SIXTH REVISION

THE REVISED STATUTES

OF THE

STATE OF MAINE

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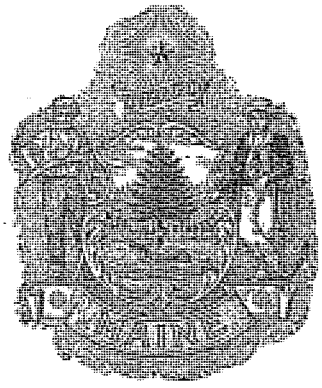

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CHAPTER 68.

Appointment, Powers and Duties of Executors and Administrators.

Limitations.

Sec. 1. Limitation as to minimum amount of property; as to period of time since death. R. S. c. 66, § 1. No administration shall be granted on the estate of any intestate deceased person, unless it appears to the judge that he left personal estate to the amount of at least twenty dollars, or owed debts to that amount, and left real estate of that value; and when no administration is granted for want of such estate, the personal property of the deceased becomes the property of the widow, or, if none, of the next of kin, who are not, in such case, chargeable as executors in their own wrong. After twenty years from the death of any person, no probate of his last will, or administration on his estate shall be originally granted except as provided in the following section, unless it appears that there are moneys due to said estate from the State of Maine or the United States; but this does not apply to foreign wills previously proved and allowed in another state or country.

22 Me. 553; 52 Me. 196; 63 Me. 379; 80 Me. 54; 81 Me. 32, 225.

Sec. 2. Administration on estate of an intestate may be taken in certain cases after twenty years from death. R. S. c. 66, § 2. When administration has not been taken on the estate of an intestate within twenty years after the death of such intestate, and thereafter any property of at least twenty dollars in value, accrues to said estate, or belonging thereto, first comes to the knowledge of any person interested in said estate, original administration may be granted on such property, at any time within two years next after it so accrued or first became known, but such administration shall affect no other property and shall not revive debts due to or by said intestate.

Wills and Executors.

Sec. 3. Wills may be deposited in the registry of probate; proceedings after death of testator. R. S. c. 66, § 3. A will may be deposited for safekeeping in the registry of probate in the county where the testator lives; and the register, on being paid one dollar, shall receive and keep it, and give a certificate of the deposit thereof. Such will shall be enclosed in a sealed wrapper, indorsed with the name and residence of the testator, and the date when deposited, and may have indorsed thereon the name of any person to whom it is to be delivered after the death of the testator, and shall not be opened nor read, until delivered to the testator, or to some person authorized to receive it by a written order signed by the testator and attested by one witness, and the register may require the person presenting the same to make oath that it is genuine. After the testator's death the will shall be delivered to the person, if any, entitled by the indorsement on the wrapper to receive it; or, if not demanded before the next probate court thereafter, it may then be publicly opened and retained in the probate office until offered for probate; but, if the jurisdiction of the estate belongs in another court, it shall be delivered to the executors, or other persons entitled to its custody, to be presented for probate in such other court.

Sec. 4. Duty of executors and others having custody of wills. R. S. c. 66, § 4. Whoever has the custody of a will, shall, after the testator's death, deliver it into the probate court having jurisdiction thereof, or to the executor therein named; and any executor, having such will in his custody, shall file it in such court. If such executor or other person, having been duly cited for that purpose, neglects so to do, without reasonable cause, for thirty days after notice of the testator's death, he may be committed to jail by the judge's warrant, there to be kept in close custody, until he so delivers the will, or is released by the judge or otherwise by order of law; and he is also liable to any party for the damage which he has sustained by such neglect.

5 Me. 493; 6 Me. 276; 52 Me. 172; 80 Me. 57.

Sec. 5. Public notice of hearing on petitions for probate of wills. R. S. c. 66, § 5. Whenever a will is presented for probate, the judge of probate, having jurisdiction thereof, shall assign a time and place for a hearing, and cause public notice thereof to be given; and in addition thereto, said judge may, at his discretion, order personal notice upon such persons as he deems necessary.

Sec. 6. Depositions may be taken. R. S. c. 66, § 6. When any of the witnesses of a will offered for probate live out of the state, or more than thirty miles distant, or, by age or indisposition of body are unable to attend court, their depositions, taken as provided in chapter one hundred and twelve, or before a magistrate authorized by commission from the judge, shall be competent evidence in the absence of such witnesses.

46 Me. 247.

Sec. 7. If no objection to a will, one witness or one deposition only is required. R. S. c. 66, § 7. 1915, c. 289. When it clearly appears to the judge by the written consent of the heirs at law or otherwise, that there is

no objection thereto, he may decree the probate of any will upon the testimony of one or more of the three subscribing witnesses required by law, who can substantiate all the requisite facts, and the affidavit of such witness or witnesses taken before the register of probate may be received as evidence; or, in the cases described in the preceding section, upon the depositions of one or more of the subscribing witnesses, substantiating the facts.

See c. 79, § 15.

Sec. 8. When letters testamentary may be granted. R. S. c. 66, § 8. When a will is proved and allowed, the judge of probate may issue letters testamentary thereon to the executor named therein, if he is legally competent, accepts the trust, and gives bond to discharge the same when required; but if he refuses to accept on being duly cited for that purpose, or if he neglects for twenty days after probate of the will so to give bond, the judge may grant such letters to the other executors, if there are any capable and willing to accept the trust.

See § 23; 46 Me. 237, 248; 101 Me. 75; 102 Me. 305; 105 Me. 246.

