

MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

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piration of the time within which an appeal might have been taken or of final judgment on appeal, the register of probate shall forthwith file in the office of the register of deeds in the county or counties where real estate which may be affected by such decree is situated under seal of the probate court, a certified copy thereof which the register of deeds shall record without fee.

CHAPTER 75.

Courts of Probate.

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Courts of Record. Jurisdiction in Equity.

Sec. 1. Courts of record; seal; punishment for contempt. R. S. c. 67, § 1. Courts of probate are courts of record. Each shall have an official seal, of which the register shall have the custody. They may issue any process necessary for the discharge of their official duties, and punish for contempt of their authority.

*47 Me. 86; 63 Me. 248.

Sec. 2. Jurisdiction in equity. R. S. c. 67, § 2. The courts of probate shall have jurisdiction in equity, concurrent with the supreme judicial court and the superior court, of all cases and matters relating to the administration of the estates of deceased persons, to wills, and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon bill or petition according to the usual course of proceedings in equity.

119 Me. 287; *120 Me. 151; 121 Me. 401.

Selection, Powers, and Duties of Judges of Probate.

Sec. 3. Judges, how selected; terms commence, when. R. S. c. 67, § 3. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners; and they enter upon the discharge of their duties on the first day of January following; but, when appointed to fill vacancies, their terms commence on their appointment.

See Const. Me. Art. vi, § 7; c. 8, § 55; c. 92, §§ 1-4.

Sec. 4. Officers to execute processes and attend courts. R. S. c. 67, § 4. Sheriffs and their deputies, and constables, shall execute all legal processes directed to them by any such judge who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he shall be paid as in other courts for similar services.

47 Me. 86.

Sec. 5. Probate courts to be in constant session; certain days to be fixed upon which matters requiring public notice shall be made returnable. R. S. c. 67, § 5. 1923, c. 180. Probate court shall always be open in each county for all matters over which it has jurisdiction, except upon days on which, by law, no court is held, but it shall have certain fixed days and places to be made known by public notification thereof in their respective counties, to which all matters requiring public notice shall be made returnable; and in case of the absence of the judge, or vacancy in the office at the time of holding any court, the register, or acting register, may adjourn the same until the judge can attend, or some other probate judge can be notified and attend.

²⁷ Me. 116; 109 Me. 423.

Sec. 6. Time and place for hearings in equity and contested cases; compensation of judge. 1917, c. 31. Judges of probate may hold hearings for matters in equity and contested cases at such time and place in the county, as the judge of probate may appoint, and make all necessary orders and decrees relating thereto, and when hearings are held at other places than those fixed for holding the regular terms of court, the judge shall be allowed, in addition to his regular salary, five dollars per day and actual expenses, which shall be paid by the estate unless otherwise provided by law.

Sec. 7. Term of probate court at Fort Kent. R. S. c. 67, § 7. The judge of probate in and for the county of Aroostook shall hold a court of probate once in each year at Fort Kent in said county. The time for holding said court shall be appointed by said judge and made known by public notification as provided in section five.

Sec. 8. Probate judges may interchange duties; reimbursement for expenses. R. S. c. 67, § 8. 1929, c. 153, § 1. During the sickness, absence from the state, or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county; the judges may interchange service or perform each others' duties when they find it necessary or convenient, and in case of the death of a judge, all necessary terms of the probate court for the county, may, at the request of the register, be held by the judge of another county, until the vacancy is filled. The orders, decrees, and decisions of the judge holding such terms, have the same force and validity as if made by the judge of the county in which such terms are held.

When any judge of probate holds court, or a hearing in any probate matter, or in equity, in any county other than the one in which he resides, such judge shall be reimbursed by the county in which such court or hearing is held, for his expenses actually and reasonably incurred, upon presentation to the county commissioners of said county of a detailed statement of such expenses.

⁷⁹ Me. 37.

Sec. 9. Jurisdiction. R. S. c. 67, § 9. Each judge may take the probate of wills, and grant letters testamentary or of administration on the estates of all deceased persons, who, at the time of their death, were inhabitants or residents of his county, or who, not being residents of the state, died leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person confined in the state prison under sentence of death or of imprisonment for life; and has jurisdiction of all matters relating to the settlement of such estates. He may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law, and has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law.

