

# MAINE STATE LEGISLATURE

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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.

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PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

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BANGOR:  
WHEELER & LYNDE.

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1857.

CHAP. 65. residue of said personal estate as aforesaid, or transmit it to the foreign executor or administrator, if any, to be distributed according to the law of the place where the deceased had his domicile.

If such persons died insolvent, &c.  
R. S., c. 107,  
§ 22, 23, 24.

SEC. 27. If such person died insolvent, his estate found in this state, shall, as far as practicable, be so distributed that all his creditors here and elsewhere may share in proportion to their debts; and to this end his estate shall not be transmitted as aforesaid, until all his resident creditors have received the proportion that they would, if the whole estate applicable to the payment of creditors, wherever found, was divided among all said creditors in proportion to their debts without preferring any one kind of debt to another; and in such case, no foreign creditor shall be paid out of the assets found here, till all the resident creditors have received their proportion as herein provided.

If any residue, how distributed.  
R. S., c. 107,  
§ 25.

SEC. 28. If there is any residue, after such payment to the citizens of this state, it may be paid to any other creditors who have proved their debts here, in proportion to the amount, but no one shall receive more than would be due to him, if the whole estate were divided ratably among all the creditors as before provided; and the balance, if any, may be transmitted to the foreign executor or administrator, or if there be none such, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all the resident and foreign creditors who have proved their debts in this state.

## CHAPTER 66.

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## DISPOSITION OF INSOLVENT ESTATES.

SEC. 1. An insolvent estate, after payment of the expenses of the funeral, and of administration, is to be appropriated:

*First.* — To the allowance made to the widow or widower and children.

*Second.* — To the expenses of the last sickness.

*Third.* — To debts entitled to a preference under the laws of the United States.

*Fourth.* — To public rates and taxes, and money due the state.

*Fifth.* — To all other debts.

A creditor of one class is not to be paid, until creditors of preceding classes, of which the administrator had notice, are fully paid.

SEC. 2. When an estate is not sufficient to pay more than such expenses, and claims of the first class, the administrator is exonerated from payment of any claim of a subsequent class, without making a representation of insolvency.

Priority of claims and of payment.  
 R. S., c. 109, § 1, 2.

When representation of insolvency need not be made.  
 24 Maine, 25.  
 R. S., c. 109, § 4.

## COMMISSIONERS AND PROCEEDINGS.

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

When representation is to be made.  
 Commissioners sworn; report.  
 R. S., c. 109, § 3.

SEC. 4. The commissioners are to appoint convenient times and places for their meetings, and to give notice thereof, as the judge directs. Six months after their appointment shall be allowed in the first instance for the presentation of claims. An additional time, not exceeding in the whole eighteen months, may be allowed therefor, or for any particular claim or claims specified in the order of the judge.

Times, places, and notice, of meetings.  
 Time allowed for presentation of claims.  
 5 Greenl. 45.  
 19 Maine, 261.  
 R. S., c. 109, § 5, 6.

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Claims to be presented in writing, supported by oath, stating claimant's security and credits.  
R. S., c. 109, § 6, 7.

Claim of one refusing to be examined to be rejected. False testimony perjury.  
R. S., c. 109, § 8.

If claimant hold security, value of to be deducted. When either party is dissatisfied, &c.  
R. S., c. 109, § 10, 11.

Interest on claims. Report may be recommitted, &c. Fees.  
R. S., c. 109, § 9, 12, 27, 28.

Contingent claims proved, and distinguished, &c.  
32 Maine, 460.  
R. S., c. 109, § 13, 14.  
If absolute in four years, entitled to share; otherwise, sum reserved to be distributed.  
R. S., c. 109, § 15, 16.  
1849, c. 96.

SEC. 5. Claims must be presented in writing, supported by affidavit of the claimant, or of some person cognizant thereof, stating what security the claimant has, if any, and the amount of credit to be given, according to his best knowledge and belief. The commissioners may require a claimant to be sworn, and may examine him on all matters relating to his claim; and administer oaths to claimants and witnesses.

