

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 VI.**  
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TITLE SIXTH.

THE POWERS AND DUTIES OF COURTS OF PROBATE.

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64. The appointment, powers and duties of executors and administrators.
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Chapter 63.

THE COURT OF PROBATE.

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14. Registers, how selected; their oath and bond; to have the care of all papers and keep all the records of their courts.
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18. Register not to be counsel in cases incompatible.

Supreme court of probate.

19. The supreme judicial court to be the supreme court of probate. Persons may appeal by claiming an appeal within thirty days, or within thirty days after return from absence or constitution of attorney.
20. Appellant to file his bond within ten days, and his reasons for appeal within ten days more, and give notice to all parties fourteen days before court. Case in which bond may be waived.
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24. Appeal to be heard at the next term. What judgment the court may render. Trial by jury.
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Selection, powers and duties of judges of probate.

SECTION 1. Judges of probate shall be selected and hold
 2 their office, according to the provisions of the constitution;
 3 have an official seal, and authority to issue whatever pro-
 4 cesses may be necessary for the discharge of their official
 5 duties, and to punish for contempt of their authority, in the
 6 same manner that the supreme judicial court may.

R. S., c. 105, § 1, 2, 5, 7.

SECT. 2. Sheriffs and their deputies, coroners and con-
 2 stables shall serve and execute all legal processes directed to

3 them by any judge of probate; and any person, summoned
4 before him as a witness, who shall refuse to appear and give
5 evidence, shall be liable to the same penalties and damages,
6 as for such refusal before the supreme judicial court.

R. S., c. 105, § 6, 7.

SECT. 3. Judges of probate shall have certain fixed days
2 and places for holding their courts, and making and publish-
3 ing their orders and decrees, where no express provision is
4 made by law; and such days shall be made known, by
5 public notifications thereof in their respective counties; they
6 may adjourn their courts to any time, not beyond the next
7 regular day, and appoint special courts whenever they deem
8 it necessary; and, in case of the absence of the judge, or
9 vacancy in the office, at the time of holding any court, the
10 register of probate may adjourn the same till the judge can
11 attend, by posting notice thereof at the probate office.

R. S., c. 105, § 8. 1841, c. 5, § 2.

SECT. 4. The judge, for each county, shall have power to
2 appoint guardians for minors and others, as prescribed by
3 law; take the probate of wills; grant letters testamentary,
4 or of administration, on the estates of all deceased persons,
5 who, at the time of their decease, were inhabitants or resi-
6 dents of his county, or who died without the state, leaving
7 estate to be administered in his county, or whose estate is
8 afterwards found therein; also, on the estate of any person,
9 who, by due course of law, is under sentence of death and
10 confined in the state prison awaiting its execution, or of im-
11 prisonment for life in the state prison; and shall have juris-
12 diction of all matters relating to the settlement of such estates,
13 to persons under guardianship, and to whatever else may be
14 conferred upon him by law.

R. S., c. 105, § 3, 4. 1848, c. 80.

SECT. 5. No probate of any last will or administration on
2 the estate of any person deceased, shall be originally granted
3 after the expiration of twenty years from his decease, except
4 it appears satisfactorily to the judge of probate, that there
5 are moneys due to the estate of said deceased, from the
6 government of the United States; nor shall any administra-

7 tion be granted at any time, unless it satisfactorily appears to
8 the judge, that there is personal estate of the deceased,
9 amounting to at least twenty dollars, or that the debts due
10 from him amount to that sum; and, in the latter case, that
11 he left that amount, in value, of real estate; and, in case no
12 administration is granted for the reasons aforesaid, the per-
13 sonal estate of said deceased shall become the property of his
14 widow, if any, otherwise of the next of kin, who may
15 appropriate the same, without being chargeable as executors
16 in their own wrong.

R. S., c. 105, § 39, 40. 1847, c. 5. 1848, c. 75.

SECT. 6. When a case is originally within the jurisdiction
2 of such court, in two or more counties, the one which first
3 commences proceedings therein, shall retain the same ex-
4 clusively throughout; and the jurisdiction, assumed in any
5 case, except cases of fraud, so far as it depends on the
6 residence of any person, or the locality or amount of property,
7 shall not be contested in any proceeding whatever, except on
8 an appeal from the probate court in the original case, or the
9 want of jurisdiction appears on the same record.

R. S., c. 105, § 4, 22.

SECT. 7. When any judge of probate is interested, either
2 in his own right, in trust, or in any other manner, or is within
3 the degree of kindred, by which in law he may, by any
4 possibility, be heir to any part of the estate of any person
5 deceased, to an amount, in either case, not less than one
6 hundred dollars, such estate shall be settled in the probate
7 court of any adjoining county, which shall have full jurisdic-
8 tion thereof, the same as if the deceased had died therein.
9 If his interest arises after he has regularly assumed jurisdic-
10 tion of such estate, or existed at the time of his appointment
11 to office; and in all cases where an executor, administrator
12 or guardian, whose trust is not fully executed, is appointed
13 and qualified as judge of probate for the county in which his
14 letters were granted, further proceedings therein shall be
15 transferred to the probate court in any adjoining county, and
16 there completed the same as if such court had had original
17 jurisdiction thereof; and in all such cases the register of pro-

18 bate, in such adjoining county, shall transmit copies of all
19 records relating to such estates, to the probate office of the
20 county where such estate belongs, to be there recorded.

R. S., c. 105, § 18, 19. Amendments of 1841, § 15.

1841, c. 5, § 1. 1852, c. 278, § 1, 2. 1846, c.
199, § 1, 2.

SECT. 8. Where parts of counties are designated by law,
2 for the purpose of having a judge and register of probate for
3 their separate accommodation, such district shall be deemed
4 a county, for all purposes of this and other applicable chap-
5 ters; and appeals from the judge of probate thereof, shall be
6 cognizable in the county where such district is situated.

R. S., c. 105, § 37.

SECT. 9. Every judge of probate upon first entering on
2 the duties of his office, shall examine the records, decrees
3 and certificates, and the proceedings connected therewith,
4 which his predecessor left without being signed and authen-
5 ticated, and, if he finds them correct, he shall sign and
6 authenticate them, and they shall then be as valid, to all
7 intents and purposes, as if the same had been done by his
8 predecessor while in office.

1841, c. 5, § 3.

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

R. S., c. 105, § 23.

SECT. 11. If any person, required to make oath to any
2 inventory or account, to be settled by the judge of probate,
3 is unable to attend, by reason of infirmity or otherwise, or

4 resides more than thirty miles from the place where the court
5 of probate is held, the judge, by a commission issued for the
6 purpose, may authorize any disinterested magistrate to ad-
7 minister such oath; who shall return a certificate thereof to
8 the judge, together with such commission and inventory, or
9 account annexed, and the vouchers to prove the same.

R. S., c. 105, § 38.

SECT. 12. No judge of probate shall have a voice in judg-
2 ing and determining, nor be attorney or counselor, in or out
3 of court, in any civil action or matter whatever, which may
4 depend on, or relate to any sentence or decree made by him
5 in his office; nor be attorney or counselor in any civil action,
6 for or against any executor, administrator, guardian or trustee
7 under any last will and testament, as such, within his county.

R. S., c. 105, § 20.

SECT. 13. No bond, required by law to be given to the
2 judge of probate, or to be filed in the probate office, shall be
3 deemed sufficient, unless examined and approved by the
4 judge, and such approval, under his official signature, writ-
5 ten thereon.

R. S., c. 105, § 36.

Selection, powers and duties of registers of probate.

SECT. 14. Registers of probate shall be selected and hold
2 their office according to the provisions of the constitution;
3 and before entering on their duties, be duly sworn, and give
4 bond to the treasurer of their county, with sufficient sureties,
5 in the sum of not less than one hundred nor more than one
6 thousand dollars, at the discretion of the judge of probate,
7 who shall certify his approval thereon; and they shall have
8 the care and custody of all files, papers and books belonging
9 to the probate office; and shall duly record all wills proved,
10 letters of administration or guardianship granted, accounts
11 allowed, and all orders and decrees of the judge, and such
12 other matters as the judge shall direct.

R. S., c. 105, § 9, 10, 11.

SECT. 15. The condition of such bond shall be for the
2 keeping up, seasonably and in good order, the records of the
3 court; making and keeping correct and convenient alphabets
4 of the records, and for the faithful discharge of all the other

5 duties of said office; and if such register forfeits his bond, he
 6 shall thenceforth be forever disqualified from holding said
 7 office, and if he neglects to complete his records for more
 8 than six months at any one time, sickness or any extraor-
 9 dinary casualty excepted, such neglect shall be adjudged a
 10 forfeiture. R. S., c 105, § 11, 12.

SECT. 16. In case of the death or absence of the register,
 2 the judge of probate shall appoint a suitable person to act as
 3 register, until the permanent register shall resume his duties,
 4 or another shall be qualified in his stead; and he shall be
 5 duly sworn, and, if the judge require it, give bond as in case
 6 of the permanent register. R. S., c. 105, § 13, 14.

SECT. 17. Every judge of probate and the justices of the
 2 supreme court of probate shall constantly inspect the conduct
 3 of the register with respect to his records and the duties of
 4 his office, and give information in writing of any breach of
 5 his bond, to the treasurer of his county, whose duty it shall
 6 be, thereupon, to put the same in suit; and the money thus
 7 recovered shall be applied for the expenses of duly complet-
 8 ing the records of such register, under the direction of said
 9 judge, and the surplus, if any, shall inure to the county; but
 10 if the same shall not be sufficient for that purpose, the trea-
 11 surer may recover the deficiency of the register, in an action
 12 on the case. R. S., c. 105, § 15, 16, 17. R. S., c. 96, § 30.

SECT. 18. No register of probate shall be attorney or coun-
 2 selor in or out of court, in any suit or matter whatever,
 3 pending in the court of which he is register, nor in any appeal
 4 therefrom; nor be executor, administrator, trustee, guardian,
 5 commissioner of insolvency, appraiser or divider of any estate,
 6 or in any case, that is within the jurisdiction of said court,
 7 nor be, in any manner, interested in the fees or emoluments
 8 arising therefrom. R. S., c. 105 § 21.

Supreme court of probate.

SECT. 19. The supreme judicial court shall be the supreme
 2 court of probate, and have appellate jurisdiction, in all mat-
 3 ters determinable by the several judges of probate; and
 4 any person aggrieved by any order, sentence, decree or denial

5 of such judges, may appeal therefrom to the supreme court,
6 to be held within and for the same county, provided he claims
7 his appeal within thirty days from the date of the proceeding
8 appealed from; or, if at that time he was beyond sea, or out
9 of the United States, and had no sufficient attorney within
10 the state, within thirty days after his return or constitution
11 of such attorney.

R. S., c. 105, § 24, 25, 29. R. S., c. 96, § 29.

SECT. 20. Within ten days after claiming his appeal, he
2 shall file in the probate office his bond to the adverse party,
3 for such sum and with such sureties as the judge shall ap-
4 prove, conditioned to prosecute his appeal with effect, and
5 pay all intervening costs and damages, and such costs as the
6 supreme court shall tax against him; and he shall also file
7 the reasons of appeal with the register of the court appealed
8 from, within ten days after the bond is filed, and shall serve
9 all the other parties, who have appeared before the judge of
10 probate, in the case, with a copy of such reasons attested by
11 such register, fourteen days, at least, before the sitting of the
12 appellate court; but in case of any controversy between a
13 supposed insane person or other person under guardianship,
14 with his guardian, the supreme court may, at their discretion,
15 sustain an appeal on the part of the ward, without such bond.

R. S., c. 105, § 26, 27.

SECT. 21. If any such person, from accident, mistake,
2 defect of notice or otherwise, without fault on his part, omits
3 to claim or prosecute his appeal as aforesaid, the supreme
4 court, if justice seems to require a revision, may, upon rea-
5 sonable terms, allow an appeal to be entered and prosecuted
6 with the same effect as if it had been seasonably done; but
7 not without due notice to the party adversely interested, nor
8 unless the petition therefor is filed with the clerk of said court
9 within one year after the decision complained of was made,
10 said petition to be heard at the term next after the filing
11 thereof.

R. S., c. 105, § 30, 31.

SECT. 22. If the appellant, in any case, fails to enter and
2 prosecute his appeal, the supreme court, upon the complaint

3 of any person interested in the case, may affirm the former
 4 sentence, assess reasonable costs for the complainant, and
 5 take such further order thereon, as law and justice require.

R. S., c. 105, § 28.

SECT. 23. After an appeal is claimed, the bond filed, and
 2 notice thereof given at the probate office, with the reasons
 3 of the appeal, all further proceedings, in pursuance of the
 4 matter appealed from, shall cease, until the determination of
 5 the supreme court thereon.

R. S., c. 105, § 32.

SECT. 24. Such appeal shall be cognizable at the next term
 2 of the supreme court, which is held after the expiration of
 3 thirty-four days after such appeal is made; and said court
 4 may reverse or affirm, in whole or in part, the sentence or
 5 act appealed from, pass such decree thereon as the judge of
 6 probate ought to have passed, remit the case to the probate
 7 court for further proceedings, or take any order therein, as
 8 law and justice require; and if upon such hearing any ques-
 9 tion of fact occurs proper for a trial by jury, an issue shall be
 10 formed for that purpose, under the direction of the court, and
 11 so tried.

R. S., c. 105, § 27, 33, 34.

SECT. 25. In all contested cases, in the original or appellate
 2 court of probate, legal costs may be allowed, at discretion, to
 3 either party, to be paid by the other, or to either or both
 4 parties to be paid out of the estate in controversy, as justice
 5 may require; and executions may be issued therefor, the
 6 same as in courts of common law.

R. S., c. 105, § 35.

Chapter 64.

THE APPOINTMENT, POWERS, AND DUTIES OF EXECUTORS AND ADMIN- ISTRATORS.

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3. When a will may be proved by one or two witnesses.

4. When letters testamentary may be granted.

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6. Conditions, if executor is residuary legatee.

7. Executors not to act without giving bond. Majority have power to act in all cases, and actions against them without joining those not acting.

Foreign wills.

8. Foreign wills may be allowed in this state.

9. Copy of such will to be presented to the judge, time assigned for hearing, and notice given.

10. It may then be allowed and recorded, but not to be valid unless executed according to the laws of this state.

11. Letters testamentary may then be granted and estate settled.

Nuncupative wills.

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13. To whom administration may be granted.

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Administrators with the will annexed.

15. Administrators with the will annexed may be appointed, when no person named in the will accepts the trust and gives bond, and when he is a minor.

16. Also when any executor or administrator is removed or his resignation accepted. In what cases executors and administrators may be removed or their resignation accepted.

17. Power of female executor or administrator ceases on marriage, and administrator with will annexed may be appointed.

18. Also on the death of the sole or surviving executor.

19. Administrators with the will annexed to give bonds same as others.

Public administrators.

20. Appointment, duty, and bonds of public administrators.

21. When judge may revoke their powers. They shall then surrender their letters and settle their accounts.

22. In what cases judge may license them to sell real estate.

23. Proceedings in such sales.

24. They shall pay balance in their hands to state treasurer, to be paid to lawful claimants.

25. Judge to notify treasurer of such balance, and if administrators neglect to deposit it in three months, their bond to be put in suit.

26. If not claimed in twenty years, forfeited to the state.

Special administrators.

27. In what cases special administrators may be appointed. Their bonds and the conditions thereof.

28. Duty to collect goods and effects of deceased, and pay to widow and children such sum as the judge directs. Such sums to be accounted for by them in final settlement.

