

MAINE STATE LEGISLATURE

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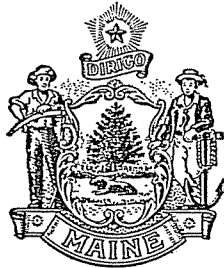
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CHAPTER 143.

PARTITION OF REAL ESTATE BY COURTS OF PROBATE. ALLOWANCES. DISTRIBUTION OF PERSONAL ESTATE.

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Partition of Real Estate

Sec. 1. Jurisdiction to make partition of real estate. R. S. c. 78, § 1. The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all the real estate of such person in this state, among the widow or widower, and heirs, or devisees of such person, and all holding under them, when the proportions of the respective parties are not in dispute between them, or do not appear to the judge to be uncertain, depending upon the construction of any devise or other conveyance, or upon other questions that he thinks proper for the consideration of a jury and a court of common law.

*35 Me. 421.

Sec. 2. Reversions or remainders may be divided. R. S. c. 78, § 2. Any reversion or remainder vested in his heirs, expectant on the determination of a particular estate under his will or otherwise, may in like manner be divided either during the existence of such particular estate or after its determination.

Sec. 3. Appointment, oath, and duties of commissioners. R. S. c. 78, § 3. The partition shall be made by 3 disinterested commissioners, appointed by said judge, who shall first be sworn, and shall make such partition pursuant to the will of the deceased or the laws regulating the descent of intestate estates, as the case may be, among all the parties owning shares, whether they joined in the petition therefor or not.

Sec. 4. Partition of estate in different counties. R. S. c. 78, § 4. If there is estate in different counties to be divided, the judge may appoint separate commissioners for each county and issue warrants accordingly; and in such case, the partition shall be made of the estate in each county as if there were no other to be divided.

Sec. 5. Proceedings, when equal division cannot be made. R. S. c. 78, § 5. 1933, c. 86. When the whole or any part of the premises, of greater value than any party's share, cannot be divided without great inconvenience, the same may be assigned to any one or more of the parties, who will accept and pay to the others such sums as the commissioners award to make the partition just; but such partition shall not be established by the court until all such sums are paid or secured, with interest, to the satisfaction of the parties entitled thereto or to the satisfaction of the judge of the probate court having jurisdiction thereof; nor if inconsistent with the condition of the devise, under which they claim; but in such assignment males shall be preferred to females, and the elder to the younger children of the same sex.

47 Me. 271; *62 Me. 114.

Sec. 6. Proceedings, when interest of widow or widower, heir or devisee has been alienated. R. S. c. 78, § 6. No conveyance of the interest of a widow or widower, or any heir or devisee, in the lands of the deceased, by deed, levy of execution, or otherwise shall take from the judge of probate his jurisdiction to divide and assign such lands in manner aforesaid; but the same shall inure to the equitable owner of the part so conveyed; and in case of the unequal division provided for in the preceding section, such owner may make written application to the judge before he accepts such division, for the share of such widow or widower, heir or devisee, and after notice to such widow or widower, heir or devisee, the judge may decide in favor of such owner, and he shall receive said share of the money, or so much thereof, as is proportional to his equitable interest.

81 Me. 207.

Sec. 7. When such interest is under attachment. R. S. c. 78, § 7. If the share of any such widow or widower, heir or devisee, or any one claiming under such widow or widower, heir or devisee, is under attachment, the judge, on like application from the plaintiff in the suit or from the attaching officer, shall require the money, not exceeding the amount of the attachment, to be paid to the officer, who shall be answerable therefor in his official capacity, subject to the rights of the parties, as if originally attached.

Sec. 8. Estate which shall be included in the partition. R. S. c. 78, § 8. When such partition is made on application of an heir or one holding under him, it shall be made among all the owners, and include all the ancestor's estate, which any interested party requires to have included; and when made on the application of a devisee or one holding under him, it shall be made of all the estate held by him jointly or in common with others holding under the testator, which any devisee requires to have included.