Sec. 9. Wills lost or carried out of the state, how to be proved; time during which will is lost, shall not be taken as part of statute limitation. R. S. c. 66, § 9. When the last will of any deceased person, who had his domicile in the state at the time of his death, is lost, destroyed, suppressed or carried out of the state, and cannot be obtained after reasonable diligence, or is in the custody of any tribunal or magistrate in another state or in a foreign country, and cannot be produced in this state, its execution and contents may be proved by a copy, and by the testimony of the subscribing witnesses thereto, or by any other evidence competent to prove the execution and contents of a will, and upon proof of the continued existence of such lost will, unrevoked up to the time of the testator's death, letters testamentary shall be granted as on the last will of the deceased, the same as if the original had been produced and proved. And when such original will is produced for probate, the time during which it has been lost, suppressed, concealed or carried out of the state, shall not be taken as a part of the limitation provided in the first section of this chapter.

73 Me. 603; 80 Me. 54; 93 Me. 296; 101 Me. 76.

Sec. 10. Will may prescribe what bond executor shall give. R. S. c. 66, § 10. Letters testamentary may issue, and all acts required by law or otherwise under the provisions of the will may be done and performed by the executor without giving bond, or by his giving one in a specified sum, or without sureties, when the will so provides; but when it appears necessary or proper, the judge may require him to give bond with sureties as in other cases.

See § 41; 84 Me. 482; 93 Me. 362, 374; 105 Me. 246.

Sec. 11. Bond of executor. R. S. c. 66, § 11. Every executor before entering on the execution of his trust shall give bond, except when otherwise provided in the will, with sufficient sureties resident in the state, or with a surety company authorized to do business in the state, as surety, in such sum as the judge orders, payable to him or his successors, conditioned, in substance, as follows:

I. To make and return to the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and

credits of the testator, which are by law to be administered, and which come to his possession or knowledge.

II. To administer, according to law and to the will of the testator, all his goods, chattels, rights and credits.

III. To render, upon oath, a just and true account of his administration within one year, and at any other times, when required by the judge of probate.

IV. To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between such representation and the sale of such real estate for the payment of debts, by waste or trespass committed on any building thereon, or on any trees standing and growing thereon, except as necessary for repairs or fuel for the family of the deceased; or by waste or trespass of any other kind; and for such damages as he recovers for the like waste or trespass committed thereon.

Corporate suretyship authorized, c. 53, § 156; see c. 52, § 63; c. 100, § 17; 46 Me. 248; 54 Me. 456; 56 Me. 301; 60 Me. 416; 77 Me. 157; 84 Me. 146.

Sec. 12. What executors may act; powers of majority. R. S. c. 66, § 12. When two or more persons are named executors in any will, and are not released thereby from giving bonds, none shall act as such, or intermeddle, except those who give bonds as aforesaid; but a majority of those legally qualified, unless it is otherwise prescribed therein, may do all the acts in the execution of such trust, which all could do, and all acts so done are as valid in law as if all had agreed thereto; and a suit may be maintained against the executors, so acting, on their bond, for the benefit of any person aggrieved by their acts, without joining the other parties to such bond.

54 Me. 456; 84 Me. 146.

Wills Made in Other States or Countries.

Sec. 13. Wills made in other states or countries, proved and allowed here. R. S. c. 66, § 13. Any will executed in another state or country, according to the laws thereof, may be presented for probate in this state, in the county where the testator resided at the time of his death, and may be proved and allowed, and the estate of the testator settled, as in case of wills executed in this state.

84 Me. 146; 85 Me. 378; 105 Me. 245.

Sec. 14. Wills proved in other states or countries, allowed in this state. R. S. c. 66, § 14. A will proved and allowed in another state or country, according to the laws thereof, may be allowed and recorded in this state in the manner and for the purposes hereinafter mentioned. A copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any person interested, to the judge of probate in any county in which there is estate, real or personal, on which the will can operate; whereupon the judge shall assign a time and place for hearing, and cause public notice thereof to be given. After such hearing, if the judge considers that the instrument should be allowed in this state as the will of the deceased, he shall order the copy to be filed and recorded.

4 Me. 138; 85 Me. 378; 92 Me. 177; 101 Me. 547; 110 Me. 471.

Sec. 15. Validity of such wills, established. R. S. c. 66, § 15. Such will shall then have the same force as if it had been originally proved and allowed in the same court in the usual manner; but nothing herein shall give any operation and effect to the will of an alien different from what it would have had, if originally proved and allowed in this state.

12 Me. 131; 85 Me. 378; 92 Me. 177; 101 Me. 547.

Sec. 16. Letters may be granted and the estate settled. R. S. c. 66, § 16. After allowing and recording any will as aforesaid, the judge of probate may grant letters testamentary, or of administration with the will annexed thereon, and proceed in the settlement of the estate found in this state, in the manner provided by its laws with respect to the estates of persons who were inhabitants of any other state or country; and the letters thus granted shall extend to all the estate of the deceased within this state, and exclude the jurisdiction of the probate court in every other county. Such administration may be granted in any county in which lands of the testator, subject to the operation of his will, remain undisposed of for more than twenty years from his decease. The provisions of section ten of this chapter, apply to such proceedings, or the court may, upon issuing letters testamentary, require such bond, with or without sureties, as may have been required by the court before which such will was originally approved and allowed.

85 Me. 378; 101 Me. 547; 105 Me. 245.

Nuncupative Wills.

