. 11. Every partition when made by the judge of probate  
2 on the application of an heir, shall be made amongst all the  
3 owners of all the estate, that descended from the ancestor, and  
4 which any party interested, whether the applicant or others shall  
5 require to have included in the partition; and when made on  
6 the application of a devisee, it shall be made of all the estate,

7 held by the applicant jointly or in common with others holding  
8 under the testator, which he or any other devisee shall require  
9 to have included; and the same rule shall apply, when the  
10 application is made by any person holding under an heir or  
11 devisee. 1821, 51, § 33. M. R. S. 103, § 55.

SECT. 12. Such partition may be ordered on the petition of  
2 any of the owners of any share, after due notice to all the others  
3 to appear and shew cause against it; which notice shall be served  
4 fourteen days at least before the time appointed for the hearing,  
5 on the other owners personally; if they can be found within the  
6 State, and if not, the notice shall be given by publishing it, in  
7 such newspaper or newspapers as the court shall order, once in  
8 each week, for three weeks at least before such hearing.

1821, 51, § 33. M. R. S. 103, § 53.

SECT. 13. If it shall appear to the court that any minor or  
2 insane person is interested, in the premises, having no guardian  
3 within the State, the court shall assign him a guardian for the  
4 suit to appear for him and defend his interest therein, as guar-  
5 dians are assigned in actions at common law; and if any one  
6 resides without the State, having no agent therein, the judge  
7 shall appoint an agent for such owner, for the same purpose.

1821, 51, § 33. M. R. S. 103 § 53.

SECT. 14. Any widow entitled to dower in any estate of which  
2 her husband died seized, settled or in a course for settlement in  
3 any court of probate, may apply to the judge and have her dower  
4 assigned to her on the principles stated in chapter ninety-five  
5 unless her claim is disputed by some adverse party, and the  
6 judge, for that purpose shall issue his warrant to three suitable  
7 persons to assign the same, and the like notice shall be given  
8 and the like proceedings, so far as applicable, shall be had by  
9 the court and by the commissioners, as is provided in this chap-  
10 ter for division of lands amongst heirs and devisees.

9 Mass. 10. M. R. S. 60, § 3.

SECT. 15. In all cases of partition, or assignment of dower  
2 pending before any judge of probate, when the real estate of the  
3 deceased, or any part of it shall lie in common and undivided  
4 with that of any other person, the court may cause it to be  
5 divided and set off from the part held by such co-tenant, before  
6 making partition thereof among the heirs or others claiming  
7 under the deceased. 1821, 51, § 32.

SECT. 16. The court in such case, shall order notice of the  
2 intended partition or assignment of dower, to be given to the  
3 co-tenant, which notice shall contain a description of the premi-  
4 ses to be divided, with a statement of the share or proportion,  
5 claimed as belonging to the estate of the deceased, and shall  
6 express the time and place, appointed for hearing the case; and  
7 it shall be served on the co-tenant, by delivering to him an  
8 attested copy thereof, or by leaving such copy at the place of  
9 his abode in this State, if any, fourteen days at least before the  
10 time appointed for the hearing. If such co-tenant do not reside

11 within the State, such public or special notice shall be given as  
12 the judge may require. 1821, 51, § 32. M. R. S. 103, § 65.

SECT. 17. The judge may, for any sufficient reason, set aside  
2 the return of the commissioners and commit the case anew to  
3 the same or to other commissioners; and the return, when  
4 finally accepted and confirmed by the court, shall be recorded  
5 in the probate office, and also in the registry of deeds for the  
6 county in which the lands lie—saving to all parties interested  
7 the right to appeal to the supreme court of probate as provided  
8 in chapter one hundred five, section twenty-five and thirty-four.

1821, 51, § 33, 35. M. R. S.

SECT. 18. In the settlement of any intestate estate, or of any  
2 insolvent estate in which the widow shall have duly waived the  
3 provisions made for her in the will of her husband, and claimed  
4 her dower, the widow, besides her apparel and ornaments, shall  
5 be entitled to so much of the personal estate as the judge shall  
6 determine to be necessary according to the degree and estate of  
7 her husband, regard being had to the state of the family under  
8 her care.

1821, 51, § 39. 1835, 180, § 1.

SECT. 19. When such allowance shall have been made from  
2 an estate represented insolvent, which shall ultimately appear to  
3 be solvent, the judge by a subsequent decree, may make such  
4 further allowance to the widow therefrom, as he shall deem  
5 reasonable.

1835, 180, § 1.

SECT. 20. In all insolvent estates, whether testate or intes-  
2 tate, if there be no widow, the judge shall have like authority to  
3 make an allowance of personal estate to the minor children of  
4 the deceased, exclusive of their wearing apparel and books.

SECT. 21. Whenever on the settlement of any account of any  
2 administrator or executor, there shall appear to remain in his  
3 hands any goods and chattels, rights and credits, not necessary  
4 for the payment of debts and expenses of administration, the  
5 judge shall order the same to be distributed according to the  
6 provisions of the will of the deceased if any, so far as may be  
7 directed by the same, and otherwise according to the provisions  
8 of chapter ninety-three—and alienage shall be no impediment  
9 to any person, who is entitled in other respects, to receive the  
10 same.

1821, 51, § 7. 1821, 38, § 19. 1821, 51, § 41.

SECT. 22. When the surplus, mentioned in the preceding sec-  
2 tion, shall consist of any other property besides money, the  
3 judge may order a specific distribution of the same in propor-  
4 tion to the value thereof, and for this purpose, if found conven-  
5 ient, he may appoint one or more appraisers to value, and make  
6 a specific distribution of the same, under oath, and make report  
7 thereof to his judge for his acceptance.

SECT. 23. If any evidence of debt, or any account due to  
2 the deceased, shall be thus assigned, the person receiving the  
3 same, shall be authorized to use the name of the executor or  
4 administrator to collect the same by suit or otherwise, or giving  
5 such other indemnity against the costs and expenses, as the judge



6 may order; saving to all supposed debtors the right to set  
7 off any claim which they may have against the estate of the  
8 deceased.

SECT. 24. Whenever any executor or administrator, shall pay  
2 to any creditor, heir or legatee, any sum exceeding thirty dol-  
3 lars on account of any debt, legacy or decree of distribution  
4 amongst the widow and kindred of the deceased, the judge of  
5 probate, at his discretion, may authorize him to require of the  
6 payee a sufficient bond to refund so much of the sum so paid,  
7 as the same may exceed such payee's equitable proportion on  
8 final settlement of the estate; unless such payment be made to  
9 a creditor under an order of distribution of an insolvent estate.

1822, 51, § 42. 1830, 470, § 9.

SECT. 25. Any residuary legatee, or any person having a par-  
2 ticular legacy, given him under any last will, may sue for and  
3 recover the same of the executor, in an action of debt at com-  
4 mon law.

1821, 51, § 43.

SECT. 26. When an executor or administrator, shall recover  
2 judgment for any debt due to the deceased, and shall levy the  
3 execution on real estate, or when the deceased held any real  
4 estate in mortgage, without having foreclosed the right of  
5 redemption, the executor or administrator of the deceased, shall  
6 be seized of such real estate in trust for the same person, who  
7 would have been entitled to the money—if the same had been  
8 paid, and the same shall be accounted for as personal assets in  
9 his hands, and if redeemed the money shall be received by him  
10 to the same uses and he may release the estate.

1821, 52, § 16, 17; 39, § 9, 10. 7 Greenleaf, 127.

SECT. 27. Any real estate, so levied upon or held in mortgage,  
2 may be sold, though subject to the right of redemption if not  
3 foreclosed, for the payment of debts or legacies, and the charges  
4 of administration, in the same manner as any real estate, of  
5 which the deceased person died seized; such sale to be made  
6 by the executor or administrator on license to be obtained as  
7 provided in chapter one hundred twelve.

1821, 52, § 16, 17; 39, § 9, 10. 7 Greenleaf, 127.

SECT. 28. If the real estate so levied upon, or held in mort-  
2 gage shall not be redeemed, nor necessary for the payment of  
3 debts and disposed of agreeably to the preceding section, the  
4 same shall be distributed amongst those, who are entitled to the  
5 personal estate, but in the same manner, as is provided in this  
6 chapter for the distribution of the real estate; or the judge of  
7 probate, if he find it more for the benefit of the parties in inter-  
8 est, may order the same to be sold by the executor or adminis-  
9 trator, in the same manner as is provided in the preceding  
10 section, and the money, realized from such sale, to be distribu-  
11 ted as in other cases of personal estate.

## NOTES.

SECTS. 6, 7, 8, 9, 10, 11 and 12. Details are here introduced which it is hoped may lead to a more distinct apprehension of the respective rights of the parties to a partition in the court of probate but intended to be conformable to the principles recognized by the existing laws.

SECT. 17. As partitions made by the common law courts are required to be recorded in the registry of deeds, consistency requires that partitions made in probate court should be also recorded where almost all the evidences of titles to real estate are now to be found.

SECTS. 21, 22 and 23. When the personal estate to be distributed consists of a balance in money the mode of distribution is plain. But in estates where the effects considerably exceed the debts, there is frequently an amount of property of various descriptions. The more common practice appears to be, to consider the whole amount as money in the hands of the administrator and for the judge of probate to order distribution as such, leaving it to the parties entitled to shares, to insist on money or to accept their part in such articles as remain as they can agree with the administrator. Vi. note to chapter 106, § 28 and 29.

On reference to the prescribed form of the administration bond, vi. stat. 1821, ch. 51, § 7, it would seem that the judge may order a distribution of specific articles amongst the kindred, or others, as the case may be. Such a mode would be very convenient where the debts are few, as the estate may be settled much more promptly. The property alluded to is generally more valuable to the kindred than the avails of a sale to others would be, and the frequent sacrifice of property below its value may be avoided.

Under the amendments here proposed either mode of settlement might be adopted as circumstances may require. The division of *rights and credits* may not so frequently be used, but many cases exist where such a distribution of them would be preferable to any other mode of settlement. This form of assignment is not unknown to our statute laws on the settlement of estates, vi. the act of 1835, ch. 191, § 3.

The length of time consumed in the settlement of estates, frequently involving very few difficulties is an evil much to be deprecated and in most cases easily avoided by the methods proposed in these sections.

## CHAPTER 109.

## OF INSOLVENT ESTATES.

- Sect. 1. Of priority of claims in insolvent estates.  
 2. Same subject.  
 3. Representation of insolvency and appointment of commissioners.  
 4. When such commissioners may not be appointed.  
 5. Notice of times and places of meetings to be given by the commissioners.  
 6. Times within which their report must be made.  
 7. Testimony of claimant and others may be received under oath.  
 8. Consequences of claimant's refusal to be sworn or of making false representations.  
 9. Interest to be allowed on all claims from the death of the insolvent.  
 10. Value of collateral security to be deducted by commissioners.  
 11. Or the same may be sold at the option of the claimant.  
 12. Report of the commissioners and their allowance.  
 13. Of the allowance of contingent claims.  
 14. Same subject.