³² Me. 103; ⁴⁵ Me. 287; ⁶³ Me. 249; ⁷⁴ Me. 89; ⁸¹ Me. 32, 225; ¹⁰⁰ Me. 149; ¹⁰¹ Me. 547; ¹⁰⁵ Me. 245, 388.

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Jurisdiction is conferred upon judges of probate in the following cases:
 To determine questions relating to inheritance taxes, c. 77, § 5.
 To approve transfer of funds held for religious or benevolent purposes, c. 20, § 34.
 In cases of persons suffering from use of drugs, c. 22, § 132.
 In cases of neglected children, c. 72, § 52.
 Of proceedings for support of family, c. 74, § 9.
 To decree judicial separation of husband and wife, c. 74, § 10.
 In case of shipwrecked goods, c. 48, §§ 7, 12, 17.
 In cases involving custody of children, c. 72, §§ 46, 52.
 In sales of contingent remainders, c. 87, §§ 4-6.
 In cases of contribution under wills, c. 88, § 14.
 To issue writ of habeas corpus in case of insane persons under arrest or imprisoned, c. 113, § 38.
 To take depositions in perpetuum, c. 121, § 22.
 To take examination of poor debtor, c. 124, § 22.
 To take bond for safe-keeping of insane criminals, c. 149, § 3.
 To commit to state school for girls, c. 154, § 21.
 To commit to insane hospitals, c. 155, § 25; to Pownal State School, c. 155, § 49.
 To release on habeas corpus from insane hospital, c. 155, § 38.

Sec. 10. Judge of probate may appoint stenographer; duties. R. S. c. 67, § 10. The judge of any court of probate or court of insolvency, may appoint a stenographer to report the proceedings at any hearing or examination in his court, whenever such judge deems it necessary or advisable. Such stenographer shall be sworn to a faithful discharge of his duty, and, under the direction of the judge, shall take full notes of all oral testimony at such hearing or examination, and also such other proceedings at such hearing or examination as the judge directs, and when required by the judge shall furnish for the files of the court a correct and legible longhand or typewritten transcript of his notes of the oral testimony of any person testifying at such hearing or submitting to such examination, and in making said transcript the stenographer shall transcribe his said notes in full by questions and answers.

Sec. 11. Transcript of testimony to be read to person testifying, and signed when required by law; otherwise deemed correct without signing. R. S. c. 67, § 11. In cases where the person testifying or submitting to examination is required by law to sign his testimony or examination, the transcript made as provided in the preceding section shall be read to the person whose testimony or examination it is, at a time and place to be appointed by the judge, unless such person or his counsel in writing waives such reading; and if it is found to be accurate, or if it contains errors or mistakes or alleged errors or mistakes, and such errors or mistakes are either corrected or the proceedings had in relation to the same as hereinafter provided, such transcript shall be signed by the person whose testimony or examination it is. When the reading of a transcript is waived as provided by this section, such transcript shall be deemed correct. In all other cases the transcript need not be signed but shall be deemed to be complete and correct without signing and shall have the same effect as if signed.

Sec. 12. Certified copies of transcript to be taken as evidence. R. S. c. 67, § 12. Whenever it becomes necessary, in any court in the state, to prove the testimony or examination taken, as provided in the two preceding sections, the certified copy of the transcript of such testimony or examination, taken by such stenographer, is evidence to prove the same.

Sec. 13. Correction of mistakes in transcript. R. S. c. 67, § 13. Manifest errors or mistakes in any transcript, may be corrected, under the direction of the judge, according to the facts. But when an error or mistake is alleged by the party conducting the hearing or examination, or by his counsel, or by the person testifying or submitting to examination, or by his counsel, and said parties cannot agree whether or not there is such an error or mistake as alleged, or what correction should be made, the judge shall decide whether or not such an error or mistake exists, and may allow or disallow a correction according as he may find the fact, but in such case the judge shall annex to the transcript a certificate signed by him stating the alleged error or mistake, and by whom

alleged, and the correction allowed or disallowed. In case the said parties mutually agree that there is an error or mistake in the transcript, and in like manner agree what the correction should be, the transcript may be corrected according to such agreement, but such correction shall be stated and made in the presence of the judge. No changes or alterations shall be made in any transcript except in the presence of the judge, or the person appointed by the judge to take the examination.