Sec. 17. Nuncupative wills may be approved; notice. R. S. c. 66, § 17. No letters testamentary or probate of any nuncupative will, shall pass the seal of any court of probate, until fourteen days after the decease of the testator; nor shall such will be approved and allowed at any time, unless due notice is given to all persons interested, specifying that the will to be proved is a nuncupative will.

See c. 79, §§ 18-20.

Administrators.

Sec. 18. Grant of administration on the estates of persons deceased, intestate. R. S. c. 66, § 18. Upon the death of any person intestate, the judge having jurisdiction shall grant administration of such intestate's goods or estate to the widow, husband, next of kin, or husband of the daughter of the deceased, or to two or more of them, as he thinks fit, if the applicants are more than twenty-one years old and are in other respects qualified for the trust, but if unsuitable, or being residents in the county, they after due notice neglect or refuse for thirty days from the death of the intestate to take out letters of administration, he may commit administration on such estate to such person as he deems suitable.

22 Me. 553; 32 Me. 103; 102 Me. 305; see c. 95, § 8.

Sec. 19. Administration on estates of persons civilly dead. R. S. c. 66, § 19. When any person is under sentence of death or of imprisonment for life, and is confined in pursuance thereof, he is, from the time of such imprisonment, to all intents and purposes, civilly dead; and his estate shall

be administered upon and distributed, and his contracts and relations to persons and things are affected, in all respects, as if he were dead.

47 Me. 469; 74 Me. 238.

Sec. 20. Administration granted without bond, under certain conditions. 1915, c. 238, § 1. A judge of probate may in his discretion grant administration or administration with the will annexed, upon any estate, to the widow or next of kin, without requiring bond for the faithful discharge of the duties of the trust, whenever all persons interested in said estate who are of full age and legal capacity, other than creditors, assent in writing thereto; provided that public notice shall first be given upon the petition for such appointment. The judge of probate may, however, upon or after granting letters of administration or letters of administration with the will annexed, whenever it appears necessary or proper, require that a bond be given as in other cases.

Sec. 21. Appointment of administrators, if judge of probate refuses or delays. R. S. c. 66, § 20. If any judge of probate shall refuse or unreasonably delay the appointment of an administrator upon the estate of any person deceased upon due application therefor, an application may be made to the supreme judicial court sitting in the county where the person deceased had his residence at the time of his death, or to any judge thereof in vacation, for such appointment; and said court or such judge, shall have the same power to appoint an administrator as the probate court now has.

Sec. 22. Bonds of administrators. R. S. c. 66, § 21. Except when a bond is not required as provided in section twenty, every administrator, before entering on the execution of his trust, shall give bond with good and sufficient sureties resident within the state, or with a surety company authorized to do business in the state, as surety, in such sum as the judge orders, payable to him or his successors, conditioned, in substance, as follows:

I. To make and return into the probate court, within three months, a true inventory of all the real estate and all the goods, chattels, rights and credits of the deceased, which come into his possession or knowledge.

II. To administer according to law all the goods, chattels, rights and credits of the deceased.

III. To render, upon oath, a true account of his administration within one year, and at any other times when required by the judge of probate.

IV. To pay and deliver any balance, or any goods and chattels, rights and credits, remaining in his hands upon the settlement of his accounts, to such persons as the judge of probate directs.

V. To deliver the letters of administration into the probate court, in case any will of the deceased is thereafter proved and allowed.

VI. To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between such representation and the sale of such real estate for the payment of debts, by waste or trespass committed on any building thereon, or on any trees standing and growing thereon, except as necessary for repairs or fuel for the family of the deceased; or by waste or trespass of any other kind; and for such damages as he recovers for the like waste or trespass committed thereon.

See c. 100, § 17; c. 53, § 156; 62 Me. 308; 65 Me. 471; 93 Me. 296; 105 Me. 389.

Administrators with the Will Annexed, and De Bonis Non.

Sec. 23. Administrator with will annexed, when to be appointed. R. S. c. 66, § 22. 1909, c. 2. If there is no person whom the judge can appoint executor of any will according to section eight; or if the only one appointed neglects to file the required bond within the time therein allowed, he may commit administration of the estate, with the will annexed, to any suitable person having regard to the best interests of the persons interested under such will; and when an executor is under twenty-one years of age at the time of the probate of the will, administration may be granted, with the will annexed, during his minority, unless there is another executor who accepts the trust, in which case the estate shall be administered by such other executor until the minor arrives at full age, when he may be admitted as joint executor with the former, upon giving bonds as before provided.

78 Me. 141; 102 Me. 305.

Sec. 24. Removal of executors or administrators; judge may commit administration to other persons. R. S. c. 66, § 23. When an executor or administrator, residing out of the state, after being cited by the judge of probate, neglects to render his accounts and settle the estate according to law, or when any executor or administrator, joint or sole, becomes insane or otherwise unsuitable to perform the trust, refuses or neglects to do so, or mismanages the estate, said judge may remove him; and he may accept the resignation of any joint or sole executor or administrator, when he is satisfied, after public or personal notice to those interested, and a hearing, that there is reasonable cause therefor, and that it will not be detrimental to the estate or to those interested therein; and in either case, if there is no other executor or administrator to discharge the trust, the judge may commit administration of the estate not already administered, with the will annexed or otherwise, as the case requires, to such persons as he thinks fit, as if the one resigned or removed were dead; and such administrator shall have the same powers and be liable to the same obligations as other administrators or executors whom he succeeds.