29. His compensation. When his powers cease, and he is to deliver over the effects in his hands.

30. Not liable to an action by creditor without decree of judge. When limitation of actions begins to run in such cases.

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33. Notice of appointment by executors and administrators.

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39. How choses in action shall be appraised.

40. Additional inventories may be required.

41. What may be omitted in the inventory.

42. When new or additional bond may be required.

43. When a sale of the personal estate may be ordered.

44. For what executors and administrators shall account, unless they elect to take personal estate at the appraisal. When and how they may elect.

45. When debts due the deceased may be compounded.

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48. Chargeable with all property in their hands, whether in the inventory or not, and with proceeds of real estate sold.

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50. Judge may permit property of deceased to be insured. He may also allow executor or administrator a percentage on assets administered by him.

51. Claims of executor or administrator not allowed unless in writing, and if disputed may be referred.

52. When one executor or administrator is removed or resigns, the others may proceed, and bring actions for recovery of the assets.

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Embezzlement of the property of deceased persons.

55. Judge may cite persons suspected of embezzlement and examine them under oath.

56. He may cite persons entrusted with any estate of the deceased and require them to render an account under oath.

57. Penalty for refusing in both cases.

Wills and Executors.

SECT. 1. Every person having the custody of any will,
2 shall, within thirty days after notice of the testator's death,
3 deliver it into the probate court, which has jurisdiction thereof,
4 or to the executors therein named; and if without any
5 reasonable cause, he neglects so to do, after being duly cited

6 for that purpose by the judge of probate, he may be commit-
7 ted to the jail of the county, by the judge's warrant, there to
8 be kept in close custody until he shall deliver the will, as
9 above directed; and he shall also be liable to the action of
10 any party for the damage which he may sustain by such
11 neglect. R. S., c. 106, § 4.

SECT. 2. When a will is offered for probate to the judge,
2 and any of the witnesses live out of the state, or more
3 than thirty miles distant, or by age or indisposition of body,
4 are unable to attend court, the depositions of such witnesses,
5 taken before any magistrate authorized by commission from
6 such judge, shall be competent evidence in the absence of
7 such witness. R. S., c. 106, § 5.

SECT. 3. When it clearly appears to the judge, either by
2 the written consent of the heirs at law, or otherwise, that
3 there is no objection to the probate of any will, he may decree
4 probate thereof, upon the testimony of one or more of the
5 three subscribing witnesses, required by law, who can sub-
6 stantiate all the requisite facts. R. S., c. 106, § 6.

SECT. 4. When any will is duly proved and allowed, the
2 judge of probate may issue letters testamentary thereon to the
3 executor named therein, if he is legally competent, accepts
4 the trust, and gives bond to discharge the same; but if he
5 refuses to accept, on being duly cited for that purpose, or if
6 he neglects, for twenty days after probate of the will, to give
7 such bond, the judge may grant such letters to the other
8 executors, if there are any capable and willing to accept the
9 trust. R. S., c. 106, § 7. 11.

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

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

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

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

Fourthly. To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between the representation of insolvency, and the sale of such real estate for the payment of debts, by waste or trespass committed on any building thereon, or on any trees standing and growing thereon, except as may be necessary for repairs, or fuel for the family of the deceased; or by waste or trespass of any other kind, and for such damages as he may recover from any heir or devisee of the estate or other person, for the like waste or trespass committed thereon.

R. S., c. 106, § 8.

SECT. 6. If such executor is a residuary legatee, the condition of his bond, instead of the preceding, shall be to return an inventory as aforesaid, and to pay all the debts and legacies of the testator, unless the estate, from some unexpected event, should prove insufficient therefor. R. S., c. 106, § 9.

SECT. 7. When two or more persons are named executors in any will, none shall have authority to act as such, or intermeddle, except those who give bonds as aforesaid; but a majority of those who do give bonds, unless it is otherwise prescribed in such will, shall have power to do all the acts of every description, in the execution of such trust, which all acting together could do, and all acts, so done, shall be as valid, in law, to all intents and purposes, as if all had agreed thereto; and a suit may be maintained against the executors so acting, on their bond, for the benefit of any person aggrieved by their acts, without joining the other parties to such bond, *but any executor refusing to act, or not joined in such suit, shall not be personally liable for costs, in any event.*

R. S., c. 106, § 10. 1849, c. 94, § 1. (New.)

Foreign wills.

SECT. 8. Any will, proved and allowed in any other of the United States, or in any foreign country, according to the laws thereof, may be allowed and recorded in this state, in the manner and for the purposes, hereinafter mentioned.

R. S., c. 106, § 14.

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

R. S., c. 106, § 15.

SECT. 10. If, on hearing the case, it appears to the judge, that the instrument ought to be allowed in this state, as the last will and testament of the deceased, he shall order the copy to be filed and recorded; and it shall then have the same force and effect, as if it had been originally proved and allowed in the same court in the usual manner; but nothing herein contained shall be construed to make valid any will, that is not executed in the manner prescribed by the laws of this state, nor to give any operation and effect to the will of an alien, different from what it would have had, if originally proved and allowed within this state. R. S., c. 106, § 16.

SECT. 11. After allowing and recording any will, as aforesaid, the judge of probate may grant letters testamentary, or of administration with the will annexed thereon, and proceed in the settlement of the estate found in this state, in the manner provided by the laws of this state, with respect to the estates of persons, who were inhabitants of any other state or country; and the letters testamentary or of administration thus granted, shall extend to all the estate of the deceased within this state, and exclude the jurisdiction of the probate court in every other county. R. S., c. 106, § 17.

Nuncupative wills.

SECT. 12. No letters testamentary, or probate of any nuncupative will shall pass the seal of any court of probate, until fourteen days after the decease of the testator; nor shall such will be approved and allowed at any time, unless due notice is given to all persons interested, specifying that the will to be proved is a nuncupative will. R. S., c. 106, § 18.

Administrators.

SECT. 13. Upon the decease of any person intestate, the judge of probate having jurisdiction for the purpose, under the provisions of the preceding chapter, shall grant administration of such intestate's goods or estate, to the widow, husband, next of kin, or husband of the daughter 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; but, if they are unsuitable, or, being residents in the county, and cited before the judge for the purpose, neglect or refuse to take out letters of administration, he may, after thirty days from the decease of the intestate, commit administration on such estate to one or more of the principal creditors, or to such other persons as he shall deem suitable.

R. S., c. 106, § 1, 2.

SECT. 14. Every administrator, before entering on the execution of his trust, shall give bond with good and sufficient sureties, resident within this state, in such sum, as the judge shall order, payable to him or his successors, with condition, in substance, as follows:

First. To make and return into the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the deceased, which may come to his possession or knowledge.

Secondly. To administer, according to law, all the goods, chattels, rights and credits of the deceased.

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

Fourthly. To pay and deliver any balance, or any goods and chattels, rights and credits remaining in his hands, upon the settlement of his accounts, to such persons as the judge of probate shall direct.

Fifthly. To deliver the letters of administration into the probate court, in case any will of the deceased shall be there after duly proved and allowed.

Sixthly. To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between the representation of insolvency, and the sale of such real estate for the payment of debts, by waste or trespass committed upon any building thereon, or any trees standing and growing thereon, except as may be necessary for repairs or fuel for the family of the deceased, or by waste or trespass of any other kind; and for such damages, as he may recover of any heir or devisee of the estate or other person, for the like waste or trespass committed thereon.

R. S., c. 106, § 3.

Administrators with the will annexed.

SECT. 15. If there is no person that the judge can appoint executor of any will according to the provisions of section four, he may commit administration of the estate, with the will annexed, to such person as he would be authorized to appoint if the deceased had died intestate; and when an executor is under twenty one years of age at the time of the probate of the will, administration may be granted, with the will annexed, during the minority of such executor, unless there is another executor, who shall accept the trust; in which case, the estate shall be administered by such other executor, until the minor arrives at full age, when he may be admitted as joint executor, with the former, upon giving bond, as before provided.

R. S., c. 106, § 11, 12.

SECT. 16. When an executor or administrator, residing out of the state, after being duly cited by the judge of probate, neglects to render his accounts and settle the estate according to law; or when any executor or administrator, joint or sole, becomes insane, or otherwise unsuitable to perform the trust,

6 refuses or neglects to do so, or mismanages the estate, the
7 judge of probate may remove him; and he may accept the
8 resignation of any joint or sole executor or administrator,
9 when he is satisfied, after fourteen days notice to those inter-
10 ested in the estate and a hearing, that there is reasonable
11 cause therefor, and that it will not be detrimental to the
12 estate, or to those interested therein; and, in either case, if
13 there is no other executor or administrator to discharge the
14 trust, the judge may commit administration of the estate not
15 already administered, with the will annexed, or otherwise,
16 as the case may require, to such persons as he thinks fit, the
17 same as if the one resigned or removed were dead; and such
18 administrator shall have the same powers, and be liable to
19 the same obligations, as other administrators.

R. S., c. 106, § 34. 1849, c. 94, § 2. 1852, c. 256, § 1, 2, 3.

SECT. 17. When an unmarried woman, who is joint or sole
2 executor or administrator, marries, her husband shall not
3 exercise such trust in her right, but her authority shall be
4 thereby extinguished; and the other executor or administrator,
5 if any, may proceed in discharging the trust, as if she were
6 dead. If there be no other, administration with the will
7 annexed, or otherwise, may be granted, as provided in the
8 preceding section.

R. S., c. 106, § 35.

SECT. 18. The executor of an executor shall have no
2 authority, 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 said estate not already administered,
5 may be granted, with the will annexed, to such person as
6 the judge of probate shall think fit.

R. S., c. 106, § 36.

SECT. 19. Every person, who is appointed administrator
2 with the will annexed, shall, before entering upon the execu-
3 tion of his trust, give bond to the judge of probate, in like
4 manner, and with like condition, as is required of an executor.

R. S., c. 106, § 13.

Public administrators.

SECT. 20. The governor, with advice of council, whenever
2 a vacancy occurs in any county, shall appoint a suitable and

3 discreet person to be public administrator therein, whose duty
4 it shall be to take out letters of administration, and faithfully
5 administer upon the estate of any person, who dies intestate
6 in such county, not known to have, in this state, any heirs or
7 kindred who can lawfully inherit such estate; and he shall
8 account in like manner and give bonds to the judge of probate
9 with like conditions as in cases of ordinary administration,
10 and with the further condition, in substance, that he will
11 comply with the provisions of the following section.

R. S., c. 107, § 1, 2, 3, 9.

SECT. 21. If, before the estate of such deceased is fully
2 settled, any last will and testament of his shall be produced,
3 and duly proved, or if any of his heirs, next of kin, or his
4 widow shall make application in writing to the judge of
5 probate, having jurisdiction of the estate, and claim the right
6 to administer thereon, or to have some other suitable person
7 appointed to that trust, the judge shall revoke the former
8 administration, and grant letters testamentary, or new admin-
9 istration, as the case may require; and thereupon the public
10 administrator shall surrender his letters of administration to
11 the judge of probate, settle his account, and deliver to his
12 successor all sums of money in his hands, and all the goods,
13 chattels, rights and credits of said deceased, not administered
14 upon.

R. S., c. 107, § 7, 8.

SECT. 22. The judge of probate may grant license to a
2 public administrator to sell the real estate of such deceased,
3 for the payment of debts and incidental charges, the same as
4 to other administrators; and also, after three years from the
5 granting of administration, to sell any or all of such real
6 estate, at public or private sale, although not needed for that
7 purpose, if he is satisfied that it would be for the interest of
8 all concerned, and that no heir, or other persons, except cred-
9 itors, directly interested in such estate, can be found in the
10 United States.

R. S., c. 107, § 10, 11.

SECT. 23. In such cases, the judge of probate and such admin-
2 istrator shall observe all the provisions of law as to bonds,
3 notices, oaths and every thing else required in the sale of real
4 estate by other administrators.

R. S., c. 107, § 12.

SECT. 24. When there is in the hands of such public administrator, an amount of money more than may be necessary for the payment of the deceased's debts, and other purposes of administration, however it may have arisen, he shall be required by the judge of probate to deposit it with the treasurer of state, who shall receive it; and the state shall be responsible for the principal thereof, for the benefit of those who may lawfully claim it; and the governor and council, on application and proof, may order the treasurer to pay it over.

R. S., c. 107, § 4, 12.

SECT. 25. In such case, the judge of probate shall give notice to the treasurer of state, of such amount, and from what estate receivable; and, if said administrator neglects, for three months after the order of the judge therefor, to deposit the same, the treasurer shall cause his probate bond to be put in suit, for the recovery thereof. R. S., c. 107, § 5.

SECT. 26. If the heirs, widow, or next of kin to any such intestate, or other lawful claimant, shall not demand such money within twenty years from the time of its deposit, it shall be forfeited to the state.

R. S., c. 107, § 6.

Special administrators.

SECT. 27. When, by reason of a suit concerning the proof of a will, or from any other cause, there is a delay in granting letters testamentary, or of administration, the judge of probate may, in his discretion, appoint a special administrator, who shall, notwithstanding there is an appeal, proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate; and he shall give bond like other administrators, conditioned 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 may come to his possession or knowledge; and that he will truly account, on oath, for them, and deliver them to the person who shall be lawfully authorized to receive them.

R. S., c. 107, § 13, 14. Amendments of 1841, § 16.

SECT. 28. He shall collect all the goods, chattels and debts
2 of the deceased, and preserve them for the executor or admin-
3 istrator thereafter appointed; and, for that purpose, may
4 maintain suits; sell such perishable and other goods, as the
5 judge may order, and pay to the widow, if any, and if not,
6 to the guardian of the children under fourteen years of age,
7 such sum for their temporary support, as the judge may order,
8 having regard to the state and amount of the property. If
9 the estate is solvent, such sum shall, on final settlement, be
10 deducted from the share of the widow or children, but if
11 insolvent, shall be considered by the judge in the allowance
12 he shall make them. R. S., c. 107, § 15.

SECT. 29. Such administrator shall be allowed such com-
2 pensation for his services as the judge may think reasonable,
3 not exceeding that allowed to other administrators; and on
4 the granting of letters testamentary or of administration, his
5 powers shall cease, and he shall deliver over forthwith all
6 the goods, chattels, money and effects of said deceased in his
7 hands, and the executor or administrator may prosecute any
8 suit, commenced by the special administrator, the same as if
9 it had been commenced by himself. R. S., c. 107, § 15, 16.

SECT. 30. No special administrator shall be liable to an
2 action by any creditor of the deceased, without an application
3 by such creditor to the judge of probate, and his decree
4 authorizing it; and the limitation of all suits against the
5 estate, shall begin to run from the time of granting letters
6 testamentary, or of administration, in the usual form, in like
7 manner, as if such special administration had not been
8 granted. R. S., c. 107, § 17. 1843, c. 11.

SECT. 31. But instead of appointing a special administrator,
2 in all cases where a will has been proved and allowed by the
3 judge of probate, and an appeal made therefrom, he may
4 grant letters testamentary to the executor named in such will,
5 who shall give bond and proceed in the settlement of such
6 estate, the same as if no appeal had been made; and, after
7 the payment of the just debts and charges of administration,
8 he shall retain in his hands all the remaining avails of such
9 estate, to await the result of the case in the supreme court of

10 probate, and then pay over the same, under the direction of
11 the judge of probate, to the parties legally entitled thereto.

1852, c. 244, § 1, 2.

Executors in their own wrong.