Sec. 14. When examination is before some person appointed by judge, he may also appoint a stenographer. R. S. c. 67, § 14. When an examination is taken before some person appointed by the judge to take it, the judge may also appoint a stenographer to attend such examination for the purposes mentioned in section ten, and the duties of such stenographer shall be the same as in examinations before the judge. The powers and duties of any person appointed by the judge to take an examination shall be the same at such examination as those of the judge, and the same proceedings for the correction or alteration of transcripts may be had before such person as before the judge.

Sec. 15. Transcripts deemed original papers. R. S. c. 67, § 15. All transcripts made and signed as herein provided, shall be deemed original papers.

Sec. 16. Court first commencing probate proceedings, to have jurisdiction. R. S. c. 67, § 16. When a case is originally within the jurisdiction of the probate court in two or more counties, the one which first commences proceedings therein, retains the same exclusively throughout; and the jurisdiction assumed in any case, except in cases of fraud, so far as it depends on the residence of any person, or the locality or amount of property, shall not be contested in any proceeding whatever, except on an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

*58 Me. 227; 63 Me. 249; *74 Me. 89; 77 Me. 250; 81 Me. 224; *123 Me. 22.

Sec. 17. When judge or register is interested, proceedings to be in adjoining county. R. S. c. 67, § 17. 1929, c. 153, § 2. When a judge or register of probate is interested in his own right, trust, or in any other manner, or is within the degree of kindred, by which in law, he may, by possibility, be heir to any part of the estate of the person deceased, or is named as executor, trustee, or guardian of minor children, in the will of any deceased resident of the county, such estate shall be settled in the probate court of any adjoining county, which shall have as full jurisdiction thereof, as if the deceased had died therein. If his interest arises after jurisdiction of such estate has been regularly assumed, or existed at the time of his appointment to office, and in all cases where an executor, administrator, guardian, or trustee, whose trust is not fully executed, becomes judge or register of probate for the county in which his letters were granted, further proceeding therein shall be transferred to the probate court in any adjoining county, and there remain till completed, as if such court had had original jurisdiction thereof, unless said disability is removed before that time. Whenever in any case within the provisions of this section, the disability of the judge or register is removed before the proceedings have been fully completed, the proceedings shall then be transferred to the probate court in the county of original jurisdiction or to the probate court which otherwise would have had jurisdiction; and in all such cases the register in such adjoining county shall transmit copies of all records relating to such estate, to the probate office of the county where such estate belongs, to be there recorded.

See § 30; c. 80, § 1; *79 Me. 36.

Sec. 18. Judge to certify unfinished acts of his predecessor. R. S. c. 67, § 18. Every judge, upon entering on the duties of his office, shall examine the records, decrees, certificates, and all proceedings connected therewith, which his predecessor left unsigned or unauthenticated, and if he finds them correct, he shall sign and authenticate them, and they shall then be as valid to all intents and purposes, as if such duty had been done by his predecessor while in office.

104 Me. 462.

Sec. 19. Oaths required may be taken before certain officials within or without the state. R. S. c. 67, § 19. 1929, c. 153, § 3. All oaths required to be taken by executors, administrators, trustees, or guardians, and all oaths required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by license of a judicial or probate court, may be administered by the judge or register of probate, by any justice of the peace, or notary public; and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed. When any person of whom such oath is required, including any person making an affidavit in support of a claim against an estate, resides temporarily or permanently without the state, the oath may be taken before a notary public without the state, a commissioner for the state of Maine, or a United States consul.

Sec. 20. Judges not to be counsel in cases incompatible; nor draft documents, which they are required to pass upon. R. S. c. 67, § 20. No judge of probate shall have a voice in judging and determining, nor be attorney or counselor in or out of court in any civil action or matter, which depends on or relates to any sentence or decree made by him in his office; nor in any civil action for or against any executor, administrator, guardian, or trustee under any last will and testament, as such, within his county, and any process or proceeding commenced by him in the probate court for his county in violation of this section is void, and he is liable to the party injured in damages; nor shall any judge of probate draft or aid in drafting any document or paper which he is by law required to pass upon.

