

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

REVISION II.

REPORT

OF THE

COMMISSIONER

APPOINTED TO

REVISE THE PUBLIC LAWS

OF THE

STATE OF MAINE.

COURTS OF PROBATE.

TITLE VI.

Augusta:

FULLER & FULLER, PRINTERS TO THE STATE.

1856.

TITLE SIXTH.

THE POWERS AND DUTIES OF COURTS OF PROBATE.

Chap. 63. The court of probate.

64. The appointment, powers and duties of executors and administrators.
 65. The distribution of estates real and personal, and of lands held in mortgage or taken on execution.
 66. Insolvent estates.
 67. Appointment, powers and duties of guardians.
 68. Testamentary trustees.
 69. Estates of deceased partners.
 70. Assignments for the benefit of creditors.
 71. Sales of real estate by license of court.
 72. Probate bonds, and remedies thereon.
-

Chapter 63.

THE COURT OF PROBATE.

ELECTION, POWERS AND DUTIES OF JUDGES OF PROBATE.

- Sect.* 1. Judges, how selected; to have a seal, issue processes and punish for contempt.
2. Officers to serve such processes; witnesses refusing to appear and testify, how punished.
 3. Judges to have fixed days and places for holding court. Special courts, and adjournments by judge or register.
 4. In what cases he may appoint guardians, executors and administrators, and his jurisdiction generally.
 5. In what cases administration shall not be granted, and disposal of property in such cases.
 6. Court first commencing proceedings to have jurisdiction throughout; assumed jurisdiction only to be avoided by appeal, except for fraud, or the want of jurisdiction appears on the record.
 7. When the judge is interested, jurisdiction transferred to the adjoining county, and copies of records to be transmitted and recorded in the county where the case originally belonged.
 8. Provisions of this chapter applicable to probate districts made of parts of counties.
 9. Judge to sign and certify unfinished records, decrees and certificates of his predecessor, and same to be valid.
 10. Oaths required may be taken before the judge or a justice of the peace, and certificate returned and recorded.
 11. Judge may appoint magistrate to administer oath to person unable to attend, or living thirty miles from court, and return certificate.
 12. Judge not to be counsel in cases incompatible.
 13. No bond sufficient unless approval of judge is written thereon.

CHAP. 63.

ELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

- Sect. 14.* Registers, how selected ; their oath and bond ; to have the care of all papers and keep all the records of their courts.
15. Conditions of his bond ; a forfeiture disqualifies him from holding his office.
16. In his absence or death, judge may appoint a register pro tem., who shall be sworn and give bond.
17. Judges of probate and of the supreme court to inspect register's conduct, and give notice of breach of his bond to county treasurer, who shall put it in suit ; apply the money to complete the records, and sue register for any deficiency.
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.
21. Court may allow entry of an appeal accidentally omitted, on petition filed within a year, and notice to all adverse parties.
22. Proceedings if appellant fails to enter his appeal.
23. After an appeal, all proceedings in probate court to cease till decision in the supreme court.
24. Appeal to be heard at the next term. What judgment the court may render. Trial by jury.
25. Costs may be allowed in all contested cases, as in actions.

Election, powers and duties of judges of probate.

Judges, how
selected ; to
have a seal, &c.

1856, c. 210.
R. S., c. 105,
§ 1, 2, 5, 7.

Officers to serve
such processes,
&c.

R. S., c. 105,
§ 6, 7.

Judges to have
fixed days and
places for
holding court,
&c.

- SECT. 1. Judges of probate are elected or appointed as
- 2 provided in the constitution. Their election is effected and
- 3 determined as provided respecting county commissioners by
- 4 chapter seventy-eight. They are to enter upon the dis-
- 5 charge of their duties on the first day of January following,
- 6 they are to have an official seal and authority to issue
- 7 whatever process may be necessary for the discharge of their
- 8 official duties, and to punish for contempt of their authority
- 9 in the same manner that the supreme judicial court may.

- SECT. 2. Sheriffs and their deputies, coroners and con-
- 2 stables shall serve and execute all legal processes directed
- 3 to them by any judge of probate ; and any person summoned
- 4 before him as a witness who refuses to appear and give
- 5 evidence is liable to the same penalties and damages as for
- 6 such refusal before the supreme judicial court.

- 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 public
- 5 notifications thereof in their respective counties ; they may
- 6 adjourn their courts to any time not beyond the next regu-
- 7 lar day, and appoint special courts, when they deem it

CHAP. 63.

8 necessary; and in case of the absence of the judge or vacan-
 9 cy in the office at the time of holding any court the register
 10 of probate may adjourn the same, till the judge can attend,
 11 by posting notice thereof at the probate office.

R. S., c. 105, § 8.
 1841, c. 5, § 2.

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

In what cases
 he may appoint
 guardians, &c.

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 grant-
 3 ed after the expiration of twenty years from his decease,
 4 except it appears satisfactorily to the judge of probate, that
 5 there are moneys due to the estate of said deceased from
 6 the government of the United States; and except as pro-
 7 vided in chapter sixty-four and section eleven, nor shall any
 8 administration be granted at any time, unless it satisfacto-
 9 rily appears to the judge, that there is personal estate of the
 10 deceased amounting to at least twenty dollars, or that the
 11 debts due from him amount to that sum, and in the latter case,
 12 that he left that amount in value of real estate; and in case
 13 no administration is granted for the reasons aforesaid, the
 14 personal estate of said deceased shall become the property
 15 of his widow, if any, otherwise of the next of kin, who may
 16 appropriate the same without being chargeable as executors
 17 in their own wrong.

In what cases
 administration
 shall not be
 granted, &c.

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 exclu-
 4 sively throughout; and the jurisdiction assumed in any case,
 5 except cases of fraud, so far as it depends on the residence
 6 of any person or the locality or amount of property, shall
 7 not be contested in any proceeding whatever, except on an
 8 appeal from the probate court in the original case, or when
 9 the want of jurisdiction appears on the same record.

Court first
 commencing
 proceedings to
 have jurisdiction
 throughout, &c.

R. S., c. 105,
 § 4, 22.

CHAP. 63.

When the judge
is interested,
jurisdiction
transferred to
adjoining
county, &c.

R. S., c. 105,
§ 18, 19.
Amendments of
1841, § 15.
1841, c. 149, § 1.
1852, c. 278,
§ 1, 2.

Provisions of
this chapter
applicable to
probate districts,
&c.

R. S., c. 105, § 37.

Judge to sign
and certify
unfinished
records, decrees
and certificates
of his
predecessor, &c.

1841, c. 149, § 3.

Oaths required
may be taken
before the judge
or a justice of
the peace, &c.

SECT. 7. When any judge of probate is interested either
2 in his own right, in trust, or in any other manner, or is with-
3 in 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, as if the deceased had died therein. If his
9 interest arises after he has regularly assumed jurisdiction of
10 such estate, or existed at the time of his appointment to
11 office; and in all cases where an executor administrator or
12 guardian whose trust is not fully executed, is appointed
13 and qualified as judge of probate for the county, in which
14 his letters were granted, further proceedings therein shall
15 be transferred to the probate court in any adjoining county,
16 and there completed as if such court had had original juris-
17 diction thereof; and in all such cases the register of probate
18 in such adjoining county shall transmit copies of all records
19 relating to such estate to the probate office of the county,
20 where such estate belongs to be there recorded.

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

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.

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

CHAP. 63.

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,
 13 shall be returned into the registry of probate, and there filed
 14 and 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 admin-
 7 ister such oath; who shall return a certificate thereof to the
 8 judge with such commission and inventory or account an-
 9 nexed and the vouchers to prove the same.

Judge may
appoint magis-
trate to
administer
oath, &c.R. S., c. 105,
§ 33.

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 which may depend on
 4 or relate to any sentence or decree made by him in his office;
 5 nor in any civil action for or against any executor, adminis-
 6 trator, guardian, or trustee under any last will and testa-
 7 ment, as such, within his county.

Judge not to be
counsel in
cases incompati-
ble.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 written
 5 thereon.

No bond suffi-
cient unless
approval of
judge is
written thereon.
R. S., c. 105,
§ 36.*Election, powers and duties of registers of probate.*

SECT. 14. Registers of probate are elected or appointed
 2 as provided in the constitution. Their election is effected
 3 and determined as provided respecting county commissioners
 4 by chapter seventy-eight. They enter upon the discharge
 5 of their duties on the first day of January following, and
 6 before entering on their duties shall be duly sworn and give
 7 bond to the treasurer of their county with sufficient sureties
 8 in the sum of not less than one hundred nor more than one
 9 thousand dollars at the discretion of the judge of probate,
 10 who shall certify his approval thereon; and they shall have
 11 the care and custody of all files papers and books belonging
 12 to the probate office; and shall duly record all wills proved,
 13 letters of administration or guardianship granted, accounts
 14 allowed, and all orders and decrees of the judge, and such
 15 other matters as the judge shall direct.

Registers, how
selected; their
oath and bond,
&c.1856, c. 210.
R. S., c. 105,
§ 9, 10, 11.

CHAP. 63.

Conditions of his
bond, &c.

R. S., c. 105,
§ 11, 12.

In his absence or
death, judge
may appoint a
register pro
tem., &c.

R. S., c. 105,
§ 13, 14.

Judges of
probate and of
the supreme
court to inspect
register's
conduct, &c.

R. S., c. 105,
§ 15, 16, 17.
R. S., c. 96, § 30.

Register not to
be counsel in
cases
incompatible.

R. S., c. 105,
§ 21.

SECT. 15. The condition of such bond shall be for keeping
2 up seasonably and in good order the records of the court;
3 making and keeping correct and convenient alphabets of the
4 records, and for the faithful discharge of all other duties of
5 office; and if such register forfeits his bond, he shall thence-
6 forth be forever disqualified from holding said office, and if
7 he neglects to complete his records for more than six months
8 at any one time, sickness or any extraordinary casualty ex-
9 cepted, such neglect shall be adjudged a forfeiture.

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

SECT. 17. Every judge of probate and the justices of the
2 supreme court of probate shall constantly inspect the con-
3 duct of the register with respect to his records and the
4 duties of his office, and give information in writing of any
5 breach of his bond to the treasurer of his county, who shall
6 put the same in suit; and the money thus recovered shall be
7 applied for the expenses of duly completing the records of
8 such register under the direction of said judge, and the sur-
9 plus if any shall inure to the county; but if the same is not
10 sufficient for that purpose, the treasurer may recover the
11 deficiency of the register in an action on the case.

SECT. 18. No register of probate shall be attorney or
2 counselor in or out of court in any suit or matter pending
3 in the court, of which he is register, nor in any appeal there-
4 from; nor be executor, administrator, trustee, guardian,
5 commissioner of insolvency, appraiser or divider of any
6 estate in any case, that is within the jurisdiction of said
7 court, nor be in any manner interested in the fees and emol-
8 uments arising therefrom.

Supreme court of probate.

The supreme
judicial court to
be the supreme
court of probate,
&c.