- Sect. 15. Same subject.  
 16. Same subject.  
 17. Claimant or administrator may waive the commissioners' report, and proceed at common law.  
 18. Course of such proceedings.  
 19. Same subject.  
 20. Same subject.  
 21. Same subject.  
 22. Such claim may be submitted to referees.  
 23. Claimant may be examined under oath before the court or referees.  
 24. Claim if sustained, to be entered upon the list of debts.  
 25. Allowance of costs.  
 26. Settlement of administrator's private claim by the judge.  
 27. Judge to decree distribution after thirty days.  
 28. That actions may be brought, after a representation of insolvency.  
 29. When claims not presented to the commissioners are recoverable.  
 30. What neglect of the administrator to render account, after report of the commissioners, shall be a forfeiture of his bond.  
 31. Of a subsequent representation and commission of insolvency.  
 32. What claims may be allowed in such cases.  
 33. Same subject.  
 34. Certain debts due deceased, may be assigned to the creditors, widow, or minor children.  
 35. Same subject.  
 36. Provisions of this chapter extended to executors, as well as administrators.  
 37. What in certain cases shall be deemed waste.  
 38. When an executor, who has given bond as residuary legatee, may represent the estate insolvent.

SECT. 1. When any estate under administration is found to be insufficient to pay all the claims existing against the same, the funds for which the administrator is accountable after payment of the expenses of the funeral and last sickness of the deceased and of administration, shall be applied in the following order :

- First*—To the allowance from the personal estate, made by the judge of probate to the widow or children of the deceased ;  
*Secondly*—To debts entitled to a preference, under the laws of the United States ;  
*Thirdly*—Public rates and taxes and monies due the State ;—  
 and  
*Fourthly*—All other debts. 1821, 51, § 25.

SECT. 2. No payment shall be made to creditors of any one class, until all those of the preceding class or classes of whose claims the administrator shall have had notice, shall be fully paid. 1821, 51, § 25.

SECT. 3. Whenever it shall appear to the judge of probate, from the representation of the administrator, that the estate of the deceased, will probably be insufficient for the payment of his debts, the judge, except as provided in the following section, shall appoint two or more fit persons to be commissioners, to receive and examine all claims of creditors against the estate of the deceased, excepting any which the administrator may have,

8 and to return to the probate court a list of all the claims that  
9 shall have been laid before them with the sum, that they shall  
10 have allowed on each claim; and the commissioners before  
11 entering on the duties of their office, shall be duly sworn.

1821, 51, § 25.

SECT. 4. Provided, that if the funds shall not be sufficient to  
2 extend beyond the payment of the expenses of the last sickness,  
3 funeral and administrator, and the allowance to the widow and  
4 children, as aforesaid, it shall not be necessary to appoint com-  
5 missioners, and the administrator shall be exonerated from the  
6 payment of any claim of any subsequent class. 1838, 322, § 1.

SECT. 5. The commissioners of insolvency, shall appoint con-  
2 venient times and places for their meetings, to receive and  
3 examine the claims of creditors, and shall give notice thereof  
4 by causing an advertisement to be printed in such public news-  
5 paper or papers, or by such other notice, as the judge shall  
6 direct. 1821, 51, § 25.

SECT. 6. The period of six months, after the appointment of  
2 the commissioners shall be, in the first instance, allowed for the  
3 creditors to present and prove their claims, and if necessary an  
4 additional time, not exceeding eighteen months in the whole,  
5 from the date of the commission, at the discretion of the judge,  
6 may be allowed for the reception and examination of claims  
7 generally or of any particular claim or claims, to be specified  
8 in the order of the judge. 1821, 51, § 25. 6 Pick. 458.

SECT. 7. The commissioners may, when they shall think it  
2 proper, require an oath to be administered by either of them to  
3 any claimant, to make true answers to all such questions, as  
4 shall be asked of him, by them relating to his claim, and they  
5 may thereupon examine him upon all matters relating thereto;  
6 they may also administer oaths to and examine such witnesses  
7 as may be produced before them. 1821, 51, § 26.

SECT. 8. If any claimant refuse, when required, to submit to  
2 examination as aforesaid, his claim shall be rejected; and if any  
3 such claimant, or any witness, sworn as aforesaid, shall wilfully  
4 and corruptly make any false answer or declaration relating to  
5 any claim under examination, he shall be deemed guilty of per-  
6 jury and liable to the punishment prescribed for that crime in  
7 chapter two hundred fifty-eight. 1821, 51, § 27.

SECT. 9. The commissioners, shall cast interest on all claims  
2 allowed by them from the time of the death of the debtor to the  
3 time of making their report, whether the claims bear interest  
4 or not. 13 Mass. 537.

SECT. 10. If any creditor hold as collateral security for his  
2 claim any mortgage or pledge of real or personal estate, or any  
3 note or other evidence of debt, being of less value than the  
4 amount due him, he shall be allowed only the difference between  
5 such amount and the value of the security taken, to be estimated  
6 by the commissioners, who may at either of their meetings give  
7 the creditor a certificate of such estimate. 16 Mass. 308.

SECT. 11. If such creditor be dissatisfied with said estimate, the judge on his application and production of the said certificate, may order the administrator to join in either a public or private sale of such mortgaged or pledged property, proceeding in like manner as is required in the sale of such property for the payment of debts, when owned exclusively by the deceased, excepting that no new bond shall be required of the administrator; and the net proceeds of such sale, deducting incidental charges, shall be retained by the creditor in part of his claim instead of such estimated value; and on distribution of the assets he shall be allowed his proportion of the deficiency so ascertained. 16 Mass. 308.

SECT. 12. At the expiration of the time limited, the commissioners shall make their report to the judge, who shall order the administrator to pay their legal fees. 1821, 51, § 25.

SECT. 13. Any person liable as surety for the deceased, or having any other contingent claim, may exhibit the same, and if proved, the commissioners may report the amount thereof; distinguish it from the absolute claims allowed, and stating the nature of it. 1835, 191, § 5.

SECT. 14. The judge in ordering a distribution, as hereinafter provided, shall leave in the hands of the administrator, a sum sufficient to pay to such contingent creditor a proportion equal to what shall then be paid to the other creditors.

M. R. S. 68, § 5.

SECT. 15. If at any time within four years after the date of the administration bond, such contingent debt shall appear, to the satisfaction of the judge, to have become absolute, the creditor shall be entitled to a dividend thereon, equal to what shall have been paid to the other creditors, so far as the same can be paid without disturbing any former dividend.

M. R. S. 68, § 7.

SECT. 16. If such claim be not established within said term of four years, or if it shall not be sufficient to exhaust the assets, in the hands of the administrator, the residue of the assets shall remain for the benefit of the other creditors.

M. R. S. 68, § 7.

SECT. 17. Any person whose claim shall be disallowed, in whole or in part by the commissioners, and any administrator who shall be dissatisfied with the allowance of any claim, may appeal from the decision of the commissioners and the claim shall thereupon be determined at common law.

1821, 51, § 25.

SECT. 18. Such appeal shall be claimed, and notice thereof shall be given in writing, at the probate office, within twenty days after the return of the commissioners; and in case of an appeal by an administrator, he shall also give notice to the creditor within thirty days, by serving a copy of the former notice, attested by the register, upon him or his agent or attorney,

7 personally or by leaving such copy at his usual place of abode,  
8 if he or such agent or attorney, reside within the State.

1821, 51, § 25.

SECT. 19. Whenever such appeal shall have been claimed  
2 the demand shall be deemed contingent, and, until the decision  
3 thereof, provision shall be made for the same, as is provided in  
4 the fourteenth and fifteenth sections of this chapter.

SECT. 20. The creditor within a reasonable time, in any case  
2 not exceeding three months after the report of the commission-  
3 ers shall have been returned shall prosecute his claim against  
4 the administrator, in an action for money had and received; in  
5 which action he may annex to his writ before service, a schedule  
6 of all his claims, and the nature thereof, or he may file in the  
7 office of the clerk of the court, to which the action shall be  
8 brought, such schedule fourteen days at least, before the return  
9 day of the writ—or if such action be brought before a justice  
10 of the peace the schedule may be filed with the justice seven  
11 days, at least, before such return day.

1821, 51, § 25.

SECT. 21. In every such case the administrator, at such time  
2 as the court may direct, shall file an abstract of all the demands,  
3 which the deceased may have left against the supposed creditor,  
4 and judgment shall be rendered for either party as the case may  
5 be, upon the balance to be ascertained at the trial.

2 Mass. 498.

SECT. 22. Whenever an appeal from the decision of the com-  
2 missioners, shall be claimed, the parties may submit the matter  
3 to referees to be agreed upon between them, and appointed by  
4 a rule of the probate court; and their award shall be final.

1821, 51, § 25.

SECT. 23. On the trial of such appeal before any court or  
2 referees, the creditor may be examined upon oath as before the  
3 commissioners, if he refuse to take the oath, or to answer fully  
4 upon examination, his claim shall not be allowed.

1821, 51, § 26.

SECT. 24. On final judgment in any action upon appeal as  
2 aforesaid, whether at common law, or before referees, no execu-  
3 tion shall issue, if determined against the administrator, except  
4 for costs, but the sum, thus ascertained to be due to the claimant,  
5 shall be entered upon the list of debts entitled to dividends from  
6 the estate, as is provided in regard to contingent claims in sec-  
7 tion fifteenth of this chapter.

1821, 51, § 26.

SECT. 25. On all such appeals, costs may be allowed to the  
2 prevailing party; but if awarded against the administrator when  
3 appellee, the same may be charged by him against the estate;  
4 otherwise where he shall be the appellant, unless the judge of  
5 probate shall be satisfied that he had reasonable cause to  
6 appeal.

SECT. 26. Any private claim, which the administrator may  
2 have against the estate, may be examined and allowed by the  
3 judge, and annexed to the list of claims reported by the com-

4 missioners, and a proportional dividend thereon reserved to the  
5 administrator.

SECT. 27. After the expiration of thirty days from the return  
2 made by the commissioners, the judge of probate shall make  
3 such a decree for the distribution of the effects amongst the  
4 creditors, as the case shall require according to the provisions  
5 of this chapter. If at any future time there should be assets  
6 sufficient for other distributions, he may order the same to be  
7 made on the same principles.

1821, 51, § 25.

