

MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :
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his estate shall not be transmitted as aforesaid, until all his resident creditors have received the proportion that they would have had, if the whole estate applicable to the payment of creditors, wherever found, had been divided among all said creditors in proportion to their debts, without preferring any one kind of debt to another; and in such case, no foreign creditor shall be paid out of the assets found here, until all the resident creditors have received their proportions as herein provided.

SEC. 31. If there is any residue, after such payment to the citizens of this state, it may be paid to any other creditors who have proved their debts here, in proportion to the amount, but no one shall receive more than would be due him, if the whole estate were divided ratably among all the creditors as before provided; and the balance, if any, may be transmitted to the foreign executor or administrator, or if there is none such, it shall, after four years from the appointment of the administrator, be distributed ratably among all the resident and foreign creditors who have proved their debts in this state.

SEC. 32. Where lands in this state held in trust under a foreign will, for persons not residing here, have been sold, the probate court for the county in which the will has been allowed, may, in its discretion, order the money to be transmitted to the trustee, if there is any, in the state or country where the testator had his domicile.

Distribution of residue.
R. S., c. 65, § 38.

Proceeds of sale of land under a foreign will, how disposed of.
R. S., c. 65, § 39.

CHAPTER 68.

INSOLVENT ESTATES.

DISPOSAL OF INSOLVENT ESTATES.

SEC. 1. An insolvent estate, after payment of the expenses of the funeral, and of administration, shall be appropriated:

- I. To the allowance made to the widow or widower, and children.
- II. To the expenses of the last sickness.
- III. To debts entitled to a preference under the laws of the United States.
- IV. To public rates and taxes, and money due the state. (a)
- V. To all other debts.

Priority of claims and of payment.
R. S., c. 66, § 1.
See c. 65, § 41.
18 Me., 271.
19 Me., 261.
24 Me., 28.
61 Me., 470.
71 Me., 66.
77 Me., 501.
84 Me., 94.
97 Me., 389.

A creditor of one class is not to be paid, until creditors of preceding classes, of which the administrator had notice, are fully paid.

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. (b)

When representation of insolvency need not be made.
R. S., c. 66, § 2.

COMMISSIONERS AND PROCEEDINGS.

SEC. 3. When it appears to the administrator that an estate may be insufficient to pay the debts of the fifth class, on his application to the judge of probate, the judge shall appoint two or more commissioners to receive and decide upon all unpreferred claims against the estate, except

When representation must be made.
R. S., c. 66, § 3.

(a) 64 Me., 407; 67 Me., 506.

(b) 24 Me., 28; 62 Me., 167; 79 Me., 225; 84 Me., 94; 90 Me., 412; 97 Me., 390, 391, 396.

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—commissioners to be sworn; their report.
85 Me., 461.

Meetings and notice.
R. S., c. 66, § 4.
48 Me., 407.

—time allowed to prove claims.

—proceedings in case of death of commissioner.

How claims must be presented and proved.
R. S., c. 66, § 5.
67 Me., 197.
96 Me., 453.

Refusal or perjury by claimant.
R. S., c. 66, § 6.
67 Me., 197.

Value of claimant's security to be deducted.
R. S., c. 66, § 7.
24 Me., 38.
90 Me., 297.

—appraisal.

Interest on claims.
R. S., c. 66, § 8.
19 Me., 264.
48 Me., 483.
74 Me., 486.
—report may be recommit-
ted.

—claim of administrator.

Commissioners, forfeiture for neglect of duty.
R. S., c. 66, § 9.
67 Me., 115, 117.

Contingent claims, how to be treated.
R. S., c. 66, § 10.
32 Me., 463.
67 Me., 564.

those of the administrator. They shall first be sworn, and shall make report to the court of all claims presented, and of their disposal, 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.

SEC. 4. The commissioners shall appoint convenient times and places for their meetings, and 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 judge's order. If one or more of the commissioners die, after the expiration of the eighteen months and before the commission is returned, the judge may appoint new commissioners and allow an additional time not exceeding three months for the presentation of claims.

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.

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 is guilty of perjury.

SEC. 7. When a claimant holds security for his claim of less value than its amount, he shall 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 shall be added by the judge to the sum allowed on which he is to receive his dividend, and the property appraised shall be disposed of by the administrator.