SECT. 19. The supreme judicial court is the supreme court
2 of probate, and has appellate jurisdiction in all matters de-
3 terminate by the several judges of probate; and any person
4 aggrieved by any order, sentence, decree, or denial, of such
5 judges may appeal therefrom to the supreme court to be held
6 within and for the same county, provided he claims his appeal
7 within thirty days from the date of the proceeding appealed
8 from; or if at that time he was beyond sea or out of the

9 United States and had no sufficient attorney within the state
10 within thirty days after his return or constitution of such
11 attorney.

CHAP. 63.

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 approves;
4 conditioned to prosecute his appeal with effect and pay all
5 intervening costs and damages and such costs, as the supreme
6 court taxes against him; and he shall file the reasons of
7 appeal with the register of the court appealed from within
8 ten days after the bond is filed and serve all the other par-
9 ties, who appeared before the judge of probate in the case,
10 with a copy of such reasons attested by such register four-
11 teen days at least before the sitting of the appellate court;
12 but in case of controversy between a person under guardian-
13 ship with his guardian, the supreme court may at discretion
14 sustain an appeal on the part of the ward without such bond.

Appellant to
file his bond
within ten days,
&c.

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,
3 omits to claim or prosecute his appeal as aforesaid, the
4 supreme court, if justice seems to require a revision, may
5 upon reasonable terms allow an appeal to be entered and
6 prosecuted with the same effect, as if it had been seasonably
7 done; but not without due notice to the party adversely
8 interested, nor unless the petition therefor is filed with the
9 clerk of said court within one year after the decision com-
10 plained of was made, said petition to be heard at the term
11 next after the filing thereof.

Court may allow
entry of an
appeal
accidentally
omitted, &c.

R. S., c. 105,
§ 30, 31.

SECT. 22. If the appellant fails to enter and prosecute his
2 appeal, the supreme court upon the complaint of any person
3 interested in the case may affirm the former sentence, assess
4 reasonable costs for the complainant, and take such further
5 order thereon, as law and justice require.

Proceedings if
appellant fails to
enter his appeal.

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.

After an appeal,
all proceedings
in probate court
to cease till
decision in the
supreme court.
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 act
5 appealed from, pass such decree thereon as the judge of pro-
6 bate ought to have passed, remit the case to the probate

Appeal to be
heard at the next
term, &c.

CHAP. 64.

R. S., c. 105,
§ 27, 33, 34.

Costs may be
allowed in all
contested cases,
as in actions.

R. S., c. 105,
§ 35.

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 may
10 be formed for that purpose under the direction of the court
11 and so tried.

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 as in
6 courts of common law.

Chapter 64.**THE APPOINTMENT, POWERS, AND DUTIES OF EXECUTORS AND ADMINISTRATORS.****WILLS AND EXECUTORS.**

- Sect. 1.* Duty of person having custody of a will to present it to probate court. Pen-
alty for neglect.
2. When depositions of witnesses to a will may be taken.
 3. When a will may be proved by one or two witnesses.
 4. When letters testamentary may be granted.
 5. Executors to give bonds. Conditions thereof.
 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.

12. When nuncupative wills may be approved. Notice thereof.

ADMINISTRATORS.

13. To whom administration may be granted.
14. Administrators to give bonds. Conditions thereof.

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.

Sect. 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.
31. Notwithstanding an appeal from the probate of a will, executor may proceed to settle the estate, and retain avails for parties legally entitled.

EXECUTORS IN THEIR OWN WRONG.

32. Who are executors in their own wrong, and their liability.

PROVISIONS RELATING TO BOTH EXECUTORS AND ADMINISTRATORS.

33. Notice of appointment by executors and administrators.
34. Notice when the deceased lived out of the state.
35. Notice proved by affidavit filed and recorded.
36. Party required to publish notice may select the newspaper.
37. Inventory to be returned in three months.
38. Estates must be appraised. Appointment and oath of appraisers.
39. How choses in action shall be appraised.
40. Additional inventories shall 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.
46. Executor or administrator neglecting to pay debts, guilty of waste.
47. How often accounts shall be settled. Accountant may be interrogated under oath.
48. Chargeable with all property in their hands, whether in the inventory or not, and with proceeds of real estate sold.
49. Income of real estate occupied, how to be accounted for.
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 the recovery of the assets.
53. Chancery remedies between coexecutors and coadministrators.
54. Previous acts of removed executors or administrators valid.

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.

CHAP. 64.

Wills and executors.

Duty of person
having custody
of a will to
present it to
probate court.
Penalty for
neglect.

R. S., c. 106, § 4.

When deposi-
tions of
witnesses to a
will may be
taken.

R. S., c. 106, § 5.

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

R. S., c. 106, § 6.

When letters
testamentary
may be granted.

R. S., c. 106,
§ 7, 11.

Executors to
give bonds.
Conditions
thereof.

SECT. 1. Every person having the custody of any will shall within thirty days after notice of the testator's death deliver it into the probate court, which has jurisdiction thereof, or to the executors therein named; and if without any reasonable cause he neglects so to do after being duly cited for that purpose by the judge of probate, he may be committed to the jail of the county by the judge's warrant, there to be kept in close custody until he delivers the will as above directed; and he shall also be liable to the action of any party for the damage, which he sustains by such neglect.

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

SECT. 3. When it clearly appears to the judge by the written consent of the heirs at law or otherwise, that there is no objection to the probate of any will, he may decree probate thereof upon the testimony of one or more of the three subscribing witnesses required by law, who can substantiate all the requisite facts.

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

SECT. 5. Every executor before entering on the execution of his trust shall give bond with sufficient sureties resident in this state in such sum, as the judge of probate orders, payable to him or his successors with condition in substance, as follows:
First—To make and return to the probate court within three months a true inventory of all the real estate, and all the goods, chattels, rights and credits of the testator, which are by law to be administered and which may come to his possession or knowledge.

CHAP. 64.

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

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

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

R. S., c. 106, § 8.

SECT. 6. If such executor is a residuary legatee, the con-
2 dition of his bond instead of the preceding shall be to return
3 an inventory as aforesaid and to pay all the debts and lega-
4 cies of the testator, unless the estate from some unexpected
5 event should prove insufficient therefor.

Conditions, if
executor is
residuary
legatee.

R. S., c. 106, § 9.

SECT. 7. When two or more persons are named executors
2 in any will, none shall have authority to act as such or inter-
3 meddle, except those who give bonds as aforesaid; but a
4 majority of those who do give bonds, unless it is otherwise
5 prescribed in such will, have power to do all the acts in the
6 execution of such trust, which all could do, and all acts so
7 done are as valid in law as if all had agreed thereto; and a
8 suit may be maintained against the executors so acting on
9 their bond for the benefit of any person aggrieved by their
10 acts without joining the other parties to such bond. When
11 by the provisions of a will executors have in matters named
12 a discretion, they are to submit their doings to the judge of
13 probate for approval, without which they are not valid, on
14 petition of a person interested.

Executors not to
act without
giving bond, &c.

R. S., c. 106,
§ 10.
1849, c. 94, § 1.
1852, c. 244, § 3.

Foreign wills.

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

Foreign wills
may be allowed
in this state.
R. S., c. 106,
§ 14.

SECT. 9. A copy of the will and the probate thereof duly
2 authenticated shall be produced by the executor, or by any
3 person interested therein, to the judge of probate in any

Copy of such
will to be
presented to the
judge, &c.

CHAP. 64.

R. S., c. 106,
§ 15.

It may then be
allowed and
recorded, &c.

R. S., c. 106,
§ 16.

Letters testa-
mentary may
then be granted
and estate
settled.

R. S., c. 106,
§ 17.
1856, c. 242.

When nuncupa-
tive wills may
be approved.
Notice thereof.

R. S., c. 106,
§ 18.

To whom
administration
may be granted.

4 county, in which there is estate real or personal, on which
5 the will may operate; whereupon the judge shall assign a
6 time and place of hearing the case, and cause notice there-
7 of to all persons interested to be given in some public
8 newspaper three weeks successively; the first publication
9 to be thirty days at least before the time so assigned.

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

SECT. 11. After allowing and recording any will as afore-
2 said, the judge of probate may grant letters testamentary,
3 or of administration with the will annexed thereon, and pro-
4 ceed in the settlement of the estate found in this state, in
5 the manner provided by the laws of this state with respect
6 to the estates of persons, who were inhabitants of any oth-
7 er state or country; and the letters testamentary or of
9 administration thus granted, extend to all the estate of the
10 deceased within this state, and exclude the jurisdiction of
11 the probate court in every other county. Such administra-
12 tion may be granted in any county, in which lands of the tes-
13 tator subject to the operation of his will remain unsold after
14 the lapse of more than twenty years from his decease.

Nuncupative wills.

SECT. 12. No letters testamentary or probate of any nun-
2 cupative will shall pass the seal of any court of probate,
3 until fourteen days after the decease of the testator; nor
4 shall such will be approved and allowed at any time, unless
5 due notice is given to all persons interested, specifying that
6 the will to be proved is a nuncupative will.

Administrators.

SECT. 13. Upon the decease of any person intestate the
2 judge of probate having jurisdiction shall grant administra-
3 tion of such intestate's goods or estate to the widow, hus-

CHAP. 64.

4 band, next of kin, or husband of the daughter of the de-
 5 ceased, or to two or more of them, as he shall think fit, if
 6 the applicant be over the age of twenty-one years and in
 7 other respects suitably qualified for the trust; but if they
 8 are unsuitable or being residents in the county and cited
 9 before the judge for the purpose neglect or refuse to take
 10 out letters of administration, he may after thirty days from
 11 the decease of the intestate commit administration on such
 12 estate to one or more of the principal creditors, or to such
 13 other persons, as he deems suitable.

R. S., c. 106,
 § 1, 2.

14 **SECT. 14.** Every administrator before entering on the
 15 execution of his trust shall give bond with good and suffi-
 16 cient sureties resident within this state in such sum, as the
 17 judge orders, payable to him or his successors with condi-
 18 tion in substance, as follows:

Administrators
 to give bonds.
 Conditions
 thereof.

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

23 *Second*—To administer according to law all the goods,
 24 chattels, rights and credits of the deceased.

25 *Third*—To render upon oath a true account of his admin-
 26 istration within one year, and at any other times when
 27 required by the judge of probate.

28 *Fourth*—To pay and deliver any balance, or any goods
 29 and chattels, rights and credits, remaining in his hands upon
 30 the settlement of his accounts to such persons, as the judge
 31 of probate directs.

32 *Fifth*—To deliver the letters of administration into the
 33 probate court in case any will of the deceased shall be there-
 34 after duly proved and allowed.

35 *Sixth*—To account, in case the estate should be repre-
 36 sented insolvent, in the manner provided for executors in
 37 the fourth specification of section five of this chapter.

R. S., c. 106, § 3.

Administrators with the will annexed.

