

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.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

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

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2. By whom guardians may be nominated and appointed.
3. Guardian's authority over the minor's person and property.

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THE POWERS AND DUTIES OF GUARDIANS.

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16. Married women not to be guardians, nor husbands in right of wives.
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DISABILITY OF ADULTS UNDER GUARDIANSHIP.

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MINORS.

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

By whom nominated and appointed. R. S., c. 110, § 2, 3, 4.

Their authority over the minor's person and property. R. S., c. 110, § 5.

When guardians may be appointed for insane and incompetent persons, &c. R. S., c. 110, § 7. 1856, c. 6. 1857, c. 40, § 1, 2.

Municipal officers to make inquisition

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

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

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

INSANE AND INCOMPETENT PERSONS, SPENDTHRIFTS, AND CONVICTS.

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

First.—Insane persons, including insane married women whose husbands have left them without making provision for their support, or who are possessed of real or personal estate, and from any cause stand in need of relief, or whose property is in danger of being wasted or lost; and insane persons described in section twenty-three of chapter one hundred and forty-three; and may appoint the husband or other suitable person guardian of an insane wife, on application of the municipal officers of the town where she belongs, and he shall have the same powers as other guardians, and may cause her to be supported, from her estate, in the insane hospital or otherwise.

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

Third.—Convicts, committed to the state prison for a term less than for life.

SEC. 5. Before appointing any such guardian, except for convicts, the judge shall issue his warrant to the municipal officers of the town where such person resides, requiring them to

make inquisition into the facts stated in the application; and they shall decide, upon such evidence as they are able to obtain, whether the facts so stated are true; and, as soon as may be, report the result to the judge; and if he shall, on said report, and on due notice to the other party, and a hearing thereon, adjudge that such person is insane, a spendthrift, or incapable as aforesaid, he shall appoint a guardian.

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

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

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

SEC. 9. Such guardians shall have the custody of the persons of their wards, if resident in the state, except so far as the court of probate may from time to time otherwise order; and every guardian appointed over any person for gaming, idleness, drinking, or debauchery, shall inculcate upon him habits of sobriety and industry, and when of sufficient health and strength, with the approbation of the judge of probate, he may bind him out to labor, not exceeding six months at any one time, or employ him in his own service; giving credit for his earnings, or such sum as he receives therefor.

THE POWERS AND DUTIES OF GUARDIANS.

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

First. — For the faithful discharge of his trust.

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

Third. — To render a just and true account of his guardianship when by law required.

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

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into the facts, and report, &c. 18 Maine, 385. R. S., c. 110, § 8, 9, 13.

If municipal officers are applicants, &c. R. S., c. 110, § 10, 13.

All contracts and sales of estate, after filing copy of such application, &c., void. R. S., c. 110, § 11.

Ward's expenses, in defending himself, &c. R. S., c. 110, § 12.

Guardian to have custody of ward's person, &c. 31 Maine, 196. R. S., c. 110, § 14.

Guardian to give bonds. Conditions. 31 Maine, 254. R. S., c. 110, § 15.

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Estates of wards to be appraised, &c.
R. S., c. 110, § 16.
1857, c. 20, § 1.

SEC. 11. Thereupon the judge of probate shall appoint three suitable disinterested persons to appraise the estate of the ward, as estates under administration are appraised; and the guardian shall return the inventory under oath, within such time as the judge in his warrant to the appraisers directs, if the ward is a minor, and in all other cases, within three months after his appointment; if he lives more than ten miles from court, the oath may be administered by a justice of the peace.

How guardian shall manage ward's estate, &c.
R. S., c. 110, § 19.

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

Shall settle and pay ward's debts, &c.
17 Maine, 222.
R. S., c. 110, § 20, 21.
1845, c. 150.

SEC. 13. He shall settle all accounts of his ward; pay all his just debts out of his personal estate, so far as it will go without disposing of effects necessary for the use and comfort of the ward and his family, and in case of deficiency thereof, then out of the real estate; demand, sue for, and receive all his dues, compound for the same and give discharges thereof, on such terms as the judge of probate authorizes; appear for and represent his ward in all legal proceedings, unless another is appointed for that purpose as guardian or next friend; and may insure any real estate of his ward, liable to be injured by fire, at the expense of the estate, and do all things relating thereto as if he was the owner.

May act in partition of real estate, &c.
R. S., c. 110, § 22.
1852, c. 270, § 1.