12 Me. 464.

Sec. 9. Any owner may apply for partition; notice. R. S. c. 78, § 9. Such partition may be ordered on the petition of any of the owners of any share, after giving personal notice to each of the other owners in the state, and public notice, if any reside out of the state.

Sec. 10. Warrant may be revoked; proceedings. R. S. c. 78, § 10. The judge may, for sufficient cause, revoke any warrant issued by him for making partition or for settling or determining other interests in real or personal estate, and grant a new warrant or proceed otherwise, as circumstances require.

Sec. 11. Guardians appointed for minors, and agents for owners out of the state. R. S. c. 78, § 11. If it appears to the court that any minor or insane person, who has no guardian in the state, is interested in the premises, the court shall assign him a guardian for the suit, to appear for him and defend his interest; and if any owner resides without the state, having no agent therein, the judge shall appoint an agent to act for him.

Sec. 12. Proceedings, when land is owned in common with other parties. R. S. c. 78, § 12. When any of the real estate, of which partition is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition to be given to the cotenant, which notice shall contain a description of the premises to be divided, and of the proportion claimed as belonging to the estate of the deceased; specify the time and place of hearing the case, and be served by delivering to him or leaving at the place of his abode

an attested copy thereof, at least 14 days before the time of hearing; but if the cotenant does not reside in the state, such notice shall be given as the judge requires. At the time appointed in the notice, the judge shall hear the parties, determine their respective rights in such estate, and direct the commissioners first to divide and set off the estate of the deceased from that of such other persons, and then to make the partition prayed for.

31 Me. 110; 69 Me. 546; 70 Me. 234.

Sec. 13. Return of commissioners may be set aside or recommitted; record and effect when accepted. R. S. c. 78, § 13. The judge may set aside the return of the commissioners and commit the case anew to the same or other commissioners. The return when accepted by the court shall be recorded in the probate office and the original return, or a true copy thereof attested by the registry of probate, shall be recorded in the registry of deeds for the county or registry district in which the lands lie, and such partition shall be binding to all intents and purposes upon all the persons interested, saving the right of appeal to the supreme court of probate.

See c. 79, § 250, re filing of duplicate plans in registry of deeds; c. 140, § 46, re expenses of partition; 12 Me. 199.

Allowances to Widows and Others

Sec. 14. Allowance to widows from personal estate. R. S. c. 78, § 14. In the settlement of any intestate estate, or of any testate estate which is insolvent or in which no provision is made for the widow in the will of her husband, or when she duly waives the provision made, the judge may allow the widow so much of the personal estate, besides her ornaments and wearing apparel, as he deems necessary, according to the degree and estate of her husband and the state of the family under her care; he may also allow her any 1 pew in a meeting-house, of which the deceased died seized; and such allowance, when recorded, vests the title in her; and when an estate which, at the time of said allowance, was considered insolvent, ultimately appears to be solvent, the judge by a subsequent decree may make the widow a further reasonable allowance. When, after an allowance has been made from any estate, additional personal property belonging to said estate comes to the knowledge of the judge, he may make a further allowance to her therefrom.

See c. 149, § 21, re insolvency; 31 Me. 67; 39 Me. 18; 46 Me. 539; *50 Me. 238; 52 Me. 199; 53 Me. 185; *54 Me. 534; 68 Me. 124; 83 Me. 17; 84 Me. 71; *85 Me. 169; *86 Me. 205; 107 Me. 248; *110 Me. 67; 127 Me. 423; 128 Me. 191; 133 Me. 385.

Sec. 15. Mortgage debts allowed, to be assigned. R. S. c. 78, § 15. When an allowance to a widow wholly or partly consists of a debt due the estate, secured by a mortgage of real or personal property, the executor or administrator, under direction of the judge, shall assign said mortgage and deliver the evidence of such debt to her.

54 Me. 535.

Sec. 16. Temporary allowances during litigation. R. S. c. 78, § 16. In the settlement of any testate estate, where no provision is made for the widow in the will of her husband or she duly waives the provision made, the judge shall make her suitable allowances from the personal estate, from time to time, for the support of herself and family under her care, during any litigation concerning the will; and on final probate of the will he shall make her a final reasonable allowance from the personal estate, according to the degree and estate of her husband and the state of the family under her care.

