

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

ERRATA.

PAGE 65, section 27, line 18, after "not," read "to."

92,	46,	1, for "She," read "The."
119,	5,	3, after "fife," for "a," read "or."
138,	62,	6, for "offier," read "officer."
405,	13,	1, for "28," read "13."
414,	3,	3, for "couaty," read "county."
440,	31,	4, in a few copies, for "on," read "or."
453,	28,	2, _____ for "necessay," read "necessary."
500,	23,	2, of the margin, for "dease," read "cease."
619,	24,	2, for "administrator of any contractors," read "administrators of any contractor."

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837, 2d column,	1, dele "MILITIA," so as to read OFFICERS of the state prison.
842, 2d	46, for "527," read "537."
851, 1st	62, for "610," read "616."
857, 2d	14, for "163," read "162."
867, 2d	49, for "568," read "508."
875, 1st	14, for "wrunq," read "rung."
880, 1st	54, for "775," read "475."

CHAPTER 106.

CHAP. 106.

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

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

To whom administration shall, or may be granted.
1821, 51, § 7.
4 Mass. 348.
4 Pick. 33.

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

Same subject.
1821, 51, § 7.
1823, 401, § 2.
18 Pick. 24.

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Of the administrator's bond.
1821, 51, § 7.
11 Mass. 190.
2 Pick. 24.
9 Pick. 395.

3 Pick. 365.

1 Pick. 230.
4 Pick. 50.
8 Pick. 526.

1835, 191, § 4.

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1821, 51, § 11.
4 Mass. 137.
5 Greenl. 490.
6 Greenl. 274.
4 Pick. 33.

When wills may be proved, by depositions.
1821, 51, § 12.
5 Mass. 219.

When by only one or two of the subscribing witnesses.
1821, 51, § 13.

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

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

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

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

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

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

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

SECT. 4. Every person, having the custody of any will, shall, within thirty days after notice of the death of the testator, deliver the same into the probate court, which has jurisdiction of the same, or to the executors named in the will; and, if he shall, without any reasonable cause, neglect 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 warrant of the said judge, there to be kept in close custody, until he shall deliver the will, as above directed; and he shall be further liable to the action of any party aggrieved, for the damage, which may be sustained by such neglect.

SECT. 5. When a will shall be offered for probate to the judge, and the witnesses, or any of them, live out of the state, or more than thirty miles distant, or by reason of age or indisposition of body, are unable to attend court, the deposition of such witnesses, taken in writing, under oath, before any magistrate, authorized by commission from such judge, shall be competent evidence in the absence of such witness.

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

three subscribing witnesses, required by law, he or they substantiating all the requisite facts.

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

Of letters testamentary.

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

Of the executor's bond. 1821, 51, § 15.

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 shall have come to his possession or knowledge ;

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

9 Pick. 395.

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

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

1835, 191, § 4.

SECT. 9. If such executor be a residuary legatee, the condition of his bond, instead of that required in the preceding section, shall be, to return an inventory, as required in the first clause of the preceding condition, and to pay all the debts and legacies of the testator, unless the estate of the testator, from some unexpected event, should prove insufficient for the payment of the same.

Condition, if executor be residuary legatee. 1830, 470, § 7. 13 Mass. 365. 5 Pick. 337.

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

Co-executors not to act as such, unless they give bond. 1821, 51, § 15.

SECT. 11. If any person, who is appointed an executor, shall refuse to accept the trust, on being duly cited for the purpose, or, if he shall neglect, for twenty days after probate of the will, to give bond as before prescribed, the judge may grant letters testamentary to the other executors, if there be any capable and willing to accept the trust ; and, if there is no such other executor, the judge may commit administration of the estate, with the will annexed, to such person as he would be authorized to appoint, if the deceased had died intestate.

Provisions for administration, when executor's bond is not given. 1821, 51, § 15. 4 Pick. 33.

SECT. 12. When an executor is under the age of twenty one years, at the time of the probate of the will, administration may be

Administration during executor's minority. 1821, 51, § 15.

CHAP. 106. granted, with the will annexed, during the minority of such executor, unless there be another executor, who shall accept the trust; in which case, the estate shall be administered by such other executor, until the minor shall arrive at full age, when he may be admitted as joint executor, with the former, upon giving bond, as before provided.

Administrators with the will annexed, to give bonds, as executors.

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

Foreign wills may be allowed and recorded, in this state. 1821, 51, § 14. 4 Greenl. 134.

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

Proceedings in probate court, and the effect thereof. 1821, 51, § 14. 4 Greenl. 134.

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

Same subject. 1821, 51, § 14. 3 Fairf. 127.

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

Same subject. 3 Mass. 506. 13 Pick. 8.

