

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



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## TITLE SIX.

## Powers and Duties of Courts of Probate.

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Are courts of record, have a seal, and may punish for contempt. R. S., c. 63, § 1. 47 Me., 86. 63 Me., 248.

SEC. 1. Courts of probate are courts of record. Each shall have an official seal, of which the register has the custody. They may issue any process necessary for the discharge of their official duties, and punish for contempt of their authority like the supreme judicial court.

## SELECTION, POWERS AND DUTIES OF JUDGES OF PROBATE.

Judges, how selected; terms commence, when. R. S., c. 63, § 2. [See Constitution, art. vi, § 7.]

SEC. 2. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners by chapter seventy-eight; and they enter upon the discharge of their duties on the first day of January following; but, when appointed to fill vacancies, their terms commence on their appointment.

Officers shall execute processes and attend courts; witnesses to appear under penalty. R. S., c. 63, § 3. 47 Me., 86.

SEC. 3. Sheriffs and their deputies, coroners and constables, shall execute all legal processes directed to them by any such judge who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he shall be paid as in other courts for similar services; and any person summoned before the judge 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 shall have fixed days and places for holding courts. R. S., c. 63, § 4. 27 Me., 116.

—adjournments.

SEC. 4. 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 necessary; and in case of the absence of the judge or vacancy in the office at the time of holding any court, the register may, by posting notice thereof at the probate

office, adjourn the same until the judge can attend or some other probate judge can be notified and attend. CHAP. 63.

SEC. 5. During the sickness, absence from the state or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county; and in case of the death of a judge, all necessary terms of the probate court for the county, may, at the request of the register, be held by the judge of another county, until the vacancy is filled. The orders, decrees and decisions of the judge holding such terms, have the same force and validity as if made by the judge of the county in which such terms are held.

In case of sickness, absence, inability or death of judge, another probate judge may hold his courts.  
R.S., c. 63, § 5.

SEC. 6. Each judge may take the probate of wills, and grant letters testamentary or of administration on the estates of all deceased persons, who, at the time of their death, were inhabitants or residents of his county, or who, not being residents of the state, died leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person confined in the state prison under sentence of death or of imprisonment for life; and has jurisdiction of all matters relating to the settlement of such estates. He may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law, and has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law.

Jurisdiction as to wills, and administration.  
1881, c. 38.  
32 Me., 103.  
45 Me., 287.  
63 Me., 249.  
74 Me., 89.

—adoption of children, change of names, and guardianship.  
R.S., c. 67, § 28.  
1876, c. 59.  
1881, c. 38.

SEC. 7. When a case is originally within the jurisdiction of the probate court in two or more counties, the one which first commences proceedings therein, retains the same exclusively throughout; and the jurisdiction assumed in any case, except in 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.

Court first commencing probate proceedings, to have jurisdiction.  
R.S., c. 63, § 7.  
58 Me., 227.  
63 Me., 249.  
74 Me., 89.

SEC. 8. When a 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 possibility, be heir to any part of the estate of a 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, becomes 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 in such adjoining county shall transmit copies of all records relating to such estate, to the probate office of the county where such estate belongs, to be there recorded.

When judge is interested, jurisdiction shall be transferred to adjoining county.  
R.S., c. 63, § 8.

SEC. 9. Where parts of a county are designated by law for a separate probate district, it is deemed a county for all purposes of this and

Probate districts.  
R.S., c. 63, § 9.

**CHAP. 63.** other applicable chapters; and appeals from the judge thereof are cognizable in the county where such district is situated.

Judge to certify unfinished acts of his predecessor.  
R.S., c. 63, § 10.

**SEC. 10.** Every judge, upon entering on the duties of his office, shall examine the records, decrees, and certificates, and all proceedings connected therewith, which his predecessor left unsigned or unauthenticated, 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 such duty had been done by his predecessor while in office.

Oaths required may be taken before judge, register or justice of the peace.  
R.S., c. 63, § 11.

**SEC. 11.** All oaths, required to be taken by executors, administrators, trustees, or guardians, except to the truth of 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 a judicial or probate court, may be administered by the judge or register 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. When no objection is made by parties interested, to the allowance of an account, administrators, executors, guardians and trustees may make oath thereto before a justice of the peace, and when they reside without the state, before a commissioner for the State of Maine or a United States consul.

—how administrators, etc., may make oath to accounts where no objection is made.  
1881, c. 8.

When judge may appoint commissioner to administer oath.  
R.S., c. 63, § 12.

**SEC. 12.** If a person, required to make oath to any 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 account annexed, and the vouchers to prove the same.

Judge not to be counsel in cases incompatible.  
R.S., c. 63, § 13.

**SEC. 13.** No judge of probate shall have a voice in judging and determining, nor be attorney or counsellor 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, and any process or proceeding commenced by him in the probate court for his county, in violation of this section is void, and he is liable to the party injured in damages.

—such process void.

—liability.  
1883, c. 220.

#### SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

Registers, how selected; oath, bond, powers and duties.  
R.S., c. 63, § 14.  
See c. 78, §§ 1-5.