SECT. 28. No action shall be brought against an administra-  
2 tor, after the estate is represented insolvent, unless it be for a  
3 demand which is entitled to a preference and would not be  
4 affected by the insolvency of the estate, or unless the assets  
5 should prove more than sufficient to pay all the debts allowed  
6 by the commissioners; and if the estate is represented insolvent,  
7 whilst an action is pending against the administrator, for any  
8 demand, that is not entitled to such preference, the action may  
9 be discontinued without the payment of costs, or if the demand  
10 is disputed, the action may be tried and determined and judg-  
11 ment rendered thereon, in the same manner and with the same  
12 effect, as is provided in the case of an appeal, from the award  
13 of the commissioners; or the action may be continued at the  
14 discretion of the court, without costs to either party until it  
15 shall appear, whether the estate is insolvent, and if it should  
16 prove not to be insolvent, the plaintiff may prosecute the action  
17 as if no such representation had been made.

1821, 51, § 25. M. R. S. 68, § 19. 4 Mass. 620,

SECT. 29. Every creditor of an estate, found to be actually  
2 insolvent, who shall not have presented his claim for allowance,  
3 in the manner prescribed in this chapter, shall be forever barred  
4 from recovering the same, unless further assets of the deceased  
5 shall come to the hands of the administrator after the decree of  
6 distribution, in which case his claim, if not disputed by the  
7 administrator, or if approved to the satisfaction of the judge  
8 may be allowed and paid, in the manner and with the limita-  
9 tions, provided in this chapter for the case of contingent debts.

1821, 51, § 25. M. R. S. 68, § 19. 4 Mass. 620—15 do.  
140, 148.

SECT. 30. Whenever the commissioners, shall have duly  
2 reported to the judge a list of claims allowed, if the adminis-  
3 trator shall neglect to exhibit and settle his account of admin-  
4 istration with the judge within six months after the report  
5 shall have been made, or within such further time as the judge  
6 shall think proper to allow therefor, such neglect shall be  
7 deemed a breach of the administration bond.

1833, 62, § 3. 1821, 51, § 28.

SECT. 31. Whenever it shall appear, that the assets in the  
2 hands of the administrator are more than sufficient for the pay-  
3 ment of the full amount of all the claims allowed and interest

4 thereon, and the administrator shall apprehend that there may  
5 not be assets sufficient to pay all such other claims as may  
6 be adduced under the provisions of this chapter, together with  
7 the charges of administration, the administrator may make rep-  
8 resentation to the judge, whose duty it shall be to issue another  
9 commission of insolvency returnable in sixty days, and like pro-  
10 ceedings shall be had as in other cases. 1830, 470, § 8.

SECT. 32. After a distribution ordered on any commission of  
2 insolvency, no claim shall be allowed on any such subsequent  
3 commission, unless demanded of the administrator within three  
4 years after he shall have accepted the trust, neither shall he be  
5 liable to any action to be commenced thereon after that time ;  
6 provided that within thirty days, or at the first regular probate  
7 court after the expiration of said three years ; said claim having  
8 been duly presented, the administrator shall make further repre-  
9 sentation of insolvency as provided in the preceding section.

1830, 470, § 8.

SECT. 33. No such subsequent commission shall be issued,  
2 unless representation be made within the thirty days, or the first  
3 probate court, after the three years mentioned in the preceding  
4 section, and no dividend shall be made thereon so as to prevent  
5 the full payment of the claims before allowed or provided for  
6 with interest. 1830, 470, § 8.

SECT. 34. Whenever an administrator in his said capacity  
2 holds notes, accounts, or other demands of the deceased which  
3 in the opinion of the judge, with due diligence on the part of  
4 the administrator, are not available as assets, beyond the proba-  
5 ble expenses of collection, on account of the poverty of the  
6 persons liable, or of the disputable nature of the demands the  
7 judge may order the same to be assigned, as provided in the  
8 following section, reserving to such persons liable their equitable  
9 right of set off, and the assignee giving to the administrator  
10 such indemnity against costs, as the judge may require.

1835, 191, § 3.

SECT. 35. After due notice to all persons interested, such  
2 demands or any of them may be transferred to the following  
3 parties with authority to collect the same in the name of the  
4 administrator, they to be entitled to preference in the following  
5 order, if applied for by themselves, their attorney or guardian  
6 viz : 1835, 191, § 3.

7 *First*, To the largest creditor who will take the same, at their  
8 nominal value, to be deducted from the amount of his claim  
9 before distribution of the assets.

10 *Secondly*, To the widow of the deceased, if any ; and

11 *Thirdly*, To the minor children of the deceased in equal pro-  
12 portions.

SECT. 36. The word administrator in the preceding sections  
2 of this chapter, shall be construed, as including in its significa-  
3 tion the word executor.



SECT. 37. If any executor or administrator of an insolvent estate, shall commit such waste or trespass upon any real estate as is described in the fifteenth section of chapter, one hundred twenty-nine, whether he be an heir or devisee thereof or not, or if he shall consent to any such waste or trespass by any other person, he shall be liable to account for treble the amount of the damage done to the real estate, as aforesaid; and such administrator or executor, shall have power to prosecute actions of trespass against any persons committing such waste, whether they be heirs or devisees or not, and the damages so recovered shall also be accounted for as assets. 1835, 191, § 4.

SECT. 38. Any executor, who may have given bond as a residuary legatee pursuant to the provisions of section ninth of chapter one hundred six, if the estate under his care from some unexpected event prove insufficient for the payment of debts, may represent the same insolvent, and like proceedings and distribution shall be had, as is provided in this chapter for other cases; and the said executor or his surety, in any suit brought upon his bond, may avail himself of such insolvency and distribution in bar of such action. 1830, 470, § 7.

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## NOTES.

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SECTS. 9, 10, 11. These sections contain principles of an equitable nature, which have been confirmed by judicial decisions. Vi. 13 Mass. rep. 537, 16,—do. 38.

SECTS. 14, 15, 16. These relate to contingent claims and are supplied and seem necessary to give effect to the existing act of 1835, ch. 191, § 5, revised in the preceding section.

SECTS. 20, 21. As all the claims which either party may have against the other are supposed to have been considered by the commissioners of insolvency, it is requisite that all the same claims should be put in issue on the appeal. These sections are intended to prescribe the mode of joining those claims in the same action.

SECT. 23. On the appeal it is proper that the creditor, if required, should answer on oath such questions as might have been put to him by the commissioners, that the action may be tried on the same evidence.

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## CHAPTER 110.

### OF GUARDIANS.

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- Sect. 1. How guardians to minors may be nominated and appointed.  
 2. Same subject.  
 3. Same subject.  
 4. When the minor's choice may be certified by a justice of peace.

- Sect.* 5. Of the authority of the guardian, over the ward's person and property.  
 6. Executor or administrator not to be guardian of a minor, interested in the estate of the deceased.  
 7. Of guardianship of insane persons and others not minors.  
 8. Inquisition to be made by selectmen.  
 9. Of their return, hearing thereon, and appointment by the judge.  
 10. Proceedings where the selectmen or overseers of the poor are applicants.  
 11. Copy of application may be filed in the registry of deeds; the effect thereof.  
 12. The respondent's costs to be paid out of his estate.  
 13. Authority of assessors of plantations, &c. in certain cases.  
 14. Guardian's authority.  
 15. Their bond.  
 16. The ward's estate to be appraised.  
 17. Of embezzlement of any property of the ward.  
 18. Same subject.  
 19. Guardian's duty.  
 20. From what funds, debts may be paid.  
 21. Of the settlement of the ward's affairs, guardian to appear for him in suits, &c.  
 22. His authority in special cases, in reference to real estate.  
 23. Judge of probate may authorize sales, and investments in certain cases.  
 24. Married women or their husbands in their right not to be guardians.  
 25. Of the removal of guardians.  
 26. Guardianship of female ward, if a minor to cease on her marriage.  
 27. Guardians to settle accounts at least once in three years.  
 28. Penalty for neglect of such duty.  
 29. Bond to be examined on the settlement of such accounts, &c.  
 30. Accounts by two or more joint guardians.  
 31. Disabilities of persons, over twenty-one years of age, when under guardianship.  
 32. First appointment of guardian, excludes the jurisdiction of any other judge of probate.  
 33. Guardians and next friends in special cases.

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SECT. 1. The judge of probate in each county, when it shall  
 2 appear to him necessary and convenient, may appoint guardians  
 3 to minors, being inhabitants of or residents in the same county,  
 4 and also to such as shall reside without this State, and have any  
 5 estate within his county. 1821, 51, § 46, 52. M. R. S. 79, § 1.

SECT. 2. If the minor is under the age of fourteen years, the  
 2 judge of probate may nominate and appoint his guardian, and  
 3 if he is above the age of fourteen years, he may nominate his  
 4 own guardian, who if approved by the judge, shall be appointed  
 5 accordingly, notwithstanding he may have had a guardian  
 6 appointed before he arrived at that age.

1821, 51, § 46, 52. M. R. S. 79, § 1.

SECT. 3. If the guardian, nominated by such minor, shall not  
 2 be approved by the judge, or if the minor shall reside without  
 3 the State, or if after being cited by the judge, he shall neglect  
 4 to nominate a suitable person, or one who will accept the trust,  
 5 the judge may nominate and appoint the guardian, in the same  
 6 manner, as if the minor were under the age of fourteen years.

1821, 51, § 46, 52. M. R. S. 79, § 1.

SECT. 4. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the next probate court, his nomination of a guardian may be certified to the judge of probate by a justice of the peace, which shall have the same effect, as if made in the presence of the judge.

SECT. 5. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of all his estate, and shall continue in office, until the minor shall arrive at the age of twenty-one years—unless sooner discharged according to law; provided however, that the father of the minor, if living, and in case of his death, the mother, while she remains unmarried, being themselves, respectively competent to transact their own business, shall be entitled to the care of his person and education.

4 Mass. 675. 6 do. 273. M. R. S.

SECT. 6. No executor or administrator on an estate shall be appointed guardian to any minor, interested therein.

1821, 51, § 46.

SECT. 7. The judge of probate in any county may appoint guardians to the following persons, though more than twenty-one years of age, belonging to such county, on application in writing, if any of the friends, relations or creditors of such person or of the selectmen or overseers of the poor of the town where he belongs.

1821, 51, § 49.

*First*—insane persons, including insane married women, whose husbands have left them, without making provisions for their support;

1828, 380, § 1, 2.

*Secondly*—spendthrifts, who by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste or lessen their estate, as to expose themselves or their families to want or suffering or their towns to charge or expense; and—

1821, 51, § 53.

*Thirdly*—such persons as by excessive drinking, gaming or debauchery, shall render themselves incapable of managing their own affairs.

1832, 13, § 1.

