

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:
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CHAP. 67.**CHAPTER 67.****APPOINTMENT, POWERS AND DUTIES OF GUARDIANS. ADOPTION OF CHILDREN.****MINORS.**

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MINORS.

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.

Guardians for minors, exceptions.
 R. S. c. 67, § 1.
 53 Me. 401.

SEC. 2. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; but a guardian for such a minor, named by the deceased father in his last will, shall be appointed if suitable. If the minor is over that age, he may nominate his own guardian in the presence of the judge or register of probate, or 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, appointed before he was fourteen years of age; 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.

How nominated and appointed.
 R. S. c. 59, § 24.
 R. S. c. 67, § 2.
 1869, c. 6.
 1870, c. 113,
 § 12.
 53 Me. 401.

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, these duties shall devolve on the guardian; and in any case the judge may decree them to him, if he deems it for the welfare of the minor, till his further order.

Power over minor's person and property.
 R. S. c. 67, § 3.
 1861, c. 16.
 31 Me. 196.
 53 Me. 549.

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:

Guardians for incompetent adults, in what cases to be appointed.
 R. S. c. 67, § 4.
 1858, c. 29,
 §§ 1, 2.
 48 Me. 360.
 49 Me. 269, 360.

First.—Persons who are insane, or of unsound mind, including married women, who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates, or to protect their rights.

Second.—Persons, who, by excessive drinking, gaming, idleness,

[CHAP. 67. or debauchery of any kind, have become incapable of managing their own affairs, or who 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.

Guardians for convicts, insane persons in the hospital, and incompetent married women, how appointed. Proceedings when municipal officers are applicants. R. S. c. 67, §§ 5, 6. R. S. c. 143, § 23. 1858, c. 29, §§ 1, 2. 18 Me. 385.

SEC. 5. Guardians may be appointed, on application as aforesaid, for convicts, and for persons certified by the municipal officers of any town to have been committed by them to the insane hospital, upon proof of the facts, without further action of the municipal officers, or personal notice to the parties; and for insane or incompetent married women, after personal notice and a hearing, upon proof of the alleged insanity or incompetency, without inquisition by the municipal officers of the town. In all cases where the municipal officers or overseers of the poor are applicants, if they 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 further inquisition, if such person is present, or on such further notice, if any, as he thinks reasonable. Or, if such officers have not given such notice, the judge shall cause personal notice to be given to the party, before the hearing and adjudication.

When inquisition is to be made by municipal officers. R. S. c. 67, § 5. 18 Me. 385.

SEC. 6. In all other cases, the judge shall issue his warrant to the municipal officers of the town where such person resides, requiring them to make inquisition into the allegations made in the application; and they shall decide, upon such evidence as they are able to obtain, whether such allegations are true; and, as soon as may be, report the result to the judge; and if he shall, on said report, after personal 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.

After notice, and filing copy of application, contracts of parties to be void. R. S. c. 67, § 7.

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.

Allowance to ward to defend himself. R. S. c. 67, § 8.

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.

Power of guardian over ward's person. Duties. R. S. c. 67, § 9.

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 debauch-

ery, 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. CHAP. 67.

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: Bond of guardians. Conditions. R. S. c. 67, § 10. 22 Me. 549. 31 Me. 254.

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.

SEC. 11. The judge of probate shall appoint three disinterested persons to appraise the estate of the ward; and the guardian shall return the inventory under oath, within such time as the judge in his warrant directs, if the ward is a minor, and in all other cases, within three months after his appointment, or such further time as the judge may allow. The warrant for an inventory may be revoked for cause, and a new one issued if deemed necessary. Inventory of ward's estate to be returned. R. S. c. 67, § 11. 1861, c. 36, §§ 1, 3. 1864, c. 225. 1869, c. 8, § 4.

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. How guardian shall manage ward's estate. R. S. c. 67, § 12. 48 Me. 279.

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 estate of his ward at the expense of the estate, and do all necessary acts relating to such insurance. He shall pay ward's debts, collect dues, appear for him in court, and insure his estate. R. S. c. 66, § 13. 17 Me. 222. 48 Me. 279. 53 Me. 549.

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 He may act in partition, set out dower, ap-

CHAP. 67. 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.

He may adjust claims by commissioners, reference or compromise, or represent estate insolvent.

R. S. c. 66, § 22.
1859. c. 115.
1864, c. 250.
See c. 66 § 21.

Sale of ward's stocks, chattels and pews; investment of funds.

R. S. c. 67, § 15.
1870, c. 113,
§ 13.

A married woman not to be guardian.
R. S. c. 67, § 16.

Judge may dismiss guardian, or remove after notice.

R. S. c. 67, § 17.

Settlement of guardian's accounts.
R. S. c. 67, § 18.
1 Me. 186.
31 Me. 254.
54 Me. 332.

SEC. 15. The guardian of any insane or incapacitated adult may apply for commissioners to be appointed to decide upon claims against his ward's estate, deemed exorbitant, unjust or illegal; may be authorized to refer or compromise claims for or against said estate; or may, if necessary, represent said estate insolvent, with like proceedings, rights and liabilities, as in the case of estates of deceased persons.

SEC. 16. The judge of probate, on petition of the guardian or any party interested, with or without notice to other persons interested, as the judge deems necessary, 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. 17. 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.