Sec. 25. Authority of administrators de bonis non. R. S. c. 66, § 24. An administrator de bonis non shall collect and receive from his predecessor or his heirs, executors or administrators, and from all other sources, all the property and assets of the estate of the deceased, including the proceeds from the sale of real estate, not already distributed, and shall account for and distribute the same as though he were the original administrator or executor; and all sums recovered on any probate bond shall be a part of the estate, but so much thereof as is recovered on any real estate bond shall be distributed as is provided for the distribution of the proceeds of the sale of real estate.

113 Me. 357.

Sec. 26. Marriage of executrix or administratrix. R. S. c. 66, § 25. When an unmarried woman, who is joint or sole executrix or administratrix, marries, her husband shall not exercise such trust in her right, nor is her authority thereby extinguished.

56 Me. 302; 63 Me. 432.

Sec. 27. Death of executor. R. S. c. 66, § 26. The executor of an executor has no authority, as such, to administer the estate of the first testator; but on the death of the sole or surviving executor of any last will, administration of said estate not already administered may be granted with the will annexed, to such person as the judge thinks fit.

64 Me. 422.

Sec. 28. Bond of administrator with the will annexed, and de bonis non. R. S. c. 66, § 27. Except when a bond is not required as provided in section twenty, every person, appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give such bond to the judge as is required of an executor. Every administrator de bonis non shall give such bond as is required of an executor or administrator, as the case may demand.

78 Me. 141.

Public Administrators.

Sec. 29. Appointment, duty and bonds of public administrators. R. S. c. 66, § 28. When a vacancy occurs in any county, the governor, with the advice and consent of the council, shall appoint a public administrator therein, who shall take out letters of administration and administer on the estate of persons who die intestate in such county, not known to have in the state any heirs or kindred who can lawfully inherit such estate; and who shall account in like manner, and give bond to the judge with like conditions, as in cases of ordinary administration, and with the further condition, in substance, that he will comply with the following section.

Sec. 30. When the judge may revoke his powers. R. S. c. 66, § 29. If, before the estate of such deceased is fully settled, any last will and testament of his is produced and duly proved, or if any of his heirs, next of kin, or his widow makes application in writing to the judge having jurisdiction of the estate, and claims the right to administer thereon, or to have some other suitable person appointed to that trust, the judge shall revoke the former administration and grant letters testamentary, or new administration, as the case requires; and thereupon the public administrator shall surrender his letters of administration to such judge, settle his account, and deliver to his successor all sums of money in his hands, and all goods, chattels, rights and credits of said deceased, not administered upon.

Sec. 31. Balance in his hands to be paid to treasurer of state. R. S. c. 66, § 30. When there is, in the hands of such public administrator, an amount of money, more than is necessary for the payment of the deceased's debts and for other purposes of administration, he shall be required by the judge to deposit it with the treasurer of state, who shall receive it; the state shall be responsible for the principal thereof, for the benefit of those who may lawfully claim it; and the governor and council, on application and proof, may order the treasurer to pay it over.

Sec. 32. Notice to be given to treasurer. R. S. c. 66, § 31. In such case, the judge shall give notice to the treasurer of state of such amount, and from what estate it is receivable; and if said administrator neglects, for three months after the order of the judge therefor, to deposit the same, the treasurer shall cause his probate bond to be put in suit for the recovery thereof.

Sec. 33. Balance, not claimed in twenty years, forfeited to state. R. S. c. 66, § 32. If the heirs, widow, or next of kin, to any such intestate, or other lawful claimants, do not demand such money within twenty years from the time of its deposit, it shall be forfeited to the state.

Special Administrators.

Sec. 34. Appointment of special administrator; bond. R. S. c. 66, § 33. When there is a delay in granting letters testamentary or of administration, the judge of probate may appoint a special administrator, who shall, notwithstanding any pending appeal, proceed in the execution of his duties until it is otherwise ordered by the supreme court of probate; and he shall give bond, like other administrators, conditioned that he will make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which come to his possession or knowledge; and that he will truly account for them under oath, and deliver them to the person authorized to receive them. When by reason of the removal or discharge of executors or administrators, and appeals from the decrees of removal or discharge, there is no executor or administrator to act, the judge may appoint a special administrator, who shall have the same powers, and perform the same duties as other special administrators, until such appeals are disposed of and some executor or administrator may legally act.

76 Me. 473; 102 Me. 166.

Sec. 35. His powers and duties. R. S. c. 66, § 34. He shall collect all the goods, chattels and debts of the deceased, control and cause to be improved all his real estate, collect the rents and profits thereof, and preserve them for the executor or administrator thereafter appointed; and for that purpose may maintain suits, and sell such perishable and other goods as the judge orders; pay the expenses of the funeral and last sickness, and of his administration; debts preferred under the laws of the United States; public rates and taxes, and money due the state from the deceased; and pay to the widow, if any, and if not, to the guardian of the children under fourteen years of age, for their temporary support, such sums as the judge orders, having regard to the state and amount of the property; and sums so paid to the widow or guardian shall be deducted, if the estate is solvent, from the share of the widow or children, but if insolvent, shall be considered by the judge in his allowance to them.

63 Me. 355; 76 Me. 473; 102 Me. 166.

Sec. 36. His compensation; when his powers cease; proceedings. R. S. c. 66, § 35. Such administrator shall be allowed such compensation for his services, as the judge thinks reasonable, not exceeding that allowed to other administrators; and on the granting of letters testamentary or of administration, his powers cease, and he shall forthwith deliver all the goods, chattels, money and effects of said deceased in his hands, and the executor or administrator may prosecute any suit commenced by the special administrator, as if it had been commenced by himself.