*Fourthly*—convicts committed to the state prison, for a term not longer than one year and not for life.

SECT. 8. Before appointing any such guardian except in the last mentioned instance the judge shall issue his warrant to the selectmen of the town where the person resides, concerning whom, such application is made, requiring them to make inquiry into the facts stated in the application; and the selectmen shall decide upon such evidence, as they may be able to obtain, whether the facts so stated are true; and as soon as may be, they shall report the result to the judge.

1832, 13, § 1.

SECT. 9. If on the report of the said selectmen, and on due notice to the person, concerning whom the application is made, and a hearing thereon by the judge of probate, he shall adjudge

4 such person to be insane, or a spendthrift or incapacitated, as  
5 aforesaid, he shall appoint a guardian or guardians, with the  
6 powers hereinafter specified.

SECT. 10. Provided, that whenever the selectmen or the over-  
2 seers of the poor of such town are the applicants, and it shall  
3 appear, that they have given at least fourteen days notice thereof  
4 to the person concerning whom the application is made, by  
5 serving him with a copy of their application, the judge, if such  
6 person is present, or on such further notice, as he may think  
7 reasonable, if any, may appoint such guardian, if he finds it  
8 proper, without any further inquisition, such as is provided in  
9 the eighth section.

SECT. 11. Whenever application shall have been made, as  
2 provided in section seventh of this chapter, and notice shall  
3 shall have been issued thereon, by the judge of probate, the  
4 applicants may cause a copy of their application and the order  
5 of court thereon to be filed in the registry of deeds for the  
6 county ; and if a guardian shall be appointed thereupon all con-  
7 tracts, excepting for necessities, and all gifts, sales or transfers  
8 of real or personal estate made by the person who is subject of  
9 such application, after the filing of the same, as aforesaid, and  
10 before the termination of the guardianship, shall be void ; pro-  
11 vided that this section shall not be construed as adding by impli-  
12 cation any thing to the validity of any such act by any such  
13 person previously to the filing of such copy as aforesaid.

1821, 51, § 53.

SECT. 12. When a guardian shall have been appointed under  
2 such application, the judge shall make an allowance to be paid  
3 by the guardian, from the ward's estate, for all reasonable  
4 expenses incurred by the ward in defending himself against the  
5 complaint.

M. R. S. 79, § 14.

SECT. 13. When such person shall reside on lands, not within  
2 any incorporated town, all acts authorized to be done by the  
3 selectmen, respecting the guardianship of such person, shall  
4 and may be done by the assessors of the district or tract, if it  
5 be an organized plantation in the same county.

M. R. S. 79, § 15.

SECT. 14. Guardians appointed under the provisions of said  
2 seventh section shall have the custody of the person of the ward,  
3 if such ward reside within the State, excepting so far as the  
4 court of probate, from time to time may otherwise order.

1821, 51, § 49, 53. 5 Mass. 427.

SECT. 15. Every guardian appointed for minors or other per-  
2 sons under the provisions of this chapter, shall give bond to the  
3 judge of probate in such sum and with such surety or sureties  
4 resident within this State as the judge shall accept, conditioned  
5 as follows :

6 *First*—For the faithful discharge of his trust ;

7 *Secondly*—To render a true and perfect inventory of the estate,  
8 property and effects of his ward, as appraised by three persons

9 under oath, to be appointed by the judge of probate, within the  
10 time limited by law;

11 *Thirdly*—To render a just and true account of his guardian-  
12 ship as often as, and whenever by law required;—and

13 *Fourthly*—At the expiration of his trust, to pay and deliver  
14 over all monies and property, which on a final and just settle-  
15 ment of his accounts, shall appear to be remaining in his hands.

1830, 470, § 11. 1821, 51, § 46, 49, 53. 1832, 13, § 1.

SECT. 16. On the appointment of every guardian, under any  
2 of the foregoing provisions, the judge of probate, shall appoint  
3 three suitable disinterested persons, to appraise the estate of the  
4 ward, in like manner as estates under administration, may be  
5 appraised as is mentioned in chapter one hundred and six sec-  
6 tions twenty-three and twenty-four, and the guardian shall return  
7 the inventory under oath within such time as the judge in his  
8 warrant to the appraisers shall direct, if the ward be a minor,  
9 and in all other cases, within three months after the appoint-  
10 ment of the guardian.

1832, 13, § 1. 1821, 51, § 47. 1830, 470, § 3, 11.

SECT. 17. Upon complaint made to the judge of probate by  
2 any guardian, or by the ward, or by any creditor or other person  
3 interested in his estate, or by any person having claims thereto,  
4 in expectancy, as heir or otherwise, against any one suspected  
5 of having concealed, embezzled or conveyed away any of the  
6 money, goods or effects of the ward, the judge may cite and  
7 examine such suspected person, and proceed with him as to such  
8 charge, in the same manner as is provided respecting persons  
9 suspected of concealing or embezzling the effects of a deceased  
10 testator or intestate.

1821, 51, § 50. 1832, 13, § 2.

SECT. 18. If any guardian having the charge and custody of  
2 any money, bill, note, bond, evidence of debt, or any property  
3 whatever, belonging to his ward, shall in violation of his trust  
4 embezzle the same, or fraudulently convert the same to his own  
5 use, he shall be punished by fine not exceeding five thousand  
6 dollars, or confinement to hard labor for a term not exceeding  
7 ten years, or both, according to the circumstances of the offence.

1825, 315, § 8.

SECT. 19. The guardian appointed under the provisions of  
2 this chapter, shall manage the estate of his ward, frugally and  
3 without waste, and apply the income and profits thereof so far  
4 as may be necessary, for the comfortable and suitable mainte-  
5 nance of the ward and his family, if there be any; and if the  
6 income and profits be insufficient for that purpose, then from the  
7 capital; and whenever any exigency by law authorizing a sale  
8 of any real estate of the ward shall occur, the guardian shall  
9 apply for a license to sell the same to some proper court, and  
10 having sold the same, shall apply the proceeds to the purposes  
11 contemplated by his licence.

1821, 51, § 51.

SECT. 20. Every such guardian, shall pay all just debts due  
2 from the ward, out of his personal estate, so far as it may prove

3 sufficient without disposing of effects necessary for the use and  
4 comfort of the ward and his family, if any, in case of deficiency  
5 thereof, then out of the real estate as provided in chapter one  
6 hundred and thirteen. 1821, 51, § 51. 1830, 470, § 5.

SECT. 21. Such guardian, shall also settle all accounts of the  
2 ward, and demand, sue for, and receive all debts due to him, or  
3 may, with the approbation of the judge of probate compound  
4 for the same, and give a discharge to the debtor upon such  
5 terms as the judge of probate may authorize; and he shall  
6 appear for and represent his ward in all legal suits and proceed-  
7 ings, unless where another person is appointed for that purpose,  
8 as guardian, or next friend.

1830, 470, § 5.

SECT. 22. The guardian may join in, and assent to a parti-  
2 tion of the real estate of his ward, either upon a petition for  
3 partition or other legal process; and he may assign and set out  
4 dower in the said estate to any widow entitled thereto, and may  
5 appoint an appraiser of real estate on any execution either  
6 against, or in favor of his ward.

M. R. S. 2 Pick. 382.

SECT. 23. Any judge of probate in his county, on the appli-  
2 cation of a guardian, or of any person interested in the estate  
3 of any ward, after notice to all other persons interested, may  
4 authorize or require the guardian to sell, or transfer any stock  
5 in the public funds or other personal property held by him, as  
6 guardian, and to invest the proceeds of such sale, and also all  
7 other monies in his hands, in real estate, or in any other manner,  
8 that shall be most for the interest of all concerned;—and the  
9 judge may make such further order, and give such directions, as  
10 the case may require, for managing, investigating and disposing  
11 of the effects in the hands of the guardian, or for buying in,  
12 any particular estate, or remainder, or reversion, or mortgage or  
13 other incumbrance, upon any real estate belonging to the ward.

1821, 51, § 56.

SECT. 24. No married woman, during her coverture, shall be  
2 appointed guardian of any minor, or other person; and if any  
3 female guardian be named after any such appointment, her  
4 authority as such shall cease; neither shall her husband become  
5 guardian in her right.

1821, 51, § 54.

SECT. 25. The judge of probate may dismiss any guardian of  
2 a minor or other person, whenever it shall appear necessary, or  
3 on the request of such guardian, and if the case require it,  
4 appoint another guardian in his place; provided that the judge,  
5 previously to any removal, except by request to the guardian,  
6 shall give fourteen days notice to such guardian, to appear and  
7 shew cause to the contrary.

1821, 51, § 55.

SECT. 26. On the marriage of any female ward, under the  
2 age of twenty-one years, the authority of her guardian, as such,  
3 shall cease.

SECT. 27. Every guardian, shall render and settle his account  
2 with the judge of probate at least once in three years and as  
3 much oftener, as the judge may cite him for that purpose.

1830, 470, § 10.

SECT. 28. On neglect or refusal to settle his account as afore-  
2 said, such guardian shall be deemed to have broken the condi-  
3 tion of his bond, notwithstanding the ward may be indebted to  
4 him, and liable to be removed therefor; and he shall also forfeit  
5 all allowance for his personal service, unless it appear to the  
6 judge, that such neglect arose from sickness or other unavoidable  
7 accident.

1830, 470, § 10. 4 Mass. 106.

SECT. 29. On the settlement of every guardianship account  
2 except when intended as a final one, the judge shall examine  
3 the bond of the guardian, and if it be found insufficient, either  
4 in amount or in the responsibility of the sureties, he shall require  
5 a new and sufficient one. Should such bond not be given, as  
6 required, the guardian shall be removed and a new one appointed  
7 in his place.

1830, 470, § 10. 4 Mass. 106.

SECT. 30. When an account is rendered by two or more joint  
2 guardians, the judge of probate may, in his discretion, allow the  
3 same, upon the oath of any one of them.

M. R. S.

SECT. 31. Whenever a person above the age of twenty-one  
2 years for any cause specified in this chapter, shall have had a  
3 guardian appointed over him by any judge of probate, such  
4 appointment shall be deemed evidence of the continued  
5 disability of such person to have the management of his pro-  
6 perty, until otherwise adjudged by the court of probate, not-  
7 withstanding the death or resignation, or removal of the guardian;  
8 and a new guardian may be appointed without further interven-  
9 tion from the selectmen. Whenever on application of any such  
10 person, or otherwise, the judge shall find, that such disability has  
11 ceased, he shall order the property of the ward remaining undis-  
12 posed of to be restored to him, excepting such legal compensa-  
13 tion as the guardian is authorized by law to receive for his  
14 services.

1821, 51, § 51.

