

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)

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

TITLE SIX.**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.****SELECTION, POWERS AND DUTIES OF JUDGES OF PROBATE.**

- SEC. 1. Judges, how selected; to enter upon duties first of January following; 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.

SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

- SEC. 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 and reasons therefor.
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.

SELECTION, 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.

SEC. 1. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as provided respecting county commissioners by chapter seventy-eight. They are to enter upon the discharge of their duties on the first day of January following, and have an official seal, and authority to issue whatever process is necessary for the discharge of their official duties, and to punish for contempt of their authority the same as the supreme judicial court may.

Officers to serve processes, &c. R. S., c. 105, § 6, 7.

SEC. 2. Sheriffs and their deputies, coroners and constables, shall serve and execute all legal processes directed to them by any judge of probate; and any person summoned before him as a witness, refusing to appear and give evidence, is liable to the same penalties and damages as for such refusal before the supreme judicial court.

Judges to have fixed days and places for holding court, &c. 27 Maine, 114. R. S., c. 105, § 8. 1841, c. 5, § 2.

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

In what cases he may appoint guardians, &c.

SEC. 4. The judge for each county may appoint guardians for minors and others according to law; take the probate of wills;

grant letters testamentary or of administration on the estates of all deceased persons, who at the time of their decease, were inhabitants or residents of his county, or who died without the state leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person, who is under sentence of death and confined in the state prison awaiting its execution, or of imprisonment for life in the state prison; and shall have jurisdiction of all matters relating to the settlement of such estates, to persons under guardianship, and to whatever else is conferred on him by law.

SEC. 5. No probate of any last will or administration on the estate of any person deceased, shall be originally granted after the expiration of twenty years from his decease, except it appears satisfactorily to the judge of probate, that there are moneys due to the estate of said deceased from the government of the United States; and except as provided in chapter sixty-four and section eleven; nor shall any administration be granted at any time, unless it satisfactorily appears to the judge, that there is personal estate of the deceased amounting to at least twenty dollars, or that the debts due from him amount to that sum, and in the latter case, that he left that amount in value of real estate; and in case no administration is granted for the reasons aforesaid, the personal estate of said deceased shall become the property of his widow, if any, otherwise of the next of kin, who may appropriate the same without being chargeable as executors in their own wrong.

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

SEC. 7. When any judge of probate is interested either in his own right, in trust, or in any other manner, or is within the degree of kindred, by which in law he may, by any possibility, be heir to any part of the estate of any person deceased, to an amount in either case not less than one hundred dollars, such estate shall be settled in the probate court of any adjoining county, which shall have as full jurisdiction thereof, as if the deceased had died therein. If his interest arises after he has regularly assumed jurisdiction of such estate, or existed at the time of his appointment to office; and in all cases where an executor, administrator, or guardian, whose trust is not fully executed, is appointed and qualified as judge of probate for the county, in which his letters were granted, further proceedings therein shall be transferred to the probate court in any adjoining county, and there completed as if such court had had original jurisdiction thereof; and in all such cases the register of probate in such adjoining county, shall transmit copies of all records

CHAP. 63.

22 Maine, 549.
32 Maine, 102.
R. S., c. 105,
§ 3, 4.
1848, c. 80.

In what cases
administration
shall not be
granted, &c.
R. S., c. 105,
§ 39, 40.
1847, c. 5.
1848, c. 75.

Court first
commencing
proceedings to
have jurisdic-
tion through-
out, &c.
R. S., c. 105,
§ 4, 22.

When judge
interested,
jurisdiction
transferred to
adjoining
county.
R. S., c. 105,
§ 18, 19.
1841, § 15.
1841, c. 149, § 1.
1852, c. 278,
§ 1, 2.

CHAP. 63.

This chapter applicable to probate districts.

R. S., c. 105, § 37.

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

1841, c. 149, § 3.

Oaths required may be taken before judge or justice of the peace.

R. S., c. 105, § 23.

Judge may appoint magistrate to administer oath.

R. S., c. 105, § 38.

Judge not to be counsel in cases incompatible.

R. S., c. 105, § 20.

No bond sufficient unless approved by judge.

R. S., c. 105, § 36.

Registers, how selected; oath and bond, &c.

R. S., c. 105, § 9, 10, 11, 1856, c. 210.

relating to such estate, to the probate office of the county where such estate belongs, to be there recorded.

SEC. 8. Where parts of a county are designated by law for a separate probate district, it shall be deemed a county for all purposes of this and other applicable chapters; and appeals from the judge of probate thereof shall be cognizable in the county where such district is situated.

SEC. 9. Every judge of probate, upon first entering on the duties of his office, shall examine the records, decrees, and certificates, and the proceedings connected therewith, which his predecessor left without being signed and authenticated, and if he finds them correct, he shall sign and authenticate them, and they shall then be as valid to all intents and purposes, as if it had been done by his predecessor while in office.

SEC. 10. All oaths, required to be taken by executors, administrators, trustees, or guardians, except to the truth of inventories or accounts by them rendered, and all oaths required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by license of any judicial or probate court, may, at any convenient time and place, be administered by the judge of probate or by any justice of the peace; and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded.