SEC. 6. If the claimant refuses to submit to such examination, his claim shall be rejected. If he or a witness knowingly answers or testifies falsely in relation to any claim, he shall be deemed guilty of perjury.

SEC. 7. When a claimant holds security for his claim of less value than the amount of it, he is to be allowed only the difference between it and such value, estimated by the commissioners, who shall give him a certificate thereof. If either party is dissatisfied with that valuation, the judge, on application and after notice to the other party, may appoint three disinterested men to appraise on oath such security and make return thereof, by them signed, to the court; and their appraisal shall be substituted for the first, and the amount allowed varied accordingly. If the claimant declines to take the property at such appraisal, and relinquishes his claim thereon, its appraised value is to be added by the judge to the sum allowed on which he is to receive his dividend, and the property appraised is to be disposed of by the administrator.

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

## CONTINGENT CLAIMS.

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

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

## APPEALS.

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

Appeal by written notice at probate office within twenty days. Notice when administrator appeals.  
35 Maine, 121.  
R. S., c. 109, § 17, 18.

SEC. 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 is 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.

One who has by accident failed to give notice, may obtain redress by petition to S. J. Court, &c.  
R. S., c. 123, § 9.

SEC. 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.

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

36 Maine, 138.  
R. S., c. 109, § 17, 19, 20.

SEC. 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, and judgment is to be rendered for either party for the balance ascertained at the trial.

Proceedings in the suit, and judgment.  
R. S., c. 109, § 20, 21.

SEC. 15. When notice of appeal is 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.

Parties may agree upon a reference. Creditor may be examined.  
R. S., c. 109, § 22, 23.

SEC. 16. If final judgment or award is made against an administrator, no execution can be issued, except for costs 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 awarded against him to the estate, but not when he appealed without reasonable cause shown for it.

Judgment against administrator to be added to list of contingent debts, &c.  
R. S., c. 109, § 24, 25.

## SUITS PENDING AND COMMENCED.

SEC. 17. Actions pending on claims not preferred, when a representation of insolvency is made, may be discontinued with-

Actions pending, proceedings in them, &c.

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2 Greenl. 8,  
109.  
21 Maine, 263.  
36 Maine, 138.  
R. S., c. 109,  
§ 28.  
1849, c. 96.  
1854, c. 98, § 2.

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

R. S., c. 109,  
§ 29.  
1849, c. 96.  
1854, c. 98, § 3.

Demands not  
available may  
be sold and  
assigned.

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

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

5 Greenl. 45.  
6 Greenl. 268.  
8 Greenl. 22.  
11 Maine, 50.  
R. S., c. 109,  
§ 30.

Trespasses on  
real estate of  
insolvents.  
R. S., c. 109,  
§ 37.

Provisions  
applicable to  
estates under  
charge of  
executors, &c.

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

Executor  
giving bond as  
residuary  
legatee may  
make repre-  
sentation of  
insolvency.  
R. S., c. 109,  
§ 38.

Decree of  
distribution  
when and how  
made.

R. S., c. 109,  
§ 27.

out costs; or continued, tried, and judgment rendered, with the effect, and satisfied in the manner, provided in cases of appeal. No action can be commenced, except on a preferred claim, after such representation and the appointment of commissioners.

SEC. 18. Claims not presented, and claims disallowed without appeals taken, are forever barred, and cannot be recovered or filed in set-off, unless further assets come to the hands of the administrator after distribution, when on petition to the judge of probate and notice to all parties interested, if proved or not disputed, they may be allowed and paid as provided for contingent debts.

## MISCELLANEOUS PROVISIONS.

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

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

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

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

SEC. 23. When an executor has given bond as a residuary legatee, and the estate is found to be insufficient to pay the debts, he may make a representation of insolvency; and proceedings thereon may take place as in other cases. Such proceedings and distribution operate as a bar to a suit on his bond for the recovery of a debt.

## DECREE OF DISTRIBUTION.

SEC. 24. After the expiration of thirty days from the time when the report on claims is made, the judge is to make a decree of distribution of the balance in the hands of the administrator among the creditors, according to the provisions of this chapter. In case of further assets, he is to make another distribution on the same principles.