SECT. 32. The guardianship, which shall be first lawfully  
2 granted of any person residing without the State, shall extend  
3 to all the estate of the ward within the same and shall exclude  
4 the jurisdiction of the probate court in every other county.

M. R. S. 79, § 31.

SECT. 33. Nothing contained in this chapter, shall impair or  
2 affect the power of any court of common law, probate court, or  
3 justice of the peace, to appoint a guardian to defend the inter-  
4 ests of any minor, or other incapacitated person, in any suit  
5 pending in such court, nor their power to allow or appoint any  
6 person, as next friend of such minor or incapacitated person, to  
7 commence, prosecute or defend any suit in his behalf.

M. R. S. 79, § 9.

NOTES.

SECT. 5. This section defines principles settled by judicial decisions. Vi. 4 Mass. rep. 675. 6th do. 273.

SECT. 7. A new provision is here introduced for the appointment of guardians of convicts committed to the state prison for more than one year and for a term less than for life. As they are beyond the reach of personal process for debt and cannot attend to their own business, the provision may be advantageous both to them and their creditors if they have property and owe debts. The case seems parallel to the one immediately preceding it, in this section. When a person is so imprisoned for life, the law already provides for administration on his estate, as if he were dead. Vi. stat. 1837, c. 292, § 3.

SECT. 12. This precaution seems to be proper in order that the ward may be secure against an offensive process, being placed at a great disadvantage by the provisions in the preceding section.

SECT. 22. This section expresses the power of the guardian to act in certain cases wherein the existing law seems not sufficiently explicit.

SECT. 23. As cases may occur, when the direction of the judge on the application of others may be necessary, as well as his consent on the application of the guardian in other cases, the provisions of this section are extended for that purpose.

SECTS. 30, 31, 32. These sections are new, but supposed not to be inconsistent with the present apprehension of the law.

CHAPTER 111.

OF TESTAMENTARY TRUSTEES.

- Sect. 1. Of the bonds required, and their condition.
2. When bonds may not be required.
3. Trustee, neglecting to give bonds, considered as declining.
4. When a trustee may resign.
5. No person required to accept the trust, as executor or administrator of a former trustee.
6. When a trustee may be removed.
7. Vacancies to be supplied by the judge of probate.
8. How the property shall vest in new trustees.
9. Same subject.
10. Of the bonds and inventory, required of trustees, by the judge of probate.
11. Of the appraisal.
12. Courts to authorize a sale, and investment of personal property, or of real estate.
13. Chancery powers.
14. Proceedings on bonds of trustees, for breach of condition.

SECT. 1. Every person, who shall be appointed a trustee for 2 minors or others,} under any last will, excepting such as are 3 exempted by the succeeding sections of this chapter shall 4 before entering on the duties of his trust, give bond with suffi- 5 cient surety or sureties, to the judge of probate for the county



6 in which the will shall have been proved, and in such sum as  
7 the judge shall prescribe—with condition as follows—

8 *First*—That he will faithfully execute such trust, according to  
9 the will of the testator, so far as consistent with law.

10 *Secondly*—That he will make a true and perfect inventory of  
11 the real estate, goods and chattels, rights and credits of such  
12 minors or others, to be returned into the probate office of such  
13 county at such time as the judge shall order.

14 *Thirdly*—That he will annually render to such judge an  
15 account of the income and profits thereof, and of his payments  
16 and expenses, or at such other times as the judge shall direct ;  
17 and

18 *Fourthly*—That at the expiration of such trust, he will adjust  
19 and settle his accounts with the judge, and will pay and deliver  
20 over all balances and sums of money or other property that may  
21 be due, and give possession of the other estate belonging to  
22 such minors and others, with which he may have been entrusted  
23 to the persons entitled thereto. 1821, 51, § 58.

SECT. 2. In the following cases, bonds shall not be required  
2 of such trustee, unless for special reasons the judge shall deter-  
3 mine it to be necessary—

4 *First*—The testator shall have requested or directed, that such  
5 bond should not be required.

6 *Secondly*—When all the parties interested in the trust fund if  
7 of full age and legal capacity, shall in writing signify to the  
8 judge of probate their request, that such bond should not be  
9 required ; and

10 *Thirdly*—When the trustee, not being before required to give  
11 bonds, shall have entered upon the duties of his trust, before  
12 the taking effect of the provisions of this chapter.

SECT. 3. Every person appointed a trustee, as aforesaid, who  
2 shall neglect to give such bond, within such time as the judge  
3 of probate shall allow for that purpose, shall be considered as  
4 having declined the trust. 1821, 51, § 59.

SECT. 4. Every such trustee, may upon his own request, be  
2 allowed to resign his trust, when it shall appear to the judge of  
3 probate, proper to allow the same. 1821, 51, § 60.

SECT. 5. No person succeeding to such trust, as executor or  
2 administrator of a former trustee, shall be required to accept or  
3 retain the same against his will.

SECT. 6. When any trustee appointed either by the testator  
2 or the judge of probate, shall become insane, or otherwise inca-  
3 pable of discharging his trust, or evidently unsuitable therefor  
4 the judge may upon notice to such trustee, and all others inter-  
5 ested, remove him and appoint another in his stead.

1821, 59, § 62.

SECT. 7. When any person appointed a trustee shall decline  
2 or resign the trust, or shall die before the objects thereof are  
3 accomplished, if no adequate provision is made by the will for

4 supplying such vacancy, the judge of probate, shall, after notice  
5 to all persons interested, appoint a new trustee, to act alone or  
6 jointly with others, as the case may be. 1821, 59, § 61.

SECT. 8. Every trustee appointed by the judge of probate  
2 under the provisions of this chapter, shall have and exercise the  
3 same powers, rights and duties, whether as a sole or joint trustee,  
4 as if he had been originally appointed by the testator; and the  
5 trust estate shall vest in him, in like manner as it did or would  
6 have vested in the trustee, in whose place he is substituted.

1821, 59, § 61.

SECT. 9. The judge may order such conveyances to be made  
2 by the former trustee, or his representatives, or by the other  
3 remaining trustees, as may be proper, to vest in the trustee newly  
4 appointed, either alone or jointly with others, the estate and  
5 effects, as the case may be.

SECT. 10. Every trustee appointed by the judge of probate  
2 shall, before entering upon the duties of his trust give bond in  
3 the manner prescribed in the first section; excepting only that  
4 the judge may dispense with the making and returning of an  
5 inventory, by any substituted trustee, whenever he shall think  
6 such inventory unnecessary; in which case the condition of the  
7 bond shall be altered accordingly. Without the acceptance of  
8 such bond by the judge, no right nor authority shall vest in the  
9 said trustee.

SECT. 11. In all cases, when an inventory is required to be  
2 returned by any trustee, the estate and effects shall be appraised  
3 by three suitable persons to be appointed and sworn as is pre-  
4 scribed by law, with respect to the estate of a deceased spec-  
5 tator. M. R. S.

SECT. 12. The judges of probate having jurisdiction of the  
2 trust, in their respective counties and also the supreme judicial  
3 court in any county, may on the application of the justice, or  
4 of any person interested in the trust estate, after notice to all  
5 other persons, interested therein, authorize or require the  
6 trustee, to sell any stock in the public funds or in any corpora-  
7 tion, or any other personal estate, or effects held by him in trust,  
8 and to invest the proceeds of such sale, and also any other trust  
9 monies in his hands, in real estate or in any other manner, that  
10 shall be most for the interest of all concerned therein; they  
11 may also authorize the sale of real estate held as aforesaid, and  
12 give such further directions, as the case may require, for man-  
13 aging, investing, and disposing of the trust fund, subject to any  
14 provisions, contained in the will, respecting such fund, and pro-  
15 vided this section shall not restrain the exercise of any powers  
16 given by the terms of the will.

1821, 51, § 58. M. R. S. 69, § 11.

SECT. 13. The said courts respectively, may hear and deter-  
2 mine in equity, all other matters relating to the trusts mentioned  
3 in this chapter. M. R. S. 69, § 12.

SECT. 14. Any bond given by a trustee, as provided in this chapter, may be put in suit by order of the judge of probate, for the use and benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted in the manner prescribed in chapter one hundred thirteen with respect to bonds given by administrators. 1821, 51, § 74.

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## NOTE.

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SECT. 12. In this section the judge of probate may *direct* as to the investment of funds by the trustees as well as to *permit* any investment proposed, a provision intended to protect the rights of all who may be interested in the trust estate. It may also be convenient for the trustee to obtain in some cases the direction of the judge to authorize any important act contemplated by him, prior to its performance, to relieve himself from future responsibility.

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## CHAPTER 112.

### OF SALES OF REAL ESTATE BY EXECUTORS, ADMINISTRATORS, GUARDIANS, AND OTHERS UNDER SPECIAL LICENSE OF COURT.

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- Sect.*
1. When judges of probate may license sales of real estate.
  2. Sales to be by auction, unless otherwise ordered.
  3. Appeals allowed on such applications.
  4. Concurrent jurisdiction of S. J. court, and D. court.
  5. Of the bonds required.
  6. Form of the oath.
  7. Notice previous to granting license.
  8. Effect of a bond of indemnity by parties interested in the estate.
  9. Of the notice of sale.
  10. Certificate of judge of probate, when necessary or on applications to other courts.
  11. Other evidence.
  12. When the certificate of the overseers of the poor necessary.
  13. Proceedings for sale of estates of persons deceased, or wards not belonging to this State.
  14. Same subject.
  15. Evidence of the appointment of foreign executor, administrator or guardian.
  16. Sales may be adjourned fourteen days.
  17. Licenses to remain in force one year only.
  18. Limitation of suits to recover back lands sold.
  19. Evidence of notice of sale, how perpetuated.
  20. Licenses to sell real estate at private sale.
  21. Oath and bond in such cases.
  22. License applicable to a particular offer to purchase.
  23. Jurisdiction in one county may be extended, in case, &c.

- Sect.* 24. License for private sale, applicable to sales by auction.  
 25. Wife of an insane ward, &c. may join with his guardian in a sale, and of proceedings to be had thereon.  
 26. Same subject.  
 27. Same subject.  
 28. Judge of probate to authorize deeds, pursuant to a contract of the deceased.  
 29. Court may prescribe in what order lands shall be sold.  
 30. Operation of the deed of the person licensed.  
 31. What estate may be the subject of such sale.  
 32. Surplus proceeds of sale considered real estate, for purposes of distribution.  
 33. Presumptive heirs of wards may appear as parties in interest, on application for sale of their lands.  
 34. Costs when the granting of a license is objected to.  
 35. Requisites of a valid sale against heirs, &c.  
 36. Requisites against such as claim adversely to the title sold.  
 37. Neglect or misconduct of the person licensed, a breach of his bond.  
 38. Certain cases to be embraced in the construction of this chapter.