38 **SECT. 15.** If there is no person, that the judge can appoint
 39 executor of any will according to the provisions of section
 40 four, he may commit administration of the estate with the
 41 will annexed to such person, as he would be authorized to
 42 appoint, if the deceased had died intestate; and when an
 43 executor is under twenty-one years of age at the time of the
 44 probate of the will, administration may be granted with the

Administrators
 with the will
 annexed may be
 appointed, &c.

CHAP. 64.

R. S., c. 106,
§ 11, 12.

Also when any
executor or
administrator is
removed or his
resignation
accepted, &c.

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

Power of female
executor or
administrator
ceases on
marriage, &c.

R. S., c. 106,
§ 35.

Also on the
death of the sole
or surviving
executor.

R. S., c. 106,
§ 36.

Administrators,
&c., to give
bonds same as
others.

R. S., c. 106,
§ 13.

8 will annexed during the minority of such executor, unless
9 there is another executor, who accepts the trust; in which
10 case the estate shall be administered by such other executor,
11 until the minor arrives at full age, when he may be admitted
12 as joint executor with the former upon giving bond as before
13 provided.

SECT. 16. When an executor or administrator residing out
2 of the state after being duly cited by the judge of probate
3 neglects to render his accounts and settle the estate accord-
4 ing to law; or when any executor or administrator joint or
5 sole becomes insane or otherwise unsuitable to perform the
6 trust, refuses or neglects to do so, or mismanages the estate,
7 the judge of probate may remove him; and he may accept
8 the resignation of any joint or sole executor or adminis-
9 trator, when he is satisfied after fourteen days notice to
10 those interested in the estate and a hearing, that there is
11 reasonable cause therefor and that it will not be detrimental
12 to the estate or to those interested therein; and in either
13 case if there is no other executor or administrator to dis-
14 charge the trust, the judge may commit administration of the
15 estate not already administered with the will annexed or
16 otherwise, as the case may require, to such persons as he
17 thinks fit, as if the one resigned or removed were dead; and
18 such administrator shall have the same powers and be liable
19 to the same obligations, as other administrators.

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

SECT. 18. The executor of an executor shall have no
2 authority as such to administer the estate of the first testa-
3 tor; but on the death of the sole or surviving executor or
4 any last will administration of said estate not already admin-
5 istered may be granted with the will annexed to such per-
6 son, as the judge of probate shall think fit.

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 execu-
5 tor.

*Public administrators.*CHAP. 64.

SECT. 20. The governor with advice of council, whenever
 2 a vacancy occurs in any county, shall appoint a suitable per-
 3 son to be public administrator therein, whose duty it shall
 4 be to take out letters of administration and faithfully ad-
 5 minister 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 pro-
 9 bate with like condition as in cases of ordinary administra-
 10 tion and with the further condition in substance, that he will
 11 comply with the provisions of the following section.

Appointment,
 duty, and bonds
 of public
 administrators.

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 is produced and
 3 duly proved, or if any of his heirs, next of kin or his widow
 4 make application to the judge of probate having jurisdiction
 5 of the estate, and claims the right to administer thereon, or
 6 to have some other suitable person appointed to that trust,
 7 the judge shall revoke the former administration and grant
 8 letters testamentary, or new administration, as the case may
 9 require; and thereupon the public administrator shall sur-
 10 render his letters of administration to the judge of probate,
 11 settle his account, and deliver to his successor all sums of
 12 money in his hands, and all the goods, chattels, rights and
 13 credits of said deceased, not administered upon.

When judge
 may revoke
 their powers, &c.

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, as to other
 4 administrators; and also, after three years from the grant-
 5 ing of administration, to sell any or all of such real estate,
 6 at public or private sale, although not needed for that pur-
 7 pose, if he is satisfied that it would be for the interest of all
 8 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.

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

R. S., c. 107,
 § 10, 11.

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

Proceedings in
 such sales.

R. S., c. 107, § 12.

SECT. 24. When there is in the hands of such public
 2 administrator an amount of money, more than may be nec-
 3 essary for the payment of the deceased's debts and other
 4 purposes of administration, he shall be required by the

They shall pay
 balance in their
 hands to state
 treasurer, &c.

CHAP. 64.

R. S., c. 107,
§ 4, 12.

Judge to notify
treasurer of such
balance, &c.

R. S., c. 107, § 5.

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

R. S., c. 107, § 6.

5 judge of probate to deposit it with the treasurer of state,
6 who shall receive it; and the state shall be responsible for
7 the principal thereof for the benefit of those who may law-
8 fully claim it; and the governor and council on application
9 and proof may order the treasurer to pay it over.

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

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

Special administrators.

In what cases
special
administrators
may be
appointed, &c.

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

Duty to collect
goods and effects
of deceased, &c.

SECT. 27. When from any cause there is a delay in grant-
2 ing letters testamentary or of administration, the judge of
3 probate may appoint a special administrator, who shall not-
4 withstanding there is an appeal proceed in the execution of
5 his duties, until it shall be otherwise ordered by the supreme
6 court of probate; and he shall give bond like other admin-
7 istrators conditioned, that he will make and return into the
8 probate court within three months a true inventory of all
9 the goods chattels rights and credits of the deceased, which
10 may come to his possession or knowledge; and that he will
11 truly account on oath for them and deliver them to the per-
12 son, who shall be lawfully authorized to receive them.

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.

His compensa-
tion. When his
powers cease,
&c.

SECT. 29. Such administrator shall be allowed such com-
2 pensation for his services, as the judge may think reasonable,

CHAP. 64.

3 not exceeding that allowed to other administrators; and on
 4 the granting of letters testamentary or of administration
 5 his powers shall cease, and he shall deliver forthwith all the
 6 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, as if it had
 9 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 applica-
 3 tion 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 as if
 7 such special administration had not been granted.

Not liable to an
 action by
 creditor without
 decree of judge,
 &c.

R. S., c. 107,
 § 17.
 1843, c. 11.

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

Notwithstanding
 an appeal from
 the probate of a
 will, executor
 may proceed to
 settle the estate,
 &c.

1853, 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 acts
 9 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.

Who are execu-
 tors in their own
 wrong, and
 their liability.

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

Notice of
 appointment by
 executors and
 administrators.

CHAP. 64.

R. S., c. 106,
§ 19.

Notice when the
deceased lived
out of the state.

R. S., c. 106,
§ 23.

Notice proved
by affidavit
filed and
recorded.

R. S., c. 106,
§ 21.

Party required to
publish notice
may select the
newspaper.

1850, c. 163, § 1.

Inventory to be
returned in
three months.

R. S., c. 106,
§ 22.

Estates must be
appraised, &c.

R. S., c. 106,
§ 23.

How choses in
action, shall be
appraised.

R. S., c. 106,
§ 24.

Additional
inventories may
be required.

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 fur-
6 ther notice, as the judge shall in writing direct.

SECT. 34. If the deceased was not an inhabitant or resi-
2 dent 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 shall direct.

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 with a copy of the notice in the probate
5 court within one year after giving bond as aforesaid shall
6 be evidence of the time place and manner, in which the
7 notice was given.

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.

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
4 estate and of all the goods and chattels rights and credits of
5 the deceased, which are by law to be administered and
6 which may come to his possession or knowledge.

SECT. 38. The real estate, goods and chattels, comprised
2 in the inventory shall be appraised by three disinterested
3 persons appointed by the judge of probate and duly sworn;
4 and when any part of such estate is in any other county, the
5 judge may appoint three appraisers for each other county to
6 return an inventory thereof, who shall be sworn.

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

SECT. 40. The judge of probate at any time afterward,
2 when any estate or effects rights or credits come to the
3 knowledge or possession of any executor or administrator,

4 may require of him an additional inventory; and appraisers
 5 in like manner shall be appointed and sworn; and return
 6 shall be made within such time, as the judge in his warrant
 7 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:

What may be
 omitted in the
 inventory

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

8 *Second*—The wearing apparel of the deceased not exceed-
 9 ing one hundred dollars in value, provided that before the
 10 return of the inventory such executor or administrator has
 11 distributed the same to the widow and minor children of the
 12 deceased, which he is authorized to do at his discretion, and
 13 returns to the judge a certificate of such distribution from
 14 the widow or the children's children next of kin, who are
 15 of age.

16 *Third*—Such provisions and other articles not exceeding
 17 fifty dollars in value, as have necessarily been consumed in
 18 the family of the deceased before the appraisal of such
 19 estate.

20 *Fourth*—Any sum of money becoming due on the death of
 21 the deceased from an insurance on his life effected by him
 22 after deducting the amount of premium paid therefor within
 23 three years with interest, provided such deceased left a
 24 widow or issue.

1844, c. 114, § 1.

SECT. 42. If after the return of any inventory or in the
 2 progress of the settlement of any estate the judge finds, that
 3 the bonds given by any executor or administrator are too
 4 small in amount, or insecure for want of responsible sureties,
 5 he may require additional or larger bonds, or other sure-
 6 ties; and if said executor or administrator does not furnish
 7 the same his authority may be revoked and some other per-
 8 son appointed in his place.

When new or
 additional bond
 may be required.

R. S., c. 106,
 § 27.

SECT. 43. The judge of probate, when he deems it neces-
 2 sary for the speedy payment of the debts of the deceased or
 3 for the benefit of all parties interested, that all or any of the
 4 goods and chattels rights and credits named in the inven-
 5 tory and not distributed should be sold, may order either a
 6 public or private sale of the same in such manner, as he shall
 7 direct; and the executor or administrator shall account for
 8 the same as sold: saving the legal rights of persons to whom

When a sale of
 the personal
 estate may be
 ordered.

CHAP. 64.

R. S., c. 106,
§ 28.

For what
executors and
administrators
shall account,
&c.

R. S., c. 106,
§ 29.

When debts due
the deceased
may be
compounded.

R. S., c. 106, § 33.

Executor or
administrator
neglecting to
pay debts,
guilty of waste.

R. S., c. 106,
§ 39.

How often
accounts shall
be settled, &c.

R. S., c. 106,
§ 40.

Chargeable with
all property in
their hands, &c.

R. S., c. 106, § 41.

Income of real
estate occupied,
how to be
accounted for.

9 specific legacies are bequeathed, and those of the executor
10 or administrator under the provisions of the succeeding
11 section.

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

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 pro-
5 portion of the same.

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 sub-
4 jects said estate to be taken in execution, he shall be deemed
5 guilty of waste and unfaithful administration.

SECT. 47. Every executor or administrator shall render
2 his 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; but no such account shall be settled
5 without reasonable notice. On the examination of such
6 account the accountant may be interrogated under oath in
7 relation to the same, and such record of his answers made,
8 as the judge requires.

SECT. 48. Every executor or administrator shall be charge-
2 able in his account with all goods chattels rights and credits
3 of the deceased, which come to his hands and are by law to
4 be administered, whether included in the inventory or not;
5 with all the proceeds of real estate sold for the payment of
6 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.

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 man-
4 ner ordered by the judge of probate with the assent of the

CHAP. 64.