*119 Me. 150.

Election, Powers, and Duties of Registers of Probate.

Sec. 21. Registers, how elected; bond. R. S. c. 67, § 21. Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners by chapter ninety-two, and they enter upon the discharge of their duties on the first day of January following; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall give bond to the treasurer of their county with sufficient sureties, in the sum of one thousand dollars; and every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of his county, to be presented to them at their next meeting for approval, and after the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county, within ten days after its approval, to be filed in his office.

See Const. Me. Art. vi, § 7; Art. ix, § 1; c. 92, §§ 1-4.

Sec. 22. Condition of bond. R. S. c. 67, § 22. The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer quar-

terly, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records, and to faithfully discharge all other duties of the office. If such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than six months at any time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.

69 Me. 368; *123 Me. 23.

Sec. 23. Duties; may act as auditors; records attested by volume; binding of original papers. R. S. c. 67, § 23. Registers of probate shall have the care and custody of all files, papers, and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship granted, bonds approved, accounts allowed, all petitions for distribution and decrees thereon, and all petitions, decrees, and licenses relating to the sale, exchange, lease, or mortgage of real estate, all petitions and decrees relating to adoption and change of name, and such orders and decrees of the judge, and other matters, as he directs. They shall keep a docket of all probate cases, and shall, under the appropriate heading of each case, make entries of each motion, order, decree, and proceeding, so that at all times the docket will show the exact condition of each case. Any register may act as an auditor of accounts when requested so to do by the judge and his decision shall be final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume, and it shall be deemed to be a sufficient attestation of such records, when each volume thereof bears the attest with the written signature of the register or other person authorized by law to attest such records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective offices, and when so bound and indexed such inventories and accounts shall be deemed to be recorded in all cases where the law requires a record to be made, and no further record shall be required.

Other records which registers are required to make:

Cases transferred to other counties, § 17.

Foreign wills, c. 76, § 14.

Appointment of agent, c. 76, § 42.

Judgment on partition, c. 78, § 13.

Allowance, c. 78, § 14.

Account of distribution, c. 78, § 21.

Appointment of agent by non-resident guardian, c. 80, § 13.

As to non-resident guardians, c. 80, § 28.

Of change of name, c. 80, § 42.

Appointment of agent by non-resident trustees, c. 82, § 4.

As to non-resident executors, etc., c. 85, § 14.

Affidavit of notice of sale of real estate, c. 85, § 25.

Decree as to will when right of widow is in doubt, c. 89, § 13.

Waivers and notices of intention to claim share, by widow or widower, c. 89, § 14.

Proceedings on commitment to insane hospitals, c. 155, § 26.

Duties of registers of probate as to inheritance taxes, c. 77, §§ 6, 7, 9.

Sec. 24. Register to certify copy of will to register of deeds if real estate is devised, or power given to executors or trustees to sell without license. R. S. c. 67, § 24. 1921, c. 1. Within thirty days after a will has been proved and allowed in the probate court, or in the supreme court of probate, the register shall make out and certify to the register of deeds in the county where the real estate is situated, a true copy of so much of said will as devises real estate, with the description thereof, so far as it can be furnished from said will, including so much of said will as may relate to powers of executors and trustees named in said will to sell real estate without license of court, and the name of the testator and of the devisee; and the register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof as aforesaid, and record it in the same manner as a deed of real estate.

See § 39; c. 15, § 18.

Sec. 25. Beneficiaries to be notified of bequests; copy to be furnished on request. R. S. c. 67, § 25. Registers of probate shall, within the time specified in the preceding section, notify by mail all beneficiaries under any will, that bequests have been made to them, stating the name of the testator and executor, or administrator with the will annexed. Beneficiaries shall, upon application, be furnished with a copy of so much of the will as relates to them, upon payment of a fee of fifty cents, provided the copy does not exceed ten lines of legal cap paper of not less than ten words in each line, and five cents for each additional line of ten words.