See c. 67, § 43; 111 Me. 320.

Sec. 37. Not to be sued by creditor without decree of judge. R. S. c. 66, § 36. No special administrator is liable to an action by any creditor of the deceased, without an application by such creditor to the judge, and his decree authorizing it; and the limitation of all suits against the estate begins to run from the time of granting letters testamentary or of administration in the usual form, as if such special administration had not been granted.

See c. 92, § 15.

Sec. 38. In certain cases, letters may be granted to executor, pending appeal; proceedings. R. S. c. 66, § 37. When a will has been proved and allowed by the judge of probate and an appeal made therefrom, he may, instead of appointing a special administrator as aforesaid, grant letters testamentary to the executor named in such will, who shall give bond and proceed in the settlement of such estate, as if no appeal had been made; and after payment of the just debts and charges of administration, he shall retain in his hands all the remaining avails of such estate to await the result of the case in the supreme court of probate, and then pay the same, under the direction of the judge of probate, to the parties legally entitled thereto.

Sec. 39. Special administrators may be appointed to prosecute claims arising out of French spoliations. R. S. c. 66, § 38. In all cases of claims against the United States arising out of French spoliations, in those counties where the records of the probate court relating to the estate of any claimant have been lost or destroyed and have not been restored, the judge of probate having jurisdiction may, on petition and after public notice and hearing, appoint a special administrator upon the estate of any original claimant, deceased testator or intestate, who may prosecute such claim against the United States as aforesaid, for the benefit of such estate, and at any time after six months from the date of his giving notice of his appointment and after public notice and order of distribution, may distribute said estate to those determined by the court to be entitled thereto; but no such distribution shall be disturbed by reason of any debt or claim afterwards filed against said estate. Such special administrators shall give such a bond as the judge may determine. But nothing herein contained shall prevent the appointment of an administrator under the general law.

95 Me. 274.

Executors in Their Own Wrong.

Sec. 40. Executors in their own wrong; liability. R. S. c. 66, § 39. Whoever sells or embezzles any of the goods or effects of a deceased person liable to administration, before taking out letters testamentary or of administration thereon and giving bond accordingly, is liable as an executor in his own wrong, to the actions of the creditors and other persons aggrieved, and also to the rightful executor or administrator, for the full value of the goods or effects of the deceased taken by him, and for all damages caused by his acts to said estate; and he shall not retain any part of the goods or effects, except for such funeral expenses, debts of the deceased or other charges actually paid by him, as the rightful executor or administrator would have had to pay.

15 Me. 117; 48 Me. 349; 54 Me. 482; 57 Me. 25; 58 Me. 435; 65 Me. 420; 70 Me. 341; 87 Me. 325.

Provisions Relating to Both Executors and Administrators.

Sec. 41. Application that no bond be required, must be stated in petition and in public notice on petition. 1915, c. 238, § 2. Letters testamentary shall not issue under the provisions of section ten of this chapter, nor shall administration or administration with the will annexed be granted without bond under the provisions of section twenty of this chapter, unless the petition for probate of the will or for administration contains an application that no bond, or a bond without sureties, be required, and the fact of such application is stated in the public notice on such petition.

Sec. 42. Notice of appointment. R. S. c. 66, §§ 40, 41. 1909, c. 16, 1915, c. 56. Every executor or administrator, within three months after his appointment or within such further time, not exceeding three months, as the judge allows, shall cause public notice of his appointment to be published in some newspaper published in the county where the deceased last dwelt, if in the state, and shall give such further notice as the judge in writing directs. If the deceased last dwelt in an unorganized township, or was not an inhabitant of or resident in the state at the time of his death, public notice shall be given in some newspaper, or in such manner as the judge directs.

See c. 92, § 14; 84 Me. 145.

Sec. 43. Proof of notice. R. S. c. 66, § 42. An affidavit of the executor or administrator or of the person employed by him to give such notice shall be filed with a copy of the notice in the registry of probate within one year after his appointment, and the register shall note thereon the time of filing, enter the same on his docket, and record said affidavit, and such record is evidence of the time, place and manner in which the notice was given. In case an appeal is taken from the appointment of an executor or administrator, then said affidavit shall be filed, noted, entered and recorded as above provided within four months after final decree. In case of a vacancy in the office of executor or administrator before affidavit has been filed as aforesaid, then said affidavit shall be filed as above provided within four months after the appointment of the administrator de bonis non or the administrator with the will annexed. Whenever an executor or administrator fails to give said notice or to file such affidavit as above provided he may be removed from his trust by the judge of probate, in his discretion, upon petition of any interested party.

84 Me. 145.

Sec. 44. Non-residents must appoint agent or attorney in state. R. S. c. 66, § 43. 1915, c. 42. Executors or administrators residing out of the state at the time of giving notice of their appointment, shall appoint an agent or attorney in the state, and insert his name and address in such notice. Such appointment shall be made by a writing filed and recorded in the registry of probate for the county in which the principal is appointed, and by such writing the subscriber shall agree that the service of any legal process against him as such executor or administrator, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such executor or administrator shall, if made on such agent, have like effect as

if made on himself personally within the state, and such service shall have such effect. An executor or administrator who after his appointment removes from and resides without the state shall so appoint an agent within thirty days after such removal, and give public notice thereof. If an agent appointed under the provisions of this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as above provided, and public notice thereof given; the powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. Neglect or refusal by an executor or administrator to comply with any provision of this section shall be cause for removal. An executor or administrator, residing out of the state shall not appoint his coexecutor or coadministrator, residing in the state, as his agent.