5 accountant and such of the other parties as are present at
6 the settlement of his account; and if the parties do not
7 agree on the sum to be allowed, it shall be determined by
8 three disinterested persons to be appointed for that pur-
9 pose by the judge of probate, whose award accepted by the
10 judge shall be final.

R. S., c. 106,
§ 42.

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

Judge may
permit property
of deceased to be
insured, &c.

1850, c. 185.

SECT. 51. No private claim of any executor or adminis-
2 trator against the estate under his charge shall be allowed
3 in his account, unless particularly stated in writing, and if
4 any such claim is disputed by any person interested it may
5 be submitted to referees agreed upon in writing by the
6 interested parties present, or their agents or guardians;
7 and their written report made pursuant to the submission,
8 the judge may accept or recommit and decree accordingly.

Claims of
executor or
administrator
not allowed
unless in
writing, &c.

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

When one
executor or
administrator is
removed or
resigns, &c.

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 respect-
4 ive legal representatives, in all cases, where there is not a
5 plain adequate and complete remedy at law: and in such
6 case the court shall have the same power and may proceed
7 in like manner, as is provided in cases between copartners.

Chancery reme-
dies between
co-executors and
co-administra-
tors.

R. S., c. 106,
§ 38.

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

Previous acts of
removed
executors or
administrators
valid.

CHAP. 65.

R. S., c. 106,
§ 44.

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.

Embezzlement of the property of deceased persons.

Judge may cite
persons sus-
pected of
embezzlement
and examine
them under
oath.

R. S., c. 106,
§ 30.

SECT. 55. Upon complaint made to the judge of probate
2 by any executor, administrator, heir, legatee, creditor or per-
3 son 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
7 before him to be examined on oath in relation thereto.

He may cite
persons
entrusted with
any estate of the
deceased, &c.

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 or
7 other papers belonging to such estate taken into his custo-
8 dy, and of his doings in relation thereto.

R. S., c. 106,
§ 31.

Penalty for
refusing in both
cases.

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

- Sect. 1. In what cases the judge of probate may order partition of real estate.
2. Including reversions and remainders.
 3. Appointment, oath, and duties of commissioners to make partition.
 4. When estate is in different counties, separate commissioners may be appointed. How partition shall be made in such cases.
 5. When equal division cannot be made, estate may be assigned to one or more on payment of an equivalent. Males preferred to females, and older to the younger.
 6. Proceedings when the interest of an heir or devisee has been conveyed.
 7. Also when such interest is under attachment.
 8. Partition to be made of all or any part of the estate, if any owner requires it.
 9. Any owner may apply for partition. What notice shall be given.
 10. Judge to appoint a guardian or agent to act for minors, and persons insane or out of the state.

- Sect. 11. Where the land lies in common with other owners, notice to be given, hearing had, and a severance first made and then the petition or assignment of dower prayed for.
12. Judge may set aside or recommit return of the commissioners, but when accepted and recorded, binding on all parties, subject to appeal.

DISTRIBUTION OF PERSONAL ESTATE.

13. What allowance the judge may make to the widow from the personal estate, including one pew, and when he may make further allowance.
14. When such allowance consists of a debt secured by mortgage, same shall be assigned to her.
15. When an allowance may be made to minor children, if no widow.
16. Distribution of the balance of the personal estate.
17. When a specific distribution of personal effects may be made, and appraisers appointed to make it.
18. On what conditions, debts so assigned may be collected in the name of executor or administrator.
19. When a bond may be required of heirs, legatees or creditors to refund money paid to them.
20. Legatee of residuary or specific legacy may sue for it.

DISTRIBUTION OF LANDS HELD IN MORTGAGE OR TAKEN ON EXECUTION.

21. Lands held in mortgage or taken on execution deemed personal estate, and distributed accordingly.
22. Such lands may be sold by license, and for what purposes.
23. Distribution of same if not redeemed or sold, or it may be sold and money distributed.

PERSONS UNDER SENTENCE OF DEATH OR OF STATE PRISON FOR LIFE.

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, when the proportions of the respect-
 5 ive parties are not in dispute between them, or do not appear
 6 to the judge to be uncertain depending upon the construction
 7 of any devise or other conveyance, or upon other questions
 8 that he may think proper for the consideration of a jury and
 9 a court of common law.

In what cases
 the judge of
 probate may
 order partition of
 real estate.

R. S., c. 108,
 § 1, 3.

SECT. 2. Any revision or remainder vested in his heirs,
 2 or other particular estate under his will or otherwise, may
 3 be in like manner divided either during the existence of such
 4 particular estate or after its determination.

Including
 reversions and
 remainders.
 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

Appointment,
 oath, and duties,
 &c.

CHAP. 65.

R. S., c. 108, § 4.

When estate is
in different
counties, &c.

R. S., c. 108, § 5.

When equal
division cannot
be made, &c.R. S., c. 108,
§ 6, 7.Proceedings
when the
interest of an
heir or devisee
has been
conveyed.R. S., 6. 108,
§ 8, 9.Also when such
division is under
attachment.

R. S., c. 108, § 10.

Partition of
estate, &c.

3 before entering on their duties they shall be duly sworn be-
4 fore the judge or a justice of the peace, and make such par-
5 tition pursuant to the will of the deceased or the laws reg-
6 ulating the descent of intestate estates, as the case may be,
7 among all the parties owning shares, whether they joined in
8 the petition therefor or not.

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

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
5 to the others such sums of money, as the commissioners
6 shall award to make the partition just; but such partition
7 shall 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 males
11 shall be preferred to females, and the elder to the younger
12 children of the same sex.

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 pro-
7 vided for in section five, such owner may make written appli-
8 cation to said judge, before he accepts such division, for the
9 share of such heir or devisee, and after notice to such heir
10 or devisee the judge may decide in favor of such owner, and
11 he shall be entitled to receive said share of the money or so
12 much thereof, as is proportional to his equitable interest.

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
5 the officer, who shall be answerable therefor in his official
6 capacity subject to the rights of the parties, as if originally
7 attached.

SECT. 8. When such partition is made on the application
2 of an heir or one holding under him, it shall be made among

CHAP. 65.

3 all the owners of all the ancestor's estate, which any inter-
 4 ested party requires to have included, and when made on
 5 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
 7 common with others holding under the testator, which any
 8 devisee 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 ap-
 5 pointed 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.

Any owner may
 apply for
 partition, &c.

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.

Judge to appoint
 a guardian or
 agent to act for
 minors, &c.

R. S., c. 108,
 § 13.

SECT. 11. When any of the real estate, of which partition
 2 or the assignment of dower is prayed for, is held in common
 3 with that of other persons, the judge shall order notice of
 4 the intended partition or assignment of dower to be given to
 5 the co-tenant, which shall contain a description of the prem-
 6 ises to be divided and of the proportion claimed as belong-
 7 ing to the estate of the deceased; specify the time and place
 8 of hearing the case, and be served by delivering to him, or
 9 leaving at the place of his abode an attested copy thereof
 10 at least fourteen days before the time of hearing; but if the
 11 co-tenant does not reside in this state, such notice shall be
 12 given as the judge may require. At the time appointed in
 13 such notice the judge shall hear the parties, determine their
 14 respective rights in such estate, and direct the commissioners
 15 first to divide and set off the estate of the deceased from
 16 that of such other persons and then make the partition or
 17 assignment of dower prayed for. (a)

Where the land
 lies in common
 with other
 owners, &c.

R. S., c. 108,
 § 15, 16.
 1821, c. 51, § 32.

SECT. 12. The judge may set aside the return of the com-
 2 missioners, and commit the case anew to the same or other
 3 commissioners, and the return when accepted by the court
 4 shall be recorded in the probate office and in the registry of
 5 deeds for the county in which the lands lie, and be binding
 6 to all intents and purposes upon all persons interested

Judge may set
 aside or
 recommit return
 of the commis-
 sioners, &c.

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

CHAP. 65.

7 saving to them the right of appeal to the supreme court of
8 probate.

Distribution of personal estate.

What allowance
the judge may
make to the
widow from the
personal estate,
&c.

SECT. 13. In the settlement of any intestate estate, or of
2 any testate estate which is insolvent or in which no provision
3 is made for the widow in the will of her husband or she
4 duly waives the same, the widow shall be entitled to so
5 much of the personal estate besides her ornaments and wear-
6 ing apparel, as the judge shall deem necessary according to
7 the degree and estate of her husband and the state of the
8 family under her care; and he may also allow her any one
9 pew in a meeting-house, of which the deceased died seized,
10 and such allowance, when recorded shall vest the title in
11 her; and when an estate, which at the time of said allow-
12 ance was considered insolvent, ultimately appears to be sol-
13 vent, the judge by a subsequent decree may make the widow
14 a further reasonable allowance.

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

When such
allowance
consists of a
debt, &c.

SECT. 14. When any allowance to a widow wholly or part-
2 ly consists of a debt due the estate secured by a mortgage
3 of real or personal property, the executor or administrator
4 under the direction of the judge of probate shall assign said
5 mortgage and deliver the evidence of such debt to her.

1845, c. 141.

When an
allowance may
be made to
minor children,
if no widow.

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

R. S., c. 108,
§ 20.

Distribution of
the balance of
the personal
estate.

SECT. 16. When on the settlement of any account of an
2 administrator or executor, there appears to remain in his
3 hands any property not necessary for the payment of debts
4 and expenses of administration nor specifically bequeathed,
5 the judge shall order the same to be distributed according
6 to the will of the deceased if any, so far as it directs, oth-
7 erwise according to the provisions of chapter seventy-five;
8 and alienage shall be no bar to any person, who in other
9 respects is entitled to receive the same.

R. S., c. 108,
§ 21.

When a special
distribution of
personal effects
may be made,
&c.

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

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
 7 against the estate of the deceased.

CHAP. 65.

On what condi-
 tions, debts so
 assigned may be
 collected, &c.

R. S., c. 108,
 § 23.

SECT. 19. When any executor or administrator pays to
 2 any creditor heir or legatee any sum exceeding thirty dol-
 3 lars on account of any debt legacy or decree of distribution,
 4 the judge of probate may authorize him to require of the
 5 payee a sufficient bond to refund so much of said sum, as
 6 the same may exceed such payee's equitable proportion on
 7 final settlement of the estate; unless such payment be made
 8 to a creditor under an order of distribution of an insolvent
 9 estate.

When a bond
 may be required
 of heirs, &c.

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
 3 executor in an action of debt at common law or other appro-
 4 priate action. (a)

Legatee
 may sue for it.
 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
 2 mortgage without having foreclosed the right of redemption,
 3 or the executor or administrator has taken any in execution
 4 for a debt due the estate, such executor or administrator
 5 shall hold the same in trust for the persons, who would be
 6 entitled to the money if it was paid; and the same shall be
 7 accounted for as personal assets in his hands, and if redeemed
 8 the money shall be received by him for the same trust, and
 9 he may release the estate.

Lands held in
 mortgage or
 taken on execu-
 tion, &c.

R. S., c. 108,
 § 26.

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

Such lands may
 be sold by
 license, and for
 what purposes.
 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 en-
 3 titled 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

Distribution of
 same if not
 redeemed or
 sold, &c.