SECT. 32. If any person sells or embezzles any of the goods
2 or effects of a deceased person, liable to administration, before
3 taking out letters testamentary or of administration thereon,
4 and giving bond accordingly, he shall be liable to the actions
5 of the creditors, and other persons aggrieved, as an executor
6 in his own wrong; and also to the rightful executor or admin-
7 istrator, for the full value of the goods or effects of the de-
8 ceased, taken by him, and for all damages caused by his
9 acts to said estate; and he shall not be allowed to retain any
10 part of the goods or effects, except for such funeral expenses,
11 debts of the deceased, or other charges, actually paid by him,
12 as the rightful executor or administrator would have to pay.

R. S., c. 107, § 18, 19.

Provisions relating to both executors and administrators.

SECT. 33. Every executor or administrator, within three
2 months after giving bond for the discharge of his trust, shall
3 cause notice of his appointment to be posted up in two or
4 more public places to be specified by the judge, in the town
5 where the deceased last dwelt, if in this state; and such
6 further notice, as the judge shall, in writing, direct.

R. S., c. 106, § 19.

SECT. 34. If the deceased was neither an inhabitant, nor
2 resident in this state, at the time of his decease, such notice
3 shall be given by publishing in such newspaper, or in such
4 other mode, as the judge, under the circumstances of the
5 estate, shall direct.

R. S., c. 106, § 20.

SECT. 35. An affidavit of the executor or administrator, or
2 of the person employed by him to give such notice, made
3 before the judge of probate, or any justice of the peace, and
4 filed and recorded, together with a copy of the notice, in the
5 probate court, within one year after giving bond as aforesaid,
6 shall be evidence of the time, place and manner, in which
7 the notice was given.

R. S., c. 106, § 21.

SECT. 36. The party required to publish any notice, ordered
2 by the judge of probate to be given in a newspaper, may select
3 the paper therefor, unless the judge should deem such paper
4 unsuitable from its want of circulation, or other substantial
5 reason. 1850. c. 163, § 1.

SECT. 37. Every executor and administrator within three
2 months after his appointment, shall make and return, upon
3 oath, into the probate court, a true inventory of the real estate,
4 and all the goods and chattels, rights and credits of the
5 deceased, which are by law to be administered, and which
6 may come to his possession or knowledge. R. S., c. 106, § 22.

SECT. 38. The real estate, goods and chattels, comprised
2 in the inventory, shall be appraised by three suitable disin-
3 terested persons, appointed by the judge of probate, and duly
4 sworn; and, when any part of such estate is in any other
5 county, the judge, at his discretion, may appoint three ap-
6 praisers for each other county, to return an inventory thereof,
7 who shall be sworn. R. S., c. 106, § 23.

SECT. 39. Such of the credits of the deceased, and rights
2 to personal property not in possession, as the appraisers may
3 judge to be available, as assets, they shall enumerate in a
4 schedule, part of said inventory, with the names of the debtors
5 or parties obligated, the sums supposed to be due thereon,
6 and the nature of the rights aforesaid, whether absolute or
7 conditional; and state in one general sum, at the foot of each
8 schedule, such amount as in their judgment may be realized
9 from the same, exclusive of expenses and risk of settlement
10 or collection. R. S., c. 106, § 24.

SECT. 40. The judge of probate, in his discretion, at any
2 time afterward, when any estate or effects, rights or credits,
3 come to the knowledge or possession of any executor or ad-
4 ministrator, may require of him an additional inventory; and
5 appraisers in like manner shall be appointed and sworn; and
6 return shall be made within such time as the judge in his
7 warrant shall direct. R. S., c. 106, § 25.

SECT. 41. The following articles shall be omitted in mak-
2 ing the inventory, and shall not be administered upon as
3 assets, to wit:

First. All the articles of apparel or ornament of the widow, according to the degree and estate of her husband, and also the apparel and school books of minor children of the deceased.

Secondly. The wearing apparel of the deceased, not exceeding one hundred dollars in value, provided that, before the return of the inventory, such executor or administrator has distributed the same to the widow and minor children of the deceased, which he is authorized to do at his discretion, and returns to the judge a certificate of such distribution, from the widow or the children's children next of kin, who are of age.

Thirdly. Such provisions and other articles, not exceeding fifty dollars in value, as have necessarily been consumed in the family of the deceased, before the appraisal of such estate.

Fourthly. Any sum of money becoming due on the death of the deceased from an insurance on his life effected by him, after deducting the amount of premium paid therefor within three years with interest, provided such deceased left a widow or issue; but such sum shall be disposed of as provided in section fifteen of chapter seventy-five. 1844, c. 114 § 1.

SECT. 42. If, after the return of any inventory, or in the progress of the settlement of any estate, the judge finds that the bonds, given by any executor or administrator, are too small in amount, or insecure for want of responsible sureties, he may, at his discretion, require additional or larger bonds, or other sureties; and if said executor or administrator does not furnish the same, his authority may be revoked, and some other person appointed in his place.

R. S., c. 106, § 27.

SECT. 43. The judge of probate, when he deems it necessary, for the speedy payment of the debts of the deceased, or for the benefit of all parties interested, that all or any of the goods and chattels, rights and credits, named in the inventory, and not distributed, should be sold, may order either a public or private sale of the same, and in such manner, as he shall direct; and the executor or administrator shall account 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.

R. S., c. 106, § 28.

SECT. 44. Every executor or administrator shall be held to
2 account for all the goods and effects named in the inventory,
3 except credits, rights to personal property not in possession,
4 and such articles as are the subject of specific legacies, at the
5 rate at which the same were appraised, unless within three
6 months after the return of the inventory, he signifies in writ-
7 ing, to the judge his election to the contrary, or unless the
8 judge, on the application of some party interested, has previ-
9 ously ordered a sale thereof; but for special reasons, the
10 judge may allow him the further term of six months to make
11 such election.

R. S., c. 106, § 29.

SECT. 45. When any debtor of a deceased person is unable
2 to pay all his debts, the executor or administrator, with the
3 approbation of the judge of probate, may compound with
4 such debtor, and give him a discharge on receiving a fair
5 proportion of the same.

R. S., c. 106, § 33.

SECT. 46. When any executor or administrator neglects or
2 unreasonably delays to raise money out of the estate under
3 his charge, or to pay the same where due, and thereby subjects
4 said estate to be taken in execution, he shall be deemed
5 guilty of waste and unfaithful administration.

R. S., c. 106, § 39.

SECT. 47. Every executor or administrator shall render his
2 accounts, agreeably to the condition of his bond; and the
3 judge of probate may require him to account, whenever he
4 may deem it necessary, with or without a special application
5 from the parties interested; but no such account shall be
6 settled without reasonable notice to such parties. On the
7 examination of such account, the accountant may be interro-
8 gated, under oath, in relation to the same, and such record of
9 his answers made, as the judge requires. R. S., c. 106, § 40.

SECT. 48. Every executor or administrator shall be charge-
2 able, in his account, with all goods, chattels, rights and
3 credits of the deceased, which come to his hands, and are by

4 law to be administered, whether included in the inventory or
5 not; with all the proceeds of real estate sold for the payment
6 of debts, legacies and incidental expenses, and with all the
7 interest, profit and income, that in any way come to his
8 hands, in his said capacity, from any estate of the deceased.

R. S., c. 106, § 41.

SECT. 49. If any part of the real estate has been used or
2 occupied by the executor or administrator, he shall account
3 for the income thereof, to the devisees or heirs in the manner
4 ordered by the judge of probate, with the assent of the
5 accountant, and such of the other parties as are present at the
6 settlement of his account; and, if the parties do not agree on
7 the sum to be allowed, it shall be determined by three dis-
8 interested persons, to be appointed, for that purpose, by the
9 judge of probate, whose award, accepted by the judge, shall
10 be final.

R. S., c. 106, § 42.

SECT. 50. The judge of probate, in his discretion, may
2 permit an executor or administrator to insure, at the charge
3 of the estate, any property of the deceased, which may
4 become assets in his hands; and may allow him, in the
5 settlement of his account, such percentage on the amount of
6 assets administered by him, as he may deem reasonable
7 and just.

1850, c 185.

SECT. 51. No claim of any executor or administrator against
2 the estate under his charge, shall be allowed in his account,
3 unless particularly stated in writing, and if any such claim,
4 except for charges of administration, is disputed by any per-
5 son interested adversely in the allowance thereof, it may be
6 submitted to referees, agreed upon, in writing, by the inter-
7 ested parties present, or their agents or guardians; and their
8 written report, made pursuant to the submission, the judge
9 may accept, or, if necessary, recommit and decree accordingly.

R. S., c. 106, § 43.

SECT. 52. When there is more than one executor or admin-
2 istrator, and either of them is removed, or his resignation
3 accepted by the judge of probate, the others may proceed to
4 discharge the trust reposed in them, in the same manner as
5 if such person was dead; and they may bring actions of

6 account against him, and recover, by any proper legal pro-
7 cess, such effects and assets as remain in his hands unad-
8 ministered. Like actions or process may be brought by one
9 executor or administrator against another, when the latter
10 retains an undue proportion of the estate under their charge,
11 or refuses either to account to the other, or pay the debts,
12 legacies, or other charges on such estate, or where the ag-
13 grieved executor is a residuary legatee. R. S., c. 106, § 37.

SECT. 53. The supreme judicial court may hear and deter-
2 mine, in equity, all disputes and controversies, between co-
3 executors and co-administrators, and between their respective
4 legal representatives, in all cases where there is not a plain,
5 adequate and complete remedy at law: and, in such case,
6 the court shall have the same power, and may proceed in
7 like manner, as is provided in cases between copartners.

R. S., c. 106, § 36.

SECT. 54. When any letters of administration are revoked,
2 or any executor or administrator is removed, all previous
3 sales of real or personal estate, made in a legal manner by
4 him, and with good faith on the part of the purchaser, and
5 all other acts, in due course of administration, done by him
6 in good faith, shall remain valid and effectual, and he shall
7 be accountable in the same manner as if he had not been
8 removed.

R. S., c. 106, § 44.

Embezzlement of the property of deceased persons.

SECT. 55. Upon complaint made to the judge of probate,
2 by any executor, administrator, heir, legatee, creditor or other
3 person interested in the estate of any person deceased, against
4 any one suspected of having concealed, embezzled or con-
5 veyed away any of the money, goods or effects of the
6 deceased, he may cite such suspected person to appear before
7 him, to be examined, on oath, in relation thereto.

R. S., c. 106, § 30.

SECT. 56. Upon complaint of any such party, that any
2 person, entrusted by an executor or administrator with any
3 part of such estate, refuses to render to him a full account
4 thereof, when required, the judge of probate may cite such
5 person to appear before him, and to render a full account,

6 under oath, of any money, goods, chattels, bonds, accounts,
7 or other papers, belonging to such estate, taken into his cus-
8 tody, and of his doings in relation thereto.

R. S., c. 106, § 31.

SECT. 57. If any person duly cited, as aforesaid, refuses
2 to appear and submit to such examination, or to answer all
3 lawful interrogatories, the judge may commit him to the
4 jail of the county, there to remain until he submit to the
5 order of the court, be discharged by the complainant, or by
6 order of the supreme judicial court.

R. S., c. 106, § 32.

Chapter 65.

DISTRIBUTION OF ESTATES REAL AND PERSONAL, AND OF LANDS HELD IN MORTGAGE AND TAKEN ON EXECUTION.

Distribution of real estate.

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 6. Proceedings when the interest of an heir or devisee has been conveyed.
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21. Lands held in mortgage or taken on execution deemed personal estate, and distributed accordingly.

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24. Persons under sentence of death or of state prison for life, deemed civilly dead, and their estates administered and distributed accordingly.

Distribution of the estates of persons deceased out of the state.

25. Estates of persons deceased out of the state how administered and distributed.

26. If such person died insolvent, estate to be distributed proportionally among his foreign and resident creditors. Foreign creditors not to be paid, till resident have received their proportion.

27. If any residue, how it may be distributed.

Distribution of real estate.

SECT. 1. The court of probate, which has jurisdiction of
2 the estate of any deceased person, may make partition of all
3 his real estate, in this state, among his heirs or devisees, and
4 all holding under them, in the manner and under the restric-
5 tions hereinafter mentioned, when the proportions of the
6 respective parties are not in dispute between them, or do not
7 appear to the judge to be uncertain, depending upon the
8 construction of any devise or other conveyance, or upon any
9 other questions, that he may think proper for the considera-
10 tion of a jury, and a court of common law.

R. S., c. 108, § 1, 3.

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

R. S., c. 108, § 2.

SECT. 3. The partition shall be made by three disinterested
2 commissioners, appointed by said judge for that purpose; and,
3 before entering on their duties, they shall be duly sworn
4 before the judge or a justice of the peace, and make such
5 partition pursuant to the will of the deceased, or the laws
6 regulating the descent of intestate estates, as the case may
7 be, among all the parties owning shares, whether they joined
8 in the petition therefor or not. R. S., c. 108, § 4.

SECT. 4. If there is estate in different counties to be divided,
2 the judge may, at discretion, appoint separate commissioners
3 for each county and issue warrants accordingly; and, in such
4 case, the partition shall be made of the estate in each county,
5 the same as if there were no other to be divided. R. S., c. 108, § 5.

SECT. 5. When the whole, or any part of the premises, of
2 greater value than either party's share, cannot be divided
3 without great inconvenience, the same may be assigned to
4 any one or more of the parties who will accept it, and pay to
5 the others such sums of money as the commissioners shall
6 award, to make the partition just; but such partition shall
7 not be established by the court, until all such sums are
8 paid, or secured with interest, to the satisfaction of the parties
9 entitled thereto; nor if inconsistent with the condition of the
10 devise, under which they claim; but in such assignment
11 males shall be preferred to females, and the elder to the
12 younger children of the same sex. R. S., c. 108, § 6, 7.

SECT. 6. No conveyance of the interest of any heir or
2 devisee in the lands of the deceased, by deed, levy of execu-
3 tion, or otherwise, shall take from the judge of probate his
4 jurisdiction to divide and assign such lands in manner afore-
5 said; but the same shall inure to the equitable owner of the
6 part so conveyed; and, in case of the unequal division
7 provided for in section five, such owner may make written
8 application to said judge, before he accepts such division, for
9 the share of such heir or devisee, and after notice to such
10 heir or devisee, the judge may decide in favor of such owner,

11 and he shall be entitled to receive said share of the money,
12 or so much thereof as is proportional to his equitable interest.

R. S., c. 108, § 8, 9.

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

R. S., c. 108, § 10.

SECT. 8. When such partition is made on the application
2 of an heir or one holding under him, it shall be made among
3 all the owners of all the ancestor's estate which any interested
4 party whatever requires to have included; and, when made
5 on the application of a devisee or one holding under him, it
6 shall be made of all the estate held by him jointly or in com-
7 mon with others holding under the testator, which any devisee
8 requires to have included.

R. S., c. 108, § 11.

SECT. 9. Such partition may be ordered, on the petition of
2 any of the owners of any share, after due notice to all the
3 others to appear and shew cause against it; which notice
4 shall be served, fourteen days at least before the time
5 appointed for the hearing, on the other owners personally, if
6 they can be found within the state, and if not, by publishing
7 it in such newspaper or newspapers as the court shall order,
8 for three successive weeks at least before such hearing.

R. S., c. 108, § 12.

SECT. 10. If it shall appear to the court that any minor, or
2 insane person who has no guardian in the state, is interested
3 in the premises, the court shall assign him a guardian for the
4 suit, to appear for him and defend his interest therein; and,
5 if any owner resides without the state, having no agent
6 therein, the judge shall appoint an agent to act for him.