Sec. 17. Widows support and quarantine. R. S. c. 78, § 17. A widow shall have her reasonable sustenance out of the estate of her husband for 90 days after his death, and may remain in the house of her husband during said 90 days without being chargeable with rent therefor.

*59 Me. 441; 133 Me. 385.

Sec. 18. Allowance to minor children. R. S. c. 78, § 18. In all insolvent estates, the judge may make a like allowance from the personal estate to the minor children of the deceased, under 14 years of age; and to those between 14 and 21 years of age, who from ill health are unable to labor; and if there is a widow and such children by a former wife, the judge may, at his discretion, divide such allowance among the widow and such children of a former wife. In solvent estates, the judge may, at his discretion, make an allowance from the personal estate to minor children under 12 years of age, when the income from their distributive shares will be insufficient for their support and education.

See c. 145, § 38, re legal effect of adoption of child; c. 145, § 40, re allowance to adopted child; 85 Me. 169.

Sec. 19. Allowance to husband from his wife's estate. R. S. c. 78, § 19. Upon the death of a wife whose estate is solvent, the judge may make an allowance to her husband from her personal estate, in the same manner as to a widow from the estate of her husband.

Distribution of Personal Estate

Sec. 20. Lien for debt due to estate created on legacy or distributive share; validity and amount of debt, how determined. R. S. c. 78, § 20. A debt, whether matured or not, due to the estate of a deceased person from a legatee or distributee of such estate creates a lien on the legacy or distributive share, having priority of any attachment or transfer of such legacy or share, and shall be set off against or deducted from the legacy of such legatee or from the distributive share of such distributee; and the probate court shall, after due notice, hear and determine the validity and amount of any such debt, and may make all necessary or proper decrees and orders to effect such set-off or deduction; but the provisions of this section shall not prejudice any remedy of an executor or administrator for the recovery of such debt, nor affect the liability of the legatee or distributee for the excess of indebtedness over the amount of his share in, or claim upon the estate to which he is indebted.

See c. 156, § 7, re lien on share of estate.

Sec. 21. Remainder of personal estate, how distributed; unclaimed shares or pecuniary legacies to be paid to county treasurer; discharge after settlement; deposits in savings banks etc. by order of the probate court to be deposited in county treasury. R. S. c. 78, § 21. When on the settlement of any account of an administrator, executor, guardian, or trustee there appears to remain in his hands property not necessary for the payment of debts and expenses of administration, or for the payment of pecuniary legacies of fixed amount, nor specifically bequeathed, the judge upon petition of any party interested, after public notice and such other notice as he may order, shall determine who are entitled to the estate and their respective shares therein under the will or according to law, and order the same to be distributed accordingly; and alienage shall be no bar to any person, who, in other respects, is entitled to receive any part of such property. If an executor, administrator, guardian, or trustee neglects to distribute the property in his hands in pursuance of such order,

and the parties in interest reside out of the state, and had no actual notice of any such settlement of account, the judge, on petition of any such party, may, within 6 years after such settlement, order such executor, administrator, guardian, or trustee to render a new account. If any sum of money directed by a decree of the probate court to be paid over, in any solvent or insolvent estate, or pecuniary legacy, remains for 6 months unclaimed, the executor, administrator, guardian, or trustee who was ordered to pay over the same shall pay such sum of money to the treasurer of the county in which the probate court has jurisdiction, who shall give a receipt therefor, specifying the amount, name of estate, and name of person entitled thereto, which said receipt shall be filed in the probate court and allowed as a sufficient voucher therefor. When an executor, administrator, guardian, or trustee has paid or delivered over to the persons entitled thereto the money or other property in his hands, as required by a decree of a probate court, he may perpetuate the evidence thereof by presenting to said court, without further notice, within 1 year after the decree is made, an account of such payments or of the delivery over of such property; which account being proved to the satisfaction of the court, and verified by the oath of the party, shall be allowed as his final discharge, and ordered to be recorded. If such account is presented after 1 year from the date of the decree, it may be allowed after public notice.