Sec. 26. If register absent or dead, judge may appoint register pro tempore. R. S. c. 67, § 26. In case of the death or absence of the register, the judge shall appoint a suitable person to act as register, until the register resumes his duties, or another is qualified in his stead; he shall be sworn, and if the judge requires it, give bond as in case of the register.

Sec. 27. Judges to inspect register's conduct of his office. R. S. c. 67, § 27. Every judge of probate and the justices of the supreme court of probate, shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall put it in suit; and the money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge, and the surplus, if any, shall inure to the county; but if it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in an action on the case.

Sec. 28. Proceedings, if register is incapable or neglects his duties. R. S. c. 67, § 28. When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time; such person shall be paid by the treasurer in proportion to the time that he has served, and the amount shall be deducted from the register's salary.

Sec. 29. Records, in case of vacancy. R. S. c. 67, § 29. When there is a vacancy in the office of register, and the records are incomplete, they may be completed and certified by the person appointed to act as register, or by the register's successor.

63 Me. 250.

Sec. 30. Register not to be counsel in probate cases; nor draft or aid in drafting any paper which he is required to record. R. S. c. 67, § 30. 1929, c. 90. No register shall be an attorney or counselor in or out of court in any suit or matter pending in the court of which he is register, nor in any appeal therefrom; nor be administrator, guardian, commissioner of insolvency, appraiser, or divider of any estate, in any case within the jurisdiction of said court, except as provided in section seventeen, nor be in any manner interested in the fees and emoluments arising therefrom, in such capacity; nor commence or conduct, either personally or by his agent or clerk, any matter, petition, process, or proceeding in the court of which he is register, in violation of this section, and for each and every violation of the preceding provisions of this section, such register shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than eleven months. No register shall draft or aid in drafting any document or paper, which he is by law required to record in full or in part, under a penalty of not more than one hundred dollars, to be recovered by any complainant in an action of debt for his benefit, or by indictment for the benefit of the county.

See c. 15, § 14; c. 93, § 14.

Supreme Court of Probate.

Sec. 31. Supreme court of probate; appellate jurisdiction thereof. R. S. c. 67, § 31. 1929, c. 141, § 7. The superior court is the supreme court of probate, and has appellate jurisdiction in all matters determinable by the several judges of probate; and any person aggrieved by any order, sentence, decree, or denial of such judges, except the appointment of a special administrator, or any order or decree requiring any administrator, executor, guardian, or trustee to give an additional or new official bond, or any order or decree under section thirty-nine of chapter seventy-six, or any order or decree removing a guardian from office, may appeal therefrom to the supreme court of probate to be held within the county, if he claims his appeal within twenty days from the date of the proceeding appealed from; or if, at that time, he was beyond sea, or out of the United States, and had no sufficient attorney within the state, within twenty days after his return, or the appointment of such attorney.

19 Me. 260; 27 Me. 82; 30 Me. 538; 34 Me. 44; 39 Me. 394; 44 Me. 63; *51 Me. 424; 52 Me. 195; *53 Me. 186, 558; *54 Me. 342; 56 Me. 413; 58 Me. 227; 67 Me. 504; 68 Me. 413; 73 Me. 224; 75 Me. 581; 79 Me. 38; 80 Me. 22, 91; 83 Me. 28; *85 Me. 360; 86 Me. 101; *93 Me. 213, 214; *94 Me. 422; *97 Me. 279; *100 Me. 148; 106 Me. 114; 108 Me. 351; 113 Me. 233; *114 Me. 338; *115 Me. 501; 116 Me. 462, 473; *118 Me. 91; *120 Me. 151; *126 Me. 111.

