

# 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.



PORTLAND:  
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**ERRATA:**

**The following two leaves are  
inserted because one or more pages  
in this chapter have errors  
noticed and corrected here.**

# ERRORS.

## ERROR IN THE TEXT OF THE REVISED STATUTES.

Page 63, § 3, line one.—Erase the last word “may.”

## ERROR IN THE TEXT OF THE REPEALING ACT.

Page 999.—Transfer “Chapter 48, Section 6, of an act to facilitate the prompt administration of justice by establishing a superior court in Kennebec County,” from the year 1879 to 1878.

## ERROR IN THE COMMISSIONER'S NOTES.

Pages 177, 178.—Erase the last two lines of page 177, and the first three lines of page 178.

## ERRORS IN THE MARGINAL REFERENCES.

- Page 59, § 6, ¶ xx.—Erase “*R. S.*, c. 1, ¶ xx”, and supply, at the bottom of the page, “*R. S.*, c. 1, § 4”
- “ 66, § 24.—Erase “*Resolve of 1837, c. 52.*”
- “ 69, § 44.—Supply “*Resolve of 1840, c. 107.*”
- “ 72, § 68.—Erase “*See c. 6, §§ 40-67.*”
- “ “ § 70.—Erase “*R. S.*, c. 2, § 66.”
- “ 79, § 12, (note b).—“*See c. 18, § 73*” should read “*See c. 18, § 75.*”  
“*See c. 30, § 15*” should read “*See c. 30, § 16.*”
- “ “ § 14.—Supply “*See c. 18, § 75.*”
- “ 83, § 40.—“*R. S.*, c. 3, § 34” should read “*R. S.*, c. 3, § 33.”
- “ 84, § 46.—“*See c. 18, § 67*” should read “*See c. 18, § 59.*”
- “ 86, § 59, ¶ i, (note b).—“*See c. 17, §§ 25-29*” should read “*See c. 17, §§ 27, 28.*”
- “ “ “ ¶ vi, (note e).—“*See c. 18, § 15*” should read “*See c. 18, § 17.*”
- “ 92, note.—“*c. 18, §§ 39, 103*” should read “*c. 18, §§ 39, 97.*”
- “ 97, § 16.—Erase “*R. S.*, c. 4, § 16.”
- “ 108, § 86.—“*Art. ii, § 2*” should read “*Art. ii, § 1, ¶ 2.*”
- “ 117, § 28.—Erase the first reference to “1878, c. 31, § 1.” Also erase “*R. S.*, c. 5, § 26.”
- “ 176, § 27.—“*Resolve of 1883, c. 20*” should read “*Resolve of 1883, c. 86.*”
- “ 183, § 5.—“*See § 93, ¶ 6*” should read “*See § 93, ¶ v.*”
- “ 202, § 102.—“1883, c. 229” should read “*See c. 115, § 1.*”
- “ 209, § 1.—Supply “1880, c. 215.”
- “ 210, § 7.—Supply “1880, c. 215.”
- “ 249, § 44.—“1875, c. 25, § 6” should read “1875, c. 25, § 6.”
- “ 270, § 16.—Supply “1880, c. 215.”
- “ 330, § 26.—“*See c. 40, § 77*” should read “*See c. 40, § 74.*”
- “ “ § 28.—“*See c. 40, § 38*” should read “*See c. 40, §§ 33, 40.*”
- “ 374, § 23.—“*See § 17*” should read “1880, c. 234, § 1.”
- “ 384, § 74.—Add “1883, c. 138, § 3.”  
“1883, c. 144, § 4.”
- “ 506, § 1.—Supply “*See 1880, c. 215.*”
- “ 642, § 80, bottom of the page.—Supply “1878, c. 48, § 6.”
- “ 709, § 105.—“*See c. 134, § 13*” should read “*See c. 134, § 19.*”
- “ 773, § 42.—Supply “1883, c. 198, § 2.”
- “ 804, § 35.—“*See c. 134, § 26*” should read “*c. 134, § 26.*”
- “ 861, § 1.—“*R. S.*, c. 2, § 20.” } should read “1883, c. 221.”  
“*R. S.*, c. 115, § 1.” }
- “ 862, § 4.—“*See c. 63, §§ 32 to 39*” should read “*See c. 63, § 35.*”