**SEC. 14.** Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners by chapter seventy-eight, and they enter upon the discharge of their duties on the first day of January following; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall be sworn, and give bond to the treasurer of their county with sufficient sureties, in not less than one hundred, nor more than one thousand dollars, at the discretion of the judge, who shall certify his approval thereon; they have

[See Constitution, art. vi, § 7.]

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, bonds approved, accounts allowed, and such orders and decrees of the judge, and other matters, as he 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 the office; and if such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than six months at any one time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.

SEC. 16. Within thirty days after a will has been proved and allowed in the probate court, or in the supreme court of probate, the register shall make out and certify to the register of deeds in the county where the real estate is situated, a true copy of so much of said will as devises real estate, with the description thereof, so far as it can be furnished from said will, and the name of the testator and of the devisee; and the register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof as aforesaid, and record it in the same manner as a deed of real estate.

SEC. 17. For such service, the register of probate shall receive fifty cents for each copy so certified, and the register of deeds fifty cents for entering and recording the same, said sums to be paid by the executor or administrator when said will is proved, to the register of probate, who shall pay fifty cents to the register of deeds at the time said certified copy is furnished to him; and the executor or administrator shall charge said sums in his account.

SEC. 18. In case of the death or absence of the register, the judge shall appoint a suitable person to act as register, until the register resumes his duties, or another is qualified in his stead; he shall be sworn, and, if the judge requires it, give bond as in case of the register.

SEC. 19. 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 toward the expenses of 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 from the register in an action on the case.

SEC. 20. When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time; such person shall be paid by the treasurer in proportion to the time that he has served, and the amount shall be deducted from the register's salary.

SEC. 21. When there is a vacancy in the office of register, and the records are incomplete, they may be completed and certified by the person appointed to act as register, or by his successor.

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Conditions of bond; penalty for breach. R.S., c. 63, § 15. 69 Me., 368.

Register to certify copy of will to register of deeds within thirty days after proof, if real estate is devised. 1879, c. 118. See c. 7, § 16; c. 64, § 42. —duty of register of deeds.

Fees to be paid by executor or administrator. 1874, c. 186, § 3. See c. 7, § 16.

If register is absent or dead, judge may appoint register pro tem. R.S., c. 63, § 16. Judges of probate and of the supreme court to inspect register's conduct, &c. R.S., c. 63, § 17.

Proceedings, if register is incapable or neglects his duties. R.S., c. 63, § 18.

Records, in case of vacancy. R.S., c. 63, § 19. 63 Me., 250.

## CHAP. 63.

Register not to be counsel in probate cases.  
R.S., c. 63, § 20.

—such proceeding void; liability.  
1883, c. 219.

SEC. 22. No register shall be attorney or counsellor 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 within the jurisdiction of said court, nor be in any manner interested in the fees or emoluments arising therefrom; and any matter, petition, process or proceeding drawn, commenced or conducted by the register, or his agent or clerk, in the court of which he is register, in violation of this section, is void, and such register is liable in damages to the party injured thereby.

## SUPREME COURT OF PROBATE.

Supreme court is supreme court of probate.  
R.S., c. 63, § 21.

—appeal.

SEC. 23. 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, except the appointment of a special administrator, may appeal therefrom to the supreme court to be held within the county, if he claims his appeal within twenty 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 attorney within the state, within twenty days after his return, or the appointment of such attorney. (a)

Appellant to file bond and reasons of appeal; service on other parties.  
R.S., c. 63, § 22.  
11 Me., 251.  
44 Me., 63.  
53 Me., 185.

SEC. 24. Within the time limited for claiming an appeal, the appellant shall file, in the probate office, his bond to the adverse party, or to the judge of probate for the benefit of the adverse party, for such sum and with such sureties, as the judge approves; conditioned to prosecute his appeal with effect, and to pay all intervening costs and damages, and such costs as the supreme court taxes against him, and he shall also file in the probate office the reasons of appeal; and, fourteen days at least before the sitting of the appellate court, he shall serve all the other parties, who appeared before the judge of probate in the case, with a copy of such reasons, attested by the register; but in case of controversy between a person under guardianship and his guardian, the supreme court may sustain an appeal on the part of the ward without such bond.

Court may allow appeal accidentally omitted.  
R.S., c. 63, § 23.  
58 Me., 227.

SEC. 25. 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 requires 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; and said petition shall be heard at the next term after the filing thereof.

Proceedings when appeal is not prosecuted.  
R.S., c. 63, § 24.

SEC. 26. If the appellant fails to enter and prosecute his appeal, the supreme court, upon complaint of any person interested, may affirm the former sentence, assess reasonable costs for the complainant, and take such further order thereon, as law and justice require.

(a) 19 Me., 260; 27 Me., 82; 30 Me., 538; 34 Me., 44; 39 Me., 394; 44 Me., 63; 51 Me., 424; 52 Me., 195; 53 Me., 186, 538; 54 Me., 342; 56 Me., 413; 58 Me., 227; 67 Me., 504; 68 Me., 413; 73 Me., 224.