SEC. 8. Interest shall 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 shall 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 shall be paid by the administrator. Any claim which he has against the estate, shall be examined and allowed by the judge and by him annexed to the list of claims, and a proportional dividend decreed to him.

SEC. 9. Commissioners of insolvency who neglect to render their report to the judge for three months after the expiration of the time allowed them for receiving claims, forfeit all compensation for their services, and may be cited by the judge to show cause for their negligence.

CONTINGENT CLAIMS.

SEC. 10. Contingent claims may be proved, and the amount allowed reported, stating their nature and distinguishing them from other claims. The judge, ordering distribution, shall leave in the hands of the administrator a sum sufficient to pay on them the percentage paid to others.

SEC. 11. If, within four years after administration was granted, such claims become absolute, there shall be paid upon them a percentage 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 percentage does not exhaust the sum reserved, the residue shall 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, § 11.
57 Me., 564.

APPEALS.

SEC. 12. 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. When the appeal is made by any party other than the claimant, he shall 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 he has any within the state; otherwise, such notice shall be given as the judge directs. (a)

Appeal, how and when to be made by claimant, heir, creditor or administrator.
R. S., c. 66, § 12.

—bond;
notice.

SEC. 13. 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 court in season, or, after giving such notice, has, by accident or mistake, omitted further to prosecute his 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.

Failing to prosecute appeal seasonably, after disallowance of claim, appellant may petition supreme court.
R. S., c. 66, § 13.
See c. 84, § 7.
63 Me., 413.
81 Me., 197.

SEC. 14. When an appeal is so taken, or leave is so granted, the claim shall 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 shall be deemed contingent, and provision shall be made for it as in sections ten and eleven. (b)

Proceedings on appeal.
R. S., c. 66, § 14.

SEC. 15. A person whose claim against an insolvent estate has been allowed by commissioners and their decision has been appealed from by the administrator, heir at law, or any other creditor, and who by accident or mistake has omitted to commence an action for money had and received within the time prescribed by section fourteen, may petition the supreme judicial court, and after notice to the administrator and a hearing, the court may grant leave to commence an action for the recovery of his claim, at the next term of the court in the county where administration was granted, within four years from granting administration, but no decree of distribution can be disturbed by a judgment so recovered.

If claim is allowed and appeal taken by administrator, heir or creditor, claimant may apply to supreme court.
R. S., c. 66, § 15.
96 Me., 454.

SEC. 16. The creditor, before service, must 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

Proceedings in the suit and judgment.
R. S., c. 66, § 16.
68 Me., 414.
96 Me., 454.

(a) 35 Me., 122; 36 Me., 141; 48 Me., 483; 49 Me., 87; 61 Me., 105, 239, 242; 65 Me., 422; 68 Me., 413; 73 Me., 36; 96 Me., 453.

(b) 36 Me., 141; 55 Me., 514; 57 Me., 564; 61 Me., 242; 68 Me., 413; 71 Me., 375; 73 Me., 347; 74 Me., 194; 81 Me., 197; 96 Me., 454.

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trial justice. At such time as the court directs, the administrator shall file an abstract of all demands of the deceased against the claimant, and judgment shall be rendered for either party for the balance ascertained at the trial.

Reference;
examination
of creditor.
R. S., c. 66, § 17.
55 Me., 514.
67 Me., 197.

SEC. 17. 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 like effect, if he refuses to be examined.

Judgment
against ad-
ministrator,
to be added
to claims
allowed.
R. S., c. 66, § 18.

SEC. 18. 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 shall 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. (a)

—costs.

SUITS PENDING AND COMMENCED.

Actions
pending.
R. S., c. 66, § 19

SEC. 19. Actions pending on claims not preferred, when a decree of insolvency is made, may be discontinued without costs; or continued, tried and judgment rendered with the effect, and satisfied in the manner provided in cases of appeal. No action can be commenced, except on a preferred claim, after such decree. (b)

—limitation.

Claims not
presented or
not allowed,
barred,
except in case
of further
assets.
R. S., c. 66, § 20.
67 Me., 458.