SEC. 14. He may join in and assent to a partition of his ward's real estate on a petition or other legal process therefor; assign and set out dower in such estate to any widow entitled thereto; appoint an appraiser of real estate taken on execution against or in favor of his ward; and when his ward, prior to the guardianship, had lawfully contracted to convey real estate on conditions, and had failed to do so, he may convey it according to the terms of the contract, and shall be accountable therefor on his bond.

Sales of ward's estate, and investment of funds.
R. S., c. 110, § 23.
1857, c. 37.

SEC. 15. Any judge of probate, on the application of a guardian, or of any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell or transfer any stock in the public funds, or other personal property held by him as guardian, or any pews or interest in pews in a meeting-house, belonging to such estate, as goods and chattels, and to invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner most for the interest of all concerned; and the judge may make such further order, and give such directions, as the case requires, for managing, investing, and disposing of the effects in the hands of the guardian, or for buying in any particular estate, remainder, reversion, mortgage, or other incumbrance upon any real estate belonging to the ward.

SEC. 16. No married woman, during her coverture, shall be appointed guardian; and if any female guardian is married, her authority, as such, shall cease; nor shall her husband be guardian in her right.

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Married women not to be guardians, &c.

R. S., c. 110, § 24.

SEC. 17. The judge of probate may dismiss any guardian, when it appears necessary, or on the request of such guardian, and if the case require it, appoint another in his place; but previously to any such removal, except by request of the guardian, he shall give fourteen days notice to such guardian to appear and show cause to the contrary; and on the marriage of any female ward under twenty-one years of age, the authority of her guardian shall cease.

Judge may remove guardians. Notice to be given, &c.
R. S. c. 110, § 25, 26.

SEC. 18. Every guardian shall settle his account with the judge of probate at least once in three years, and as much oftener as the judge cites him for that purpose; and on neglect or refusal to do so, he shall be deemed to have broken the condition of his bond; be liable to removal therefor, although the ward may be indebted to him; and forfeit all allowance for his personal services, unless it appears to the judge that such neglect arose from sickness, or other unavoidable accident.

How often guardian is to settle account, &c.

1 Greenl. 186.
R. S., c. 110, § 27, 28.

SEC. 19. On the settlement of every account of the guardian, except when intended as a final one, the judge shall examine his bond, and if it is found insufficient in amount or responsibility of sureties, he shall require a new and sufficient one; and if the guardian does not give it, he shall be removed, and another appointed.

Judge to examine bond, &c.

R. S., c. 110, § 29.

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

Oath of guardian, &c.

R. S., c. 110, § 30.

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

Guardianship of person out of state, &c.

R. S., c. 110, § 32.

DISABILITY OF ADULTS UNDER GUARDIANSHIP.

SEC. 22. When a person over twenty-one years of age is under guardianship, he shall be deemed incapable of disposing of his property otherwise than by his last will, or of making any contract, notwithstanding the death, resignation, or removal of the guardian; and in such case a new guardian may be appointed without further intervention from the municipal officers. When on application of any such person or otherwise, the judge finds that a guardian is no longer necessary, he shall order the remaining property of the ward to be restored to him, except a legal compensation to the guardian for his services.

Disability of adults under guardianship to dispose of estate, &c.

R. S., c. 110, § 31.

GUARDIANS AD LITEM.

SEC. 23. Nothing in this chapter shall affect the power of any court of common law, probate court, or justice of the peace, to appoint a guardian to defend the interests of any minor or other incapacitated person in any suit pending in such court, nor

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

R. S., c. 110, § 33.

CHAP. 67. their power to allow or appoint any one, as next friend of such person, to commence, prosecute, or defend, 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.

SEC. 24. Upon complaint made to the judge of probate by any guardian, ward, creditor, or other person interested in the estate, or having claims thereto in expectancy as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the judge may cite and examine such suspected person, and proceed with him in the manner provided in relation to those suspected of embezzling the estates of deceased persons.

Punishment
for embezzle-
ment.
R. S., c. 110,
§ 18.

SEC. 25. If any guardian, having the charge and custody of any property belonging to his ward, embezzles the same in violation of his trust, or fraudulently converts the same to his own use, he shall be punished by fine not exceeding five thousand dollars, or confinement to hard labor for a term not exceeding ten years, or both, according to the aggravation of the offence.

CHAPTER 68.

TESTAMENTARY TRUSTEES.

- SEC. 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.
17 Maine, 137.
R. S., c. 111,
§ 1.

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

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

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