## ERRORS IN CITATIONS OF CASES.

- Page 10, § 8, ¶ iii, (note c).—"14 *Pet.*, 504" should read "14 *Pet.*, 540."  
 " 16, § 1, (note b).—"10 *Me.*, 483" should read "10 *Me.*, 283."  
 " 78, § 5, (note a).—"13 *Me.*, 472, 489" should read "13 *Me.*, 472."  
 " " § 7, (note b).—"12 *Me.*, 589" should read "12 *Me.*, 489."  
 " 147, § 97.—"58 *Me.*, 528" should read "58 *Me.*, 532."  
 " 166, § 1.—"64 *Me.*, 549" should read "64 *Me.*, 599."  
 " 200, § 93, ¶ iv.—Erase "20 *Me.*, 545."  
 " 211, § 19.—"3 *Me.*, 347" should read "3 *Me.*, 249."  
 " 241, § 5, (note b).—"68 *Me.*, 28" should read "63 *Me.*, 28."  
 " 257, § 80, (note a), Construction of ways.—"26 *Me.*, 340" should read "26 *Me.*, 240."  
 " 397, § 1, (note a).—Erase "66 *Me.*, 526."  
 " 521, § 2, (note a).—Erase "60 *Me.*, 377."  
 " " § 9.—Erase "60 *Me.*, 533."  
 " 563, § 10.—"31 *Me.*, 286" should read "31 *Me.*, 254."  
 " 597, § 23.—"4 *Me.*, 19" should read "4 *Me.*, 8."  
 " 705, § 78.—"43 *Me.*, 438" should read "48 *Me.*, 438."  
 " 728, § 12.—Erase "68 *Me.*, 30."  
 " 750, § 5.—Erase "20 *Me.*, 325."  
 " 765, § 1, (note a).—Erase "73 *Me.*, 228."  
 " 814, § 19, (note c).—Erase "71 *Me.*, 543."  
 " 817, § 8, (note b).—"27 *Me.*, 363" should read "27 *Me.*, 362."  
 " 885, § 1.—Erase "62 *Me.*, 285."  
 " 886, § 8.—"36 *Me.*, 225" should read "36 *Me.*, 227."  
 " 933, § 4.—"34 *Me.*, 478" should read "39 *Me.*, 478."

## OMISSION IN REFERENCE INDEX TABLE, PART I.

Page 1060.—Supply "1878, c. 48, § 6," with a reference to "R. S., c. 77, § 80."

CHAP. 70. counties, showing the names of the insolvents, the date of the filing of the petition, the date of the discharge, the amount and average rate of dividends declared, inclusive of composition cases, and the amount of fees received or earned by them and the registers of said court.

insolvency,  
with  
particulars.  
1883, .214, § 5.

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## CHAPTER 71.

### SALES OF REAL ESTATE BY LICENSE OF COURT.

#### LICENSES TO SELL ESTATES OF RESIDENT OWNERS.

- SEC. 1. When license may be granted to sell, lease or exchange real estate.  
 2. Judge of probate, on application, with written consent of widow, may license sale of real estate, including right of dower and reversion. Proceeds, how to be divided.

#### SALES AT AUCTION.

- SEC. 3. Sales to be at auction; exceptions. Appeal. Original and concurrent jurisdiction of supreme court.  
 4. Bond to be filed. Conditions.  
 5. Oath first to be taken.  
 6. Notice to be given, before license is granted.  
 7. No license shall issue, if parties give bond, and fulfil it.  
 8. Notice of sale, how to be given.  
 9. Judge shall certify to supreme court in certain cases.  
 10. Parties may be examined under oath.  
 11. Overseers of the poor shall certify in certain cases.

#### PRIVATE SALES, AND SALES ON OFFER.

- SEC. 12. Licenses to sell at private sale, and on offer; proceedings.

#### SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

- SEC. 13. Wife of incapacitated ward may join in guardian's deed, or release dower.  
 14. Guardian may by agreement invest her interest; agreement may be enforced by the court, in equity as a trust.

#### SALES OF ESTATES OF NON-RESIDENT OWNERS.

- SEC. 15. Sale of estate of non-resident persons or of wards.  
 16. Proof of the appointment of executor, or guardian, in another state.

#### LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

- SEC. 17. Executors, administrators and guardians of heirs may be licensed to carry into effect certain contracts of deceased.  
 18. Notice shall be given, and bond required.

#### GENERAL PROVISIONS.

- SEC. 19. Licenses are limited to one year; but may be renewed.  
 20. Sales may be adjourned.  
 21. Licenses may include lands in other counties.  
 22. Licenses may prescribe what land is to be sold.  
 23. What estate of deceased is liable to sale. Effect of deed.  
 24. Surplus proceeds of sale shall be distributed as real estate.  
 25. What parties must be notified, and who may appear.  
 26. Costs, when license is contested.  
 27. Proof of notice of sale; certificate and record.  
 28. Proof by parol, when certificate is not returned.  
 29. Remedy for neglect or misconduct of person licensed.

## ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

## CHAP. 71.

- SEC. 30. Proceedings to recover land sold by license, are limited to five years.  
 31. Requisites for sale, as against persons claiming under deceased or ward.  
 32. Requisites as against persons claiming adversely to the title sold.

## LICENSES TO SELL ESTATES OF RESIDENT OWNERS.

SEC. 1. Judges of probate, in the counties where the applicants hereinafter named were appointed, may license the sale, lease or exchange of real estate and any interests therein, in whatever county situated, in the following cases, on application: (a)

Sale, lease, or exchange of real estate, when to be licensed.  
 R.S., c. 71, § 1.

I.—Of executors or administrators, for power to sell so much of such estate of the deceased as is necessary to pay debts, legacies, and expenses of sale and of administration.

By executors and administrators, to pay debts, &c.

II.—Of the friends or guardians of minors and other incapacitated persons, that the guardians, or some other suitable persons, may be authorized to sell real estate of their wards, or trees or timber standing thereon, for payment of debts, expenses of sale and of guardianship, and for support of their wards, and to provide a reasonable sum in anticipation of accruing expenses, when there is not sufficient personal property therefor, exclusive of such as the judge deems proper to reserve for the use of said wards; or to sell the same and place the proceeds at interest; or to sell it for two or more of these purposes; or to lease such real estate for any term of years, or exchange it for other real estate, when it clearly appears that such sale, lease or exchange would be for the benefit of the wards. But when sold in order to place the proceeds at interest, any part thereof may be used for support of the wards if it becomes necessary.

On application of friends or guardians of minors.

III.—Of executors, administrators, or guardians, when it appears by the petition and proof, that the residue would be greatly depreciated by a sale of any portion under the foregoing authority, to sell the whole, or such parts thereof as will not injure the residue.

For sale of whole property, by such representatives.  
 1875, c. 51.  
 63 Me., 250.

IV.—Of a husband or guardian of an insane wife resident in the county, to sell, on such terms and conditions as the judge thinks proper, for a sufficient consideration, any real estate held by him in right of his wife, or any of her rights of dower.

By husband or guardian of insane wife.  
 R.S., c. 71, § 1.

V.—Of executors or administrators to sell wood and timber standing on the real estate of their testator or intestate, for payment of debts, when it clearly appears to the judge to be for the advantage of those interested in the estate.

For sale of wood and timber.

VI.—Of executors or administrators, to sell as real estate the interest which their testator or intestate had in a land warrant issued by virtue of an act of congress, when not disposed of by will, and to distribute the net proceeds thereof among those entitled by law to such interest.

Of land warrants.

VII.—Of guardians, when a highway, railroad or canal is authorized to be constructed through the lands of any ward, or a dam is constructed by which such lands are liable to be flowed, to give, for a reasonable compensation, a full release of such ward's claim for damages, which shall be binding on the ward and his heirs forever.

Release of damages by highway, railroad or canal.

CHAP. 71.  
SEC. 1.

Mortgages;  
executions.  
See c. 65, § 35.

For sales by  
public ad-  
ministrators.  
See c. 64, § 27.

Heirs or  
devisees, in  
different  
states.  
1871, c. 212.  
R.S., c. 71, § 1.

A judge of  
probate may,  
on applica-  
tion, with  
written con-  
sent of wid-  
ow, license  
sale of real  
estate,  
including  
dower and  
reversion.  
1881, c. 54.

—proceeds of  
sale, how  
divided.