SEC. 18. 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, personal notice shall be given to such guardian, or public notice if his residence is out of the state or unknown, 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.

SEC. 19. 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.

SEC. 20. On the settlement of every account of the guardian, **CHAP. 67.** except when intended as a final one, the judge shall examine his His bond to be examined; proceedings if insufficient. R. S. c. 67, § 19. See c. 72, § 2. bond, and if then or at any time 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.

SEC. 21. 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 to his account. R. S. c. 67, § 20.

SEC. 22. 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. Guardian of minor out of the state. R. S. c. 67, § 21.

DISABILITY OF ADULTS UNDER GUARDIANSHIP.

SEC. 23. 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. Adults under guardianship not to dispose of estate, or make contracts. R. S. c. 67, § 22. 56 Me. 308.

GUARDIANS AD LITEM.

SEC. 24. 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 their power to allow or appoint any one, as next friend of such person, to commence, prosecute, or defend, any suit in his behalf. Guardians ad litem may be appointed. Next friends. R. S. c. 67, § 23.

SEC. 25. Pending any proceedings in the probate court in which any married woman is interested, when, after personal notice and a hearing, the judge is satisfied that, by reason of age or mental infirmity, she is incompetent to manage her affairs or protect her rights, he may appoint her husband or other suitable person her guardian for the special purpose, with power to institute or defend proceedings in law or equity necessary for the interests of his ward, and no proceeding thus instituted shall be delayed or disposed of without the consent of such guardian. Special guardians for married women in certain cases. 1838, c. 29, § 2.

EMBEZZLEMENT OF THE WARD'S ESTATE.

SEC. 26. 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 Persons suspected of embezzlement may be cited.

CHAP. 67. one suspected of having concealed, embezzled, or conveyed away any and examined. of the money, goods, or effects of the ward, the judge may cite and R. S. c. 67, § 24. examine such suspected person, and proceed with him in the manner provided in relation to those suspected of embezzling the estates of deceased persons.

Penalty for embezzlement by guardian. R. S. c. 67, § 25.

SEC. 27. 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.

ADOPTION OF CHILDREN.

Who may adopt a child. R. S. c. 59, § 27.

SEC. 28. Any inhabitant of this state not married, or any husband and wife jointly, may petition the judge of probate for their county, for leave to adopt a child not theirs by birth, and for a change of his name.

Whose consent is required. R. S. c. 59, § 27. 1867, c. 37. 1870, c. 113, § 14.

SEC. 29. Before such petition is granted, written consent to such adoption must be given by the child, if of the age of fourteen years, and by each of his living parents, if not hopelessly insane or intemperate; or, when a divorce from the bonds of matrimony or from bed and board has been decreed to either parent, written consent by the parent entitled to the custody of the child; or such consent by one parent, when, after such notice to the other parent as the judge deems proper and practicable, such other parent is considered by the judge unfit to have custody of the child. If there are no such parents, or if the parents have abandoned the child and ceased to provide for its support, consent may be given by the legal guardian; if no such guardian, then by the next of kin in this state; if no such kin, then by some person appointed by the judge to act in the proceedings as the next friend of such child.

Proceedings to be had in the probate court. R. S. c. 59, § 28.

SEC. 30. Thereupon, if the judge is satisfied of the identity and relations of the parties; of the ability of the petitioners to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child is the child of the petitioners, and that his name is thereby changed, without requiring public notice thereof.

Legal effect of such adoption. R. S. c. 59, § 29.

SEC. 31. By such decree the natural parents shall be divested of all legal rights in respect to such child, and he shall be free from all legal obligations of obedience and maintenance in respect to them; and he shall be, for the custody of the person and right of obedience and maintenance, to all intents and purposes, the child of his adopters, as if they had been his natural parents. But such adoption shall not

affect any rights of inheritance, either of the child adopted, or of the children or heirs of his adopters. CHAP. 68.

SEC. 32. Any petitioner, or any such child by his next friend, may appeal to the supreme court of probate from such decree, in the same manner and with the same effect, as in other cases, but no bond to prosecute his appeal shall be required of such child or next friend, nor costs be awarded against either. Appeal to the
supreme court
of probate
R. S. c. 59, § 30.

SEC. 33. The judge of probate, on the death of either of the adopters of such child, may make a reasonable allowance to such child from the personal estate of the deceased, if the circumstances of the case demand it. Allowance to
adopted child
from estate of
adopters.
1876, c. 113,
§ 15.

CHAPTER 68.

TESTAMENTARY TRUSTEES.

- SEC. 1. Bonds of trustees. Conditions.
2. When bonds may not be required.
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 4. Trustee may resign or be removed, after notice.
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 7. Such trustees to give bond.
 8. Inventory returned by trustee. *
 9. Trustees may refer or compromise claims.
 10. Courts may direct trust estates to be sold, and moneys invested.
 11. Equity powers of courts as to trusts.
 12. How bonds of trustees may be sued.
 13. Executors becoming trustees by operation of law.

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 condition as follows: Bonds of
trustees.
Conditions.
R. S. c. 68, § 1.
17 Me. 137.

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.

Third.—That he will render an account of the income and profits thereof, and of his payments and expenses, once in three years, and oftener if required by the judge.