CHAP. 65.

R. S., c. 108,
§ 28.
1840, c. 199,
§ 1, 2.

Persons under
sentence of
death or of
state prison for
life, deemed
civilly dead, &c.

1848, c. 80.
Amendment
1841, c. 1, § 28.

Estates of
persons deceased
out of the state
how adminis-
tered and
distributed.

R. S., c. 107,
§ 20, 21.

If such persons
died insolvent,
&c.

R. S., c. 107,
§ 22, 23, 24.

If any residue,
how it may be
distributed.

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.

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 the state prison for
3 life, and confined in such prison in pursuance thereof, he shall
4 be 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 as if
8 he was dead.

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 pay-
4 ment of his debts, shall be disposed of according to his last
5 will, duly executed according to the laws of this state, if he
6 left any; but if not his real estate shall descend according
7 to the laws of this state; and his personal estate shall be
8 distributed according to the laws of the state or country of
9 which he was an inhabitant; and the judge of probate, as he
10 thinks best, may distribute the residue of said personal
11 estate as aforesaid, or transmit it to the foreign executor or
12 administrator, if any, to be distributed according to the law
13 of the place, where the deceased had his domicile.

SECT. 26. If such person died insolvent, his estate found
2 in 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 creditors wherever found as
8 divided among all said creditors in proportion to their debts
9 without preferring any one kind of debt to another; and in
10 such case no foreign creditor shall be paid out of the assets
11 found here till all the resident creditors have received their
12 proportion as herein provided.

SECT. 27. If there is any residue after such payment to
2 the citizens of this state, it may be paid to any other cred-
3 itors, who have proved their debts here, in proportion to
4 the amount, but no one shall receive more than would be

5 due to him, if the whole estate were divided ratably among
 6 all the creditors as before provided; and the balance, if
 7 any, may be transmitted to the foreign executor or admin-
 8 istrator, or if there be none such, it shall after the expiration
 9 of four years from the appointment of the administrator be
 10 distributed ratably among all the resident and foreign cred-
 11 itors, who have proved their debts in this state.

CHAP. 66.

R. S., c. 107,
§ 25.

Chapter 66.

INSOLVENT ESTATES.

- Sect.* 1. Priority of claims and order of payment.
2. When representation of insolvency need not be made.
 3. When it is to be made; commissioners appointed, sworn.
 4. Notice of meetings; time of presentation of claims.
 5. Claims presented in writing, stating security and credits.
 6. Claimants examined on oath; refusing claim rejected.
 7. Value of security deducted, appeal from valuation of it.
 8. Report, may be recommitted, claim of administrator allowed by judge.
 9. Contingent claims proved; sum reserved to pay them.
 10. If absolute in four years to share, otherwise not.
 11. Appeal from commissioners how made, notice given.
 12. Claimant failing may petition supreme judicial court, effect of it.
 13. Claim how prosecuted after appeal or leave granted.
 14. Proceedings in suit at law.
 15. Reference may be agreed upon in probate court.
 16. Judgment added to contingent debts. Costs.
 17. Actions pending, proceedings in. No action commenced, exception.
 18. Claims not presented, barred, exception and proceedings.
 19. Demands not available sold and assigned.
 20. Neglect to settle account, breach of bond.
 21. Trespasses on real estate, proceedings.
 22. Provisions applicable to estates in charge of executors and gaurdians, exceptions.
 23. Executor and residuary legatee may represent estate insolvent.
 24. Decree of distribution.

Disposition of insolvent estates.

- SECT. 1. An insolvent estate after payment of the expen-
 2 ses of the funeral and of administration is to be appropri-
 3 ated;
- 4 *First*—To the allowance made to the widow and children.
 - 5 *Second*—To the expenses of the last sickness.
 - 6 *Third*—To debts entitled to a preference under the laws
 - 7 of the United States.
 - 8 *Fourth*—To public rates and taxes, and money due the
 - 9 state.
 - 10 *Fifth*—To all other debts.

Priority of
claims and
order of
payment.

CHAP. 66.

R. S., c. 109,
§ 1, 2.

When repre-
sentation of
insolvency need
not be made.

Idem, § 4.

11 A creditor of one class is not to be paid, until creditors
12 of preceding classes, of which the administrator had notice,
13 have been fully paid.

SECT. 2. When an estate is not sufficient to pay more
2 than such expenses, and claims of the first class, the admin-
3 istrator is exonerated from payment of any claim of a sub-
4 sequent class without making a representation of insolvency.

Commissioners and proceedings.

When repre-
sentation is to
be made.
Commissioners
sworn; report.

Idem, § 3.

Times, places,
and notice, of
their meetings.
Time allowed
for presentation
of claims.

Idem, § 5, 6.

Claims are to
be presented in
writing sup-
ported by oath,
stating claim-
ant's security
and credits.

Idem, § 6, 7.

Claim of one
refusing to be
examined is to
be rejected.
False testimony
perjury.
Idem, § 8.

If claimant
hold security
value of it is to
be deducted.
When either
party is dissat-
isfied, &c.

SECT. 3. When an estate appears to be insufficient to pay
2 the debts, on representation thereof by the administrator
3 to him the judge of probate is to appoint two or more com-
4 missioners to receive and decide upon all claims against the
5 estate, except those of the administrator. They are to be
6 first sworn, and are to make report to the court of all
7 claims presented, and of their disposition, with the sum
8 allowed on each claim.

SECT. 4. The commissioners are to appoint convenient
2 times and places for their meetings and to give notice
3 thereof, as the judge directs. Six months after their appoint-
4 ment are to be allowed in the first instance for the present-
5 ation of claims. An additional time not exceeding in the
6 whole eighteen months may be allowed therefor or for any
7 particular claim or claims specified in the order of the
8 judge.

SECT. 5. Claims must be presented in writing stating,
2 what security the claimant has and the amount of credit to
3 be given, and supported by affidavit of the claimant or of
4 some person conversant thereof according to his best knowl-
5 edge and belief. The commissioners may require a claimant
6 to be sworn and may examine him on all matters relating to
7 his claim; they may administer oaths to claimants and wit-
8 nesses.

SECT. 6. If the claimant refuses to submit to such examin-
2 ation, his claim shall be rejected. If he or a witness know-
3 ingly answers or testifies falsely in relation to any claim, he
4 is to be deemed guilty of perjury.

SECT. 7. When a claimant holds security for his claim of
2 less value than the amount of it, he is to be allowed only the
3 difference between it and such value to be estimated by the
4 commissioners, who shall give him a certificate thereof. If
5 either party is dissatisfied with that valuation, the judge on
6 application and after notice to the other party may appoint
7 three disinterested men to appraise on oath such security

8 and make return thereof by them signed to the court; and
 9 their appraisement shall be substituted for the first and the
 10 amount allowed be varied accordingly. If the claimant de-
 11 clines to take the property at such appraisal and relinquish-
 12 es his claim thereon, the appraised value of it is by the judge
 13 to be added to the sum allowed to him, on which he is to
 14 receive his dividend, and the property appraised is to be dis-
 15 posed of by the administrator.

Idem, § 10, 11.

SECT. 8. Interest is to be cast on claims allowed from the
 2 death of the debtor to the time of report, unless the con-
 3 tract otherwise provides. At the expiration of the time
 4 limited the commissioners are to make their report to the
 5 judge, who before ordering distribution may recommit it for
 6 the correction of any error appearing to him to exist. Their
 7 fees are to be paid by the administrator. Any claim, which
 8 he has against the estate is to be examined and allowed by
 9 the judge and by him annexed to the list of claims and a
 10 proportional dividend decreed to him.

Interest on
claims. Report
of commissioners
may be
recommitted, &c.

Idem, § 9, 12,
27, 28.

Contingent claims.

SECT. 9. Contingent claims may be proved and the amount
 2 allowed reported stating their nature and distinguishing
 3 them from other claims. The judge ordering distribution is
 4 to leave in the hands of the administrator a sum sufficient
 5 to pay on them the per centage paid to others.

Contingent
claims proved,
and distin-
guished, &c.

Idem, § 13, 14.

SECT. 10. If within four years after administration was
 2 granted such claims become absolute, there is to be paid
 3 upon them a per centage equal to that paid on other claims,
 4 if it can be done without disturbing prior dividends. If they
 5 do not become absolute within that time, or if payment of an
 6 equal per centage does not exhaust the sum reserved, the
 7 residue is to be distributed to the creditors, whose claims
 8 have been proved, or allowed by the judge.

If become abso-
lute in four
years entitled to
share; other-
wise, sum
reserved to be
distributed.

Idem, § 15, 16.
1849, c. 96.

Appeals.

SECT. 11. A party dissatisfied with a division of the com-
 2 missioners on a claim may appeal therefrom within twenty
 3 days after their report is made by giving written notice
 4 thereof at the probate office. When the appeal is made by
 5 an administrator, he is to give notice to the creditor within
 6 thirty days by service of a copy attested by the register on
 7 him, his agent, or attorney, personally or by leaving it at
 8 their last and usual place of abode, if any within the state;
 9 otherwise notice is to be given as the judge directs.

Appeal by
written notice at
probate office
within twenty
days. Notice of
it when admin-
istrator appeals.

Idem, § 17, 18.

CHAP. 66.

One who has by accident failed to give notice of appeal in season, may obtain redress by petition to S. J. Court, &c.

R. S., c. 123, § 9.

Claim on appeal, when and how prosecuted at law; deemed contingent.

R. S., c. 109, § 17, 19, 20.

Proceedings in the suit, and judgment.

Idem, § 20, 21.

Parties may agree upon a reference in probate court. Creditor may be examined.

Idem, § 22, 23.

Judgment against administrator to be added to list of contingent debts, &c.

Idem, § 24, 25.

Actions pending, proceedings in them, &c.

SECT. 12. A person, whose claim has been disallowed in whole or in part, and who by accident or mistake has omitted to give notice at the probate office in season, may within two years after the report was made petition the supreme judicial court, and after notice to the administrator and hearing, leave may be given to commence a suit at the next term of the court in the county, where the administrator resides for the recovery of his claim. No decree of distribution can be disturbed by a judgment so recovered.

SECT. 13. When an appeal is so taken, or leave so granted the claim is to be determined in an action for money had and received commenced within three months after the report was made or at the next term after leave was granted. Such claim is to be deemed contingent and provision is to be made for it as in sections nine and ten.

SECT. 14. The creditor before service is to annex to his writ a schedule of his claims stating the nature of them, or file it with the clerk of the court, where the writ is returnable fourteen days before its return day; or seven days before the return day, when the action is brought before a justice of the peace. At such time as the court directs, the administrator is to file an abstract of all demands of the deceased against the claimant, judgment is to be rendered for either party for the balance ascertained at the trial.

SECT. 15. When notice of appeal has been given or leave granted, the parties may agree upon referees authorized to act by a rule of the probate court, whose award is final. On trial before the court or referees the creditor may be examined on oath as before commissioners, and with the like effect, if he refuses to be examined.