Sales to be  
at auction;  
appeal.  
—jurisdiction  
of supreme  
court.  
R.S., c. 71, § 2.  
8 Me., 222.

Bond.  
R.S., c. 71, § 3.  
39 Me., 15.  
50 Me., 75.

—conditions.

VIII.—Of executors or administrators, to sell real estate held in mortgage, or taken on execution, and the right of redemption foreclosed, when it appears to be for the benefit of the parties in interest, and to distribute the proceeds as in other cases of personal estate.

IX.—Of public administrators, after three years from the granting of administration, to sell any or all of the real estate of the deceased, when it appears to be for the interest of all concerned, and that no heir or other person interested therein, except creditors, can be found in the United States.

X.—Of a part or all of the heirs or devisees living in different states, of a person deceased, who left real estate in this state undeviseed, or real estate deviseed in undivided shares to different persons, where the devisees reside in different states, the owners of which cannot dispose of their separate interests without loss, that the executor, administrator or other suitable person be authorized to sell such estate, and distribute the proceeds, after paying expenses, among such heirs or devisees, according to their respective rights therein; unless, after public notice, the first publication being thirty days prior to the hearing, or longer if the judge deems it necessary, any owner objects to such sale; and if so sold, the share of any absent owner shall be placed on interest until called for by him or his legal representatives.

SEC. 2. Whenever application is made for the sale of real estate and any interests therein, under the provisions of the first, second and third clauses of the preceding section, the judge with the written consent of the widow, having a right of dower in the estate for the sale of which such application is made, may grant a license to sell such real estate, or any interest therein, including the widow's dower and the reversion thereof. In such case the widow is entitled to her share of the proceeds of the sale under such license, equal to the present value of her dower in the real estate sold, to be estimated by the judge, according to her age; and the residue thereof, after paying debts and expenses of administration, shall be distributed to the heirs at law, as real estate is where there is no widow, or to the devisees named in the will of the deceased according to the terms thereof.

SALES AT AUCTION.

SEC. 3. All sales aforesaid shall be at public auction, except as herein-after provided, and the decision of the judge on such applications may be appealed from, as in other cases; and the supreme judicial court shall have original and concurrent jurisdiction with the probate court in all cases aforesaid.

SEC. 4. Persons licensed as aforesaid, before proceeding to make such sales, leases or exchanges, shall give bond to the judge for a sum, and with sureties to his satisfaction, with the following conditions:

I.—That they will observe all provisions of law for the sale, leasing or exchange of such real estate or interests therein, and use due diligence in executing the trust.

II.—That they will truly apply and account for the proceeds of sale or lease according to law.



SEC. 5. Before fixing the time and place of sale, lease or exchange, they shall be sworn before the judge of probate, a justice of the peace, or notary public whose certificate shall be returned to the judge, and filed and recorded by the register.

CHAP. 71.

Oath, first to be taken.  
R.S., c. 71, § 4.  
26 Me., 227.  
63 Me., 250.

SEC. 6. No license shall be granted for the sale of any such real estate, of the value of more than fifty dollars, unless by written consent of all persons interested therein, until after public or personal notice of the time and place of hearing, to all such persons, and to appear and object if they see cause. If any party interested resides without the state, such special notice may be given as the court directs.

Notice, previous to granting license.  
R.S., c. 71, § 5.

SEC. 7. Nor shall such license be granted, if any of the parties interested in such estate, gives bond to the executor, administrator, or guardian, in a sum and with sureties approved by the court, to pay all sums, for the payment of which license is asked, so far as the goods and chattels, rights and credits of the deceased or ward are insufficient therefor; but such bond shall not bar any future application for the same purposes, if the obligors, on reasonable notice and demand, fail to perform its condition.

No license shall issue, if parties give bond and fulfil it.  
R.S., c. 71, § 6.

SEC. 8. Every person licensed as aforesaid, previous to such sale, shall give thirty days' notice thereof, by posting notifications in some public place in the town where the estate lies, and in two adjoining towns, and in the town where said deceased last dwelt, or where the ward resides, if within the state; or by causing an advertisement thereof to be published three weeks successively in such newspaper as the court, authorizing the sale, orders; the first publication being thirty days before the sale.

Notice of sale, how to be given.  
R.S., c. 71, § 7.