SECT. 1. Judges of probate in their respective counties, shall  
 2 have power to license the sale of real estate, and certain inter-  
 3 ests therein, in whatever county the same may be situated in the  
 4 following cases—on application— 1821, 51, § 68.  
 5 *First*—Of executors, administrators and guardians of minors  
 6 and other incapacitated persons to authorize them to sell so  
 7 much of the real estate of their testators, intestates and wards,  
 8 respectively, as is necessary for the payment of just debts and  
 9 legacies and incidental expenses of sale and charges of admin-  
 10 istration or guardianship, and when there is not sufficient per-  
 11 sonal estate for the support of such wards. 1821, 52, § 2.  
 12 *Secondly*—Of such executors, administrators and guardians in  
 13 like cases to sell so much real estate, held in mortgage, and  
 14 seizin and possession thereof being had for breach of the con-  
 15 dition thereof, or which has been set off on execution to such  
 16 executor, administrator or the ward of such guardian, as may  
 17 be necessary for said objects, notwithstanding the right of  
 18 redeeming the same, may not have been foreclosed. 1821, 52, § 2.  
 19 *Thirdly*—Of guardians of minors, and other incapacitated  
 20 persons, so much as is necessary for the payment of debts and  
 21 expenses of guardianship and incidental charges, notwithstand-  
 22 ing there may be a reserve of personal property of the wards,  
 23 provided that it appear more for the advantage of such wards,  
 24 or their families. 1823, 224, § 1. 1830, 470, § 5.  
 25 *Fourthly*—Of guardians in addition to the provisions of the  
 26 preceding specifications to sell so much of the real estate of  
 27 their wards, as will raise not exceeding one hundred dollars  
 28 more in anticipation of accruing expenses. 1830, 470, § 4.  
 29 *Fifthly*—Of executors, administrators and guardians as afore-  
 30 said, when license might be granted for any of the foregoing  
 31 purposes, and it should appear, by the petition, and proof exhib-  
 32 ited in support of the same, that by a partial sale of any entire

33 portion, the residue would be greatly depreciated, to authorize  
 34 the sale of the whole or such entire parts thereof as will not  
 35 injure the residue. 1830, 470, § 4. 1821, 52, § 3.

36 *Sixthly*—Of the friends or guardians of minors and other  
 37 incapacitated persons, that the guardians or some other suitable  
 38 persons may be authorized to sell any real estate of the wards,  
 39 including lands held in mortgage or levied upon by execution  
 40 when it fully appears, that it would be for the benefit of the wards,  
 41 that the same should be disposed of and the proceeds thereof  
 42 put out at interest, though not requisite for other purposes.

1821, 52, § 5, 6. 1833, 62, § 1. 1837, 296, § 1.  
 43 *Seventhly*—Of friends or guardians of minors and others under  
 44 guardianship, who are owners of lands on which any trees or  
 45 timber shall be standing and it shall be made to appear, that the  
 46 interests of the wards would be promoted by having the trees  
 47 or timber sold, and the proceeds thereof put on interest, to  
 48 authorize the guardian of any such minor or other suitable per-  
 49 son to sell said trees and timber or any part thereof for the  
 50 purpose aforesaid. 1833, 76, § 1.

51 *Eighthly*—Of any husband, resident in the county of such  
 52 judge, whose wife is insane, that he may be authorized, on such  
 53 terms and conditions as the judge may think proper to require,  
 54 to make sale for a valuable and sufficient consideration of any  
 55 real estate held by him in right of his wife ; and—

1835, 160, § 1.  
 56 *Ninthly*—Of public administrators in the case defined in sec-  
 57 tion eleventh of chapter one hundred and seven.

1835, 153, § 3.  
 58 Provided, that the executor, administrator or guardian shall  
 59 have received his appointment as such from the judge granting  
 60 the license, or from his predecessor.

SECT. 2. Excepting where otherwise specially authorized as  
 2 hereinafter provided, all the sales under the provisions of the  
 3 preceding section shall be by public auction.

1821, 52, § 3.  
 SECT. 3. An appeal shall be allowed from any order, decree,  
 2 denial or decision of any judge of probate, respecting any  
 3 petition for such license, in like manner as in other cases.

1821, 51, § 63.  
 SECT. 4. The supreme judicial court in every county, and  
 2 any district court in any county, within its district, shall have  
 3 original concurrent jurisdiction with the court of probate in all  
 4 cases specified in the first section of this chapter ; and the right  
 5 and conditions of appeal may be exercised and applied from the  
 6 district courts to the supreme judicial court as may be from the  
 7 probate court. 1821, 52, § 3, 5, 6.

SECT. 5. Executors, administrators and guardians in all cases  
 2 of license obtained to sell real estate, shall before proceeding  
 3 to make such sale, give bond to the judge of probate of the  
 4 county in which they were originally appointed respectively, in

5 an amount and with sureties to his satisfaction, with the follow-  
6 ing conditions:

7 *First*—That they shall observe all the provisions of law for the  
8 sale of real estate by executors, administrators and guardians,  
9 and use due diligence in executing the trust;—and

10 *Secondly*—That the proceeds of the sale, shall be truly applied  
11 and accounted for according to law. 1830, 470, § 6.

SECT. 6. Before fixing upon the time and place of sale, they  
2 shall in substance take and subscribe the following oath before  
3 the judge of probate, in whose county they were originally  
4 appointed, or before some justice of the peace, whose certificate  
5 shall be returned to the said judge, and the same shall be filed  
6 and recorded by the register, viz:

7 “I —— do solemnly swear, that in disposing of the estate  
8 of —— which I am licensed to sell by the —— court ——  
9 held at —— on the —— day of —— 18 —— I will use my  
10 utmost endeavors to dispose of the same in such manner as will  
11 produce the greatest advantage to all persons interested therein.”

1821, 51, § 69.

SECT. 7. No license shall be granted for the sale of any such  
2 real estate by any court to any executor, administrator, guardian  
3 or other person as aforesaid, until after at least fourteen days  
4 previous personal notice, or notice given three weeks succes-  
5 sively in such newspaper as the court shall order, to all persons  
6 interested in the property, of the time and place of hearing, that  
7 they may appear and object, if they see cause. If any party  
8 interested, reside without the State such special notice may be  
9 given, as the court may direct. 1821, 52, § 2.

SECT. 8. Such license shall not be granted to any executor,  
2 administrator or guardian, if any of the parties interested in the  
3 estate of the person deceased or under guardianship shall give  
4 bond to the said executor, administrator or guardian, in a sum  
5 and with sureties to be approved by the court, conditioned to  
6 pay all sums for the payment of which license might otherwise  
7 be granted under the petition, so far as the goods and chattels,  
8 rights and credits of the person deceased, or under guardianship  
9 shall be insufficient therefor, provided that such bond shall be no  
10 bar to any future application for the same purposes, if the obli-  
11 gors on reasonable notice and demand shall at any time, fail to  
12 perform the condition thereof. 1821, 52, § 2.

SECT. 9. Every person licensed as aforesaid to sell the estate  
2 of any person deceased or under guardianship, shall, previous  
3 to such sale, give thirty days notice thereof by posting up notifi-  
4 cations in some public place in the town, where the estate lies in  
5 two adjoining towns, and in the town, where the said deceased  
6 last dwelt, or where the person under guardianship resides, if  
7 within the State; or by causing an advertisement thereof to be  
8 published three weeks successively in such newspaper as the  
9 court, who may authorize the sale shall order, the first publica-  
10 tion being thirty days before the sale.

SECT. 10. Every application for the sale of any estate under the provisions of the fifth specification of the first section of this chapter, when made to the supreme judicial court or to any district court, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried, showing the value of the real and personal estate of the person deceased or under guardianship and the amount of his just debts, or legacies, if the case require it; and also the opinion of such judge of probate, whether it be necessary that the whole or a part of the estate should be sold, and if part only, what part; and in all applications before said courts by guardians of minor children under the sixth specification aforesaid, a certificate must likewise be produced from the judge of probate in the county where such minor's estate was inventoried, stating that in his opinion it would be for the interest of such minor, that the whole or a part of his said estate should be sold for the purpose specified, and if part only, what part. 1821, 52, § 4.

SECT. 11. Any court authorized to grant licenses, under the provisions of this chapter, may examine under oath the petitioner or any other persons, whether interested or not, touching the truth of the facts set forth in any such petition. 1821, 52, § 4.

SECT. 12. No license to sell the estate of any person, under guardianship, not a minor or insane person, shall be granted, unless the guardian or other person applying shall produce to the court a certificate under the hands of the overseers of the poor, of the town where the ward resides, if within this State, giving their consent and approbation of the sale and their opinion as to the amount proper to be raised by such sale, excluding debts contracted by gaming, and if applicable to the case, whether it be necessary to sell a greater amount in value of land, to prevent injury to the residue. 1821, 52, § 5, 6.

SECT. 13. The supreme judicial court, and any district court, in any county within the limits of their respective jurisdictions, may grant license to executors and administrators, on the estates of persons deceased, who at the time of their decease resided out of the State, and also guardians of such minors and other persons under guardianship, not living within the State, producing evidence of their appointment as hereinafter provided, to sell and convey such real estate or interest therein lying within the State, in the same way and manner and under the same regulations as are provided in this chapter for the sale of such estate by executors, administrators and guardians appointed under authority of this State. 1821, 52, § 5, 6.

SECT. 14. All proceedings necessary to be had before any judge of probate within this State respecting such sale, as is provided in the preceding section, shall be had before the judge of probate within and for the county where such real estate lies, and the bond required of the person licensed shall be given

6 to the same judge. No certificate in such case shall be required  
7 of the overseers of the poor in any place. 1821, 52, § 5, 6, 9.

SECT. 15. Whenever any executor, administrator or guardian,  
2 has been duly approved or appointed by any court having pro-  
3 bate jurisdiction in any other of the United States, a certified  
4 copy of such approval and appointment submitted for examina-  
5 tion to any judge of probate in this State and by him allowed  
6 and ordered to be filed and transcribed upon the records in the  
7 registry of probate for his county, shall be sufficient authority  
8 to entitle such executor, administrator or guardian to all the  
9 rights and powers of such appointment, so far as effected by  
10 the provisions of the thirteenth section of this chapter.

1821, 52, § 10.

SECT. 16. Any sale, appointed and notified and appointed  
2 under the provisions of this chapter, may be adjourned for a  
3 time or times not exceeding fourteen days in the whole at the  
4 discretion of the person licensed, he giving such reasonable  
5 notice of such adjournment as circumstances may permit.

1821, 52, § 11.