84 Me. 145.

Sec. 45. Inventory, when to be returned. R. S. c. 66, § 44. Every executor or administrator, within three months after his appointment, or within such further time, not exceeding three months, as the judge allows, shall make and return upon oath into the probate court, a true inventory of the real estate and of all the goods, chattels, rights and credits of the deceased, which are by law to be administered and which come to his possession or knowledge.

See c. 74, § 1; 61 Me. 471; 84 Me. 94.

Sec. 46. Appointment of appraisers. R. S. c. 66, § 45. 1915, c. 297. The real estate, goods and chattels, comprised in the inventory, shall be appraised by one or three disinterested persons appointed by the judge or register, and sworn; and when any part of such estate is in another county, the judge or register may appoint appraisers for such county to return an inventory thereof, who shall also be sworn. Only one appraiser may be appointed, if in the opinion of the judge or register the nature of the property makes it desirable so to do; otherwise three appraisers shall be appointed.

See c. 86, § 54.

Sec. 47. Warrants may be revoked. R. S. c. 66, § 46. Any warrant for the appraisement of an estate, may be revoked by the judge for sufficient cause, and a new one issued, if necessary.

Sec. 48. How choses in action shall be appraised. R. S. c. 66, § 47. Such of the credits of the deceased, and rights to personal property not in possession, as the appraisers judge to be available as assets, shall be enumerated in a schedule part of said inventory, with the names of the debtors or parties obligated, the sums supposed to be due thereon, and the nature of the rights aforesaid, whether absolute or conditional; and they shall state, in one general sum at the foot of such schedule, the amount which in their judgment may be realized from the same, exclusive of expenses and risk of settlement or collection.

See c. 86, § 54.

Sec. 49. Additional inventories may be required. R. S. c. 66, § 48. The judge may, at any time afterward, when any estate or effects, rights or credits come to the knowledge or possession of any executor or admin-

istrator, require of him an additional inventory; appraisers in like manner shall be appointed and sworn; and return shall be made within the time directed by the judge in his warrant.

Sec. 50. Articles to be omitted from inventory. R. S. c. 66, § 49. The following articles shall be omitted in making the inventory, and shall not be administered upon as assets:

I. All the articles of apparel or ornament of the widow, according to the degree and estate of her husband, and the apparel and schoolbooks of minor children of the deceased.

II. The apparel of the deceased, not exceeding one hundred dollars in value, if he left a widow and minor children, or either, in which case she or they are entitled to such apparel.

III. Such provisions and other articles, not exceeding fifty dollars in value, as have necessarily been consumed in the family of the deceased before the appraisal of such estate.

IV. Any money becoming due on the death of the deceased from an insurance on his life effected by him, after deducting the amount of premium paid therefor within three years, with interest, provided, that such deceased left a widow or issue; but such money shall be disposed of as provided by section twenty-one of chapter eighty.

61 Me. 471; 79 Me. 234; 84 Me. 523.

Sec. 51. When additional bonds may be required. R. S. c. 66, § 50. If, after the return of an inventory, or in the progress of the settlement of an estate, the judge finds that the bonds given by an executor or administrator are too small in amount, or are insecure for want of responsible sureties, he may require additional or larger bonds, or other sureties, and if said executor or administrator does not furnish the same, his authority may be revoked and some other person appointed.

Sec. 52. When sales of personal estate may be ordered; collection of demands sold. R. S. c. 66, § 51. The judge, when he deems it necessary for the speedy payment of the debts of the deceased, or for the benefit of all parties interested, may order any of the goods and chattels, rights and credits, pews or interests in pews, not distributed, to be sold at public or private sale; and the executor or administrator shall account for the same as sold. Any personal estate or rights of action thus sold, may be assigned to the purchaser, and collected in the name of the executor or administrator, the purchaser giving him reasonable indemnity against costs, but reserving to debtors their rights of set-off; or the purchaser may sue therefor in his own name, subject to the same defense as if sued in the name of the executor or administrator. The legal rights of persons to whom specific legacies are bequeathed, are not affected by this section.

Sec. 53. Liability of executors and administrators to account. R. S. c. 66, § 52. Every executor or administrator shall account for the personal property and effects named in the inventory at the appraised value, unless sold under license as provided in the preceding section; but if loss accrues without his fault or negligence, he may be allowed the amount of such loss in his account of administration; and if any goods or effects not sold under license, allowed to the widow, nor distributed to the heirs or

devisees, are shown to be of greater value than they were appraised at, he shall account for the difference.

51 Me. 173; 71 Me. 450.

Sec. 54. Reference or compromise of claims; authority to carry on business. R. S. c. 66, § 53. 1915, c. 28. The judge may authorize executors or administrators to adjust, by arbitration or compromise, any claims for money or other property in favor of or against the estates by them represented. And whenever it is made to appear to the judge that it is clearly for the benefit of all parties interested, and will result in a material increase of the assets of the estate, the judge may authorize and direct that the business of the deceased, in whole or in part, shall, for a limited time, to be determined by him, be carried on by the executor or administrator, as a going business.