R. S., c. 108, § 13.

SECT. 11. When any of the real estate, of which partition
2 or the assignment of dower, under the chapter on that subject,
3 is prayed for, is held in common with that of other persons,

4 the judge shall order notice of the intended partition, or assign-
5 ment of dower to be given to the co-tenant, which shall con-
6 tain a description of the premises to be divided, and of the
7 proportion claimed as belonging to the estate of the deceased ;
8 specify the time and place of hearing the case, and be served
9 by delivering to him or leaving at the place of his abode in
10 the state, an attested copy thereof, at least fourteen days
11 before the time of hearing ; but if the co-tenant does not
12 reside in the state, such notice shall be given as the judge
13 may require. At the time appointed in such notice, the judge
14 shall hear the parties, determine their respective rights in
15 such estate, and direct the commissioners first to divide and
16 set off the estate of the deceased from that of such other per-
17 sons, and then make the partition or assignment of dower
18 prayed for. R. S., c. 108, § 15, 16. 1821, c. 51, § 22.

SECT. 12. The judge, for any sufficient reason, may set
2 aside the return of the commissioners, and commit the case
3 anew to the same or other commissioners, and the return,
4 when finally accepted by the court, shall be recorded in the
5 probate office, and also in the registry of deeds for the county
6 in which the lands lie, and be binding to all intents and pur-
7 poses upon all persons interested ; saving to them the right of
8 appeal to the supreme court of probate.

R. S., c. 108, § 17. 1821, c. 51, § 33, 35.

Distribution of personal estate.

SECT. 13. In the settlement of any intestate estate, or of
2 any testate estate, which is insolvent, or in which no provi-
3 sion is made for the widow in the will of her husband, or she
4 duly waives the same and claims her dower, the widow shall
5 be entitled to so much of the personal estate, besides her
6 ornaments, and wearing apparel, as the judge shall deem
7 necessary according to the degree and estate of her husband,
8 and the state of the family under her care ; and, in his dis-
9 cretion, he may also allow her any one pew in a meeting-
10 house, of which the deceased died seized, and such allowance,
11 when recorded, shall vest the title in her ; and when ar-
12 estate, which at the time of said allowance, was considered

13 insolvent, ultimately appears to be solvent, the judge, by a
14 subsequent decree, may make the widow a further reasonable
15 allowance.

R. S., c. 108, § 18, 19. 1849, c. 92. 1850, c. 198.

SECT. 14. When any allowance to a widow, wholly or
2 partly consists of a debt due the estate, and secured by a
3 mortgage of real or personal property, the executor or admin-
4 istrator, under the direction of the judge of probate, shall
5 assign said mortgage to her. 1845, c. 141.

SECT. 15. In all insolvent estates, if there is no widow, the
2 judge shall have the like power to make an allowance
3 from the personal estate, besides books and wearing apparel,
4 to the minor children of the deceased, who are under fourteen
5 years of age, and to those between fourteen and twenty-one
6 years of age, who from ill health, are unable to labor.

R. S., c. 108, § 20.

SECT. 16. When on the settlement of any account of an
2 administrator or executor, there appear to remain in his
3 hands any goods and chattels, rights and credits, not neces-
4 sary for the payment of debts and expenses of administration,
5 nor specifically bequeathed, the judge shall order the same
6 to be distributed according to the will of the deceased, if any,
7 so far as it may direct; but otherwise, according to the pro-
8 visions of law; and alienage shall be no bar to any person
9 who in other respects is entitled to receive the same.

R. S., c. 108, § 21.

SECT. 17. When such surplus consists of any other property
2 besides money, the judge may order a specific distribution of
3 the same, in proportion to the value thereof; and for this
4 purpose, if found convenient, he may appoint one or more
5 appraisers to value and make such distribution of the same,
6 under oath, and make report thereof to him for his accept-
7 ance.

R. S., c. 108, § 22.

SECT. 18. If any evidence of debt, or any account due to
2 the deceased is thus assigned, the assignee is authorized to
3 use the name of the executor or administrator to collect the
4 same by suit or otherwise, on giving such indemnity against
5 the costs as the judge may order; saving to all supposed

6 debtors the right to set off any claim which they have against
7 the estate of the deceased. R. S., c. 108, § 23.

SECT. 19. When any executor or administrator pays to any
2 creditor, heir or legatee, any sum exceeding thirty dollars,
3 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
6 the payee a sufficient bond to refund so much of said sum,
7 as the same may exceed such payee's equitable proportion on
8 final settlement of the estate; unless such payment be made
9 to a creditor, under an order of distribution of an insolvent
10 estate. R. S., c. 108, § 24.

SECT. 20. Any legatee of a residuary or specific legacy
2 under a will, may sue for and recover the same of the execu-
3 tor, in an action of debt at common law, or other appropriate
4 action. R. S., c. 108, § 25. Amendments of 1841, § 17.

Distribution of lands held in mortgage or taken on execution.

SECT. 21. When the deceased held any real estate in mort-
2 gage, without having foreclosed the right of redemption, or
3 the executor or administrator has taken any in execution for
4 a debt due the estate, such executor or administrator shall
5 hold the same in trust for the persons who would be entitled
6 to the money if it was paid; and the same shall be accounted
7 for as personal assets in his hands, and if redeemed, the
8 money shall be received by him for the same trust, and he
9 may release the estate. R. S., c. 108, § 26.

SECT. 22. Any such real estate, though the right of redemp-
2 tion has not expired, may be sold for the payment of debts,
3 legacies and the charges of administration, by a license from
4 the probate court, in the same manner as any real estate of
5 which the deceased died seized. R. S., c. 108, § 27.

SECT. 23. If such real estate is not redeemed, or sold as
2 aforesaid, it shall be distributed among those who are
3 entitled to the personal estate, but in the manner provided in
4 this chapter for the distribution of real estate; or the judge
5 of probate, or supreme judicial court, if it would be more for
6 the benefit of the parties in interest, may order the same to

7 be sold by the executor or administrator, as provided in the
8 preceding section, and the money realized from such sale, to
9 be distributed as in other cases of personal estate.

R. S., c. 108, § 28. 1846, c. 199, § 1, 2.

Persons under sentence of death or of state prison for life.

SECT. 24. When any person, by due course of law, is under
2 sentence of death, or of imprisonment in state prison for life,
3 and confined in such prison in pursuance thereof, he shall be
4 deemed in law, from the time of such imprisonment, to all
5 intents and purposes, as civilly dead; and his estate shall be
6 administered upon and distributed, and his contracts and
7 relations to persons and things affected, in all respects the
8 same as if he was dead. 1848, c. 80.

Distribution of the estates of persons deceased out of the state.

SECT. 25. When administration is taken in this state, on
2 the estate of any person who at the time of his decease was
3 not an inhabitant thereof, his estate found here, after payment
4 of his debts, shall be disposed of according to his last will,
5 duly executed according to the laws of this state, if he left
6 any; but if not, his real estate shall descend according to the
7 laws of this state; and his personal estate shall be distributed
8 according to the laws of the state or country of which he was
9 an inhabitant; and the judge of probate, as he thinks best,
10 may distribute the residue of said personal estate, as aforesaid,
11 or transmit it to the foreign executor or administrator, if any,
12 to be distributed according to the law of the place where the
13 deceased had his domicil. R. S., c. 107, § 20, 21.

SECT. 26. If such person died insolvent, his estate found in
2 this state, shall, as far as practicable, be so distributed that
3 all his creditors, here and elsewhere, may share in proportion
4 to their debts; and to this end, his estate shall not be trans-
5 mitted as aforesaid, until all his resident creditors have
6 received the proportion that they would, if the whole estate
7 applicable to the payment of common creditors, wherever
8 found, as divided among all said creditors in proportion to
9 their debts, without preferring any one kind of debt to

10 another; and in such case, no foreign creditor shall be paid
 11 out of the assets found here, till all the resident creditors have
 12 received their proportion, as herein provided.

R. S., c. 107, § 22, 23, 24.

SECT. 27. If there is any residue, after such payment to
 2 the citizens of this state, it may be paid to any other creditors
 3 who have proved their debts here, in proportion to the
 4 amount, but no one shall receive more than would be due to
 5 him, if the whole estate were divided ratably among all the
 6 creditors, as before provided; and the balance, if any, may
 7 be transmitted to the foreign executor or administrator, or if
 8 there be none such, it shall, after the expiration of four years
 9 from the appointment of the administrator, be distributed
 10 ratably among all the resident and foreign creditors, who
 11 have proved their debts in this state. R. S., c. 107, § 25.

Chapter 66.

INSOLVENT ESTATES.

Appointment and duty of commissioners.

- Sect. 1. Representation of insolvency. When commissioners may be appointed and when not.
2. Commissioners to appoint meetings and give notice thereof.
 3. Time allowed for proof of claims.
 4. Claims must be supported by affidavit, and security specified. Commissioners may examine claimant and witnesses under oath.
 5. If claimant refuse to be sworn, claim rejected; and if he or witnesses swear falsely, guilty of perjury.
 6. Commissioners to allow interest on all claims, unless otherwise stipulated.
 7. Value of collateral security, estimated by the commissioners, to be deducted.
 8. If either party dissatisfied, judge may appoint appraisers. Creditor may relinquish security and take dividend on his whole claim.
 9. Commissioners to report. Their fees. Report may be recommitted to correct errors.

Contingent claims.

10. Commissioners to report the amount of contingent claims, and funds to pay same per cent. on them to be left undistributed.
11. If such claims become absolute within four years, dividend to be made thereon; if not the residue shall go to the other creditors.

Appeal from the decision of the commissioners.

12. Either party, dissatisfied with decision of commissioners, may appeal. Time and mode of appeal, and notices to be given.
13. When an appeal is thus taken, claim to be determined at common law, and provision to be made for it as contingent.
14. Claimant to bring his action thereon within three months and file a schedule of his claims. Administrator to file demands in set off.
15. Such claims may be referred, and claimant may be examined on oath before court or referees.
16. Amount found due the claimant to be added to the list of debts. Allowance of costs in such cases.

Private claims of the administrator.

17. Private claims of the administrator to be adjudicated by the judge and added to the list.

Distribution of the funds.

18. After thirty days from the return, judge to decree a distribution. Priority of claims.
19. How claims of different classes, and of the same class shall be paid. When and how subsequent distributions may be made.

Suits after representation of insolvency.

20. On what claims suits may be brought after representation of insolvency. Suits pending at the time of such representation continued or discontinued without cost, or tried, and amount added to the list of debts.
21. Claims not presented for allowance forever barred, unless further assets are found.

Subsequent commission of insolvency.

22. When there may be a subsequent commission of insolvency and proceedings thereon.
23. What claims may then be allowed. Within what time such representation must be made. Prior claims not affected.

Disposal of unavailable debts.

24. Judge may order unavailable debts to be sold and assigned to purchasers.

Miscellaneous provisions.

25. Neglect of administrator to settle account in six months, or such further time as the judge may allow, a breach of his bond.
26. Liability of administrator for committing or consenting to any waste on the real estate of the deceased.
27. Provisions of this chapter extended to estates under the charge of executors and guardians of insane persons. Exceptions.
28. And also to estates under charge of an executor who has given bond as residuary legatee.

Appointment and duty of commissioners.

SECT. 1. When it appears to the judge of probate, by the
 2 representation of the administrator, that the estate of any
 3 deceased person will probably be insufficient for the payment

4 of his debts, he shall appoint two or more suitable commis-
5 sioners, to be duly sworn, and receive and examine all claims
6 of creditors against the estate, except those of the administra-
7 tor, and return to the probate court a list of all claims laid
8 before them, with the sums they have allowed on each; but
9 if the funds are only sufficient to pay the expenses of
10 the funeral and administration, and the allowance to the
11 widow and children, commissioners need not be appointed,
12 and the administrator shall be exempt from paying claims of
13 any subsequent class. R. S., c. 109, § 3, 4.

SECT. 2. The commissioners shall appoint convenient times
2 and places for their meetings to receive and examine the
3 claims of creditors; and shall give notice thereof, in such
4 newspaper or newspapers, or in such other manner, as the
5 judge directs. B. S., c. 109, § 5.

SECT. 3. Six months after their appointment shall be
2 allowed in the first instance, for the proof of claims; but, if
3 necessary, an additional time, not exceeding twelve months,
4 at the discretion of the judge, may be allowed for the proof
5 of claims generally, or of any particular claim or claims, to
6 be specified in the order of the judge. R. S., c. 109, § 6.

SECT. 4. All claims shall be presented to the commissioners
2 in writing, supported by the affidavit of the party or some
3 person comsant thereof; it shall be specified what security
4 the claimant has, and the amount of credit to be given in set
5 off, if any, to his best knowledge and belief; and the
6 commissioners may, when they think proper, require any
7 claimant to be sworn, by either of them, to make true answers
8 to all questions that they may ask him, and they may then
9 examine him upon all matters relating to his claim; and they
10 may also administer oaths and examine any witnesses pro-
11 duced before them. R. S., c. 109, § 6, 7.

SECT. 5. If any claimant refuses, when required, to submit
2 to examination as aforesaid, his claim shall be rejected; and
3 if any such claimant, or any witness sworn as aforesaid,
4 wilfully and corruptly makes any false answer or declaration

5 relating to any claim under examination, he shall be deemed
6 guilty of perjury, and liable to punishment accordingly.

R. S., c. 109, § 8.

SECT. 6. The commissioners shall cast interest on all claims
2 allowed by them, from the time of the death of the deceased
3 to the time of making their report, whether the claims
4 expressly bear interest or not, unless otherwise stipulated in
5 the contract.

R. S., c. 109, § 9.

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

R. S., c. 109, § 10.

SECT. 8. If such creditor or the administrator is dissatisfied
2 with said estimate, the judge, on his application, and pro-
3 duction of said certificate, and notice to the other party, may
4 appoint a committee of three disinterested and discreet men,
5 to examine and appraise, under oath, said mortgaged prop-
6 erty, and make return of their appraisal, under their hands,
7 to the probate court: and such appraisal shall be substituted
8 for the first appraisal, and the difference added to, or
9 deducted from the balance of the claim as allowed by the
10 commissioners. And if the creditor declines to take the
11 property at the appraisal of the committee, and relinquishes
12 his claim thereon, the judge shall add the amount of such
13 appraisal to his claim as allowed, and he shall be entitled to
14 his dividend on the whole amount, and the property shall be
15 disposed of by the administrator according to law.

R. S., c. 109, § 11.

SECT. 9. At the expiration of the time limited, the commis-
2 sioners shall make their report to the judge, who shall order
3 the administrator to pay their legal fees; but before ordering
4 a distribution to be made thereon, he may recommit the

5 report for the correction of any error or mistake, satisfactorily
6 appearing to him to exist. R. S., c. 109, § 12, 27.

Contingent claims.

SECT. 10. Any person liable as surety for the deceased, or
2 having any other contingent claim, may prove the same, and
3 the commissioners shall report the amount thereof, distin-
4 guishing it from the absolute claims allowed, and stating its
5 nature; and the judge, in ordering a distribution, shall leave
6 in the hands of the administrator, a sum sufficient to pay, on
7 such contingent claim, the same percentage, which shall then
8 be paid on the others. R. S., c. 109, § 13, 14.

SECT. 11. If at any time within four years after adminis-
2 tration, if it satisfactorily appears to the judge that such
3 contingent claim has become absolute, the creditor shall be
4 entitled to his dividend thereon as aforesaid, so far as the
5 same can be paid without disturbing any former dividend;
6 but if it does not become absolute in said time, or if becoming
7 absolute, its payment shall not exhaust the assets in the
8 administrator's hands, the residue thereof shall remain for
9 the other creditors. R. S., c. 109, § 15, 16.

Appeal from the decision of the commissioners.