Any sums of money directed by a decree of the probate court to be paid over which remained unclaimed for 6 months in the hands of any executor, administrator, guardian, or trustee, and were deposited in some savings bank or like institution as directed by the probate court to accumulate for the benefit of the person entitled thereto under the provisions of this section, shall with all accumulations, be deposited in the treasury of the county in which said probate court has jurisdiction, for the benefit of persons entitled by the decree of the probate court having original jurisdiction of the proceedings, in which said decree ordering such deposits was originally based.

See c. 153, § 21, re payments to minors under order of court; 50 Me. 191; 78 Me. 463; 82 Me. 296; 84 Me. 549; 88 Me. 19; *100 Me. 149; 103 Me. 369; *105 Me. 390; 114 Me. 167; 121 Me. 401; 125 Me. 178.

Sec. 22. Distribution of specific articles. R. S. c. 78, § 22. When such surplus consists of any other property besides money, the judge may order a specific distribution of the same in proportion to the value thereof; and for this purpose he may appoint one or more appraisers to value and make such distribution under oath, and to make report thereof to him for his acceptance.

89 Me. 103; 108 Me. 387.

Sec. 23. Assignment of debts; conditions of suit. R. S. c. 78, § 23. If any evidence of debt or account due to the deceased is thus assigned, the assignee may use the name of the executor or administrator to collect the same, by suit or otherwise, on giving such indemnity against costs as the judge orders, saving to all supposed debtors the right to set off any claim against the estate of the deceased.

Sec. 24. Payment of deposit by county treasurer; list of depositors published annually; deposits to escheat to county after 20 years. R. S. c. 78, § 24. At any time within 20 years from the date when the deposit mentioned in section 21 is made with the county treasurer, the person entitled thereto or his executor, administrator, or assigns may present to the judge of probate evidence of his right to the same, and, upon satisfactory proof that he or they are entitled thereto, the judge of probate shall by decree direct the county treasurer to

pay over to such person or persons the amount of the original deposit, with interest at the rate of 2% per year from the date of deposit; provided that all sums of money paid to the county treasurer by any savings bank shall draw interest at the same rate as was paid by said bank at the time of payment to the county treasurer. The county treasurer shall annually in the month of January publish in one or more newspapers, published and printed within the county, and in the state paper a list of all persons entitled to such deposits. The county shall have the use and income of all such deposits and after 20 years from the date of each deposit, if not claimed and paid over to the person entitled thereto, his heirs, executors, administrators, or assigns, the same shall escheat to the county; provided, however, that in the case of deposits assigned by the judges of probate to the several county treasurers, the said period of 20 years shall commence on the date of such assignments; but every person entitled to receive and be paid any such deposit made before the 29th day of March, 1911 shall be entitled to receive and be paid the amount of such original deposit with such interest thereon as is shown by the bank-book of such original deposit at the date of such payment to such person.

Sec. 25. Bond may be required in certain cases. R. S. c. 78, § 25. When an executor or administrator pays to a creditor, heir, or legatee a sum exceeding \$30 on account of a debt, legacy, or decree of distribution, the judge of probate may authorize him to require of the payee a sufficient bond to refund so much thereof as said sum may exceed such payee's equitable proportion on final settlement of the estate, unless such payment is made to a creditor under an order of distribution of an insolvent estate.

Sec. 26. Legacies when payable. R. S. c. 78, § 26. Legacies shall be payable in 20 months after final allowance of the will; but such payments shall not be affected by any claims presented to the executor or administrator with the will annexed, or filed in the probate office after the expiration of said 20 months and after such payment; nor shall the executor or administrator with the will annexed be responsible for the payments of said legacies on account of such claims.

*118 Me. 21; 133 Me. 385.

Sec. 27. Legatee may sue for legacy. R. S. c. 78, § 27. Any legatee of a residuary or specific legacy under a will may sue for and recover the same of the executor in an action of debt at common law or other appropriate action.