SECT. 16. If final judgment or award be made against an administrator, no execution can be issued, except for costs which may be allowed to the prevailing party. The sum found due to the claimant is to be entered by the judge of probate on the list of contingent debts entitled to dividends. The administrator may charge costs against him to the estate, but not when he appealed without reasonable cause shewn for it.

Suits pending and commenced.

SECT. 17. Actions pending on claims not preferred, when a representation of insolvency is made, may be discontinued without costs; or continued, tried, and judgment rendered with the effect and satisfied in the manner provided in cases

CHAP. 66.

5 of appeal. No action can be commenced, except on a pre-
 6 ferred claim, after such representation and the appointment
 7 of commissioners.

Idem, § 28.
 1849, c. 96.
 1854, c. 98, § 2.

SECT. 18. Claims not presented and claims disallowed
 2 without appeals taken are forever barred and cannot be
 3 recovered or filed in set off, unless further assets come to
 4 the hands of the administrator after distribution, when if
 5 proved before the judge of probate or not disputed they may
 6 be allowed and paid as provided for contingent debts. (a)

Claims not
 presented and
 allowed or
 judgment
 obtained on
 them, barred,
 &c.

Idem, § 29.
 1849, c. 96.
 1854, c. 98, § 3.

Miscellaneous provisions.

SECT. 19. When there are demands due the deceased not
 2 in the opinion of the judge available as assets, he may order
 3 them to be sold like other personal estate and assigned to
 4 the purchaser with authority to collect them in the name of
 5 the administrator giving him such indemnity against costs,
 6 as the judge requires, and reserving to debtors their rights
 7 of set off.

Demands not
 available may
 be sold and
 assigned.

Idem, § 34.
 1852, c. 220, § 1.

SECT. 20. If an administrator neglects to settle his account
 2 within six months, after the report on claims is made, or
 3 within such further time as the judge may allow, it shall be
 4 deemed a breach of his bond.

Neglect to settle
 account within
 time allowed,
 breach of bond.
 Idem, § 35.

SECT. 21. When an administrator commits waste or tres-
 2 pass, although an heir or devisee, or consents that another
 3 should do it, on real estate of his intestate insolvent, he is
 4 liable to account for treble the amount of the damage. He
 5 may recover damages in an action of trespass of a person
 6 committing the same to be accounted for as assets, although
 7 such person be heir or devisee of the estate.

Trespasses on
 real estate of
 insolvents.

Idem, § 37.

SECT. 22. The provisions of this chapter are applicable to
 2 estates under charge of executors; and of guardians of insane
 3 persons, except so far as they cannot be applied, and that an
 4 allowance for their support and their families shall take the
 5 place of an allowance to widows and children.

Provisions of
 chapter appli-
 cable to estates
 under charge of
 executors, &c.
 Idem, § 36.
 1850, c. 177,
 § 1, 2.

SECT. 23. When an executor has given bond as a residu-
 2 ary legatee, and the estate is found to be insufficient to pay
 3 the debts, he may make a representation of insolvency;
 4 and proceedings thereon may take place as in other cases.

An executor
 giving bond as
 legatee may
 make representa-
 tion of
 insolvency.

(a) No provision is made for a subsequent commission of insolvency in case of further assets. The provisions for it in R. S. being regarded as inconsistent with the provisions of the act of 1849, c. 96, for another mode of proof before the judge, or admission as not disputed, and then added to list of contingent claims without being passed upon by commissioners. And if the estate proves to be solvent, all the claims not presented to the commissioners are barred by the same act.

CHAP. 67.

Idem, § 38.

- 5 Such proceedings and distribution operate as a bar to a suit
6 on his bond for the recovery of a debt.

*Decree of distribution.*Decree of
distribution
when and how
made.

- SECT. 24. After the expiration of thirty days from the
2 time, when the report on claims is made, the judge is to make
3 a decree of distribution of the balance in the hands of the
4 administrator among the creditors according to the provis-
5 ions of this chapter. In case of further assets he is to make
6 another distribution on the same principles.

Idem, § 27.

Chapter 67.**APPOINTMENT, POWERS AND DUTIES OF GUARDIANS.****MINORS.**

- Sect.* 1. When guardians may be appointed for minors. Executors and administra-
tors 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 com-
pound 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.

Sect. 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 may appoint guardians to
2 minors residing in his county or out of the state and having
3 estate in his county; but no executor or administrator on
4 an estate shall be guardian to a minor interested therein.

When guardians
may be
appointed for
minors, &c.
R. S., c. 110,
§ 1, 6.

SECT. 2. If the minor is under fourteen years of age, the
2 judge may nominate and appoint his guardian; if he is over
3 that age, he may nominate his own guardian in the presence
4 of the judge, or if he resides more than ten miles from the
5 place of holding the next court, he may do it in writing cer-
6 tified by a justice of the peace; and if approved by the judge,
7 such nominee shall be appointed, although the minor may
8 have a guardian; but if not thus approved, or if the minor
9 resides out of the state, or being cited by the judge neglects
10 to nominate a suitable person, who will accept the trust, the
11 judge may nominate and appoint, as if he were under four-
12 teen.

By whom
guardians may
be nominated
and appointed.

R. S., c. 110,
§ 2, 3, 4.

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

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

R. S., c. 110, § 5.

Insane and incompetent persons, spendthrifts, and convicts.

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

When guardians
may be
appointed for
insane and
incompetent
persons, &c.

7 *First*—Insane persons including insane married women,
8 whose husbands have left them without making provision

CHAP. 67.

9 for their support, or who are possessed of real or personal
 10 estate and from any cause stand in need of relief or whose
 11 property is in danger of being wasted or lost. Insane per-
 12 sons described in section nineteen of chapter one hundred
 13 and forty-three.

14 *Second*—Persons, who by excessive drinking, gaming, idle-
 15 ness or debauchery of any kind, have become incapable of
 16 managing their own affairs, or so spend or waste their estate
 17 as to expose themselves or families to want or suffering, or
 18 their towns to expense.

R. S., c. 110, § 7.
 1853, c. 6.

19 *Third*—Convicts, committed to the state prison for a term
 20 not less than a year, and not for life.

Municipal
 officers to make
 inquisition into
 the facts, and
 report, &c.

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

R. S., c. 110,
 § 8, 9, 13.

If municipal
 officers are
 applicants, &c.

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

R. S., c. 110,
 § 10, 13.

All contracts
 and sales of
 estate, made
 after filing a
 copy of such
 application, &c.

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

R. S., c. 110,
 § 11.

Ward's
 expenses, in
 defending
 himself, &c.

R. S., c. 110,
 § 12.

SECT. 8. When a guardian is thus appointed, the judge
 2 shall make an allowance to be paid by the guardian from the
 3 ward's estate for all his reasonable expenses in defending
 4 himself against the complaint.

CHAP. 67.

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

Guardian to
 have the custody
 of his ward's
 person, &c.

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
 4 the judge shall accept, conditioned as follows:
 5 *First*—For the faithful discharge of his trust.
 6 *Second*—To render a true and perfect inventory of the
 7 estate property and effects of his ward within the time lim-
 8 ited by law.
 9 *Third*—To render a just and true account of his guardian-
 10 ship whenever by law required.
 11 *Fourth*—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.

Guardian to give
 bonds. Condi-
 tions thereof.

R. S., c. 110,
 § 16.

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

Estates of
 wards to be
 appraised, &c.

R. S., c. 110,
 § 10.

SECT. 12. The guardian shall manage the estate of his
 2 ward frugally and without waste; and apply the income and
 3 profits thereof as far as needed for the comfortable and
 4 suitable maintenance of the ward and his family, and if they
 5 are insufficient for that purpose he may use the principal;
 6 and when any exigency occurs the guardian may apply to
 7 some proper court for a license to sell the estate of his
 8 ward, and apply the proceeds to the purposes contemplated
 9 by his license.

How the guar-
 dian shall
 manage the
 ward's estate,
 &c.

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

He shall settle
 and pay his
 ward's debts, &c.

CHAP. 67.

R. S., c. 110,
§ 20, 21.
1845, c. 150.

May act for him
in partition of
real estate, &c.

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

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

R. S., c. 110,
§ 23.

Married women
not to be
guardians, &c.

R. S., c. 110,
§ 24.

Judge may
remove
guardians.
What notice to
be given, &c.

3 will go without disposing of effects necessary for the use
4 and comfort of the ward and his family, and in case of defi-
5 ciency thereof then out of the real estate; demand sue for
6 and receive all his dues; compound for the same and give
7 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 as if he was the
14 owner.

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

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 guard-
6 ian, and to invest the proceeds of such sale and also all other
7 moneys in his hands in real estate or in any other manner
8 most for the interest of all concerned; and the judge may
9 make such further order and give such directions, as the case
10 may require, for managing, investing, and disposing of, the
11 effects in the hands of the guardian, or for buying in any
12 particular estate, remainder, reversion, mortgage, or other
13 incumbrance, upon any real estate belonging to the ward.

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.

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 on
 7 the marriage of any female ward under twenty-one years of
 8 age the authority of her guardian shall cease.

CHAP. 67.

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.

How often the
guardian is to
settle his
account, &c.R. S., c. 110,
§ 27, 28.

SECT. 19. On the settlement of every account of the guard-
 2 ian, 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 suf-
 5 ficient one; and if the guardian does not give it, he shall be
 6 removed and another appointed.

Judge to exam-
ine bond on
settlement, &c.R. S., c. 110,
§ 29.

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

Oath of
guardian, &c.
R. S., c. 110, § 30.

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

Guardianship of
person out of the
state, &c.
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 dis-
 3 posing of his property otherwise than by his last will, or of
 4 making any contract notwithstanding the death, resignation,
 5 or removal of the guardian; and in such case a new guard-
 6 ian may be appointed without further intervention from the
 7 municipal officers. When on application of any such person
 8 or otherwise the judge finds, that a guardian is no longer
 9 necessary, he shall order the remaining property of the ward
 10 to be restored to him, except a legal compensation to the
 11 guardian for his services.

Disability of
adults under
guardianship to
dispose of their
estate, &c.R. S., c. 110,
§ 31.

Guardians ad litem.

SECT. 23. Nothing in this chapter shall affect the power
 2 of any court of common law, probate court, or justice of the
 3 peace, to appoint a guardian to defend the interests of any

This chapter
not to impair
powers of courts
to appoint, &c.

CHAP. 68.R. S., c. 110,
§ 33.

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.

*Embezzlement of the ward's estate.*Proceedings on
suspicion of
embezzlement
of ward's estate.R. S., c. 110,
§ 17.Punishment of
guardian for
embezzlement.R. S., c. 110,
§ 18.

SECT. 24. Upon complaint made to the judge of probate
2 by any guardian, ward, creditor, or other person interested
3 in the estate, or having claims thereto in expectancy as heir
4 or 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
9 estates of deceased persons.