SECT. 12. The claimant or administrator, dissatisfied with
2 the decision of the commissioners in relation to the allowance
3 of any claim, may appeal therefrom, by claiming the same,
4 and giving written notice thereof at the probate office, within
5 twenty days after the return of the commissioners; and if
6 the administrator appeals, he shall also give notice to the
7 creditor within thirty days, by serving a copy of the former
8 notice, attested by the register, on him, his agent or attorney,
9 personally, or by leaving it at the usual place of abode of
10 either, if either resides in the state, *but if not, notice shall*
11 *be given as the judge directs.*

R. S. c. 109, § 17, 18. (New.)

SECT. 13. When an appeal is thus taken, the claim shall
2 thereupon be determined at common law; and, until the
3 decision thereof, it shall be deemed contingent, and provision
4 shall accordingly be made for it, in manner aforesaid.

R. S. c. 109, § 17, 19.

SECT. 14. The creditor within a reasonable time, not exceeding three months after the report is returned, shall prosecute his claim against the administrator in an action for money had and received; and may annex to his writ, before service, a schedule of all his claims, and the nature thereof, or file it in the office of the clerk of the court, to which the action is returnable, fourteen days at least before the return day thereof; or if such action is brought before a justice of the peace, the schedule may be filed with him, seven days at least, before such return day; and the administrator, at such time as the court directs, shall file an abstract of all the demands which the deceased left against the supposed creditor, and judgment shall be rendered for either party, upon the balance ascertained at the trial. R. S. c. 109, § 20, 21.

SECT. 15. When an appeal is taken as aforesaid, the parties may agree upon referees, who shall be appointed by a rule of the probate court, and their award shall be final; and in the trial of any appeal, before any court or referees, the creditor may be examined on oath, as before the commissioners, and with like effect, if he refuses to be examined or *answers falsely*. R. S., c. 109, § 22, 23. (New.)

SECT. 16. On final judgment against the administrator, in court or before referees, on any such appeal, no execution shall issue, except for costs, but the sum thus found due to the claimant, shall be entered *by the judge of probate*, on the list of debts entitled to dividends from the estate, as is hereinbefore provided in regard to contingent claims; and costs may be allowed to the prevailing party; but the administrator, when appellee, may charge any costs, awarded against him, to the estate; but not when he is appellant, unless the judge of probate is satisfied that he had reasonable cause to appeal. R. S., c. 109, § 24, 25. (New.)

Private claims of the administrator.

SECT. 17. Any private claim of the administrator against the estate, shall be examined and allowed by the judge, and annexed to the list of claims aforesaid, and a proportional dividend thereon reserved to him. R. S., c. 109, § 26.

Distribution of the funds.

SECT. 18. After the expiration of thirty days from the return of the commissioners, the judge of probate may make a decree for the distribution of the effects among the creditors, which, after the payment of the expenses of the funeral 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.

Second. The expenses of the last sickness of the deceased.

Third. Debts entitled to a preference, under the laws of the United States.

Fourth. Public rates and taxes, and moneys due the state.

Fifth. All other debts. R. S., c. 109, § 1, 27.

SECT. 19. No payment shall be made to creditors of any class, until all those of preceding classes, of which the administrator has had notice, are fully paid; *all claims of the same class shall be paid in the same proportion*; and if afterwards there should be effects sufficient for other distributions, the judge may order the same to be made on the same principles.

R. S., c. 109, § 2, 27. (New.)

Suits after representation of insolvency.

SECT. 20. No action shall be brought against an administrator, after a representation of insolvency, except for a preferred claim not liable to be affected thereby, or unless the assets should prove more than sufficient to pay all the debts allowed by the commissioners, and if such representation is made while an action is pending on an unpreferred claim, it may be discontinued without costs; or, if the claim is disputed, the action may be tried and judgment rendered thereon, in the same manner, and with the same effect, as in the case of an appeal from the award of the commissioners: or the action may be continued, at the discretion of the court, without costs to either party, until it appears whether the estate is insolvent; and, if it should prove not to be insolvent, the plaintiff may prosecute the action, as if no such representation had been made.

R. S., c. 109, §. 28.

SECT. 21. Every creditor of an estate who has not presented his claim for allowance, in the manner herein prescribed, shall be forever barred from recovering the same, unless further assets of the deceased shall come to the hands of the administrator, after the decree of distribution; in which case, his claim, if not disputed by the administrator, or if proved to the satisfaction of the judge, may be allowed and paid, in the manner, and with the limitations provided for in case of contingent debts. R. S., c. 109, § 29. 1849, c. 96.

Subsequent commission of insolvency.

SECT. 22. When it appears that the assets in the hands of the administrator are more than sufficient for the payment of the full amount of all the claims allowed, and interest thereon, and he apprehends that there may not be assets sufficient to pay all such other claims as may lawfully be adduced, together with the charges of administration, he may make representation to the judge, who shall issue another commission of insolvency returnable in sixty days; and like proceedings shall be had as in other cases. R. S., c. 109, § 31.

SECT. 23. After an order of distribution on any commission of insolvency, no claim shall be allowed on any subsequent commission, unless demanded of the administrator within three years after his acceptance of the trust; nor shall he be liable to any action commenced thereon after that time, provided he shall, if such claim is so presented, make further representation of insolvency within thirty days or at the first regular probate court after the expiration of said three years; and, unless such representation is made within said time, no subsequent commission shall be issued; nor shall any dividend be made on any subsequent commission so as to prevent the full payment of the claims before allowed or provided for, with interest. R. S., c. 109, § 32, 33.

Disposal of unavailable debts.

SECT. 24. The judge may order any notes, accounts, or other demands of the deceased, which, from the poverty of the debtors, or the disputable nature of the demands, in his opinion are not available as assets beyond the expenses of collection, to be sold like other personal estate, and assigned to the purchaser thereof with authority to collect the same in

7 the name of the administrator, by giving him such indemnity
8 against costs as the judge may require, and reserving to the
9 debtors their equitable right of set off.

R. S., c. 109, § 34. 1852, c. 226, § 1.

Miscellaneous Provisions.

SECT. 25. If the administrator neglects to exhibit and settle
2 his account of administration within six months after the
3 report of the commissioners is duly returned to the judge, or
4 within such further time as the judge thinks proper to allow
5 therefor, it shall be deemed a breach of his administration
6 bond. R. S., c. 109, § 30.

SECT. 26. If any administrator of an insolvent estate com-
2 mits any waste or trespass upon any real estate belonging
3 thereto, whether he is an heir or devisee thereof, or not; or
4 if he consents to any such waste or trespass by any other
5 person, he shall be liable to account for treble the amount of
6 such damage; and he shall have power to prosecute actions
7 of trespass against any persons committing such waste,
8 whether they are heirs or devisees, or not, and the damages
9 so recovered shall also be accounted for as assets.

R. S., c. 109, § 37.

SECT. 27. All the foregoing provisions shall be construed
2 to include and be equally applicable to estates under the
3 charge of executors, and guardians appointed by reason of
4 the insanity of the ward, the same as if all three classes of
5 estates had been expressly mentioned throughout, except any
6 provisions relative to the estates of deceased persons, which,
7 in their nature, cannot be applied to estates of persons under
8 guardianship, and except that, in this latter class of estates,
9 an allowance for the support of the ward and his family shall
10 take the place of the allowance for the widow and children.

R. S., c. 109, § 36. 1850, c. 177, § 1, 2.

SECT. 28. If the estate under the charge of any executor,
2 who has given bond as residuary legatee, prove insufficient
3 for the payment of the debts, he may represent it insolvent,
4 and like proceedings and distribution shall be had, as in other
5 cases; and such insolvency and distribution shall be a bar to
6 any suit brought against the executor or his sureties on his
7 bond. R. S., c. 109, § 39.

Chapter 67.

APPOINTMENT, POWERS AND DUTIES OF GUARDIANS.

Minors.

Sect. 1. When guardians may be appointed for minors. Executors and administrators not to be guardians.

2. By whom guardians may be nominated and appointed.

3. Guardian's authority over the minor's person and property.

Insane and incompetent persons, spendthrifts, and convicts.

4. When guardians may be appointed for insane and incompetent persons, spendthrifts, and convicts.

5. Municipal officers to make inquisition into the facts, and report. Notice and hearing thereon. Appointment of guardian.

6. If municipal officers are applicants, and have given notice, judge may decide without inquisition.

7. All contracts and sales of estate, made after filing a copy of such application in the registry of deeds, void.

8. Ward's expenses, in defending himself, to be paid from his estate.

9. Guardian to have the custody of his ward's person, and may employ him or bind him out to service.

The powers and duties of guardians.

10. Guardian to give bonds. Conditions thereof.

11. Estates of wards to be appraised, and inventory returned, and when.

12. How the guardian shall manage the ward's estate, and apply the income or principal if needed. When he may sell the real estate.

13. He shall settle and pay his ward's debts, and from what funds, collect or compound his dues, appear for him in suits, and insure his property.

14. May act for him in partition of real estate, assignment of dower, and in levy of executions, and may complete contracts to convey, made by the ward before guardianship.

15. Sales of ward's estate, and investment of the funds.

16. Married women not to be guardians, nor husbands in right of wives.

17. Judge may remove guardians. What notice to be given. On marriage of female ward, guardianship to cease.

18. How often the guardian is to settle his account. Consequences of neglect or refusal to do so.

19. Judge to examine bond on settlement, and may require a new one, and remove the guardian if he does not give it.

20. Oath of one joint guardian to an account may be sufficient.

21. Guardianship of person out of the state, granted in one county, shall cover all property in the state.

Disability of adults under guardianship.

22. Disability of adults under guardianship to dispose of their estate. When guardian no longer necessary, judge shall order property restored, except compensation.

Guardians ad litem.

23. This chapter not to impair power of courts to appoint guardians ad litem.

Embezzlement of the ward's estate.

24. Proceedings on suspicion of embezzlement of ward's estate.

25. Punishment of guardian for embezzlement.

Minors.

SECT. 1. The judge of probate, when he deems it necessary and convenient, may appoint guardians to minors, residing in his county or out of the state, and having estate in his county; but no executor or administrator on an estate shall be guardian to a minor interested therein.

R. S., c. 110, § 1, 6.

SECT. 2. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; if he is over that age, he may nominate his own guardian, in the presence of the judge, or if he resides more than ten miles from the place of holding the next court, he may do it in writing certified by a justice of the peace; and, if approved by the judge, such nominee shall be appointed, although the minor may have had a guardian before; but, if not thus approved, or if the minor resides out of the state, or, being cited by the judge, neglects to nominate a suitable person who will accept the trust, the judge may nominate and appoint, the same as if he were under fourteen.

R. S., c. 110, § 2, 3, 4.

SECT. 3. Every such guardian shall have the care and management of all his ward's estate, and continue in office until the ward is twenty-one years of age, unless sooner lawfully discharged; but the father, if alive and competent to transact his own business, if not, the mother, while unmarried and thus competent, shall have the care of the person and education of the minor; otherwise this duty also shall devolve on the guardian.

R. S., c. 110, § 5.

Insane and incompetent persons, spendthrifts, and convicts.

SECT. 4. The judge of probate may appoint guardians to the following persons, belonging to his county, though over twenty-one years of age, on written application of any of their friends, relatives, or creditors, or of the municipal officers or overseers of the poor of the town where they reside:

First. Insane persons, including insane married women, whose husbands have left them, without making provision for their support, or who are possessed of real or personal estate, and, from any cause, stand in need of relief, or whose property is in danger of being wasted or lost.

Secondly. Persons who by excessive drinking, gaming, idleness or debauchery of any kind have become incapable of managing their own affairs, or so spend, or waste their estate as to expose themselves or families to want or suffering, or their towns to expense.

Thirdly. Convicts, committed to the state prison for a term not less than a year, and not for life.

R. S., c. 110, § 7. 1853, c. 6.

SECT. 5. Before appointing any such guardian, except for convicts, the judge shall issue his warrant to the municipal officers of the town where such person resides, requiring them to make inquisition into the facts stated in the application; and they shall decide upon such evidence as they are able to obtain, whether the facts, so stated, are true; and, as soon as may be, report the result to the judge; and if he shall, on said report, due notice to the other party and a hearing thereon, adjudge that such person is insane, a spendthrift, or incapable, as aforesaid, he shall appoint a guardian.

R. S., c. 110, § 8, 9, 13.

SECT. 6. But when such municipal officers are the applicants, and have given at least fourteen days notice to such person, by serving him with a copy of their application, the judge may adjudicate thereon without any further inquisition, if such person is present, or on such further notice, if any, as he thinks reasonable.

R. S., c. 110, § 10, 13.

SECT. 7. When such application is made, and notice issued thereon by the judge of probate, the applicants may cause a copy of their application, and the order of court thereon, to be filed in the registry of deeds for the county; and, if a guardian is appointed thereupon, all contracts, except for necessities, and all gifts, sales or transfers of real or personal estate, made by the ward after said filing, and before the termination of the guardianship, shall be void; but this section shall not, by implication, add anything to the validity of any such act previous to said filing.

R. S., c. 110, § 11.

SECT. 8. When a guardian is thus appointed, the judge shall make an allowance, to be paid by the guardian from

3 the ward's estate, for all his reasonable expenses in defending
4 himself against the complaint. R. S., c. 110, § 12.

SECT. 9. Such guardians shall have the custody of the
2 persons of their wards if resident in the state, except so far as
3 the court of probate may, from time to time, otherwise order ;
4 and it shall be the duty of every guardian, appointed over any
5 person for gaming, idleness, drinking or debauchery, to incul-
6 cate upon him habits of sobriety and industry, and when
7 of sufficient health and strength, with the approbation of the
8 judge of probate, he may bind him out to labor, not exceed-
9 ing six months at any one time, or employ him in his own
10 service; giving credit for his earnings, or such sum as he
11 receives therefor. R. S., c. 110, § 14.

The powers and duties of guardians.

SECT. 10. Every guardian, appointed for minors or other
2 persons, shall give bond to the judge of probate, in such sum,
3 and with such surety or sureties, resident in this state, as the
4 judge shall accept, conditioned as follows :

First. For the faithful discharge of his trust.

Secondly. To render a true and perfect inventory of the
7 estate, property and effects of his ward, within the time
8 limited by law.

Thirdly. To render a just and true account of his guar-
10 dianship, whenever by law required.

Fourthly. At the expiration of his trust, to deliver over all
12 moneys and property, which, on a final and just settlement
13 of his accounts, appear to remain in his hands.

R. S., c. 110, § 15.

SECT. 11. Thereupon the judge of probate shall appoint
2 three suitable, disinterested persons to appraise the estate of
3 the ward, the same as estates under administration are
4 appraised ; and the guardian shall return the inventory, under
5 oath, within such time as the judge, in his warrant to the
6 appraisers, directs, if the ward is a minor, and in all other
7 cases, within three months after his appointment.

R. S., c. 110, § 16.

SECT. 12. The guardian shall manage the estate of his ward,
2 frugally and without waste ; and apply the income and profits

3 thereof as far as needed, for the comfortable and suitable
4 maintenance of the ward and his family, and if they are
5 insufficient for that purpose, he may use the principal; and
6 when any exigency occurs, the guardian may apply to some
7 proper court for a license to sell the estate of his ward,
8 and apply the proceeds to the purposes contemplated by
9 his license. R. S., c. 110, § 19.