Sec. 32. Appellant to file bond and reasons of appeal; service on other parties; service on resident attorney of record to be sufficient. R. S. c. 67, § 32. 1919, c. 167. 1929, c. 153, § 4. Within the time limited for claiming an appeal, the appellant shall file, in the probate office, his bond to the adverse party, or to the judge of probate for the benefit of the adverse party, 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 approves; conditioned to prosecute his appeal with effect, and to pay all intervening costs and damages, and such costs as the supreme court of probate taxes against him, and he shall also file in the probate office the reasons of appeal; and, fourteen days at least before the sitting of the appellate court, he shall serve all the parties who appeared before the judge of probate on the case that have entered or caused to be entered their appearance in the docket of said court, with a copy of such reasons, attested by the register. When a party appears by an attorney residing in this state before the judge of probate in any case, and an appeal is taken, the service of a copy of the reasons of appeal upon such attorney shall be sufficient. In case of controversy between a person under guardianship and his guardian, the supreme court of probate may sustain an appeal on the part of the ward without such bond.

See c. 80, § 39; 11 Me. 251; 44 Me. 63; 53 Me. 185; 82 Me. 211; 85 Me. 60, *360; 93 Me. 248; 94 Me. 423; 108 Me. 351; *111 Me. 188; *113 Me. 232; *114 Me. 167; 116 Me. 462; 118 Me. 464.

Sec. 33. Court may allow appeal accidentally omitted. R. S. c. 67, § 33. If any such person from accident, mistake, defect of notice, or otherwise without fault on his part, omits to claim or prosecute his appeal as aforesaid, the supreme court of probate, if justice requires a revision, may, upon reasonable terms, allow an appeal to be entered and prosecuted with the same effect, as if it had been seasonably done; but not without due notice to the party adversely interested, nor unless the petition therefor is filed with the clerk of said court within one year after the decision complained of was made; and said petition shall be heard at the next term after the filing thereof.

58 Me. 227; 79 Me. 33; 81 Me. 182; 85 Me. 60; 92 Me. 253, 361; 98 Me. 203, *420; 103 Me. 360; 107 Me. 275; 108 Me. 351; 110 Me. 4; 111 Me. 188; 113 Me. 233; *116 Me. 462.

Sec. 34. Proceedings when appeal is not prosecuted. R. S. c. 67, § 34. If the appellant fails to enter and prosecute his appeal, the supreme court of probate, upon complaint of any person interested, may affirm the former sentence, assess reasonable costs for the complainant, and make such further order thereon, as law and justice require.

107 Me. 275; 108 Me. 351.

Sec. 35. Proceedings in probate court to cease after appeal. R. S. c. 67, § 35. After an appeal is claimed, and the bond and reasons of appeal are filed, all further proceedings, in pursuance of the matter appealed from, cease, until the determination of the supreme court of probate thereon. The register shall transmit to the appellate court all depositions, relating to the matter appealed from, filed in the probate court, and the same may be used in the appellate court.

108 Me. 351; 118 Me. 109.

Sec. 36. Appeal, when to be heard; proceedings. R. S. c. 67, § 36. Such appeal shall be cognizable at the next term of the supreme court of probate, held after the expiration of thirty-four days from the date of the proceeding appealed from, and said appellate court may reverse or affirm, in whole or in part, the sentence or act appealed from, pass such decree thereon as the judge of probate ought to have passed, remit the case to the probate court for further proceedings, or make any order therein, that law and justice require; and if, upon such hearing, any question of fact occurs proper for a trial by jury, an issue may be framed for that purpose under the direction of the court, and so tried.

45 Me. 584; 53 Me. 186; 64 Me. 208; 73 Me. 138; 80 Me. 22, 57; 107 Me. 249; 108 Me. 351; *115 Me. 127; 118 Me. 116.

Sec. 37. Rights of claimants under heir. R. S. c. 67, § 37. Any person claiming under an heir at law has the same rights as the heir in all proceedings in probate courts, including rights of appeal.

81 Me. 223; 100 Me. 148; 108 Me. 351.

Costs and Fees.

Sec. 38. Costs in contested cases. R. S. c. 67, § 38. In all contested cases in the original or appellate court of probate, costs may be allowed to either party, to be paid by the other, or to either or both parties, to be paid out of the estate in controversy, as justice requires; and executions may be issued therefor as in courts of common law.