SEC. 9. Every application for the sale of any estate, made to the supreme judicial court, under the third specification of section one, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried, showing the value of the real and personal estate of the deceased or ward, and the amount of his just debts or legacies, if the case requires it; also the opinion of such judge, whether it is necessary that the whole or a part of the estate should be sold, and if part only, what part; and in all applications before said court, by guardians of minors under the second specification of section one, a certificate must likewise be produced from the judge of probate in the county where such minor's estate was inventoried, stating that in his opinion it would be for the interest of such minor, that the whole or a part of said estate should be sold for the purpose specified, and if part only, what part.

Judge shall certify to supreme court in certain cases.  
R.S., c. 71, § 8.

SEC. 10. Any court authorized to grant licenses, may examine, under oath, the petitioner or any other person, whether interested or not, touching the truth of the facts set forth in the petition.

Parties may be examined under oath.  
R.S., c. 71, § 9.

SEC. 11. No license to sell the estate of any ward, not a minor or insane, shall be granted, unless the applicant produces to the court a certificate under the hands of the overseers of the poor of the town where the ward resides, if in the state, giving their consent to the sale, and their opinion as to the amount proper to be raised thereby, excluding debts contracted by gambling; and if applicable to the case, whether it

Overseers of the poor shall certify in certain cases.  
R.S., c. 71, § 10.

**CHAP. 71.** is necessary to sell a greater amount in value of land to prevent injury to the residue.

PRIVATE SALES, AND SALES ON OFFER.

Licenses to sell at private sale, and on offer; proceedings. R.S., c. 71, § 11. 5 Me., 240.

**SEC. 12.** In all cases where the courts may license a person to sell real estate at auction, they may license him to sell from time to time at private sale, or to accept any advantageous offer for such estate or any part of it, and to convey the same accordingly, if it appears to be for the interest of all concerned; but when so licensed, he may sell at auction, by complying with all the requirements of law for sales at auction, and with the particular conditions of his license; and he shall be sworn and give bond as if he were licensed to sell at auction; and the court shall decide what notice, if any, shall be given of such sale, and if any is required, it shall be inserted in the license and given accordingly.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

Wife of incapacitated ward may join in deed with guardian, or may release dower. R.S., c. 71, § 12.

**SEC. 13.** When the guardian of an incapacitated person is duly licensed to sell the interest of his ward in any estate held by him in right of his wife, she may, for a sufficient consideration, join with the guardian in the deed thereof, and it shall be as effectual as if made with her husband when under no disability; and when licensed to sell the real estate of his ward, she may release her right of dower therein to the purchaser, by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of dower in the premises.

Guardian may invest proceeds of her interest; trust to be enforced. R.S., c. 71, § 13.

**SEC. 14.** The guardian, with consent of the judge to whom he accounts, may agree in writing with such wife how to invest or otherwise dispose of a part of the proceeds of the sale of the whole estate for her sole use, equivalent to her interest therein; and the supreme judicial court may enforce such agreement in equity, as a trust.

SALES OF ESTATES OF NON-RESIDENT OWNERS.

Sale of estate of deceased persons or of minors out of the state. R.S., c. 71, § 14. 11 Me., 101.

**SEC. 15.** The supreme judicial and probate courts may grant licenses to continue in force for three years, to executors and administrators of persons dying out of the state, guardians of wards living out of the state, or some other suitable person on their petition, to sell and convey real estate or any interest therein in the state, as if such deceased persons had died, and such wards lived in the state, and such executors, administrators, or guardians, had been here appointed; and all proceedings in such cases, before any probate court, shall be had before the judge of probate for the county where the real estate or any part thereof lies, and the bond required shall be given to him.

Proof of appointment of executor, administrator, or guardian, in another state. R.S., c. 71, § 15.