SEC. 11. If any person, required to make oath to any inventory or account to be settled by the judge of probate, is unable to attend by reason of infirmity or otherwise, or resides more than thirty miles from the place where the court of probate is held, the judge, by a commission issued for the purpose, may authorize any disinterested magistrate to administer such oath, who shall return a certificate thereof to the judge, with such commission and inventory or account annexed, and the vouchers to prove the same.

SEC. 12. No judge of probate shall have a voice in judging and determining, nor be attorney or counselor in or out of court in any civil action or matter, which depends on or relates to any sentence or decree made by him in his office; nor in any civil action for or against any executor, administrator, guardian, or trustee under any last will and testament, as such, within his county.

SEC. 13. No bond required by law to be given to the judge of probate, or to be filed in the probate office, shall be deemed sufficient, unless examined and approved by the judge, and such approval, under his official signature, written thereon.

SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

SEC. 14. Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as provided respecting county commissioners by chapter seventy-eight. They enter upon the discharge of their duties

on the first day of January following, but before doing so, they shall be duly sworn, and give bond to the treasurer of their county with sufficient sureties, in the sum of not less than one hundred, nor more than one thousand dollars, at the discretion of the judge of probate, who shall certify his approval thereon; and they shall have the care and custody of all files, papers, and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship granted, accounts allowed, and all orders and decrees of the judge, and such other matters as the judge directs.

SEC. 15. The condition of such bond shall be for keeping up, seasonably, and in good order, the records of the court; making and keeping correct and convenient alphabets of the records, and for the faithful discharge of all other duties of office; and if such register forfeits his bond, he shall thenceforth be forever disqualified from holding said office, and if he neglects to complete his records for more than six months at any one time, sickness or any extraordinary casualty excepted, such neglect shall be adjudged a forfeiture.

Conditions of bond, &c.
R. S., c. 105,
§ 11, 12.

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

In his absence or death, judge may appoint a register pro tem.
R. S., c. 105,
§ 13, 14.

SEC. 17. Every judge of probate and the justices of the supreme court of probate, shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall put it in suit; and the money thus recovered shall be applied for the expenses of duly completing the records of such register under the direction of said judge, and the surplus, if any, shall inure to the county; but if it is not sufficient for that purpose, the treasurer may recover the deficiency of the register in an action on the case.

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.

SEC. 18. No register of probate shall be attorney or counselor in or out of court in any suit or matter pending in the court, of which he is register, nor in any appeal therefrom; nor be executor, administrator, trustee, guardian, commissioner of insolvency, appraiser or divider of any estate in any case, that is within the jurisdiction of said court, nor be in any manner interested in the fees or emoluments arising therefrom.

Register not to be counsel in cases incompatible.
R. S., c. 105,
§ 21.

SUPREME COURT OF PROBATE.

SEC. 19. The supreme judicial court is the supreme court of probate, and has appellate jurisdiction in all matters determinable by the several judges of probate; and any person aggrieved by any order, sentence, decree, or denial of such judges, may appeal therefrom to the supreme court to be held within and for the same county, if he claims his appeal within thirty days from the date of the proceeding appealed from; or if, at that time, he was beyond sea, or out of the United States, and had no sufficient

Supreme judicial court to be supreme court of probate.
19 Maine, 260.
27 Maine, 78.
30 Maine, 538.
34 Maine, 41.
R. S., c. 105,
§ 24, 25, 29.
R. S., c. 96,
§ 29.

CHAP. 63.

Appellant to file bond within ten days, &c.

R. S., c. 105, § 26, 27.

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

R. S., c. 105, § 30, 31.

Proceedings if appellant fails to enter appeal.

R. S., c. 105, § 28.

After appeal, proceedings in probate court to cease until, &c.

R. S., c. 105, § 32.

Appeal to be heard at next term, &c.

R. S., c. 105, § 27, 33, 34.

Costs may be allowed in contested cases.

R. S., c. 105, § 35.

attorney within the state, within thirty days after his return or constitution of such attorney.

SEC. 20. Within ten days after claiming his appeal, he shall file in the probate office his bond to the adverse party for such sum and with such sureties, as the judge approves; conditioned to prosecute his appeal with effect and pay all intervening costs and damages, and such costs as the supreme court taxes against him; and he shall file the reasons of appeal with the register of the court appealed from, within ten days after the bond is filed, and serve all the other parties, who appeared before the judge of probate in the case, with a copy of such reasons attested by such register, fourteen days at least before the sitting of the appellate court; but in case of controversy between a person under guardianship with his guardian, the supreme court may sustain an appeal on the part of the ward without such bond.

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

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

SEC. 23. After an appeal is claimed, and the bond and reasons of appeal filed, all further proceedings, in pursuance of the matter appealed from, shall cease, until the determination of the supreme court thereon.

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

SEC. 25. In all contested cases in the original or appellate court of probate, legal costs may be allowed to either party, to be paid by the other, or to either or both parties, to be paid out of the estate in controversy, as justice requires; and executions may be issued therefor as in courts of common law.