26 Me. 538; 55 Me. 124.

Sec. 55. Special commissioners may be appointed on disputed claims. R. S. c. 66, § 54. When one or more claims against the estate of a person deceased, though not insolvent, are deemed by the executor or administrator to be exorbitant, unjust or illegal, on application in writing to the judge of probate, and after notice to the claimants, the judge, if upon hearing, he is satisfied that the allegations in said application are true, may appoint two or more commissioners, who shall, after being duly sworn, and after notifying the parties as directed in their commission, meet at a convenient time and place, and determine whether any and what amount shall be allowed on each claim, and report to him at such time as he may limit. Sections five, six, seven, eight, twelve, thirteen, fourteen, sixteen and seventeen of chapter seventy-one, apply to such claims, and the proceedings thereon. No action shall be maintained on any claim so committed, unless proved before said commissioners; and their report on all such claims shall be final, saving the right of appeal.

See c. 71, § 26; c. 74, § 6; c. 87, § 166; 61 Me. 239; 67 Me. 116, 225, 459; 71 Me. 162; 109 Me. 66.

Sec. 56. Executor or administrator neglecting to pay debts, guilty of waste. R. S. c. 66, § 55. Any executor or administrator, who neglects or unreasonably delays to raise money out of the estate under his charge, or to pay the same where due, and thereby subjects said estate to be taken in execution, is guilty of waste and unfaithful administration.

Sec. 57. Accounts, when rendered; notice and examination. R. S. c. 66, § 56. Every executor or administrator shall render his accounts agreeably to the condition of his bond; and the judge may require him to account, when he deems it necessary. Reasonable notice shall be given before the allowance of any such account. On the examination thereof, the accountant may be interrogated under oath in relation to the same, and such record of his answers shall be made as the judge requires.

See c. 71, §§ 21, 25; c. 70, § 21; 18 Me. 58; 27 Me. 83; 49 Me. 409, 562; 64 Me. 356; 65 Me. 448; 95 Me. 526; 105 Me. 389.

Sec. 58. All property received, to be accounted for. R. S. c. 66, § 57. Every executor and administrator is chargeable in his account with all goods, chattels, rights and credits of the deceased, which come to his hands and are by law to be administered, whether included in the inventory or

not; with all the proceeds of real estate sold for the payment of debts, legacies and incidental expenses, and with all the interest, profit and income, that in any way come to his hands in his said capacity from any estate of the deceased.

39 Me. 18; 49 Me. 66; 62 Me. 308.

Sec. 59. Also income of real estate used. R. S. c. 66, § 58. If any part of the real estate is used or occupied by the executor or administrator, he shall account for the income thereof to the devisees or heirs in the manner ordered by the judge, with the assent of the accountant, and of other parties present at the settlement of his account; and if the parties do not agree on the sum to be allowed, it shall be determined by three disinterested persons, appointed for that purpose by the judge, whose award, accepted by the judge, shall be final.

62 Me. 309; 63 Me. 355; 87 Me. 282.

Sec. 60. May insure property. R. S. c. 66, § 59. An executor or administrator may insure, at the expense of the estate, any property of the deceased that becomes assets in his hands, or which he holds in trust by the provisions of a will.

Sec. 61. Allowance for monuments or gravestones; for gravestones and funeral expenses of widow. R. S. c. 66, § 60. In the settlement of the accounts of executors and administrators, the judge may allow a reasonable sum for the purchase of a suitable burial lot and for the erection of monuments or gravestones; but in insolvent estates the sum shall be fixed by the judge of probate. And on petition of any person interested the judge of probate may also allow a reasonable sum for the erection of gravestones, for funeral expenses and expenses of last sickness of the widow of the deceased, provided, she dies before the final settlement of her husband's estate and her estate is insufficient for the above purposes.

Sec. 62. Certain debts and expenses of deceased married women may be paid. R. S. c. 66, § 61. In the settlement of the estate of a married woman, debts contracted by her for the benefit of herself or her family, for which the credit was given to her, and for which her husband is not liable or is not able to pay, shall be paid by her executor or administrator, and allowed in his account; also all reasonable expenses occasioned by her last sickness.

Sec. 63. Mutual debts of husbands and wives to be paid. R. S. c. 66, § 62. Executors or administrators may pay debts due from a deceased husband to his wife, or from a deceased wife to her husband, as if the marriage relation had never existed between them.

Sec. 64. Care of lots may be provided for by executors and administrators. R. S. c. 66, § 63. Executors and administrators may pay to cemetery corporations or to cities or towns having burial places therein, a reasonable sum of money for the perpetual care of the lot in which the body of their testate or intestate is buried, and the monuments thereon. The judge of probate shall determine, after notice to all parties in interest, to whom the same shall be paid and the amount thereof, and such sum shall be allowed in the accounts of such executors and administrators.

Sec. 65. Claims verified by affidavit, if required. R. S. c. 66, § 64. Executors or administrators may require any person making a claim against the estate of their testator or intestate, to present said claim in writing, supported by the affidavit of the claimant, or of some other person cognizant thereof, stating what security the claimant has, if any, and the amount of credit to be given, according to the best of his knowledge and belief.

72 Me. 345.

Sec. 66. Claims of executors or administrators, how to be adjusted. R. S. c. 66, § 65. No private claim of an executor or administrator, against the estate under his charge, shall be allowed in his account, unless particularly stated in writing; if such claim is disputed by a person interested, it may be submitted to referees agreed upon in writing by the interested parties present, or their agents or guardians; and the judge may accept, or recommit their written report, made pursuant to the submission, and decree accordingly.

