

MAINE STATE LEGISLATURE

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CHAPTER 71.

Insolvent Estates.

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Distribution of Insolvent Estates.

Sec. 1. Priority of claims and of payment. R. S. c. 68, § 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.
- V. To all other debts.

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

See c. 67, § 46; 18 Me. 271; 19 Me. 264; 24 Me. 28; 61 Me. 470; 64 Me. 407; 67 Me. 506; 71 Me. 66; 77 Me. 501; 84 Me. 94; 97 Me. 389; 107 Me. 194.

Sec. 2. When representation of insolvency need not be made. R. S. c. 68, § 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.

24 Me. 28; 62 Me. 167; 79 Me. 225; 84 Me. 94; 90 Me. 412; 97 Me. 390, 391, 396; 113 Me. 560.

Commissioners and Proceedings.

Sec. 3. When representation must be made; commissioners to be sworn; their report. R. S. c. 68, § 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 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.

85 Me. 461.

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Sec. 4. Meetings and notice thereof; time allowed to prove claims; proceedings in case of death of commissioner. R. S. c. 68, § 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.

48 Me. 407; 105 Me. 357.

Sec. 5. Presentation and proof of claims. R. S. c. 68, § 5. 1915, c. 3. 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. Any claim filed in the registry of probate supported by affidavit as provided in section fourteen of chapter ninety-two, shall be considered as if presented to said commissioners, provided the same is so filed before the expiration of the six months period named in the preceding section. Before making their report said commissioners shall adjudicate upon all claims so filed.

67 Me. 197; 96 Me. 453.

Sec. 6. Refusal or perjury by claimant. R. S. c. 68, § 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.

67 Me. 197.

Sec. 7. Value of claimant's security to be deducted; appraisal. R. S. c. 68, § 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.

24 Me. 38; 90 Me. 297.

Sec. 8. Interest on claims; report may be recommitted; claim of administrator. R. S. c. 68, § 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.

19 Me. 264; 48 Me. 483; 74 Me. 486.

Sec. 9. Commissioners forfeit compensation for neglect of duty. R. S. c. 68, § 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.

67 Me. 115, 117.

Contingent Claims.

Sec. 10. Proof of contingent claims. R. S. c. 68, § 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.

32 Me. 463; 57 Me. 564.

Sec. 11. Proceedings on such claims after four years. R. S. c. 68, § 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.

57 Me. 564.

Appeals.

Sec. 12. Appeals; bond; notice. R. S. c. 68, § 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.

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.

Sec. 13. Petition for leave to bring suit, after failing to prosecute appeal. R. S. c. 68, § 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

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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.

See c. 87, § 8; 68 Me. 413; 81 Me. 197.

Sec. 14. Proceedings on appeal. R. S. c. 68, § 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.

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; 105 Me. 358.

Sec. 15. If claim is allowed and appeal taken by administrator, heir or creditor, claimant may apply to supreme court. R. S. c. 68, § 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.

96 Me. 454.

Sec. 16. Proceedings in the suit, and judgment. R. S. c. 68, § 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 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.

68 Me. 414; 96 Me. 454.

Sec. 17. Reference; examination of creditor. R. S. c. 68, § 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.

55 Me. 514; 67 Me. 197.

Sec. 18. Judgment against administrator, to be added to claims allowed. R. S. c. 68, § 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.

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

Suits Pending and Commenced.

Sec. 19. Actions pending. R. S. c. 68, § 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.

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; 109 Me. 67.

Sec. 20. Claims not presented or not allowed, barred, except in case of further assets. R. S. c. 68, § 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.

67 Me. 458.

Miscellaneous Provisions.

Sec. 21. Penalty for delay in settling account. R. S. c. 68, § 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.

5 Me. 48; 6 Me. 270; 8 Me. 25; 11 Me. 51; 79 Me. 224.

Sec. 22. Waste or trespass on real estate of insolvent. R. S. c. 68, § 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.

See c. 100, § 17; 59 Me. 355; 62 Me. 309; 77 Me. 246.

Sec. 23. Insolvency of estate in hands of executors and guardians. R. S. c. 68, § 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.

See c. 72, § 19; 68 Me. 432; 111 Me. 550.

Decree of Distribution.

Sec. 24. Decree of distribution, when and how made. R. S. c. 68, § 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.

73 Me. 241.

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Sec. 25. Account of payments, allowed without notice. R. S. c. 68, § 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.

105 Me. 389.

Sec. 26. Report of commissioners on exorbitant claims, final, even if estate is insolvent. R. S. c. 68, § 26. When commissioners appointed under section fifty-five of chapter sixty-eight 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.

See c. 74, § 6.

Note. Liability of heir or devisee for waste on real estate of insolvent estates, c. 100, § 16.

CHAPTER 72.

Appointment, Powers and Duties of Guardians. Adoption of Children. Change of Name.

- Sections 1-3 Appointment of Guardians for Minors.
- Sections 4-10 Appointment of Guardians for Adults.
- Sections 11-29 Powers and Duties of Guardians.
- Sections 30-32 Guardians ad litem.
- Sections 33-34 Embezzlement of the Ward's Estate.
- Sections 35-41 Adoption of Children.
- Section 42 Change of Name.

Appointment of Guardians for Minors.

Sec. 1. Appointment of guardians; proceedings when judge is interested. R. S. c. 69, § 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.

33 Me. 210; 39 Me. 394; 53 Me. 403; 61 Me. 213; 79 Me. 37.

Sec. 2. Guardians, how nominated and appointed. R. S. c. 69, § 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,