25 Me. 243; 78 Me. 299; 85 Me. 407; *88 Me. 167.

Sec. 39. Fees to be paid for abstracts of wills recorded in registry of deeds. R. S. c. 67, § 39. 1925, c. 151. 1929, c. 5. For making and certifying to the register of deeds copies of devises of real estate, the register of probate shall receive one dollar for each copy so certified, and the register of deeds one dollar for entering and recording the same, said sums to be paid by the executor or administrator when said will is proved, to the register of probate, who shall pay one dollar to the register of deeds at the time said certified copy is furnished to him; and the executor or administrator shall charge said sums in his account.

See c. 15, § 18.

Sec. 40. Fees of registers. R. S. c. 67, § 40. The register shall receive for such copies as are taxable by law twelve cents a page; for authenticating the official signature of a magistrate, twenty-five cents; for each certificate, under seal of the court, of the appointment and qualification of an administrator, execu-

tor, guardian, or trustee, twenty-five cents; but he shall have no fee for taking from the files of his office, or transporting to the place where the probate court is held, papers necessary for the settlement of any estate or account in said court, nor for furnishing to those entitled thereto, one copy of each will proved.

Sec. 41. Fees of registers in case of foreign estates. R. S. c. 67, § 41. When administration is granted on the estate of a person not a resident of the state, or the will of such person is proved, or administration is granted to a public administrator, or a guardian is appointed for a non-resident minor, the register shall have a reasonable compensation, to be fixed by the judge, for entering and filing the orders and decrees, and for making the necessary records, to be paid by the executor, administrator, or guardian, and allowed to him in his account.

Sec. 42. Registers to account quarterly for fees. R. S. c. 67, § 42. Registers of probate shall account quarterly under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly on the first days of January, April, July, and October of each year.

Sec. 43. Fees of executors, administrators, guardians, surviving partners, and trustees. R. S. c. 67, § 43. Executors, administrators, guardians, surviving partners, and trustees, may be allowed one dollar for every ten miles travel to and from court, and one dollar for each day's attendance; and also, at the discretion of the judge, having regard to the nature, liability, and difficulty attending their trusts, a commission not exceeding five per cent on the amount of personal assets that come into their hands, and, in cases where legal counsel is necessary a reasonable sum for professional aid; and trustees may receive yearly such additional sum for the care and management of the trust property as the court having jurisdiction of said trust shall allow not exceeding, however, in any one year one per cent of the principal of said trust fund, said additional sum so allowed to be charged against principal or income, or both and if charged against both, to be charged in such proportions as the said court shall determine; provided, that if the surviving partner or partners succeed to the business of the late firm, the benefit accruing from such succession shall be taken into account by the judge in determining the amount of commission to be allowed.

32 Me. 160; 104 Me. 523; 111 Me. 383; *114 Me. 29; *115 Me. 501.

Sec. 44. Pay of appraisers and commissioners. R. S. c. 67, § 44. Appraisers of estates, commissioners for examining claims against insolvent estates or determining disputed claims, and commissioners appointed to make division of estates, may be allowed a reasonable compensation for the time actually employed, including travel and expenses. The fees of witnesses to wills, appraisers and commissioners on insolvent estates or disputed claims, shall be paid by the executors, administrators, trustees, or guardians, and allowed in the settlement of their accounts.

Fees of witnesses in probate courts; c. 126, § 7.

Sec. 45. Expenses of partition. R. S. c. 67, § 45. When a partition of real estate is made by order of a judge of probate, the expenses thereof shall be paid by the parties interested, in proportion to their interests; but when such expenses accrue prior to the closing of the final account of any executor or administrator of the deceased owner of such real estate, having in his hands sufficient personal assets for the purpose, the judge may order him to pay such expenses, and allow the same in his account, after due notice and hearing thereon. In case of neglect

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or refusal of any person liable to pay such expenses, the judge may issue a warrant of distress against such delinquent for the amount due from him, and costs of process.

See c. 78.