74 Me. 486; 110 Me. 447; 112 Me. 156.

Sec. 67. When one of several executors or administrators is removed or resigns, proceedings. R. S. c. 66, § 66. When there is more than one executor or administrator, and either of them is removed, or his resignation is accepted by the judge, the others may proceed to discharge the trust reposed in them, and may bring actions of account against him and recover, by any proper legal process, such effects and assets as remain in his hands unadministered. Like actions or process may be brought by one executor or administrator against another, when the latter retains an undue proportion of the estate under his charge, and refuses either to account to the other, or to pay the debts, legacies or other charges on such estate, or when the aggrieved executor is a residuary legatee.

Sec. 68. Chancery remedies between coexecutors and coadministrators. R. S. c. 66, § 67. The supreme judicial court may hear and determine in equity all disputes and controversies between coexecutors and coadministrators, and between their respective legal representatives, in all cases, where there is not a plain, adequate and complete remedy at law; and in such case, the court has the same power and may proceed in like manner, as in cases between copartners.

See c. 82, § 6, ¶ vii.

Sec. 69. Previous acts of those removed are valid. R. S. c. 66, § 68. When letters of administration are revoked, or an executor or administrator is removed, all previous sales of real or personal estate, made in a legal manner by him and with good faith on the part of the purchaser, and all other acts, in due course of administration, done by him in good faith, remain valid and effectual, and he is accountable in the same manner as if he had not been removed.

Sec. 70. Foreign executors, administrators, guardians, conservators or trustees may be licensed to collect and receive personal estate. R. S. c. 66, § 69. 1913, c. 28. Any executor, administrator, guardian, conservator of the property of any person living out of the state, or trustee duly appointed in another state or in a foreign country and duly qualified and acting, who may be entitled to any personal estate in this state, may file an authenti-

cated copy of his appointment in the probate court for any county in which there is real property of his trust, or, if there is no such real property, in any county in which there is personal estate of his trust or to which he may be entitled, and may upon petition to said court, after due notice to all persons interested, be licensed to collect and receive such personal estate or to sell by public or private sale, or otherwise to dispose of, and to transfer and convey, shares in a corporation or other personal property, if the court finds that there is no executor, administrator, guardian, conservator or trustee appointed in this state who is authorized so to collect and receive such personal estate or to dispose of such shares or other personal property, and that such foreign executor, administrator, guardian, conservator or trustee will be liable to account for such personal estate or for the proceeds thereof in the state or country in which he was appointed; and that no person resident in this state and interested as a creditor or otherwise objects to the granting of such license or appears to be prejudiced thereby; but no such license shall be granted to a foreign executor or administrator until the expiration of six months after the death of his testator or intestate, nor until all inheritance taxes payable to this state, if any, are paid or secured.

Embezzlement of Property of Deceased Persons.

Sec. 71. Embezzlement of estate of deceased persons. R. S. c. 66, § 70. Upon complaint by an executor, administrator, heir, legatee, creditor or other person interested in the estate of a person deceased, against any one suspected of having concealed, embezzled or conveyed away any money, goods, effects or real estate of the deceased, or of having fraudulently received any such money, goods, effects or real estate, or of aiding others in so doing, the judge of probate may cite such suspected person to appear before him to be examined on oath in relation thereto, and he may require him to produce for the inspection of the court and parties, all books, papers or other documents within his control, relating to the matter under examination; such examination shall not extend over a period of time exceeding twenty years before the time said complaint is filed in the probate court.

See c. 67, § 10; 7 Me. 470; 47 Me. 85; 57 Me. 25; 72 Me. 232; 80 Me. 152; 104 Me. 495.

Sec. 72. Persons entrusted with estate of deceased, may be cited to account. R. S. c. 66, § 71. Upon complaint of any such party, that a person entrusted by an executor or administrator with any part of such estate, refuses to render to him a full account thereof when required, the judge of probate may cite such person to appear before him and to render a full account under oath of any money, goods, chattels, bonds, accounts or other papers belonging to such estate, taken into his custody, and of his doings in relation thereto.

Sec. 73. Penalties for refusal to appear and answer when cited. R. S. c. 66, § 72. If a person duly cited as aforesaid, refuses to appear and submit himself to such examination, or to answer all lawful interrogatories, or to produce such books, papers or documents, the judge shall commit him to jail, there to remain until he submits to the order of the court, or

is discharged by the complainant or the supreme judicial court; and he is also liable to any injured party in an action on the case, for all the damages, expenses and charges arising from such refusal.

Note. Executors, administrators or other persons authorized to sell goods, chattels or land, by order of any court or judge of probate, may do so without license from municipal officers, c. 41, § 8.
No trust or banking company shall act as administrator, c. 52, § 84.
Compensation of executors and administrators, c. 67, § 43.
Executors and administrators to pay amount of stenographer's fees, c. 67, § 46.

CHAPTER 69.

Succession Taxes.

Assessment and Collection.

Sec. 1. Property subject to inheritance tax; exemption of personal property of non-residents. R. S. c. 8, § 69. 1909, c. 186. 1911, c. 163, § 1. 1913, c. 190, § 3. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, by allowance of a judge of probate to a widow or child, by deed, grant, sale or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, and except as herein otherwise provided, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the state as hereinafter provided. Property which shall so pass to or for the use of (Class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adoptive parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share, in excess of the exemption hereinafter provided, of one per cent if such value does not exceed fifty thousand dollars, one and one-half per cent if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child or adoptive parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (Class A) shall in each case be five hundred dollars. Property which shall so pass to or for the use of (Class B) a brother, sister, uncle, aunt, nephew, niece or cousin of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and