SEC. 27. After an appeal is claimed, and the bond and reasons of appeal are filed, all further proceedings, in pursuance of the matter appealed from, cease, until the determination of the supreme court thereon.

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Proceedings in probate court cease after appeal. R.S., c. 63, § 25.

SEC. 28. Such appeal shall be cognizable at the next term of the supreme court, held after the expiration of thirty-four days from the date of the proceeding appealed from, and said appellate 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.

Appeal to be heard at next term; proceedings. R.S., c. 63, § 26. 45 Me., 584. 53 Me., 186. 64 Me., 208. 73 Me., 138.

SEC. 29. Any person claiming under an heir at law has the same rights as the heir in all proceedings in probate courts, including rights of appeal.

Claimants under heir, have same rights as heir. 1881, c. 90.

## COSTS AND FEES.

SEC. 30. In all contested cases in the original or appellate court of probate, 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.

Costs may be allowed in contested cases. R.S., c. 63, § 27. 25 Me., 243.

SEC. 31. The register shall receive for such copies as are taxable by law twelve cents a page; but he shall have no fee for taking from the files of his office, or transporting to the place where the probate court is held, papers necessary for the settlement of any estate or account in said court, nor for furnishing to those entitled thereto, one copy of each will proved.

Register's fees for copies. R.S., c. 63, § 28.

SEC. 32. Executors, administrators, guardians and trustees, may be allowed one dollar for every ten miles travel to and from court, and one dollar for each day's attendance; and also, at the discretion of the judge, having regard to the nature, liability and difficulty attending their trusts, a commission not exceeding five per cent. on the amount of personal assets that come into their hands, and, in cases where legal counsel is necessary, a reasonable sum for professional aid.

Fees of executors, administrators, guardians and trustees. R.S., c. 63, § 29.

SEC. 33. Appraisers of estates, commissioners for examining claims against insolvent estates or determining disputed claims, and commissioners appointed to make division of estates and for assigning widows' dower, may be allowed a reasonable compensation for the time actually employed, including travel and expenses. Witnesses to the execution of wills, or in any issue before the probate court, one dollar a day, and six cents a mile, going and returning; the fees of witnesses to wills, appraisers, and commissioners on insolvent estates, or disputed claims, shall be paid by the executors, administrators, trustees or guardians, and allowed in the settlement of their accounts.

Pay of appraisers and commissioners. 1876, c. 108.

—witnesses before probate court.

—how paid.

SEC. 34. When a partition of real estate or assignment of dower is made by order of a judge of probate, the expenses thereof shall be paid

Expenses of partition and assignment

CHAP. 63.  
of dower.  
R.S., c. 63, § 31.

—process, if  
not paid.

Fees of reg-  
ister in case  
of foreign  
estates.  
R.S., c. 63, § 32.

Fees of judge  
for taking  
disclosures.  
R.S., c. 63, § 33.

Blanks and  
records.  
R.S., c. 63, § 34.

Notice in  
probate  
proceedings,  
defined.  
1883, c. 170, § 1.

Parties may  
select  
newspaper  
for notices.  
1883, c. 170, § 2.

by the parties interested, in proportion to their interests; but when such expenses accrue prior to the closing of the final account of any executor or administrator of the deceased owner of such real estate, having in his hands sufficient personal assets for the purpose, the judge may order him to pay such expenses, and allow the same in his account, after due notice and hearing thereon. In case of neglect or refusal of any person liable to pay such expenses, the judge may issue a warrant of distress against such delinquent for the amount due from him, and costs of process.

SEC. 35. When administration is granted on the estate of a person not a resident of the state, or the will of such person is proved, or administration is granted to a public administrator, or a guardian is appointed for a non-resident minor, the register shall have a reasonable compensation, to be fixed by the judge, for entering and filing the orders and decrees, and for making the necessary records, to be paid by the executor, administrator or guardian, and allowed to him in his account.

SEC. 36. The judge shall have a reasonable compensation for hearing and reducing to writing questions and answers of any party accused of concealing or embezzling property belonging to an estate, or person under guardianship, to be paid by the person requesting the examination.

SEC. 37. Each county shall provide necessary printed blanks and record books for its probate courts.

#### NOTICES.

SEC. 38. In laws relating to probate courts and proceedings, the words "public notice" denote notice published three weeks successively in a newspaper published in the county, or, if none, in the state paper; the words "personal notice" denote service by a copy given in hand or left at the place of last and usual abode, seven days at least before the time of hearing; and the words "due notice" denote public or personal notice, at the discretion of the judge.

SEC. 39. Notices to be published in a newspaper, shall be published in such paper published in the county as the party required to publish it selects, unless the judge deems such paper unsuitable for want of circulation or other substantial reason.

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## CHAPTER 64.

### APPOINTMENT, POWERS AND DUTIES OF EXECUTORS AND ADMINSTRATORS.

#### LIMITATIONS.

SEC. 1. In what cases administration shall not be granted, nor wills proved.

#### WILLS AND EXECUTORS.

SEC. 2. Wills may be deposited in the registry of probate; how to be indorsed; when and to whom to be delivered.