**SEC. 16.** A certified copy of the appointment of such executor, administrator, or guardian, by any court of probate having jurisdiction in any other of the United States, examined and allowed by any judge of probate in this state, and filed and recorded in his county, is sufficient proof of appointment to entitle him to the benefit of the preceding section.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

Judge of

**SEC. 17.** When it appears to the judge of probate having jurisdic-

tion, that any deceased person had made a legal contract to convey real estate and was prevented by death from so doing, or that such deceased person, had made such a contract to convey an estate upon a condition, which in its nature could not be fully performed before his decease, and that in either case the person contracted with, or petitioner, has performed or is ready to perform the conditions required of him by the terms thereof, he may, on petition of such person, his heirs, assigns or legal representatives, authorize the executor or administrator, or special administrator of the deceased, or when there is no executor or administrator, the guardian of the heirs of the deceased, to execute deeds to carry said contract into effect; and when such conveyance is made to an executor or administrator, he shall stand seized of such estate to the same uses as in case of real estate set off to him on execution.

SEC. 18. Before granting such authority, the judge shall cause due notice to be given to the heirs and all other parties interested, and require the person authorized to make conveyance, to give bond with sufficient sureties to account for whatever he receives therefor.

#### GENERAL PROVISIONS.

SEC. 19. No license granted under this chapter, except when otherwise provided, remains in force for more than one year from its date; but when that time has expired, a new license may be granted, with or without new notice, at the discretion of the judge, for the sale of all or part of the same real estate upon filing a new bond.

SEC. 20. Any sale, duly appointed and notified, may be adjourned within the period prescribed by the license, not exceeding fourteen days in all, at the discretion of the person licensed, by giving such reasonable notice thereof as circumstances permit.

SEC. 21. When the real estate, for the sale of which license is necessary, lies in two or more counties, the supreme judicial or probate court, in either of said counties, may grant licenses for the sale of the whole, or any part thereof, in any other county.

SEC. 22. Any court, granting license to sell real estate for the payment of debts, legacies, or expenses of administration, may prescribe therein what particular portions thereof shall be sold, and in what order, according to the last will of the testator or the principles of equity.

SEC. 23. Lands, of which the deceased died seized in fee simple or fee tail, general or special, and all that he had fraudulently conveyed, or of which he was colorably disseized to defraud creditors, are liable to sale for payment of debts, under any license granted under this chapter; and any deed, executed and recorded in due form of law, for adequate consideration, in pursuance of such license, is effectual to pass to the purchaser all the estate, right, title, and interest in the granted premises, which the deceased, the ward, or other person on whose account the license was granted, might convey by a like deed, if living and not incapacitated.

SEC. 24. In all sales of real estate, or any part, or interest therein,

#### CHAP. 71.

probate may authorize executor or administrator to convey estate, on contract made by deceased. 1876, c. 104. 3 Me., 51. 51 Me., 424.

—when conveyance is made to executor or administrator.

Notice shall be given, and bond required. R.S., c. 71, § 17.

Licenses, limited to one year; renewable. R.S., c. 71, § 18. 19 Me., 151. 22 Me., 329. 36 Me., 576.

Sales may be adjourned. R.S., c. 71, § 19. 63 Me., 251.

Licenses may include lands in other counties. R.S., c. 71, § 20.

License may prescribe the land to be sold. R.S., c. 71, § 21.

What estate of deceased is liable to sale: effect of deed. R.S., c. 71, § 22. 3 Me., 286. 4 Me., 19. 22 Me., 330. 61 Me., 294. 71 Me., 67.

Surplus

**CHAP. 71.** by virtue of licenses granted under this chapter, the surplus proceeds of sale, remaining on final settlement of the accounts of such proceeds, shall be considered real estate, and distributed among the same persons and in the same proportions as real estate would be.

proceeds of sale to be distributed as real estate.  
R.S., c. 71, § 23.

What parties must be notified; and who may appear.  
R.S., c. 71, § 24.  
39 Me., 396.

Costs, when license is contested.  
R.S., c. 71, § 25.

Proof of notice of sale, certificate, and record.  
R.S., c. 71, § 26.  
63 Me., 251.

Proof by parol, when certificate is not returned.  
R.S., c. 71, § 27.  
63 Me., 251.

Remedy for neglect or misconduct of person licensed.  
R.S., c. 71, § 28.

Process to recover land sold by license, limited to five years.  
R.S., c. 71, § 29.  
14 Me., 346.  
58 Me., 558.

Requisites for valid sale, as against persons claiming under deceased or ward.  
R.S., c. 71, § 30.

**SEC. 25.** All heirs apparent or presumptive of the ward, shall be considered interested in the estate, and may appear and answer to the petition of any guardian or other person for the sale of his estate; and when personal notice is required, they shall be notified.