SECT. 17. No license granted under any of the provisions of  
2 this chapter, shall remain in force longer than one year from its  
3 date.

1821, 52, § 12.

SECT. 18. No action for the recovery of any estate, sold under  
2 the provisions of this chapter by an executor, administrator or  
3 guardian, shall be maintained by any heir or other person claim-  
4 ing under the deceased testator or intestate, unless it be com-  
5 menced within five years next after the sale; and no action for  
6 any estate sold in like manner by a guardian shall be maintained  
7 by the ward, or by any person claiming under him, unless it be  
8 commenced within five years next after the termination of the  
9 guardianship; excepting only, that persons out of the State,  
10 and minors and others under any legal disability to sue at the  
11 time when the action shall first accrue, may commence such  
12 action at any time within five years after the removal of the  
13 disability or their return to the State; and no entry shall be  
14 made, unless by judgment of law, upon any lands sold as afore-  
15 said, with a view to avoid the sale, unless within the times of  
16 limitations before prescribed for the commencement of an  
17 action.

1821, 52, § 12. M. R. S. 71, § 37.

SECT. 19. The affidavit of any person duly licensed to make  
2 sale of any real estate, or of any person employed by such  
3 licensed person, taken within eighteen months next following  
4 the sale of such real estate, and filed in the probate court, and  
5 recorded with one of the original advertisements of the time,  
6 place and estate to be sold, or a copy of such advertisement,  
7 are hereby declared to be one mode of perpetuating the evi-  
8 dence, that such notice was given; and a copy of such affidavit  
9 certified by the register of probate, shall be competent evidence  
10 thereof; or the affidavit may be taken as provided in section  
11 twenty-third of chapter one hundred five.

1821, 52, § 15.



SECT. 20. In all cases where the supreme judicial court—  
2 any district court, or any judge of probate, may by the provis-  
3 ions of this chapter, license any person to sell any real estate  
4 by auction, the said courts respectively, may authorize them to  
5 make sales from time to time at private sale, if it shall appear for  
6 the interest of all concerned. 1826, 342, § 1. 1830, 470, § 4.

SECT. 21. Every person thus licensed, shall be required to take  
2 the same oath, and execute and file with the judge of probate,  
3 like bonds, as is required of persons licensed to sell by auction;  
4 but the notice to be given of the time and place of sale shall  
5 be such as the court in their license may direct, excepting as  
6 directed in the following section.

1826, 342, § 1. 1830, 470, § 4.

SECT. 22. Whenever on such application to sell estate at  
2 private sale, it appears by the petition of any executor, admin-  
3 istrator or guardian, and the evidence adduced, that an advan-  
4 tageous offer has been previously made to him by any person,  
5 for such estate or any part of the same, and that the interest of  
6 all persons concerned, will be best promoted by an immediate  
7 acceptance of the same, the said courts or the judge of probate,  
8 having cognizance of such petition, may authorize a sale of the  
9 property on such terms as they see fit, to such individual with or  
10 without public notice at the discretion of the person licensed;  
11 the person licensed giving bonds and taking oath as in other cases.

SECT. 23. When the real estate for the sale of which license  
2 may be necessary, lies in two or more counties, the judge of  
3 probate or other court having authority to grant license to sell  
4 the estate in either of said counties, may also include in such  
5 license, the whole or any part of the estate in any of the other  
6 counties in the State—which might be liable to be sold for the  
7 same objects, if the court had regular jurisdiction of the same.

1826, 342, § 1.

SECT. 24. Any person duly authorized to sell real estate at  
2 private sale, may notwithstanding if he see cause, sell the prem-  
3 ises by auction, at any time within the term of his license, he  
4 complying with all the requisitions of law for sales by auction,  
5 together with any particular conditions contained in his afore-  
6 said license.

SECT. 25. Whenever the guardian of any insane or other  
2 person, not a minor, shall have obtained license from any court  
3 empowered to grant the same, to sell the interest of his ward in  
4 any estate held by him in right of his wife, it shall be lawful for  
5 her to join with such guardian in the sale and conveyance  
6 thereof, and any deed executed by her with the said guardian,  
7 for a sufficient consideration, shall be as effectual, as if executed  
8 by her with her husband when under no legal disability.

1828, 380, § 3.

SECT. 26. Whenever any guardian as aforesaid, shall have  
2 obtained license to sell the real estate of his ward and the wife  
3 of such ward shall release her contingent right of dower therein

4 to the purchaser, either in the same deed with the guardian or  
5 another deed duly acknowledged and recorded, she shall be  
6 forever barred from claiming any dower in the premises.

1828, 380, § 4.

SECT. 27. It shall be competent for the guardian with the  
2 consent of the judge of probate, to whom he is accountable, to  
3 make any agreement in writing with such wife, as to the invest-  
4 ment or other disposal of such part of the proceeds of sale of  
5 the whole property for her separate use as may be equivalent to  
6 her interest in the same, and the said judge of probate or the  
7 supreme judicial court shall have power to enforce such agree-  
8 ment as a subject of trust, upon principles of equity.

1828, 380, § 3.

SECT. 28. Judges of probate may authorize any executor or  
2 administrator of any deceased person, whose estate is subject  
3 to his jurisdiction, to execute deeds, in order to carry into effect  
4 bonds, agreements or covenants in writing whether sealed or not,  
5 whenever it shall be made to appear to them on petition of the  
6 person contracted with, as aforesaid, that the deceased in his  
7 life time, entered into any such contract to convey real estate to  
8 him, but was prevented by death, and that the petitioner has  
9 performed, or stands ready to perform whatever condition was  
10 required of him by the terms of the contract. 1839.

SECT. 29. On granting license to any executor, administrator  
2 or guardian for the payment of debts, legacies or expenses of  
3 administration, it shall be competent for the court, granting the  
4 same, to prescribe in the license, what particular portions of the  
5 real estate shall be sold, and in what order agreeably to the pro-  
6 visions of the last will of the testator or on such principles of  
7 equity, as they may find applicable. 6 Mass. 151.

SECT. 30. Any deed made, executed and recorded in due  
2 form of law for a fair and adequate consideration, in pursuance  
3 of any license under the provisions of this chapter, shall be  
4 effectual to pass to the purchaser all the estate, right, title and  
5 interest in and to the granted premises, which the testator or  
6 intestate at the time of his death or the person under guardian-  
7 ship or other person on account of whom the license was granted,  
8 might convey by a like deed, if living and not incapacitated.

1821, 52, § 2.

SECT. 31. Lands of which the testator or intestate died seized  
2 in fee tail, general or special, and also all such estate as he had  
3 fraudulently conveyed, or of which he had been colorably dis-  
4 seized, with intent to defraud his creditors, shall be liable to be  
5 sold under any license for the payment of his debts under the  
6 provisions of this chapter, as also provided in chapter ———

1821, 52, § 1. 14 Mass. 137.

SECT. 32. In all cases of sales by an executor, administrator,  
2 husband or guardian, of any part or the whole of the real estate  
3 of his testator, intestate, wife or ward, under a license granted  
4 by any court, by virtue of the provisions of this chapter,

5 whether such executor, administrator or guardian, shall have  
6 been appointed in this State or elsewhere, and wherever the  
7 husband may reside, the surplus of the proceeds of the sale,  
8 remaining on the final settlement of the accounts of such pro-  
9 ceeds shall be considered, as real estate and be disposed of  
10 amongst the same persons and in the same proportions, as the  
11 real estate would have been by the laws of this State, if it had  
12 been sold. M. R. S. 71, § 34. 9 Pick, 130.

SECT. 33. All those who are next of kin, and heirs apparent  
2 or presumptive of the ward, shall be considered as interested in  
3 the estate and may appear as such and answer to the petition of  
4 any guardian or other person for the sale of his estate ; and when  
5 personal notice is required to be given, they shall be notified as  
6 such. 3 Mass. 398. M. R. S. 71, § 29.

SECT. 34. If any person interested, shall appear and object  
2 to the granting of any license prayed for under the provisions  
3 of this chapter, and if it shall appear to the court, that either the  
4 petition, or the objection thereto, is unreasonable, they may in  
5 their discretion award costs to the party prevailing.

1821, 52, § 14. M. R. S. 71, § 36.

SECT. 35. In case of an action, relating to any estate sold  
2 under the provisions of this chapter, in which an heir, or other  
3 person claiming under the deceased, or the wife or her heirs in  
4 case of a sale of her estate by her husband, or the ward or any  
5 person claiming under him, shall contest the validity of the sale,  
6 it shall not be avoided on account of any irregularity in the  
7 proceedings, provided it shall appear—

8 *First*—that the license was granted by a court of competent  
9 jurisdiction and that the deed was duly executed and recorded—

10 *Secondly*—that the person licensed gave whatever bond was  
11 required in his case—

12 *Thirdly*—that he took the oath prescribed in section sixth of  
13 this chapter, if also required—

14 *Fourthly*—that he gave notice of time and place of sale, as  
15 prescribed in this chapter, and

16 *Fifthly*—That the premises were sold in such manner, and  
17 within such term as the license authorized—and are held by one  
18 who purchased them in good faith.

M. R. S. 71, § 38; 7 Mass. 488.

SECT. 36. If the validity of any such sale shall be drawn in  
2 question, by any person claiming adversely to the title of the  
3 deceased testator or intestate, ward, or wife aforesaid, or by a  
4 title not derived through him or her, the sale shall not be held  
5 void on account of any irregularity in the proceedings, provided  
6 it shall appear that the license was granted by a court of com-  
7 petent jurisdiction, and that the deed was duly executed and  
8 recorded. M. R. S. 71, § 40.

SECT. 37. If in relation to such sale, there shall be any  
2 neglect or misconduct in the proceedings of any executor,  
3 administrator or guardian, by which any person interested in the  
4 estate shall suffer damage, such aggrieved party may recover

5 compensation therefor, in a suit on the probate bond, or other-  
6 wise as the case may authorize or require. M. R. S. 71, § 39.

SECT. 38. Whenever executors, administrators or guardians,  
2 may be authorized to sell property held in mortgage, or levied  
3 upon by execution, as in the second specification in the first  
4 section of this chapter, or to sell trees and timber standing on  
5 any land of any minor, as in the seventh specification in said  
6 section, all the provisions in this chapter, respecting the sale of  
7 real estate, after license obtained, which may be applicable to  
8 the case, shall be construed as including the same.

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## NOTES.

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SECT. 4. In cases where the granting of any license in the S. J. court and district court depends upon certificates of approbation from the judge of probate, the concurrent jurisdiction of those courts appears to be superfluous; and as in other cases the existing provisions for the granting of licenses in probate courts seem to be sufficient for every exigency, contemplated in the first section of this chapter, it is respectfully recommended that the law be so varied, as that the S. J. C. shall exercise only appellate jurisdiction in these cases, and that the district court should take no cognizance of them. Should this alteration be made, this and the 10th section of this chapter should be omitted.