SECT. 17. After allowing and recording any will, pursuant to the three preceding sections, the judge of probate may grant letters testamentary thereon, or letters of administration with the will annexed, and may proceed in the settlement of the estate, that may be found in this state, in the manner provided in chapter, one hundred and seven, with respect to the estates of persons, who were inhabitants of any other state or country; and the letters testamentary, or of administration, thus granted, shall extend to all the estate of the deceased within this state, and shall exclude the jurisdiction of the probate court in every other county.

Nuncupative wills. 1821, 38, § 6.

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

Notice of ap-

SECT. 19. Every executor or administrator shall, within three

months after giving bond for the discharge of his trust, cause notice of his appointment to be posted up in two or more public places to be specified by the judge, in the town where the deceased last dwelt, if in this state; and such further notice, as the judge shall, in writing, direct.

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

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

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

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

SECT. 24. Such of the credits of the deceased, and rights to personal property not in possession, as the appraisers may judge to be, in whole or part, available, as assets, shall be enumerated in a schedule, part of said inventory, with the names of the debtors or parties obligated, and the respective sums supposed to be due thereon, and the nature of the rights aforesaid, whether absolute or conditional; and the appraisers shall state in one general sum, at the foot of such schedule, such amount as in their judgment may, probably be realized from the same, exclusive of expenses and risk of settlement or collection.

SECT. 25. The judge of probate, at his discretion, may at any time afterward, whenever any estate or effects, rights or credits, shall come to the knowledge or possession of any executor or administrator, require of him an additional inventory; and appraisers in like manner shall be appointed and sworn; and return shall be made within such time, as the judge in his warrant shall direct.

SECT. 26. The following articles shall be omitted in making the inventory, and shall not be administered upon as assets, to wit:

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

Secondly. The wearing apparel of the deceased, not exceeding one hundred dollars in value, provided that, before the return of the

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pointment by executors, &c. 1821, 51, § 18. 8 Mass. 111. 12 Mass. 199.

Notice on estates of persons deceased, out of the state. 1821, 51, § 18.

Notice to be proved by affidavit, filed and recorded. 1821, 51, § 18.

Inventory to be returned, within three months. 1821, 51, § 7. 1 Mass. 35, 204.

Appraisers, and their proceedings. 1821, 51, § 7.

Same subject.

Additional inventories may be required. 1830, 470, § 3.

What may be omitted in the inventory.

CHAP. 106. inventory, such executor or administrator shall have distributed the same to the widow and minor children of the deceased, which he is authorized to do at his discretion, and shall return to the judge a certificate of such distribution, from the widow or next of kin, being of age, to such children ;

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

When the judge may require new, or additional bonds.

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

When a sale of the personal property may be ordered.
1821, 51, § 10.

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

Of the executor's or administrator's election to hold the personal estate, as appraised.
1821, 51, § 10.
1830, 470, § 7.

SECT. 29. Every executor or administrator shall be held to account for all the goods and effects, named in the inventory, other than rights to personal property not in possession, and credits of the deceased, and such articles as may be the subject of specific legacies, at the rate at which the same shall be appraised, unless within three months after the return of the inventory, he shall, in writing, signify to the judge, his election to the contrary, or unless the judge, on the application of some party interested, shall have previously ordered a sale thereof ; provided that for special reasons, the judge may allow him the further term of six months to make such election.

Proceedings in cases of suspected embezzlement.
1821, 51, § 24.
4 Mass. 322.
7 Greenl. 467.

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

Same subject.
1821, 51, § 23.

SECT. 31. Upon complaint of either of the said parties, interested in such estate, that any person, who may have been entrusted by any executor or administrator with any part of the estate of the testator on intestate, refuses to render a full account thereof to such executor or administrator, when required, the judge of probate may cite such person to appear before him, and to render a full account under oath, of any money, goods or chattels, bonds or accounts, or other papers, belonging to such estate, taken into his custody, and

of his doings under or in behalf of such executor or administrator. CHAP. 106.

SECT. 32. If any person duly cited, as provided in the two preceding sections, shall refuse to appear and submit to such examination, or to answer such interrogatories, as shall be lawfully propounded to him, the judge may commit him to the common jail of the county, there to remain until he submit to the order of the court, or be discharged by the complainant, or by order of the supreme judicial court. Same subject.
1821, 51, § 24.

SECT. 33. Whenever any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge on receiving a fair proportion of the same. When debts,
due the deceased,
maybe compounded.
1821, 51, § 30.

SECT. 34. When an executor or administrator, residing out of this state, shall, after being duly cited by the judge of probate, neglect to render his accounts, and to settle the estate according to law; or when any executor or administrator shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate may remove him, and, if there be no other executor or administrator to discharge the trust, the judge may commit administration, with the will annexed, or otherwise, as the case may require; of the estate, not already administered, to such persons, as he shall think fit, in like manner, as if the one, so removed, were dead, and such administrator shall have the same authority, and be liable to the same obligations, as other administrators. Removal from
office, of non
resident and
incompetent
executors, &c.
1821, 51, § 19.