**SEC. 26.** When the granting of a license is contested, if the petition or objection to it appears unreasonable, the court may award costs to the prevailing party.

**SEC. 27.** The affidavit of any person licensed as aforesaid, or of any person employed by him, made within eighteen months after the sale, and filed in the probate office, with one of the original advertisements of the time, place, and estate to be sold, or with a copy of such advertisement, and recorded, is sufficient proof that such notice was given; and a copy of such affidavit, certified by the register, is competent evidence thereof.

**SEC. 28.** When a person, licensed as aforesaid, has taken the oath required by law, but no certificate thereof has been retained as provided in the preceding sections, parol evidence may be received that such oath was administered, in the trial of any action respecting the estate so sold; and if proved, it has the same effect as if a certificate thereof had been returned, filed and recorded.

**SEC. 29.** If a person, interested in any estate sold as aforesaid, suffers damage by neglect or misconduct of the executor, administrator, or guardian, in such proceedings, he may recover compensation therefor in a suit on the probate bond or otherwise, as the case may require.

#### ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

**SEC. 30.** No action shall be brought to recover an estate sold under this chapter, nor entry be made thereon, except by judgment of law, with a view to avoid the sale by persons claiming under the deceased, or by the ward or persons claiming under him, unless it is done within five years after the sale, or the termination of the guardianship, except that persons out of the state, or under legal disability at said times, are limited to five years after their return to the state, or the removal of the disability.

**SEC. 31.** In an action brought to contest the validity of any such sale, by the heir or others claiming under the deceased; the wife or her heirs, in case of a sale of her estate by her husband; or by the ward or person claiming under him, no such sale shall be avoided on account of any irregularity in the proceedings, if it appears:

I.—That the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded.

II.—That the person licensed took the oath, and gave the bond and notice of the time and place of sale required by law.

III.—That the premises were sold in such manner, and within such

time as the license authorized, and are held by one who purchased them in good faith. CHAP. 71.

SEC. 32. If the validity of such sale is contested by one claiming adversely to the title of the wife, ward, or deceased aforesaid, or by a title not derived through either, the sale is not void on account of any irregularity in the proceedings, if it appears that the license was granted by a court of competent jurisdiction, and the deed duly executed and recorded. As against such as claim adversely to the title sold. R.S., c. 71, § 31. 53 Me., 204.

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## CHAPTER 72.

### PROBATE BONDS AND REMEDIES THEREON.

#### WHAT BONDS ARE SUFFICIENT.

SEC. 1. No bond is sufficient, unless approved by the judge of probate.

#### WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

- SEC. 2. When bond is insufficient, a new one may be required.
3. Surety may be discharged for subsequent breaches.
  4. Principal shall give new bond, or be removed.

#### ACTIONS ON BONDS.

- SEC. 5. Suits on bonds shall be in the name of the judge. Costs.
6. In suits against sureties, principal may be made a party.
  7. How he shall be summoned; proceedings and judgment.
  8. Action on executor's or administrator's bond is limited to six years, except in case of fraudulent concealment.
  9. Judgment for plaintiff shall be for the penalty.

#### ACTIONS BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

- SEC. 10. When and how, party interested may bring suit on bond. Form of writ.
11. Judgment, if the suit is not sustained.
  12. Suit on bond by creditor of insolvent estate.
  13. Suit by creditor or legatee of solvent estate.
  14. Suit by widow, next of kin, or residuary legatee.
  15. Judgment and execution in such suits.

#### SUITS BY AUTHORITY OF THE JUDGE.

- SEC. 16. Judge may authorize suits. Execution in case of failure to account.
17. Execution in case of no return of inventory, or of neglect or mismanagement.
  18. Judgment shall be in trust for all interested.

#### OTHER PROBATE BONDS.

SEC. 19. Like proceedings to be had on other bonds.

#### WHAT BONDS ARE SUFFICIENT.

SEC. 1. No bond required to be given to the judge of probate, or to be filed in the probate office, is sufficient, until it has been examined by the judge, and his approval written thereon. No bond is sufficient, unless approved by the judge. R.S., c. 72, § 1.

#### WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

SEC. 2. When the sureties in any such bond are insufficient, on peti- Insufficient, new required.