SECT. 13. He shall settle all accounts of his ward; pay
2 all his just debts out of his personal estate, so far as it
3 will go without disposing of effects, necessary for the use
4 and comfort of the ward and his family, and, in case of
5 deficiency thereof, then out of the real estate; demand, sue
6 for and receive all his dues; compound for the same, and
7 give discharges thereof, on such terms as the judge of probate
8 may authorize; appear for and represent his ward in all legal
9 proceedings, unless another is appointed for that purpose, as
10 guardian or next friend; and is authorized to cause any real
11 estate of his ward, liable to be injured by fire, to be insured
12 in any mutual insurance company at the expense of the es-
13 tate, and to do all things in relation thereto the same as if he
14 was the owner. R. S., c. 110, § 20, 21. 1845, c. 150.

SECT. 14. He may join in and assent to a partition of
2 his ward's real estate on a petition or other legal process
3 therefor; assign and set out dower in such estate, to any
4 widow entitled thereto; appoint an appraiser of real estate
5 taken on execution against or in favor of his ward; and
6 when his ward, prior to the guardianship, had lawfully con-
7 tracted to convey real estate on conditions, and had become
8 incapacitated to do so by reason of insanity, he may convey
9 the same according to the terms of the contract, and shall be
10 accountable therefor on his bond.

R. S., c. 110, § 22. 1852, c. 270, § 1.

SECT. 15. Any judge of probate, on the application of a
2 guardian, or of any person interested in the estate of any
3 ward, after notice to all other persons interested, may author-
4 ize or require the guardian, to sell or transfer any stock in the
5 public funds, or other personal property, held by him as guar-
6 dian, and to invest the proceeds of such sale, and also all
7 other moneys in his hands, in real estate, or in any other

8 manner most for the interest of all concerned; and the
9 judge may make such further order, and give such direc-
10 tions, as the case may require, for managing, investing, and
11 disposing of the effects in the hands of the guardian, or for
12 buying in any particular estate, remainder, reversion, mort-
13 gage or other incumbrance, upon any real estate belonging
14 to the ward. R. S., c. 110, § 23.

SECT. 16. No married woman, during her coverture, shall
2 be appointed guardian; and, if any female guardian is mar-
3 ried, her authority, as such, shall cease; nor shall her hus-
4 band become guardian in her right. R. S., c. 110, § 24.

SECT. 17. The judge of probate may dismiss any guardian
2 whenever it shall appear necessary, or on the request of such
3 guardian, and if the case require it, appoint another in his
4 place; but previously to any such removal, except by request
5 of the guardian, he shall give fourteen days notice to such
6 guardian, to appear and shew cause to the contrary; and,
7 on the marriage of any female ward under twenty-one years
8 of age, the authority of her guardian shall cease.

R. S., c. 110, § 25, 26.

SECT. 18. Every guardian shall render and settle his ac-
2 count with the judge of probate, at least once in three years,
3 and as much oftener, as the judge may cite him for that pur-
4 pose; and, on neglect or refusal to do so, he shall be deemed
5 to have broken the condition of his bond; be liable to remo-
6 val therefor, although the ward may be indebted to him; and
7 forfeit all allowance for his personal services, unless it ap-
8 pears to the judge that such neglect arose from sickness or
9 other unavoidable accident. R. S., c. 110, § 27, 28.

SECT. 19. On the settlement of every account of the guar-
2 dian except when intended as a final one, the judge shall
3 examine his bond, and if it be found insufficient in amount,
4 or responsibility of sureties, he shall require a new and suffi-
5 cient one; and if the guardian does not give it, he shall be
6 removed and another appointed. R. S., c. 110, § 29.

SECT. 20. When an account is rendered by two or more
2 joint guardians, the judge of probate may, in his discretion,
3 allow the same upon the oath of any one of them.

R. S., c. 110, § 30.

SECT. 21. The guardianship, which is first lawfully granted
2 of any person residing without the state, shall extend to all
3 his estate within the same; and exclude the jurisdiction of
4 the probate court in every other county.

R. S., c. 110, § 32.

Disability of adults under guardianship.

SECT. 22. When a person, over twenty-one years of age,
2 is under guardianship he shall be deemed incapable of
3 disposing of his property otherwise than by his last will,
4 or of making any contract, until otherwise adjudged by
5 the court of probate, notwithstanding the death, resigna-
6 tion or removal of the guardian; and, in such case, a new
7 guardian may be appointed, without further intervention
8 from the municipal officers. When, on application of any
9 such person or otherwise, the judge finds that a guardian is
10 no longer necessary, he shall order the remaining property of
11 the ward to be restored to him, except a legal compensation
12 to the guardian for his services.

R. S., c. 110, § 31.

Guardians ad litem.

SECT. 23. Nothing in this chapter shall affect the power of
2 any court of common law, probate court, or justice of the
3 peace, to appoint a guardian to defend the interests of any
4 minor, or other incapacitated person, in any suit pending in
5 such court, nor their power to allow or appoint any one, as
6 next friend of such person, to commence, prosecute, or defend
7 any suit in his behalf.

R. S., c. 110, § 33.

Embezzlement of the ward's estate.

SECT. 24. Upon complaint made to the judge of probate,
2 by any guardian, ward, creditor or other person interested in
3 the estate, or having claims thereto in expectancy, as heir or
4 otherwise, against any one suspected of having concealed,
5 embezzled or conveyed away any of the money, goods or
6 effects of the ward, the judge may cite and examine such
7 suspected person, and proceed with him, in the manner pro-
8 vided in relation to those suspected of embezzling the estates
9 of deceased persons.

R. S., c. 110, § 17.

SECT. 25. If any guardian, having the charge and custody of any money, bill, note, bond, evidence of debt, or any property whatever, belonging to his ward, embezzles the same in violation of his trust, or fraudulently converts the same to his own use, he shall be punished by fine, not exceeding five thousand dollars, or confinement to hard labor for a term not exceeding ten years, or both, according to the aggravation of the offense. R. S., c. 110, § 18.

Chapter 68.

TESTAMENTARY TRUSTEES.

- Sect. 1. Testamentary trustees to give bonds. Conditions thereof.
2. In what cases bonds may not be required.
 3. Neglecting to give bond deemed declining the trust.
 4. When trustee may resign. Executor of trustee not required to accept this trust.
When trustee becomes disqualified, he may be removed.
 5. When trustee declines or dies, judge may fill vacancy.
 6. Trustee thus appointed to have same powers as others, and judge may order conveyances to vest the estate.
 7. Such trustee to give bond. Judge may dispense with inventory, and bond be altered accordingly. No right to vest without bond.
 8. Estates to be appraised.
 9. Probate or supreme court may direct the sale of trust estates and investment of the funds in other property.
 10. Said courts may hear in equity all matters relating to trusts.
 11. When and how bonds of trustees may be sued.

SECT. 1. Every testamentary trustee, except those herein-
2 after exempted, before entering on his duties, shall give
3 bond to the judge of probate for the county where the will
4 is proved, with sufficient surety or sureties, in such sum as
5 the judge prescribes, with conditions as follows :

First. That he will faithfully execute such trust, accord-
7 ing to the will of the testator, so far as consistent with law.

Secondly. That he will make a true and perfect inventory
9 of the real estate, goods and chattels, rights and credits of
10 such estate, to be returned into the probate office at such
11 time as the judge orders.

Thirdly. That he will render an account of the income and profits thereof, and of his payments and expenses, once in three years, and oftener, if required by the judge.

Fourthly. That, at the expiration of such trust, he will settle his accounts with the judge; pay and deliver over all balances, sums of money or other property, that may be due, and give possession of the other estate with which he is entrusted to the persons entitled thereto. R. S., c. 111, § 1.

SECT. 2. In the following cases, bonds shall not be required of such trustees, unless for special reasons the judge determines it to be necessary; but when no bond is required, they shall settle their account with the judge of probate annually.

First. When the testator has requested or directed, that a bond should not be required.

Secondly. When all the parties interested in the trust fund, if of full age and legal capacity, in writing, signify to the judge their request, that a bond should not be required.

Thirdly. When the trustee, not before being required to give bond, had entered on the duties of his trust, prior to August first, eighteen hundred and forty-one. R. S., c. 111, § 2.

SECT. 3. Every person, appointed a testamentary trustee, who neglects to give bond, within the time allowed therefor by the judge, shall be considered as declining the trust.

R. S., c. 111, § 3.

SECT. 4. Every such trustee, at his own request, may be allowed to resign his trust, when it seems proper to the judge of probate; no person, succeeding to such trust, as executor or administrator of a former trustee, is required to accept or retain the same against his will; and when any trustee, appointed either by the testator or the judge of probate, becomes insane, or otherwise evidently unsuitable to discharge his trust, the judge upon notice to him and all others interested, may remove him, and appoint another.

R. S., c. 111, § 4, 5, 6.

SECT. 5. When any person, appointed trustee, declines, resigns or dies, before the objects of the trust are accomplished, if no adequate provision is made by the will, for sup-

4 plying such vacancy, the judge of probate, after notice to all
5 persons interested, shall appoint a new, sole, or joint trustee.

R. S., c. 111, § 7.

SECT. 6. Every trustee, appointed by the judge of probate,
2 under the provisions hereof, shall have and exercise the same
3 powers, rights and duties, as a sole or joint trustee, as if he
4 had been originally appointed by the testator, and the trust
5 estate shall vest in him accordingly; and the judge may order
6 such conveyances to be made by the former trustee or his
7 representatives, or by the remaining trustees, as are proper,
8 to vest in the new trustee, solely or jointly such estate and
9 effects.

R. S., c. 111, § 8, 9.

SECT. 7. Every trustee, appointed by the judge of probate,
2 before entering on his duties shall give bond as aforesaid;
3 but the judge may dispense with making and returning an
4 inventory by any substitute trustee, when he thinks it unne-
5 cessary, and then the condition of the bond shall be altered
6 accordingly; but without such bond, accepted by the judge,
7 no right or authority shall vest in such trustee.

R. S., c. 111, § 10.

SECT. 8. When an inventory is required to be returned
2 by any trustee, the estate and effects shall be appraised
3 by three suitable persons, to be appointed and sworn, as
4 in the case of the estates of deceased persons.

R. S., c. 111, § 11.

SECT. 9. Any judge of probate having jurisdiction of the
2 trust, and the supreme judicial court in any county, on the
3 application of the trustee or of any person interested in the
4 trust estate, after notice to all others interested, may authorize
5 or require the trustee to sell any real estate, stocks in the
6 public funds, or in any corporation, or any other personal
7 estate held by him in trust, and invest the proceeds thereof,
8 and also any other trust moneys in his hands, in real estate
9 or in any other manner, most for the interest of all con-
10 cerned therein; and may give such further directions as
11 the case may require for managing, investing and disposing
12 of the trust fund, not inconsistent, but in accordance with
13 the provisions of the will respecting the same.

R. S., c. 111, § 12.

SECT. 10. Either of said courts may hear and determine, 2 in equity, all other matters relating to the trusts herein mentioned. 3 R. S., c. 111, § 13.

SECT. 11. Any bond given by a trustee may be put in suit 2 by order of the judge of probate, for the benefit of any person 3 interested in the trust estate; and the proceedings in such 4 suit shall be conducted in the manner prescribed with respect 5 to bonds given by administrators. R. S., c. 111, § 14.

Chapter 69.

ESTATES OF DECEASED PARTNERS.

- Sect.* 1. How the interest of a deceased partner in the partnership property shall be appraised and inventoried.
2. Same to remain with surviving partner by his giving bond.
 3. Conditions of such bond.
 4. Judge to have the same authority over, and parties same remedies against the surviving partner, as in case of administrators.
 5. If such partner does not give bond, administrator to give further bond. Conditions thereof. Also to take possession of the partnership property, settle up its concerns, and pay to surviving partner his share.
 6. Duty of surviving partner to surrender up all books and property.
 7. If he refuses, he may be cited before the judge, and committed to jail.

SECT. 1. The executor or administrator on the estate of any 2 deceased member of a copartnership, shall include in the 3 inventory which he is by law required to return to the judge 4 of probate, the whole of the partnership estate, goods and 5 chattels, rights and credits, appraised at its true value, as in 6 other cases; but the appraisers shall carry out in the foot- 7 ing an amount, equal only to the deceased's proportion of the 8 copartnership interest. R. S., c. 107, § 26.

SECT. 2. The property thus appraised shall remain with, or 2 be delivered over, as the case may be, to any of the surviving 3 partners who are disposed to undertake the management 4 thereof agreeably to the conditions of a bond, which they are 5 required to give to the judge of probate, in such sum and 6 with such sureties as he thinks reasonable, for the benefit of 7 all persons interested in the estate. R. S., c. 107, § 27.

SECT. 3. The condition of such bond shall be in substance
2 as follows:

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

Second—To apply the property thereof towards the payment
6 of the partnership debts.

Third—To render an account on oath, to the judge, when-
8 ever required, of all the partnership affairs, including the
9 property owned by the late firm; the debts due thereto;
10 what has been paid by them towards the partnership debts,
11 and what is still due therefor.

Fourth—To pay over within twelve months, unless a longer
13 time is allowed by a decree of the judge, to the executor or
14 administrator, the excess, if any, belonging to the estate of
15 the deceased partner, beyond satisfying the partnership debts.

R. S., c. 107, § 28.

SECT. 4. The judge shall have the same authority over, and
2 parties interested the same remedy against such surviving
3 partners, in all respects, as in case of administrators.

R. S., c. 107, § 29.

SECT. 5. If such surviving partners, duly cited for that
2 purpose, refuse or neglect to give such bond, the executor or
3 administrator of the deceased partner shall give a further
4 bond, to the satisfaction of the judge of probate, and to be
5 enforced like other administration bonds for the benefit of all
6 parties interested, that he will faithfully and with no unne-
7 cessary waste or expense, administer the estate of said
8 partnership; and he shall forthwith take possession of the
9 same of every description; shall have authority to use the
10 name of the surviving partners to collect the dues of the late
11 firm; shall promptly pay the debts thereof with the partner-
12 ship property, and pay to the surviving partners their propor-
13 tion of any excess there may be. R. S., c. 107, § 30, 31.

SECT 6. Every surviving partner, on the demand of the
2 executor or administrator of a deceased partner, shall exhibit
3 to the appraisers the property belonging to the firm at the time
4 of the death of such partner, for appraisement; and in case the
5 administration thereof shall devolve upon such administrator
6 as aforesaid, the survivor shall surrender to him on demand,

7 all the property of such partnership, including their books
8 and papers, and all necessary documents pertaining to the
9 same, and shall afford him all reasonable information and
10 facilities for the execution of his trust. R. S., c. 107, § 32.

SECT. 7. Every such surviving partner, who neglects or
2 refuses to comply with the provisions of the preceding section,
3 may be cited before the judge of probate; and, unless he
4 complies with such provision, or shows sufficient excuse for
5 his omission, the judge may commit him to the common jail
6 of the county, there to remain till he consents to comply as
7 aforesaid, or is released by said executor or administrator,
8 by the judge of probate, or by order of some judge of the
9 supreme judicial court. R. S., c. 107, § 33.

Chapter 70.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

- Sect. 1. An assignment however made, shall effectuate an equal distribution of all the assignor's estate. What it shall be construed to include.
2. Assignor to make oath to same, and may insert a release.
 3. Assignee to give bond. Conditions thereof.
 4. Copy of assignment to be filed in probate office in ten days, notice published in fourteen days, and three months allowed for creditors to become parties.
 5. No assignment valid without oath and notice, or filing and approval of bond in twenty days.
 6. Creditors to prove claims same as before commissioners of insolvency, and same right of appeal. Remedy on assignee's bond.
 7. Assigned property not liable to attachment or trustee process for six months. After eighteen months, assignee may be trusted for excess.
 8. Compensation of judge, register, and assignee, how determined.