SECT. 25. If any guardian having the charge and custody
2 of any property belonging to his ward embezzles the same
3 in violation of his trust, or fraudulently converts the same
4 to his own use, he shall be punished by fine not exceeding
5 five thousand dollars, or confinement to hard labor for a term
6 not exceeding ten years, or both, according to the aggava-
7 tion of the offense.

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.

12. Provisions applicable to trustees by operation of law.

Testamentary
trustees to give
bonds.
Conditions
thereof.

SECT. 1. Every testamentary trustee, except those here-
2 inafter 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 :

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

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

12 *Third*—That he will render an account of the income and
13 profits thereof, and of his payments and expenses once in
14 three years, and oftener if required by the judge.

15 *Fourth*—That at the expiration of such trust he will set-
16 tle his accounts with the judge; pay and deliver over all
17 balances sums of money or other property, that may be due,
18 and give possession of the other estate, with which he is
19 entrusted, to the persons entitled thereto.

R. S., c. 111, § 1.

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

In what cases
bonds may not
be required.

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

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

11 *Third*—When the trustee not before being required to give
12 bond had entered on the duties of his trust prior to August
13 first eighteen hundred and forty-one.

R. S., c. 111, § 2.

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

Neglecting to
give bond, &c.
R. S., c. 111, § 3.

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

When trustee
may resign, &c.

R. S., c. 111,
§ 4, 5, 6.

SECT. 5. When any person appointed trustee declines
2 resigns or dies, before the objects of the trust are accom-

When trustee
declines or dies,
judge may, &c.

CHAP. 68.

R. S., c. 111, § 7.

Trustee thus appointed to have same powers as others, &c.

R. S., c. 111, § 8, 9.

Such trustee to give bond, &c.

R. S., c. 111, § 10.

Estates to be appraised.

R. S., c. 111, § 11.

Probate or supreme court may direct the sale of trust estates, &c.

R. S., c. 111, § 12.

Said courts may hear in equity, &c.

R. S., c. 111, § 13.

When and how bonds of trustees may be sued.

R. S., c. 111, § 14.

3 plished, if no adequate provision is made by the will for
 4 supplying such vacancy, the judge of probate after notice to
 5 all persons interested shall appoint a new sole, or joint
 6 trustee.

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

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 substituted trustee, when he thinks it un-
 5 necessary, and 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.

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

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 author-
 5 ize or require the trustee to sell any real estate, or personal
 6 estate held by him in trust, and invest the proceeds thereof
 7 and also any other trust moneys in his hands in real estate
 8 or in any other manner most for the interest of all con-
 9 cerned therein; and may give such further directions, as the
 10 case may require for managing investing and disposing of
 11 the trust fund in accordance with the provisions of the will
 12 respecting the same.

SECT. 10. Either of said courts may hear and determine
 2 in equity all other matters relating to the trusts herein
 3 mentioned.

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 per-
 3 son interested in the trust estate; and the proceedings in
 4 such suit shall be conducted in the manner prescribed with
 5 respect to bonds given by administrators.

SECT. 12. *These provisions are applicable to executors who*
 2 *by the provisions of a will become trustees by operation of*
 3 *law without any express appointment, but they are not*
 4 *required to return an inventory. (a)*

CHAP. 69.

Provisions
applicable to
trustees by
operation of
law.

Chapter 69.

ESTATES OF DECEASED PARTNERS.

- Sect. 1. Partnership property included in inventory of deceased partner's estate.
 2. Bond and its condition of surviving partner.
 3. Judge same power, those interested same remedies as if administrator.
 4. When survivor does not give bond, administrator to do it.
 5. Survivor to deliver property to him, judge may enforce it.

SECT. 1. The executor or administrator of a deceased
 2 member of a partnership is to include in the inventory the
 3 property of the partnership appraised as in other cases, except
 4 that an amount is to be carried out equal only to the share
 5 of the deceased. This property is to be retained and ad-
 6 ministered, unless the surviving partner gives bond to the
 7 judge as provided in the following section.

Partnership
property
included in
inventory of a
partner
deceased.

R. S., c. 107,
§ 26, 27, 30.

SECT. 2. The bond is to be for such sum and with such
 2 sureties, as the judge may approve conditioned, to use fidel-
 3 ity and due diligence in closing the affairs of the late part-
 4 nership; to apply the property thereof toward payment of
 5 partnership debts; to render an account on oath when
 6 required, of all partnership affairs, including property owned,
 7 debts due to and from, the amount received and collected,
 8 and the amount paid; to pay to the executor or administra-
 9 tor of the deceased his proportion of any balance remaining
 10 after settlement within one year after date of the bond,
 11 unless a longer time be allowed by the judge.

Bond and its
condition.

Idem, § 27, 28.

SECT. 3. The judge has the same authority to cite the
 2 principal in such bond and to adjudicate upon his accounts,
 3 and the parties interested have the like remedies on his
 4 bond, as he or they would have, if he were an administrator.

Judge has same
power, and
those interested
same remedies,
&c.
Idem, § 29.

SECT. 4. If the survivor on being cited does not give the
 2 bond required, the executor or administrator of the deceased is
 3 to give such a bond with the necessary variations, as is required

If survivor does
not give bond,
administrator to
do it, and
administer.

(a) A new provision required to place such trustees on the same footing as others in conformity to judicial decisions. No inventory is required, because they have returned one as executors. 37, Mo. 264.

CHAP. 70.

Idem, § 30, 31.

Survivors to deliver property with books, &c.; judge may enforce it.

Idem, § 32, 33.

- 4 in the second section, and take possession of the property.
 5 He may use the name of the survivor to collect the debts.
 SECT. 5. Surviving partners are to exhibit to executors or
 2 administrators of deceased partners for appraisement all
 3 partnership property existing at the time of their decease;
 4 and if they administer, deliver it to them with all books notes
 5 documents and papers pertaining thereto, and afford them
 6 all reasonable information and facilities for the execution of
 7 their trust. If they neglect to do so, the judge after citing
 8 them to shew cause may enforce obedience by committing
 9 them to the county jail, until they comply, or are released by
 10 the executors or administrators, or by order of the supreme
 11 judicial court. (a)

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 trustee for excess.
 8. Compensation of judge, register, and assignee, how determined.

An assignment however made, shall effectuate an equal distribution of all the assignor's estate, &c.

1844, c. 112, § 1, 2.

Assignor to make oath to same, &c.

1844, c. 112, § 1.

- SECT. 1. Every assignment made by any debtor for the
 2 benefit of creditors shall provide for a proportional distri-
 3 bution of all his real and personal estate, except what is by
 4 law exempt from attachment, among all his creditors becom-
 5 ing parties thereto; and in whatever form made or how-
 6 ever expressed shall have the effect aforesaid and be also
 7 construed to pass all such estate whether specified therein
 8 or not.

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

CHAP. 70.

Assignee to give bond. Conditions thereof.

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

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

Second—To make proportional distribution of all the net proceeds of such estate among such creditors, as become parties to the assignment.

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

1849, c. 113, § 1.

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

Copy of assignment to be filed in probate office in ten days, &c.

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

SECT. 5. No such assignment shall be valid against attaching creditors unless sworn to and notice given as aforesaid; nor unless such bond is filed and approved by the judge of probate within twenty days after the execution thereof.

No assignment valid without oath and notice, &c.
1844, c. 112, § 2.
1849, c. 113, § 1.

SECT. 6. *Creditors becoming parties to the assignment, and presenting their claims to the assignee for allowance, shall offer the same proof thereof, and if dissatisfied with his decision have the same right of appeal and the same remedy that is provided in relation to claims presented to commissioners on insolvent estates*; and shall also have the same remedy on the assignee's bond that is provided in relation to an administrator's bond.

Creditors to prove claims same as before commissioners of insolvency, &c.

1849, c. 113, § 2. New.

SECT. 7. No property assigned for the benefit of creditors shall be liable to attachment for six months after the first publication of the notice herein required, nor shall the assignee during that time be liable to the trustee process on account thereof; but after the lapse of eighteen months from the assignment, or two years, to which the probate court for

Assigned property not liable to attachment or trustee process for six months, &c.

CHAP. 71.

1844, c. 112, § 4.
1849, c. 112 and
113, § 5.

Compensation of
judge, register,
and assignee,
how determined.

1849, c. 113, § 3.
New.

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 contin-
12 ued till after their expiration on such terms, as the court may
13 direct.

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.

Chapter 71.**SALES OF REAL ESTATE BY LICENSE OF COURT.****PUBLIC SALES OF NON-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 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 may 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.

Sect. 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
2 applicants hereinafter named were appointed, may license
3 the sale or exchange of real estate and certain interests
4 therein, in whatever county the same is situated, in the fol-
5 lowing cases on application :

6 *First*—Of executors, administrators, and guardians of mi-
7 nors and other incapacitated persons, so much of the real
8 estate of their testators, estestates, or wards, including such
9 as is held in mortgage and possession thereof taken for con-
10 dition broken, and such as has been set off to them on
11 execution, although the right of redemption is not fore-
12 closed, as may be necessary for the payment of just debts,
13 legacies, incidental expenses of sale, and charges of admin-
14 istration or guardianship; and when there is not sufficient
15 personal estate for the support of such wards.

16 *Second*—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
21 more for the advantage of such wards and their families.

22 *Third*—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

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

R. S., c. 112, § 1.
Specifications
1, 2.

Specifications
3, 4.

CHAP. 71.

Specification 5.

25 entire portion under the foregoing authority, the sale of the
 26 whole or such entire parts thereof, as will not injure the
 27 residue.

Specifications
 6, 7,
 1844, c. 116, § 1.

28 *Fourth*—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 lev-
 32 ied upon by execution, or sell any trees or timber standing
 33 thereon, when it fully appears that it would be for the bene-
 34 fit 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.

Specification 8.

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

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

Specification 9.

Sales to be at
 auction, &c.

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

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

44 *Seventh*—Of public administrators in cases defined by section
 45 twenty-two of chapter sixty-four.

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.

Persons making
 such sales to
 give bond, &c.

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
 4 for a sum and with sureties to his satisfaction with the fol-
 5 lowing conditions:

R. S., c. 112,
 § 5, 38,
 1844, c. 116; § 2.

6 *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.

9 *Second*—That they will truly apply and account for the
 10 proceeds of sale according to law.

Oath to be
 taken before the
 judge or a justice
 of the peace.

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

R. S., c. 112, § 6.

7 and recorded by the register.

CHAP. 71.

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

Notice previous
 to granting
 license.

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 executor
 3 administrator or guardian in a sum and with sureties to be
 4 approved by the court to pay all sums, for the payment of
 5 which license is asked, so far as the goods and chattels,
 6 rights and credits of the deceased or ward are insufficient
 7 therefor; but such bond shall be no bar to any future appli-
 8 cation for the same purposes, if the obligors on reasonable
 9 notice and demand fail to perform its condition.

No license to be
 granted, if
 parties inter-
 ested give bond
 of indemnity,
 &c.

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 first
 9 publication to be thirty days before the sale.

How notice of
 sale shall be
 given.