SEC. 20. Claims not presented, and claims disallowed without appeal, 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, and after due notice, if proved or not disputed, may be allowed and paid like contingent claims.

MISCELLANEOUS PROVISIONS.

Penalty for
delay in set-
tling account.
R. S., c. 66, § 21.

SEC. 21. 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 is a breach of his bond. (c)

Waste or
trespass on
real estate
of insolvent.
R. S., c. 66, § 22.
See c. 97, § 17.

SEC. 22. When an administrator commits waste or trespass, although an heir or devisee, or consents that another may do it, on real estate of his intestate insolvent, he shall account for treble the amount of the damage. He may, in an action of trespass, recover damages of a person committing the same, to be accounted for as assets, although such person is heir or devisee of the estate. (d)

Insolvency
of estate in
hands of ex-
ecutors and
guardians.
R. S., c. 66, § 23.
See c. 69, § 16.
68 Me., 452.

SEC. 23. This chapter applies to estates under charge of executors; and of guardians of insane persons, and of spendthrifts, except so far as it is inapplicable, and an allowance for the support of their wards and their wards' families takes the place of an allowance to widows and children.

(a) 55 Me., 525; 57 Me., 564; 60 Me., 355; 65 Me., 129; 68 Me., 431; 73 Me., 347; 85 Me., 460; 96 Me., 382.

(b) 2 Me., 11, 112; 21 Me., 265; 36 Me., 141; 49 Me., 88; 54 Me., 348; 55 Me., 101; 57 Me., 564; 60 Me., 355; 64 Me., 407; 65 Me., 129; 68 Me., 431; 73 Me., 239; 85 Me., 460.

(c) 5 Me., 48; 6 Me., 270; 8 Me., 25; 11 Me., 51; 79 Me., 224.

(d) 59 Me., 355; 62 Me., 309; 77 Me., 246.

DECREE OF DISTRIBUTION.

SEC. 24. After thirty days from the time when the report on claims is made, the judge shall make a decree of distribution of the balance in the hands of the administrator among the creditors, according to this chapter. In case of further assets, he shall make another distribution on the same principles.

Decree of distribution, when and how made. R. S., c. 66, § 25. 73 Me., 241.

SEC. 25. After 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 thereto.

Account of payments, allowed without notice. R. S., c. 66, § 26.

SEC. 26. When commissioners appointed under section fifty-four of chapter sixty-six have reported on any claims submitted to them, and their report has been accepted without appeal, it is final, notwithstanding the estate afterwards proves insolvent, and commissioners of insolvency are appointed. The amount awarded by the first commissioners shall be entered by the judge on the list of debts entitled to dividends.

Report of commissioners on exorbitant claims, final, even if estate is insolvent. R. S., c. 66, § 27. See c. 71, § 6.

Note. Liability of heir or devisee for waste on real estate of insolvent estates, c. 97, § 16.

CHAPTER 69.

APPOINTMENT, POWERS AND DUTIES OF GUARDIANS. ADOPTION OF CHILDREN. CHANGE OF NAME.

MINORS.

SEC. 1. The judge of probate may appoint guardians to minors resident 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, unless he is the parent of such minor or is nominated as such guardian in the will of which he is an executor; but when any judge is interested, either in his own right, in trust, or in any other manner, or is within the sixth degree of kindred, such appointment shall be made by a judge in any adjoining county, and the record of said appointment shall show why it was so made.

Guardians. R. S., c. 67, § 1. 1889, c. 220. 33 Me., 210. 39 Me., 394. 53 Me., 403. 61 Me., 213.

—proceedings when judge is interested. 79 Me., 37.

SEC. 2. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; but a guardian for such minor, named by the deceased father in his last will, or, if the father has died without making such nomination, named by the deceased mother in her 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.

Guardians, how nominated and appointed. R. S., c. 67, § 2. 39 Me., 394. 53 Me., 403. 61 Me., 213. 75 Me., 304. 85 Me., 360.

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 care of the person, and the education of the minor, shall be jointly with the father and mother, if competent, or if one has deceased, with the survivor, if competent;

Power over minor's person and property. R. S., c. 67, § 3. 1895, c. 41, § 1. See c. 61, § 40.