SECT. 1. Every assignment made by any debtor for the
2 benefit of creditors, shall provide for a proportional distribu-
3 tion of all his real and personal estate, except what is by law
4 exempt from attachment, among all his creditors becoming
5 parties thereto; and, in whatever form made or however
6 expressed, shall have the effect aforesaid, and be also con-
7 strued to pass all such estate whether specified therein or
8 not, *and to include all such estate that had been directly or*

9 *indirectly conveyed by the assignor to any creditor, within sixty*
 10 *days preceding the assignment, in contemplation thereof, and*
 11 *with a view to prefer such creditor over his general creditors.*

1844, c. 112, § 1, 2. (New.)

SECT. 2. The assignor shall make oath to the truth of such
 2 assignment, and a certificate of the fact shall be made there-
 3 on by the magistrate administering the same; and a release
 4 may be inserted therein which shall forever discharge the
 5 assignor from the claims of such creditors as become par-
 6 ties thereto. 1844, c. 112, § 1.

SECT. 3. The assignee, named in such assignment, before
 2 entering upon his duties, shall give bond, with sufficient
 3 sureties living in the county, to the judge of probate, or his
 4 successor, in such sum as he orders, conditioned as follows:

First—To make and return into the probate office, within ten
 6 days after the time allowed for creditors to become parties to
 7 such assignment, a true inventory, on oath, of all the real
 8 estate, goods, chattels, rights and credits of the assignor,
 9 which have come to his possession or knowledge, whether
 10 contained in the assignment or not, and the names of all the
 11 creditors who have become parties thereto, with a list of their
 12 respective claims.

Second—To make proportional distribution of all the net
 14 proceeds of such estate among such creditors as become
 15 parties to the assignment, except the property exempt by
 16 law from attachment.

Third—To render a true account of his doings, on oath, to
 18 the judge of probate within six months, and at any other
 19 time when cited by the judge. 1849, c. 113, § 1.

SECT. 4. Within ten days after the execution of such
 2 assignment, the assignee shall file an attested copy thereof in
 3 the probate office; within fourteen days, he shall publish
 4 notice thereof in some newspaper, if any, printed in the
 5 county where either assignor lives; if not, in the state paper,
 6 *to be continued three weeks successively*; and three months
 7 from the execution of such assignment shall be allowed to
 8 creditors to become parties thereto.

1844, c. 112, § 2, 3. 1849, c. 113, § 1, 4. (New.)

SECT. 5. No such assignment shall be valid against attach-
 2 ing creditors, unless sworn to and notice given as aforesaid;

3 nor unless such bond is filed and approved by the judge of
4 probate, within twenty days after the execution thereof.

1844, c. 112, § 2. 1849, c. 113, § 1.

SECT. 6. *Creditors becoming parties to the assignment,
2 and presenting their claims to the assignee for allowance,
3 shall offer the same proof thereof, and, if dissatisfied with
4 his decision, have the same right of appeal, and the same
5 remedy, that is provided in relation to claims presented to
6 commissioners on insolvent estates; and shall also have the
7 same remedy on the assignee's bond that is provided in rela-
8 tion to an administrator's bond. 1849, c. 113, § 2. (New.)*

SECT. 7. No property assigned for the benefit of creditors,
2 shall be liable to attachment for six months after the first
3 publication of the notice herein required, nor shall the
4 assignee, during that time, be liable to the trustee process, on
5 account thereof; but after the lapse of eighteen months from
6 the assignment, or two years, to which the probate court, for
7 satisfactory reasons, may extend the time, any creditor not a
8 party to the assignment, may trustee the assignee for any
9 excess of such estate after the payment of the debts of the
10 parties thereto and lawful expenses; and if such suit is insti-
11 tuted before the expiration of said terms, it may be continued
12 till after their expiration, on such terms as the court may
13 direct. 1844, c. 112, § 4. 1849, c. 112 & c. 113, § 5.

SECT. 8. The assignee, judge and register of probate shall
2 be allowed a reasonable compensation for all their services
3 under this chapter, to be paid out of the estate, and *deter-
4 mined by the judge, subject to the right of appeal to the
5 supreme court of probate, as from his decisions in other cases.*
1849, c. 113, § 3. (New.)

Chapter 71.

SALES OF REAL ESTATE BY LICENSE OF COURT.

Public Sales of Resident Estates.

Sect. 1. In what cases judges of probate may license sales and exchanges of real estate.

2. Sales to be at auction, unless otherwise ordered. Appeals allowed. Supreme court to have concurrent jurisdiction.

3. Persons making such sales to give bonds. Conditions thereof.
4. Oath to be taken before the judge or a justice of the peace.
5. Notice previous to granting license.
6. No license to be granted, if parties interested give bond of indemnity; but such bond no bar, if not paid.
7. How notice of sale shall be given.
8. When a certificate of the judge of probate is necessary, on application to the supreme court.
9. Petitioners and others may be examined under oath.
10. When certificates of the overseers of the poor necessary.

Sales of Non-Resident Estates.

11. Proceedings for the sale of estate of persons deceased without the state, and of non-resident wards.
12. Evidence of appointment of an executor, administrator or guardian in another state.

Private Sales.

13. Licenses to sell at private sale. In that case it may be at public or private sale. Court to order what notice of private sale shall be given, and insert it in the license.
14. License to accept a particular offer to purchase.

Sales by Guardians and Wives of incapacitated Wards.

15. Wife of incapacitated ward may join in sale of estate held in her right, and may bar her dower in his lands.
16. Guardian may contract with her to invest proceeds of her interest, with consent of the judge.

Licenses to carry into effect contracts of deceased persons.

17. When judges of probate may authorize deeds to carry into effect contracts of the deceased to convey real estate.

License to Guardians to release certain damages.

18. When lands of ward are taken for highways, railroads or canals, or liable to be flowed by dams, guardian may be licensed to release damages and account for the proceeds.

General provisions.

19. Licenses to be in force only one year. Sales may be adjourned not exceeding fourteen days. Notice thereof.
20. Licenses granted in any county may embrace lands in other counties.
21. When licenses may express what lands may be sold, and in what order.
22. What estate of deceased persons is liable to sale. What passes by a deed under license.
23. Surplus proceeds of sale distributed as real estate.
24. Presumptive heirs of wards deemed parties interested, and entitled to notice.
25. Costs when the granting of license is objected to.
26. What is sufficient evidence of notice of sale.
27. Remedy of party damaged by misconduct or negligence of person licensed, on his bond, or otherwise.

Actions to try the title of lands sold by license.

28. Actions or entries to recover back land sold under license, limited to five years.
 29. Requisites of a valid sale against persons claiming under the deceased or ward.
 30. Also against such as claim adversely to the title sold.

Public Sales of Resident Estates.

SECT. 1. Judges of probate, in the counties where the ap-
 2 plicants hereinafter named were appointed, shall have power
 3 to license the sale or exchange of real estate, and certain
 4 interests therein, in whatever county the same is situated, in
 5 the following cases, on application :

First—Of executors, administrators and guardians of minors
 7 and other incapacitated persons, to authorize them to sell so
 8 much of the real estate, held by them in trust, including such
 9 as is held in mortgage and possession thereof taken for condi-
 10 tion broken, and such as has been set off to them on execution,
 11 although the right of redemption is not foreclosed, as may be
 12 necessary for the payment of just debts, legacies, incidental
 13 expenses of sale, and charges of administration or guardian-
 14 ship; and when there is not sufficient personal estate for the
 15 support of such wards. R. S., c. 112, § 1. Specifications 1, 2.

Secondly—Of such guardians, so much as may be necessary
 17 for the payment of debts, expenses of guardianship, inciden-
 18 tal charges, and not exceeding one hundred dollars more in
 19 anticipation of accruing expenses, although there may be a
 20 reserve of personal property of their wards, if it appears more
 21 for the advantage of such wards and their families.

Specifications 3, 4.

Thirdly—Of such executors, administrators and guardians,
 23 when it appears by the petition and proof exhibited, that the
 24 residue would be greatly depreciated by a partial sale of any
 25 entire portion under the foregoing authority, to authorize the
 26 sale of the whole, or such entire parts thereof, as will not
 27 injure the residue.

Specification 5.

Fourthly—Of the friends or guardians of minors and other
 29 incapacitated persons, that the guardians or some other suit-
 30 able persons, may be authorized to sell or exchange any real
 31 estate of the wards, including lands held in mortgage or levied
 32 upon by execution, or sell any trees or timber standing

33 thereon, when it fully appears that it would be for the benefit
 34 of the wards, that the same should be disposed of, and the
 35 proceeds thereof put out at interest, though not requisite for
 36 other purposes. Specifications 6, 7. 1844, c. 116, § 1.

Fifthly—Of any husband, resident in the county of such
 38 judge, whose wife is insane, that he may be authorized on
 39 such terms and conditions as the judge may think proper to
 40 require, to make sale for a valuable and sufficient considera-
 41 tion, of any real estate held by him in right of his wife.

Specification 8.

Sixthly—Of executors and administrators in the case de-
 43 scribed in section twenty-three of chapter sixty-five.

R. S., c. 105, § 28. 1846, c. 199, § 1, 2.

Seventhly—Of public administrators, in cases defined by
 45 law in relation thereto.

Specification 9.

SECT. 2. All the sales aforesaid shall be at public auction,
 2 except as hereinafter provided, and an appeal shall be allowed
 3 from the decision of any judge of probate on any such appli-
 4 cation, as in other cases; and the supreme judicial court
 5 shall have original and concurrent jurisdiction with the pro-
 6 bate court in all the cases aforesaid.

R. S., c. 112, § 2, 3, 4. 1846, c. 199, § 1, 2.

SECT. 3. Executors, administrators and guardians, obtain-
 2 ing licenses as aforesaid, before proceeding to make any such
 3 sales or exchanges, shall give bond to the judge of probate for
 4 a sum and with sureties to his satisfaction, with the following
 5 conditions:

First—That they will observe all the provisions of law for
 7 the sale of such real estate, or interests therein, and use due
 8 diligence in executing the trust.

Second—That they will truly apply and account for the
 10 proceeds of sale according to law. R. S., c. 112, § 5, 38.

SECT. 4. Before fixing upon the time and place of sale or
 2 exchange, they shall make oath, that in the execution of the
 3 trust, they will act faithfully and impartially, according to
 4 their best skill and judgment; which shall be taken before
 5 the judge of probate, or before some justice of the peace,
 6 whose certificate shall be returned to the judge, and filed and
 7 recorded by the register. R. S., c. 112, § 6.

SECT. 5. No license shall be granted for the sale of any
2 such real estate, until after at least fourteen days previous
3 notice of the time and place of hearing is given personally,
4 or by publication three weeks successively in such newspa-
5 per as the court orders, to all persons interested in the
6 property to appear and object if they see cause. If any
7 party interested resides without the state, such special notice
8 may be given as the court directs. R. S., c. 112, § 7.

SECT. 6. Nor shall such license be granted, if any of the
2 parties interested in such estate, gives bond to the exec-
3 utor, administrator or guardian, in a sum and with sureties
4 to be approved by the court, to pay all sums for the payment
5 of which license is asked, so far as the goods and chattels,
6 rights and credits of the deceased or ward, are insuffi-
7 cient therefor; but such bond shall be no bar to any future
8 application for the same purposes, if the obligors, on reason-
9 able notice and demand, at any time fail to perform its
10 condition. R. S., c. 112, § 8.

SECT. 7. Every person licensed as aforesaid, previous to
2 such sale, shall give thirty days notice thereof by posting up
3 notifications in some public place in the town where the
4 estate lies, and in two adjoining towns, and in the town
5 where the said deceased last dwelt, or where the ward
6 resides, if within the state; or by causing an advertisement
7 thereof to be published three weeks successively in such
8 newspaper as the court authorizing the sale orders; the
9 first publication to be thirty days before the sale.

R. S., c. 112, § 9.

SECT. 8. Every application for the sale of any estate under
2 the provisions of the third specification of the first section,
3 when made to the supreme judicial court, shall be accom-
4 panied by a certificate from the judge of probate of the
5 county where such estate was inventoried, showing the value
6 of the real and personal estate of the deceased or ward, and
7 the amount of his just debts or legacies, if the case require it;
8 and also the opinion of such judge of probate, whether it be
9 necessary that the whole or a part of the estate should be
10 sold, and if part only, what part; and in all applications
11 before said court by guardians of minors, under the fourth

12 specification aforesaid, a certificate must likewise be produced
 13 from the judge of probate in the county where such minor's
 14 estate was inventoried, stating that in his opinion, it would
 15 be for the interest of such minor that the whole or a part of
 16 said estate should be sold for the purpose specified, and if
 17 part only, what part. R. S., c. 112, § 10.

SECT. 9. Any court hereby authorized to grant licenses,
 2 may examine under oath, the petitioner or any other persons,
 3 whether interested or not, touching the truth of the facts set
 4 forth in the petition. R. S., c. 112, § 11.

SECT. 10. No license to sell the estate of any ward, not a
 2 minor or insane, shall be granted, unless the applicant pro-
 3 duces to the court a certificate under the hands of the over-
 4 seers of the poor of the town, where the ward resides, if in
 5 this state, giving their consent to the sale, and their opinion
 6 as to the amount proper to be raised thereby, excluding debts
 7 contracted by gaming; and, if applicable to the case, whether
 8 it be necessary to sell a greater amount in value of land to
 9 prevent injury to the residue. R. S., c. 112, § 12.

Sales of Non-Resident Estates.

SECT. 11. The supreme judicial court, and the probate
 2 courts may license executors and administrators of persons
 3 deceased out of the state, guardians of wards living out of
 4 the state, or some other suitable persons on their petition, to
 5 sell and convey any such real estate or interest therein in
 6 this state, the same as if such deceased persons had died, and
 7 such wards lived in this state, and such executors, adminis-
 8 trators or guardians had been here appointed; and all pro-
 9 ceedings, in such cases, to be had before any probate court
 10 in this state, shall be had before the judge of probate for the
 11 county, where the real estate lies, and the bond required shall
 12 be given to him; but no certificate shall be required of any
 13 overseers of the poor.

R. S., c. 112, § 13, 14. 1852, c. 261. 1853, c. 20.

SECT. 12. A certified copy of the appointment of such exec-
 2 tor, administrator or guardian by any court of probate
 3 jurisdiction, in any other of the United States, examined and
 4 allowed by any judge of probate in this state, and ordered

5 to be filed and recorded in his county, shall be sufficient
6 proof of appointment to entitle him to the benefit of the pre-
7 ceding section. R. S., c. 112, § 15.

Private Sales.

SECT. 13. In all cases, where the courts, by the provisions
2 of this chapter, may license any person to sell real estate at
3 auction, they may also license him to sell, from time to time,
4 at private sale, if it appears to be for the interest of all con-
5 cerned; but when licensed to sell at private sale, he may,
6 if he sees fit, sell at auction by complying with all the requi-
7 sitions of law for sales at auction, and with any particular
8 conditions of his license; and he shall take the same oath
9 and give the same bond as if he was licensed to sell at auc-
10 tion; and the court shall decide what public notice, if any,
11 shall be given of the time and place of such private sale, and
12 if any is required, it shall be inserted in the license, and
13 given accordingly.

R. S., c. 112, § 20, 21, 24. 1852, c. 270, § 2.

SECT. 14. When it appears by the petition to sell real estate
2 at private sale, and the evidence adduced, that an advanta-
3 geous offer has been made for such estate or any part of it,
4 and that the interest of all concerned would be promoted by
5 its immediate acceptance, the court having cognizance of the
6 petition, may authorize such acceptance and the sale of the
7 estate accordingly, with or without public notice, at the dis-
8 cretion of the person licensed, by his taking the oath and
9 giving the bond, as in other cases. R. S. c. 112, § 22.