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
 8 it; and also the opinion of such judge of probate, whether
 9 it be necessary that the whole or a part of the estate should
 10 be 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 pro-
 13 duced from the judge of probate in the county, where such
 14 minor's estate was inventoried, stating that in his opinion it
 15 would be for the interest of such minor, that the whole or a
 16 part of said estate should be sold for the purpose specified,
 17 and if part only, what part.

When a certifi-
 cate of the judge
 of probate is
 necessary, &c.

R. S., c. 112,
 § 10.

CHAP. 71.

Petitioners and others may be examined under oath.
R. S., c. 112, § 11.

When certificates of the overseers of the poor necessary.

R. S., c. 112, § 12.

Proceedings for the sale of estate of persons deceased without the state, &c.

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

Evidence of appointment of an executor, administrator or guardian in another state.

R. S., c. 112, § 15.

Licenses to sell private sale, &c.

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
4 set forth in the petition.

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, wheth-
8 er it be necessary to sell a greater amount in value of land
9 to prevent injury to the residue.

Sales of non-resident estates.

SECT. 11. The supreme judicial court and the probate
2 courts may license to continue in force for three years exec-
3 utors and administrators of persons deceased out of the
4 state, guardians of wards living out of the state, or some
5 other suitable persons on their petition, to sell and convey
6 any such real estate or interest therein in this state, as if
7 such deceased persons had died and such wards lived in this
8 state and such executors administrators or guardians had
9 been here appointed; and all proceedings in such cases
10 before any probate court shall be had before the judge of
11 probate for the county, where the real estate lies, and the
12 bond required shall be given to him.

SECT. 12. A certified copy of the appointment of such
2 executor administrator or guardian by any court of probate
3 having jurisdiction in any other of the United States exam-
4 ined and allowed by any judge of probate in this state and
5 ordered to be filed and recorded in his county shall be suffi-
6 cient proof of appointment to entitle him to the benefit of
7 the preceding section.

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 sell at auction by complying with all the requisitions of law
7 for sales at auction and with any particular conditions of his

CHAP. 71.

8 license; and he shall take the same oath and give the same
 9 bond as if he was licensed to sell at auction; and the court
 10 shall decide what public notice, if any, shall be given of the
 11 time and place of such private sale, and if any is required,
 12 it shall be inserted in the license and given accordingly.

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

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

License to
 accept a particu-
 lar offer to
 purchase.

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 estate
 3 held by him in right of his wife, she may for a sufficient con-
 4 sideration join with him in the deed thereof, and it shall be
 5 as effectual as if made with her husband when under no dis-
 6 ability; and when licensed to sell the real estate of his ward
 7 she may release her right of dower therein to the purchaser
 8 by a deed duly executed solely or jointly with the guardian,
 9 and she shall thus be forever barred of dower in the premises.

Wife of
 incapacitated
 ward may join
 in sale of estate
 held in her
 right, &c.

R. S., c. 112,
 § 25, 26.

SECT. 16. The guardian, with the consent of the judge of
 2 probate to whom he accounts, may agree in writing with such
 3 wife how to invest or otherwise dispose of such a part of
 4 the proceeds of the sale of the whole estate for her sole use,
 5 as shall be equivalent to her interest therein; and [the judge
 6 of probate or] the supreme judicial court may enforce such
 7 agreement in equity as a trust. (a)

Guardian may
 contract with
 her to invest
 proceeds of her
 interest, &c.

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
 2 jurisdiction, that any deceased person in his lifetime made a
 3 legal contract to convey real estate and was prevented by
 4 death from so doing, and that the person contracted with or
 5 petitioner has performed or is ready to perform the condi-
 6 tions required of him by the terms thereof, he may on the

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

(a) The words in section sixteen in the fifth and sixth lines "the judge of probate or" should be erased, as that judge has no process or course of proceeding between parties litigant, by which he could do it.

CHAP. 71.

R. S., c. 112,
§ 28.

When lands of
wards are taken
for highways,
&c.

1843, c. 1, § 1, 2.

Licenses to be
in force only
one year, &c.

R. S., c. 112,
§ 16, 17.
1852, c. 270, § 3.

Licenses granted
in any county
may embrace
lanes in other
counties.

R. S., c. 112,
§ 23.

When licenses
may express
what lands may
be sold, &c.

R. S., c. 112,
§ 29.

What estate of
deceased persons
is liable to sale,
&c.

7 petition of such person, his heirs, assigns, or his legal repre-
8 sentatives authorize the executor or administrator of the
9 deceased to execute deeds to carry said contract into effect;
10 and when such conveyance is made to an executor or admin-
11 istrator, he shall stand seized of such estate to the same
12 uses, as in cases of real estate set off to him on execution.

License to guardians to release certain damages.

SECT. 18. When a highway, railroad, or canal, is authorized
2 to be constructed through the lands of any ward, or a dam
3 is erected, by which such lands are liable to be flowed, the
4 courts aforesaid may authorize the guardian for a reasona-
5 ble compensation, and by giving the same notice and account-
6 ing for the money so received in the same way as in cases
7 of sales of real estate by guardians, to give a full release of
8 his ward's claim for damages, which shall be binding on him
9 and his heirs forever.

General provisions.

SECT. 19. No license granted under this chapter, except
2 when otherwise provided, shall remain in force more than
3 one year from its date; and any sale duly appointed and
4 notified may be adjourned for a time or times within the
5 time prescribed by the license not exceeding fourteen days in
6 all at the discretion of the person licensed, by giving such
7 reasonable notice thereof, as circumstances will permit.

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.

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.

SECT. 22. Lands, of which the deceased died seized in fee
2 simple or fee tail general or special, and all that he had fraud-
3 ulently conveyed, or of which he was colorably disseized to
4 defraud creditors, shall be liable to sale for the payment of
5 debts under any license granted under this chapter; and
6 any deed executed and recorded in due form of law for ade-
7 quate consideration in pursuance of any such license shall

CHAP. 71.

8 be effectual to pass to the purchaser all the estate right title
 9 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 the surplus proceeds of sale
 4 remaining on the final settlement of the accounts of such
 5 proceeds shall be considered as real estate, and distributed
 6 among the same persons and in the same proportions, as the
 7 real estate would be by law.

Surplus pro-
 ceeds of sale
 distributed as
 real estate.

R. S., c. 112,
 § 32.

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

Presumptive
 heirs of wards
 deemed parties
 interested, &c.
 R. S., c. 112,
 § 33.

SECT. 25. When the granting of any license is contested,
 2 if 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.

Costs when the
 granting of the
 license is
 objected to.
 R. S., c. 112,
 § 34.

SECT. 26. The affidavit of any person licensed as afore-
 2 said or of any person employed by him made within eigh-
 3 teen months after the sale before the judge of probate or a
 4 justice of the peace and filed in the probate office and re-
 5 corded with one of the original advertisements of the time
 6 place and estate to be sold or with a copy of such adver-
 7 tisement shall be sufficient proof, that such notice was given;
 8 and a copy of such affidavit certified by the register of pro-
 9 bate shall be competent evidence thereof.

What is suffi-
 cient evidence of
 notice of sale.

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
 3 the executor administrator or guardian in such proceedings,
 4 he may recover a compensation therefor in a suit on the
 5 probate bond or otherwise, as the case may require.

Remedy of party
 damaged by
 misconduct, &c.

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 persons
 4 claiming under the deceased, or by the ward or persons
 5 claiming under him, unless it is done within five years after
 6 the sale, or the termination of the guardianship, except that

Actions or
 entries to recover
 back land sold
 under license,
 &c.

CHAP. 72.

R. S., c. 112,
§ 18.

Requisites of a
valid sale
against persons
claiming under
the deceased or
ward.

7 persons out of the state or under any legal disability at said
8 times are limited to five years after their return to the state
9 or the removal of the disability.

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:

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

9 *Second*—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.

12 *Third*—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.

Also against
such as claim
adversely to the
title sold.

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.

ACTION 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.

- Sect.* 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
2 of probate are insufficient, on the petition of any person
3 interested and notice to the principal the judge may require
4 a new bond to be given with such sureties, as he shall
5 approve.

Insufficient
sureties may be
discharged, &c.

R. S., c. 113, § 1.

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

When sureties,
after six years,
may be
discharged, &c.

R. S., c. 113, § 2.

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

Principal to give
bond, &c.
R. S., c. 113, § 3.

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

Surety, needed
as a witness,
may be dis-
charged from
subsequent
liability, &c.

R. S., c. 113,
§ 20.

(a) This section has become useless or obsolete, since the law has been so altered, that persons interested may be witnesses.

CHAP. 72.

Actions on bonds.

Suits on probate bonds must be in the name of the judge, &c.

R. S., c. 113, § 4.

How a principal may be made defendant on motion of a surety, &c.

R. S., c. 113, § 8.

How he may be summoned, and the effect thereof.

R. S., c. 113, § 9.

When judgment is for the plaintiff, &c.

R. S., c. 113, § 13.

When and how an interested party may originate a suit on a bond, &c.

R. S., c. 113, § 5, 6.
27th, Mo. R. 68.
New.

SECT. 5. All suits on probate bonds of any kind payable
2 to the judge shall be originally commenced in the supreme
3 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.

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
4 on a judgment against the sureties only, he is in the state,
5 the 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.

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 four-
5 teen days previous service of such process, he fails thus to
6 appear at the time appointed, and judgment is rendered for
7 the plaintiff, it shall be against him and the other defend-
8 ants 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 as if made or taken in the original
11 suit.

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.

Actions by interested parties without authority of the judge.

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

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

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.

If such suit not
sustained, &c.

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.

If such party is
a creditor of an
insolvent estate,
&c.

R. S., c. 113,
§ 10.

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

If a creditor or
legatee of a
solvent estate,
&c.

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
3 a 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.

If a widow,
next of kin, &c.

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
5 bond, as appears to be due, with interest and costs to the
6 person for whose use the action was brought; and when it
7 was brought for the use of several, there shall be separate
8 executions in the same form for the share of each, and the
9 costs shall be apportioned under the direction of the court;
10 and such persons shall be deemed creditors to all intents,
11 and may levy their executions in their own names on real
12 estate or otherwise.

When judgment
is for plaintiff,
&c.

R. S., c. 115,
§ 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*

Judge may
authorize suits
&c.

CHAP. 72.

3 *the benefit of the estate, and such authority shall be alleged*
 4 *in the process* ; and when it appears in any such suit against
 5 an administrator, that he has been cited by the judge of pro-
 6 bate 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.
 27, Me. R. 68.
 New.

Also, for not
 returning an
 inventory, &c.

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.

Judgment
 recovered to be
 in trust for all
 parties
 interested, &c.

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 applica-
 3 ble shall be had on the bonds given to any judge of probate
 4 by executors, special administrators, guardians, testamentary
 5 trustees, surviving partners, and others, as are provided in
 6 this chapter in reference to bonds of administrators.

Same proceed-
 ings to be had
 on all other
 probate bonds,
 &c.

R. S., c. 113,
 § 19.