

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAPTER 66.

INSOLVENT ESTATES.

DISPOSITION OF INSOLVENT ESTATES.

- SEC. 1. Priority of claims and of payment.
2. When representation of insolvency need not be made.

COMMISSIONERS AND PROCEEDINGS.

- SEC. 3. When representation of insolvency is to be made. Commissioners to be appointed and sworn; and report. Warrant may be revoked.
4. Meetings; notice. Time allowed to prove claims; may be extended.
5. How claims are to be presented and proved.
6. If claimant refuses to be examined, or testifies falsely.
7. Value of claimant's security to be deducted. Appraisal.
8. Interest on claims. Report may be recommitted. Fees. Claims of administrator.

CONTINGENT CLAIMS.

- SEC. 9. Contingent claims, how to be treated.
10. Proceedings if absolute in four years, or if not.

APPEALS.

- SEC. 11. Appeals, how and when to be made, by claimant, heir, creditor or administrator. Bond and notice, when to be given.
12. Failing to give notice, or to prosecute after notice, appellant may apply to the S. J. Court.
13. Appeal, when and how prosecuted; claim deemed contingent.
14. Proceedings in the suit, and judgment.
15. Appealed claims may be referred. Creditor may be examined.
16. Judgment against administrator to be added to claims allowed. Costs.

SUITS PENDING AND COMMENCED.

- SEC. 17. Proceedings in actions pending. Limitation.
18. Claims not presented or not allowed, barred, except in case of further assets.

MISCELLANEOUS PROVISIONS.

- SEC. 19. Penalty, if account of administration is not settled within six months after report of commissioners.
20. Waste or trespass on real estate of insolvents.
21. Insolvency of estates in hands of executors or guardians.
22. Executor who is residuary legatee may represent estate insolvent.

DECREE OF DISTRIBUTION.

- SEC. 23. Decree of distribution, when and how made; proceedings in case of further assets,
24. Account of payments may be allowed without notice.

CHAP. 66.

DISPOSITION OF INSOLVENT ESTATES.

Priority of claims and of payment.
R. S. c. 66, § 1.
18 Me. 270.
19 Me. 261.
24 Me. 25.

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.

When representation of insolvency need not be made.
R. S. c. 66, § 2.
1858, c. 32.
24 Me. 25.

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

COMMISSIONERS AND PROCEEDINGS.

When representation is to be made.
Commissioners sworn; report.
R. S. c. 66, § 3.
1858, c. 32, § 2.
1864, c. 225.

SEC. 3. When an estate appears to be insufficient to pay the debts of the fifth class, 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. But the judge may, for sufficient cause, revoke such appointment, and issue a new commission, or proceed otherwise, as the case may require.

Meetings; notice. Time allowed to prove claims.
R. S. c. 66, § 4.
48 Me. 406.

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.

How claims are to be presented and proved.
R. S. c. 66, § 5.

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.

If claimant refuses to be examined, or testifies falsely.
R. S. c. 66, § 6.

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.

CHAP. 66.

Value of claimant's security to be deducted. Appraisal. R. S. c. 66, § 7. 24 Me. 36.

SEC. 8. Interest is to be cast on claims allowed from the death of the debtor to the time of the commissioners' first 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.

Interest on claims. Report may be recommitment. Fees. Claims of administrator. R. S. c. 66, § 8. 19 Me. 261. 48 Me. 481.

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.

Contingent claims, how to be treated. R. S. c. 66, § 9. 32 Me. 460.

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.

Proceedings, if absolute in four years, or if not. R. S. c. 66, § 10.

APPEALS.

SEC. 11. The claimant, the administrator, an heir-at-law or any creditor, may appeal from the decision of the commissioners, by giving written notice thereof at the probate office within twenty days after their report is made. If the appellant is an heir-at-law or creditor other than the claimant, he shall file in the probate office with his notice of appeal a bond to the claimant with sureties, to the satisfaction of the judge, for the payment of all costs awarded against him.

Appeal, how and when to be made by claimant, heir, creditor or administrator: Bond; notice. R. S. c. 66, § 11. 1870, c. 113, § 10. 35 Me. 121. 36 Me. 138.

CHAP. 66.

48 Me. 481.
49 Me. 87.
54 Me. 345.

When the appeal is made by any party other than the claimant, 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.

In case of accident or mistake, appellant may apply to the S. J. C.
R. S. c. 66, § 12.
c. 82, § 6.
1868, c. 201.

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, or, after giving such notice, has, by accident or mistake, omitted further to prosecute this appeal, 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 administration was granted, for the recovery of his claim, but not after four years from granting administration. No decree of distribution can be disturbed by a judgment so recovered.

Appeal when and how prosecuted; claim deemed contingent.
R. S. c. 66, § 13.
36 Me. 138.
55 Me. 511.

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.

Proceedings in the suit, and judgment.
R. S. c. 66, § 14.

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.

Appealed claim may be referred.
Creditor may be examined.
R. S. c. 66, § 15.
55 Me. 511.

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.

Judgment against administrator to be added to claims allowed. Costs.
R. S. c. 66, § 16.
55 Me. 523.

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 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.

SUITS PENDING AND COMMENCED.

Proceedings in actions pending. Limitation.
R. S. c. 66, § 17.

SEC. 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 satis-

fied 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 from recovery by suit. Claims disallowed cannot be filed and proved in set-off, except to the amount of counter claims on behalf of the estate. But when, after distribution, further assets come into the hands of the administrator, claims not presented to the commissioners, on petition to the judge of probate, and after due notice, if proved or not disputed, may be allowed and paid as provided for contingent claims.

CHAP. 66.

2 Me. 8, 109.
21 Me. 263.
36 Me. 138.
49 Me. 87.
54 Me. 345.
55 Me. 99.

Claims not presented or not allowed, barred, except in case of further assets.
R. S. c. 66, § 18.
1860, c. 136.
1870, c. 113,
§ 11.

MISCELLANEOUS PROVISIONS.

SEC. 19. 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. 20. 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. 21. 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 an allowance for the support of their wards and their families shall take the place of an allowance to widows and children.

SEC. 22. 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.

Penalty, if account is not settled in six months after report.

R. S. c. 66, § 20.
5 Me. 45.
6 Me. 268.
8 Me. 22.
11 Me. 50.

Waste or trespass on real estate of insolvent.

R. S. c. 66, § 21.

Insolvency of estates in hands of executors and guardians.

R. S. c. 66, § 22.
See c. 67 § 15.

Executor who is residuary legatee may represent estate insolvent.

R. S. c. 66, § 23.

DECREE OF DISTRIBUTION.

SEC. 23. 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.

Decree of distribution, when and how made.

R. S. c. 66, § 24.

SEC. 24. After any such decree of distribution, the judge may, without further notice, audit and allow the account of the executor, administrator or guardian for payments made pursuant to such decree.

Account of payments may be allowed without notice.

1861, c. 36 § 2.