Sales by Guardians and Wives of incapacitated Wards.

SECT. 15. When the guardian of any incapacitated person
2 is duly licensed to sell the interest of his ward in any
3 estate, held by him in right of his wife, she may for a suffi-
4 cient consideration, join with him in the deed thereof, and
5 it shall be as effectual as if made with her husband when
6 under no disability; and when licensed to sell the real estate
7 of his ward, she may release her right of dower therein to
8 the purchaser by a deed duly executed solely, or jointly with
9 the guardian, and she shall thus be forever barred of dower
10 in the premises. R. S., c. 112, § 25, 26.

SECT. 16. The guardian, with the consent of the judge of probate to whom he accounts, may agree in writing, with such wife, how to invest or otherwise dispose of such a part of the proceeds of the sale of the whole estate for her sole use as shall be equivalent to her interest therein; and the judge of probate, or the supreme judicial court, may enforce such agreement, in equity, as a trust. R. S. c. 112, § 27.

Licenses to carry into effect contracts of deceased persons.

SECT. 17. When it appears to the judge of probate, having jurisdiction, that any deceased person, in his lifetime, made a legal contract to convey real estate, and was prevented by death from so doing, and that the person contracted with, has performed or is ready to perform the conditions required of him by the terms thereof, he may, on the petition of such person or his legal representatives, authorize the executor or administrator of the deceased to execute deeds to carry said contract into effect; and, when such conveyance is made to an executor or administrator, he shall stand seized of such estate to the same uses, as in cases of real estate set off to him on execution. R. S., c. 112, § 28.

License to Guardians to release certain damages.

SECT. 18. When a highway, railroad or canal is authorized to be constructed through the lands of any ward, or a dam is erected, by which such lands are liable to be flowed, the courts aforesaid may authorize the guardian, for a reasonable compensation, and by giving the same notice, and accounting for the money so received, in the same way as in other cases of sales of real estate by guardians, to give a full release of his ward's claim for damages, which shall be binding on him and his heirs forever. 1843, c. 1, § 1, 2.

General Provisions.

SECT. 19. No license granted under this chapter, shall remain in force more than one year from its date; and any sale duly appointed and notified, may be adjourned for a time or times, within the time prescribed by the license, not exceeding fourteen days in all, at the discretion of the person licensed, by giving such reasonable notice thereof, as circumstances will permit. R. S., c. 112, § 16, 17. 1852, c. 270, § 3.

SECT 20. When the real estate, for the sale of which license
2 is necessary, lies in two or more counties, the supreme judi-
3 cial or probate court, in either of said counties, may grant
4 licenses for the sale of the whole or any part thereof, in any
5 of the other counties in the state. R. S., c. 112, § 23.

SECT. 21. Any court, granting license to sell real estate for
2 the payment of debts, legacies or expenses of administration,
3 may prescribe therein what particular portions thereof shall
4 be sold, and in what order, according to the last will of the
5 testator, or the principles of equity. R. S., c. 112, § 29.

SECT. 22. Lands, of which the deceased died seized in fee
2 simple, or fee tail general or special, and all that he had
3 fraudulently conveyed, or of which he was colorably dis-
4 seized to defraud creditors, shall be liable to sale for the
5 payment of debts under any license granted under this chap-
6 ter; and any deed executed and recorded in due form of law,
7 for adequate consideration, in pursuance of any such license,
8 shall be effectual to pass to the purchaser all the estate, right,
9 title and interest in the granted premises, which the deceased,
10 the ward, or other person on whose account the license was
11 granted, might convey by a like deed, if living and not inca-
12 pacitated. R. S., c. 112, § 30, 31.

SECT. 23. In all cases of the sale of real estate, or any part
2 or interest therein by virtue of licenses granted under any of
3 the provisions of this chapter whatever, the surplus proceeds
4 of sale, remaining on the final settlement of the accounts of
5 such proceeds, shall be considered as real estate, and dis-
6 tributed among the same persons, and in the same proportions
7 as the real estate would be by law. R. S., c. 112, § 32.

SECT. 24. All who are next of kin, and heirs apparent or
2 presumptive of the ward, shall be considered as interested in
3 the estate, and may appear and answer to the petition of any
4 guardian or other person for the sale of his estate; and when
5 personal notice is required to be given, they shall be notified.
R. S., c. 112, § 33.

SECT. 25. When the granting of any license is contested, if
2 it appears that the petition or objection to it is unreason-
3 able, the court may, at discretion, award costs to the prevail-
4 ing party. R. S., c. 112, § 34.

SECT. 26. The affidavit of any person licensed as aforesaid, 2 or of any person employed by him, made within eighteen 3 months after the sale, before the judge of probate or a justice 4 of the peace, and filed in the probate office, and recorded with 5 one of the original advertisements of the time, place and 6 estate to be sold, or with a copy of such advertisement, shall 7 be sufficient proof that such notice was given; and a copy 8 of such affidavit, certified by the register of probate, shall be 9 competent evidence thereof. R. S., c. 112, § 19.

SECT. 27. If any person, interested in any estate sold as 2 aforesaid, suffers damage by the neglect or misconduct of the 3 executor, administrator or guardian in such proceedings, he 4 may recover a compensation therefor, in a suit on the probate 5 bond, or otherwise, as the case may require.

R. S., c. 112, § 37.

Actions to try the title of lands sold by license.

SECT. 28. No action shall be brought to recover any estate 2 sold under this chapter, nor entry made thereon, except by 3 judgment of law, with a view to avoid the sale, by the heir 4 or other persons claiming under the deceased, or by the ward 5 or persons claiming under him, unless it is done within five 6 years after the sale, or the termination of the guardianship, 7 as the case may be; except that persons out of the state or 8 under any legal disability, at said times, are limited to five 9 years after their return to the state or the removal of the 10 disability. R. S., c. 112, § 18.

SECT. 29. In any action, brought to contest the validity of 2 any such sale by the heir or others claiming under the de- 3 ceased; the wife or her heirs, in case of a sale of her estate 4 by her husband, or the ward or persons claiming under him, 5 no such sale shall be avoided on account of any irregularity 6 in the proceedings, if it appears:

First—That the license was granted by a court of compe- 8 tent jurisdiction, and the deed duly executed and recorded.

Secondly—That the person licensed took the oath, and gave 10 the bond and notice of the time and place of sale, required 11 by law.

Thirdly—That the premises were sold in such manner, and

13 within such time as the license authorized, and are held by
14 one who purchased them in good faith. R. S., c. 112, § 35.

SECT. 30. If the validity of such sale is contested by one
2 claiming adversely to the title of the wife, ward or deceased
3 aforesaid, or by a title not derived through either, the sale
4 shall not be held void on account of any irregularity in the
5 proceedings, if it appears that the license was granted by a
6 court of competent jurisdiction, and the deed duly executed
7 and recorded. R. S., c. 112, § 36.

Chapter 72.

PROBATE BONDS AND REMEDIES THEREON.

When sureties may be discharged and new bonds required.

- Sect. 1. Insufficient sureties may be discharged, and new ones required on petition of interested party.
2. When sureties, after six years, may be discharged, at their own request, from subsequent liabilities.
 3. If principal does not give new bond when required, to be removed.
 4. Surety, needed as a witness, may be discharged from subsequent liability; decree of discharge to be recorded, and a copy conclusive evidence.

Actions on bonds.

5. Suits on probate bonds must be in the name of the judge, but may be prosecuted in the name of his successor.
6. How a principal may be made defendant on motion of a surety, when omitted in the suit.
7. How he may be summoned, and the effect thereof.
8. When judgment is for the plaintiff, in suit on probate bond, it shall be entered for the penalty.

Actions by interested parties without authority of the judge.

9. When and how an interested party may originate a suit on a bond, without applying to the judge.
10. If such suit not sustained, costs to be awarded against such party.
11. If such party is a creditor of an insolvent estate, must produce a copy of the order of distribution.
12. If a creditor or legatee of a solvent estate, he must produce a judgment at law, and prove demand and refusal.
13. If a widow, next of kin, or residuary legatee, he must produce a decree of probate court, and prove demand and refusal.
14. When judgment is for plaintiff, several executions to issue for amount due to each party interested in the suit. How such executions may be levied.

Suits by authority of the judge.

15. Judge may authorize suits for the benefit of the estate, and such authority shall be alleged. How execution shall be awarded for not rendering an account.
16. Also, for not returning an inventory, or for other misconduct.
17. Judgment recovered to be in trust for all parties interested. How the same shall be accounted for, or collected and distributed.

Other probate bonds.

18. Same proceedings to be had on all other probate bonds, when not otherwise provided.

When sureties may be discharged and new bonds required.

SECT. 1. When the sureties in any bond, given to the judge of probate are insufficient, on the petition of any person interested, and notice to the principal, the judge may require a new bond to be given with such sureties as he shall approve.

R. S., c. 113, § 1.

SECT. 2. On the application of any surety in such bond, the judge of probate, on due notice to all parties interested, may, if he thinks proper, after six years from its date, discharge him from all liability for any subsequent, but not for any prior breaches thereof, and require a new bond of the principal, with such sureties as he shall approve.

R. S., c. 113, § 2.

SECT. 3. In either case aforesaid, if the principal does not give the new bond, within the time ordered by the judge, he shall be removed, and another appointed in his place.

R. S., c. 113, § 3.

SECT. 4. On the written application of any principal in such bond, and satisfactory proof that a surety therein is needed as a witness in any suit, in which the principal is officially a party, the judge of probate may discharge such surety from all liability for subsequent breaches of said bond, and order a new one given; and such decree shall be duly recorded, and a certified copy thereof shall be conclusive evidence of such discharge.

R. S., c. 113, § 20.

Actions on bonds.

SECT. 5. All suits, on probate bonds of any kind payable to the judge, shall be originally commenced in the supreme judicial court for the county where said judge belongs, and

4 in his name or that of his successor at the time; and they
5 shall not abate by the death of the plaintiff, his resignation
6 or the expiration of his term of office, but the process may
7 be amended and prosecuted, without notice, in the name of
8 his successor when he is appointed. R. S., c. 113, § 4.

SECT. 6. If the principal in any such bond resides in the
2 state, when an action is brought thereon, and is not made a
3 party thereto; or, if at the trial thereof, or on scire facias on
4 a judgment against the sureties only, he is in the state, the
5 court, at the request of any such surety, may postpone or
6 continue the action long enough to summon or bring him into
7 court. R. S., c. 113, § 8.

SECT. 7. Such surety may thereupon take out a writ, in
2 form prescribed by the court, to arrest the principal, if liable
3 to arrest, or to attach his estate and summon him to appear
4 and answer as a defendant in the action; and if after fourteen
5 days previous service of such process, he fails thus to appear
6 at the time appointed, and judgment is rendered for the
7 plaintiff, it shall be against him and the other defendants, the
8 same as if he had been originally a party, and any attach-
9 ment made, or bail taken on such process shall be liable to
10 respond the judgment, the same as if made or taken in the
11 original suit. R. S., c. 113, § 9.

SECT. 8. When judgment is for the plaintiff, by verdict,
2 default or otherwise, in any suit on a probate bond, it shall
3 be entered for the penalty in common form, and the subse-
4 quent proceedings shall be had by the court as hereinafter
5 provided. R. S., c. 113, § 13.

Actions by interested parties without authority of the judge.

SECT. 9. Any person interested personally or in any official
2 capacity, in any probate bond, or in any judgment rendered
3 thereon, *whose interest has been specifically ascertained by a*
4 *decree of the judge of probate, or by judgment of law, as here-*
5 *inafter provided,* may originate a suit on such bond, or scire
6 facias on such judgment, without applying to the judge whose
7 name was used in the bond or judgment, or to his successor;
8 and two or more such persons may unite in the prosecution
9 of the action, but the original writ shall allege the name and

10 addition of such person, and that the same is sued out by
11 him, "in the name of ———, judge of probate for the
12 county of ———;" otherwise it shall abate.

R. S., c. 113, § 5, 6. (New.) 27th Me. R. 68.

SECT. 10. If such suit is not sustained, judgment shall be
2 rendered and execution issued for costs against the person
3 originating it as aforesaid, but no judgment shall be rendered
4 against the judge of probate. R. S., c. 113, § 7.

SECT. 11. Every creditor, entitled to a dividend from an
2 insolvent estate, originating any action mentioned in section
3 nine, before he can recover, must produce an official copy of
4 the order of distribution among the creditors of said estate,
5 particularly specifying all the claims allowed the several
6 creditors, and prove a demand on the administrator for his
7 particular dividend. R. S., c. 113, § 10.

SECT. 12. If the estate is not insolvent, or the claim is one
2 not affected by insolvency, such creditor, or any person not a
3 residuary legatee, claiming a legacy under the will of the
4 deceased, must first have the amount due ascertained by
5 judgment of law against the administrator, and prove a
6 demand therefor on him, and his neglect or refusal to satisfy
7 the same, or show personal estate of the deceased for that
8 purpose. R. S., c. 113, § 11.

SECT. 13. Any widow entitled to an allowance made by
2 the judge of probate; any widow or next of kin entitled to a
3 distributive share in the personal estate, or any residuary
4 legatee of the deceased, before he can recover in any such
5 action, must produce a decree of the judge of probate speci-
6 fying the amount due, and prove demand and refusal as
7 aforesaid. R. S., c. 113, § 12.

SECT. 14. When judgment in any action, mentioned in
2 section nine is rendered in favor of the judge of probate,
3 whose name is therein used, the court shall order an execu-
4 tion to issue in his name for so much of the penalty of the bond,
5 as appears to be due, with interest and costs, to the person for
6 whose use the action was brought; and when it was brought
7 for the use of several, there shall be separate executions, in
8 the same form, for the share of each, and the costs shall be

9 apportioned under the direction of the court; and such per-
10 sons shall be deemed creditors to all intents, and may levy their
11 executions in their own names, on real estate or otherwise.

R. S., c. 113, § 14, 15.

Suits by authority of the judge.

SECT. 15. *The judge of probate may expressly authorize*
2 *any party interested to commence a suit on a probate bond for*
3 *the benefit of the estate, and such authority shall be alleged in*
4 *the process; and when it appears in any such suit against an*
5 *administrator, that he has been cited by the judge of probate*
6 *to account upon oath, for such personal property of the*
7 *deceased as he has received, and has not done so, execution*
8 *shall be awarded against him for the full value thereof, with-*
9 *out any allowance whatever for charges of administration or*
10 *debts paid.* R. S., c. 113, § 7, 16. New. 27 Me. R. 68.

SECT. 16. When an administrator has received personal
2 estate, and has not returned, on oath, a particular inventory
3 thereof, and in all other cases of neglect or mismanagement,
4 execution shall be awarded against him for so much of the
5 penalty of his bond as may be adjudged on trial in due
6 course of law. R. S., c. 113, § 17.

SECT. 17. Every such judgment and execution shall be
2 recovered by the judge of probate, in trust, for all parties
3 interested in the penalty of the bond; and he shall require
4 the delinquent administrator to account for the amount of
5 the same, if still in office, but if not, he shall assign the same
6 to the rightful administrator, to be collected, and the avails
7 thereof accounted for and distributed, or otherwise disposed
8 of as assets. R. S., c. 113, § 18.

Other probate bonds.

SECT. 18. When not otherwise expressly provided by law,
2 like proceedings, judgment and execution, so far as appli-
3 cable, shall be had on the bonds given to any judge of
4 probate by executors, special administrators, guardians, tes-
5 tamentary trustees, surviving partners, and others, as are
6 provided in this chapter in reference to bonds of administra-
7 tors. R. S., c. 113, § 19.