SECT. 22. This section provides for a case of not unfrequent occurrence. An advantageous offer cannot be accepted till certain forms of notice are passed through under the existing laws, when the opportunity may be lost.

SECT. 24. It is natural to suppose, that a license to sell at private sale, would include the power to sell by auction, as the public sale may afterwards be rendered valid by a private confirmation; but as doubts have been expressed on this point, it is proposed to render it certain.

SECT. 29. This principle is sustained by a case, reported 6 Mass. rep. p. 151.

SECT. 32, 33. These sections are grounded on equity principles, but it is thought it may be beneficial that they should be here defined.

SECT. 35. A sale under license of court for the purposes mentioned in this chapter, may be valid so far as respects persons not privy to the estate, as in the hands of the executor or other person licensed, and void as to the heirs or others directly interested in the estate intended to be conveyed. These sections are introduced for the purpose of defining this distinction. Vi. 7 Mass. rep. 488.

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## CHAPTER 113.

### GENERAL PROVISIONS, RESPECTING PROBATE BONDS—AND REMEDIES ON THE SAME.

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- Sect. 1. Judge of probate, to require new bonds in certain cases.  
2. Proceeding on application of sureties, to be discharged after six years.  
3. Same subject.  
4. Suits to be brought in the name of the judge of probate and in his own county.  
5. Parties interested, to put the bond in suit, without applying to the judge.

- Sect.* 6. Manner of inserting their names in the writ.  
 7. Of costs in such cases.  
 8. Principal obligor, may be made a defendant, by his sureties, if omitted in the writ.  
 9. How he may be summoned, and the effect thereof.  
 10. Copy of distribution to be produced in such suit by a creditor entitled to a dividend of an insolvent estate.  
 11. Evidence in case of a creditor in other cases, also of a legatee.  
 12. Evidence required of widows, next of kin, and residuary legatees.  
 13. Of the judgment and proceedings thereon, and award of execution.  
 14. Same subject.  
 15. Same subject.  
 16. How execution to be awarded, for not rendering an account, &c.  
 17. Also for not returning an inventory.  
 18. Of suits by the judge, as trustee for all concerned and the incidents thereof.  
 19. Provisions of this chapter extended to proceedings on bonds of executors, special administrators, guardians, testamentary trustees, surviving partners, &c.

SECT. 1. Whenever the sureties in any bond given to the judge of probate shall be insufficient, the judge of probate on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with such sureties, as he shall judge sufficient. 1821, 51, § 63.

SECT. 2. Any surety, in a bond given to the judge of probate may at any time, after the expiration of six years, from the date of the bond, on his application be discharged from all responsibility, for any subsequent breach of the condition of such bond, but for no prior breach, if the judge on due notice to all persons interested, shall think proper to discharge him; and the principal, shall thereupon give a new bond, with such sureties, as the judge shall approve.

SECT. 3. In the cases specified, in the preceding sections, if the principal shall not give such new bond, within such time, as the judge shall order, he shall be removed from his trust, and some other person shall be appointed in his place.

SECT. 4. All suits brought upon a probate bond of any kind payable to any judge of probate, shall be originally commenced in the supreme judicial court, held within and for the county, in which the said judge of probate shall belong, in the name of said judge, or his successor, for the time being as the case may be.

1821, 51, § 70.

SECT. 5. Any person interested either personally or in any official capacity, in any probate bond, or in any probate judgment, that may have been rendered on such bond shall have a right to originate a suit, on such bond, or to sue out a scire facias on said judgment, as the case may require, without applying to the judge, whose name may have been used in said bond or in such judgment, or to his successor; and any two or more parties interested in the penalty of such bond, may unite in the prosecution of the action. 1830, 470, § 1.

SECT. 6. The person by whom the said action shall be brought  
2 or his attorney, or other person in his behalf shall allege in the  
3 original writ or scire facias, his own name and addition, and that  
4 the same is sued out by him in the name of ——— judge of  
5 probate for the county of ——— otherwise the writ, shall abate.

SECT. 7. If such suit is not sustained, the court, before which  
2 the same is pending, shall render judgment and issue execution  
3 for costs against the person instituting the suit; but no judgment  
4 shall be rendered against the judge of probate; provided that  
5 this and the two preceding sections shall not be construed as  
6 applicable to suits on such bonds when commenced by the  
7 express authority of the judge of probate.

1830, 470, § 1. 5 Pick. 62.

SECT. 8. If the principal in any such bond, shall be resident  
2 within this State, at the commencement of the action, on such  
3 bond, and shall not be made a defendant therein and served with  
4 process accordingly, or if at the time of the hearing of the parties  
5 in such action, or on a scire facias on a judgment recovered  
6 against his sureties only on such bond, he shall be within the  
7 State, the court may, at the request of any such surety, continue  
8 or postpone the action, so long as may be necessary to summon  
9 or bring in the principal in the manner provided in the next  
10 section.

1821, 51, § 71.

SECT. 9. The surety may thereupon take out a writ, in such  
2 form as the court shall prescribe, to arrest the principal, if liable  
3 to arrest, or to attach his goods or estate and summon him to  
4 appear and answer as a defendant in the original action; and if  
5 after being duly served with such process, fourteen days at least  
6 before the time appointed for him to appear and answer to the  
7 suit, he shall neglect so to do, and if the judgment shall be for  
8 the plaintiff, it shall be rendered against such principal obligor,  
9 together with the other defendants in the same manner, as if he  
10 had been originally, a party to the suit; and any attachment  
11 made, or bail taken, on such process, shall be liable to respond  
12 the judgment, in like manner as if made or taken in the original  
13 suit.

1821, 51, § 71.

SECT. 10. Every creditor, entitled to a dividend from an  
2 insolvent estate, on prosecuting an original suit against the  
3 administrator or executor on any probate bond, or suing out a  
4 scire facias on any judgment previously recovered, on the same,  
5 must produce an official copy of the order of distribution, of the  
6 estate of the deceased among the creditors, particularly speci-  
7 fying all the claims allowed the several creditors, and prove that  
8 a demand has been made on the administrator, for his particular  
9 dividends.

1821, 51, § 72.

SECT. 11. If the estate be not insolvent, or if the claim be  
2 of a nature not affected by such insolvency, such creditor must  
3 first have his debt or damages ascertained by judgment of court,  
4 and make it appear, that a demand has been made of the executor  
5 or administrator therefor; and that he has refused or neglected

6 to satisfy the same, or to show goods or personal estate of the  
7 deceased for that purpose. Any person claiming a legacy under  
8 the will of the deceased, other than a residuary legatee, must  
9 also have the amount due him, ascertained by judgment of court  
10 and prove such demand on the executor or administrator with  
11 the will annexed, as is required in the case of a creditor.

1821, 51, § 72.

SECT. 12. Any widow, to whom an allowance has been made  
2 by the judge of probate, or any widow or next of kin, entitled  
3 to a distributive share in the personal estate, or any residuary  
4 legatee of any deceased person, before being entitled to recover  
5 in any such suit, upon the bond of any executor or administrator,  
6 or on any scire facias, as aforesaid, must produce a decree of the  
7 judge of probate, ascertaining the amount due, and prove such  
8 a demand, and refusal by the principal in such bond, as is  
9 required in the preceding section.

SECT. 13. Whenever in any original suit, brought on any  
2 probate bond, it shall appear by verdict, default, confession or  
3 otherwise, that the condition of any probate bond has been  
4 broken, judgment shall be entered in the common form for the  
5 penalty, and the subsequent proceedings shall be had by the  
6 court as hereafter provided.

1821, 51, § 73.

SECT. 14. Whenever it shall appear for whose use the money  
2 so recovered, shall enure, and that such person's claim has been  
3 ascertained, pursuant to sections ten, eleven and twelve of this  
4 chapter, the court shall order that the judge of probate, in  
5 whose name the action is brought, shall then have execution for  
6 any part of the penalty equal to the principal and interest  
7 appearing to be due to the person, for whose use the suit may  
8 have been brought, with legal costs; and when there are sev-  
9 eral persons to whose use the money recovered is to enure, there  
10 shall be as many separate executions in the same form; and the  
11 costs shall be apportioned under the direction of the court.

1821, 51, § 73.

SECT. 15. The person or persons to whose use execution  
2 shall have been awarded, shall have the same levied in their  
3 own names respectively on real estate or otherwise and shall  
4 be deemed the creditors to all intents.

1821, 51, § 73.

SECT. 16. Whenever in any such suit against any administra-  
2 tor, it shall appear that he has neglected or refused to account  
3 upon oath for such property of the intestate, as he has received,  
4 after he has been cited by the judge of probate for that purpose,  
5 execution shall be awarded against him, for the full value of  
6 whatever personal property of the deceased has come to his  
7 hands, without any discount, abatement, or allowance for  
8 charges of administration or debts paid.

1821, 51, § 72.

SECT. 17. Where any administrator shall have received per-  
2 sonal property of an intestate and shall not have exhibited upon  
3 oath a particular inventory thereof, and in all other cases of  
4 neglect or mismanagement, execution shall be awarded against

5 him, for such part of the penalty of his bond as may be ascer-  
6 tained in due course of law. 1821, 51, § 72.

SECT. 18. All monies recovered on any judgment or execu-  
2 tion issued as aforesaid, excepting as provided in section  
3 fourteenth of this chapter, shall be recovered by the judge of  
4 probate, in trust for all parties interested in the penalty of the  
5 bond; and he shall require any administrator or executor  
6 against whom the judgment shall have been recovered to account  
7 for the same, provided such administrator or executor shall still  
8 retain the administration of the estate on account of which the  
9 bond was given; and in other cases the judge shall assign such  
10 judgment and execution to the rightful executor or administra-  
11 tor to be collected, and the avails thereof shall be accounted  
12 for and distributed, or otherwise disposed of as assets.

4 Mass. 318. 5 Pick. 62. M. R. S. 70, § 11.

SECT. 19. When not otherwise expressly provided by law,  
2 like proceedings, judgment and execution, so far as applicable  
3 shall be had upon the bonds given to any judge of probate by  
4 executors, special administrators, guardians, testamentary trus-  
5 tees, surviving partners, or others, as is provided in this chapter  
6 in reference to bonds of administrators in common cases.

1821, 51, § 72.

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## NOTE.

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The subject of this chapter is left somewhat obscure in the statutes now in force. In this revision more distinctness is attempted as to the application and apportionment of the penalty of a probate bond when recovered and in some other particulars; and it is hoped the alterations in form will be found not much at variance with the spirit of the existing laws.