Sec. 46. Compensation of stenographers. R. S. c. 67, § 46. Stenographers appointed under the provisions of this chapter, shall be allowed five dollars a day for their services in court, or at an examination, and travel at the rate of twelve cents a mile from place of residence to the place of holding the court or examination, and ten cents for every hundred words of transcript furnished for the files of the court, to be paid by the county in which the court or examination is held, after the stenographer's bill has been allowed by the judge of the court in which the services were rendered. But if any stenographer so appointed, neglects or refuses to perform any part of the duty required of him he shall receive no pay for his services, and also may be punished for contempt of court. In probate matters, the executor, administrator, or guardian shall, in each case out of the estate in his hands, pay to the register for the county, the amount of said stenographer's fees, and in insolvent matters, the assignee shall pay the same to the register for the county before any claims are paid, other than those named in paragraph one of section forty-two of chapter eighty-four.

Sec. 47. Stenographers to furnish copies. R. S. c. 67, § 47. Such stenographers shall also furnish correct and legible longhand or typewritten copies of their notes of the oral testimony taken at any hearing or examination, to any person calling for the same, upon payment of ten cents for every hundred words of the copy furnished.

Rules of Practice.

Sec. 48. Rules of practice and procedure; blanks; revision of rules and blanks; approval. R. S. c. 67, § 48. The rules of practice and procedure in the courts of probate and insolvency, approved by a majority of the justices of the supreme judicial court June seventeen, nineteen hundred sixteen, and as thereafter revised and approved, are in force in all courts of probate and insolvency; and the blanks for use in said courts approved by the supreme judicial court September thirty, nineteen hundred sixteen, and as thereafter revised and approved, shall be used in all courts of probate and insolvency, and no other blanks shall be used therein. The governor may at any time, upon the request in writing of a majority of the judges of the courts of probate and insolvency, appoint a commission composed of three judges and two registers of probate, who may make new rules and blanks, or amendments to existing rules and blanks, which new rules and blanks, or amended rules and blanks shall, when approved by the supreme judicial court or a majority of the justices thereof, take effect and be in force in all courts of probate and insolvency. The expenses of such commission or commissions shall be reported to the governor, and upon the approval of the same by the governor and council, they shall be allowed and paid in the same manner as other claims against the state.

106 Me. 388; *117 Me. 182.

Sec. 49. Blanks and records. R. S. c. 67, § 49. Each county shall provide all necessary printed blanks and record books for its probate courts and courts of insolvency, and said record books may be printed to correspond with the printed blanks.

Notices.

Sec. 50. Notice in probate proceedings, defined. R. S. c. 67, § 50. In laws relating to probate courts and proceedings, the words "public notice" denote notice published three weeks successively in a newspaper published in the county whose court has jurisdiction, or in which the deceased last dwelt, as ordered by the judge, or, if none, in the state paper; the words "personal notice" denote service by a copy given in hand, or left at the place of last and usual abode, seven days at least before the time of hearing; and the words "due notice" denote public or personal notice, at the discretion of the judge.

*1 Mass. 256; *55 Me. 190; *76 Me. 279.

Sec. 51. Parties may select newspaper for notices. R. S. c. 67, § 51. Notices to be published in a newspaper, shall be published in such paper published in the county as the party required to publish it selects, unless the judge deems such paper unsuitable for want of circulation or other substantial reason.

Sec. 52. Public notice of appointment and qualification of executor, administrator, guardian of adult, or conservator to be given by register of probate; date of qualification. 1917, c. 133, §§ 1, 14. 1919, c. 19. Within two months after the qualification of an executor, administrator, guardian of an adult, or conservator, the register of probate shall cause public notice of such appointment and the date of qualification to be given, and shall enter upon the docket the name of the newspaper and the date of the first publication. Such notice may be given in a list showing the name of the estate, the name and residence of each person appointed and, in each case where an agent has been appointed, the name and residence of such agent. Such executor, administrator, guardian, or conservator may be required to give such further notice of his appointment as the judge may order. At the time of his qualification, such executor, administrator, conservator, or guardian of an adult shall pay to the register of probate the cost of such public notice, together with such reasonable fee for such additional duty as may be fixed by the judge, and he shall be allowed said sums in his account.

An executor, administrator, guardian of an adult, or conservator, shall be deemed to be qualified when his bond has been filed and approved by the judge of probate; provided however, that in cases where no bond is required the date of appointment shall be deemed to be the date of qualification.