SECT. 35. When an unmarried woman, who is executrix or administratrix, either alone, or jointly with another person, shall marry, her husband shall not exercise such trust in her right, but the marriage shall operate as an extinguishment of her authority; and the other executor or administrator, if there be any, may proceed in discharging the trust, as if she were dead. If there be no other, administration with the will annexed, or otherwise, may be granted, as authorized in the case, provided for in the preceding section. Administration
of executrix,
&c. to cease on
her marriage.
1821, 51, § 19.
14 Mass. 295.
17 Mass. 341.

SECT. 36. The executor of an executor shall have no authority, as such, to administer the estate of the first testator; but, on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person, as the judge of probate shall think fit. Executor's authority,
not
transmitted to
his executor.
1821, 51, § 19.

SECT. 37. When there is more than one executor or administrator, and either of them shall be removed from office by the judge of probate, the others may proceed to discharge the trust reposed in them, in the same manner, as if the person so removed were dead; and they may bring actions of account against him, and recover, by any proper legal process, such effects and assets, as remain in his hands, unadministered. Like actions or process may be brought, by one executor, or co-administrator, against another, to recover a proportional share of the estate, under their administration, when the latter retains an undue proportion thereof, or refuses either Rights of co-ex-
ecutors, &c. at
law, in certain
cases.
1821, 51, § 19.

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to account to the other, or to pay the debts, legacies, or other charges on such estate, or where the aggrieved executor is a residuary legatee.

Chancery remedies.
1837, 301, § 1.

SECT. 38. The supreme judicial court may hear and determine, in equity, all disputes and controversies, between co-executors and co-administrators, and between their respective legal representatives, in all cases where there is not a plain, adequate and complete remedy at law: and, in such case, the court shall have the same power, and may proceed in like manner, as is provided in cases between co-partners.

Of waste, by neglecting to pay debts.
1821, 51, § 29.
5 Pick. 96.

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

Of the settlement of administration accounts.
7 Pick. 14.
8 Pick. 484.

SECT. 40. Every executor or administrator shall render his accounts, agreeably to the condition of his bond; and the judge of probate may require him to account, whenever he may deem it necessary, whether with or without a special application from the parties interested; but no such account shall be settled without reasonable notice to such parties. On the examination of such account, the accountant may be interrogated, under oath, in relation to the same, and such record of his answers made, as the judge may require.

With what property executor, &c. shall be chargeable.
4 Mass. 318.
13 Mass. 177.
4 Pick. 50.
6 Pick. 422, 481.
7 Pick. 14.

SECT. 41. Every executor and administrator shall be chargeable in his account with all goods, chattels, rights and credits of the deceased, which shall come to his hands, which are by law to be administered, whether included in the inventory or not; also with all the proceeds of real estate, sold for the payment of debts or legacies, and incidental expenses, and with all the interest, profit and income, that shall in any way come to his hands, in his said capacity, from any estate of the deceased.

Income of real estate, when to be accounted for.
1821, 51, § 22.
16 Mass. 280.

SECT. 42. If any part of the real estate shall have been used, or occupied, by the executor or administrator, he shall account for the income thereof, to the devisees or heirs in such manner as shall be ordered by the judge of probate, with the assent of the accountant, and such of the other parties as may be present at the settlement of his account; and, if the parties do not agree on the sum to be allowed, it shall be determined by three disinterested persons, to be appointed, for that purpose, by the judge of probate, whose award, being accepted by the judge, shall be final.

Allowance of claims in favor of executors, &c.
1821, 51, § 21.

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

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

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What previous acts are valid, on revocation of powers of executors, &c.

CHAPTER 107.

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

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 19. Their liability.
 - 20, 21. Estates of PERSONS DECEASED OUT OF THE STATE, how administered and settled.
 - 22, 23, 24, 25. How distributed, in cases of insolvency.
 26. Appraisal of PARTNERSHIP PROPERTY.
 27. To remain with surviving partner on his giving bond.
 28. Condition of such bond.
 29. Judge's authority. Remedies on the bond.
 30. If such partner neglect to give bond, duty of the executor, &c.
 31. Further bonds required of executor, &c.
 32. Duty of surviving partner, in such case.
 33. Compulsory process.

SECTION 1. All public administrators, now in office, shall continue to hold the same, according to the tenor of their commissions.

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

SECT. 3. Such public administrator shall account to the judge

Public administrators, to remain in office. Vacancies to be filled. 1828, 401, § 1.

Duty.

When they