30 Me. 142; 80 Me. 332; *82 Me. 209; 91 Me. 238; 92 Me. 492; 112 Me. 159;
*113 Me. 397; 136 Me. 474.

Distribution of Lands Held in Mortgage or Taken on Execution

Sec. 28. Lands held in mortgage or taken on execution, before foreclosure to be treated and sold as personal estate. R. S. c. 78, § 28. Real estate held by an executor or administrator, guardian or trustee, in mortgage, or taken on execution, shall, until the right of redemption has expired, be deemed personal assets and be held in trust for the persons who would be entitled to the money, if paid; and if it is paid, he shall release the estate; but if it is not paid, he may sell it as he could personal estate at common law, and assign the mortgage and debt; and the purchaser has the same rights and liabilities as the purchaser of personal property, sold by license of the probate court. All sales so made heretofore are valid.

See c. 163, § 13, re mortgages are assets in hands of executors etc.; 6 Me. 132; 52 Me. 569; 54 Me. 535; 59 Me. 164; 61 Me. 315; *79 Me. 301; *92 Me. 491; *103 Me. 413.

Sec. 29. To be sold by license for payment of debts, legacies, and charges. R. S. c. 78, § 29. Any such real estate may, for the payment of debts, legacies, or charges of administration, be sold by a license of the probate court like personal estate; and the judge, if he deems it necessary, may require due notice to be given before granting such license, and an additional bond from the executor or administrator.

61 Me. 315; 92 Me. 491; 103 Me. 413.

Sec. 30. In case of death of executor or administrator, proceedings. R. S. c. 78, § 30. When an executor or administrator has taken land on execution for a debt due the estate, and dies without disposing thereof, the judge may license his executor or administrator to sell and convey it, in order to carry into effect the trust whereby it is held, or for any other legal purpose.

103 Me. 413.

Sec. 31. Distribution, if not sold or redeemed. R. S. c. 78, § 31. If such real estate is not so redeemed or sold, it shall be distributed among those who are entitled to the personal estate, but in the manner provided herein for the partition of real estate; or the judge of probate or superior court, if it would be more for the benefit of the parties in interest, may order it sold by the executor or administrator, and the money distributed as in other cases of personal estate.

See c. 150, § 1, sub-§ VIII, re license to sell mortgaged real estate granted to executors etc.; 54 Me. 536; *79 Me. 299; *92 Me. 491; 103 Me. 413.

Distribution of the Estates of Deceased Non-residents

Sec. 32. Estates of deceased non-residents, how to be disposed of. R. S. c. 78, § 32. When administration is taken in this state on the estate of any person who, at the time of his death, was not an inhabitant thereof, his estate found here, after the payment of his debts, shall be disposed of according to his last will, if he left any; but if not, his real estate shall descend according to the laws of this state; and his personal estate shall be distributed according to the laws of the state or country of which he was an inhabitant; and the judge of probate, as he thinks best, may distribute the residue of said personal estate as aforesaid, or transmit it to the foreign executor or administrator, if any, to be distributed according to the law of the place where the deceased had his domicile.

85 Me. 378; *86 Me. 206; 91 Me. 542.

Sec. 33. Proceedings, if such person died insolvent. R. S. c. 78, § 33. If such person died insolvent, his estate found in this state shall, so far as practicable, be so distributed that all his creditors here and elsewhere may share in proportion to their debts; and to this end his estate shall not be transmitted as aforesaid until all his resident creditors have received the proportion that they would have had if the whole estate applicable to the payment of creditors, wherever found, had been divided among all said creditors in proportion to their debts without preferring any one kind of debt to another; and in such case, no foreign creditor shall be paid out of the assets found here until all the resident creditors have received their proportions as herein provided.

Sec. 34. Distribution of residue. R. S. c. 78, § 34. If there is any residue after such payment to the citizens of this state, it may be paid to any other creditors who have proved their debts here, in proportion to the amount, but no one shall receive more than would be due him if the whole estate were divided ratably among all the creditors as before provided; and the balance, if any, may

be transmitted to the foreign executor or administrator, or if there is none such, it shall, after 4 years from the appointment of the administrator, be distributed ratably among all the resident and foreign creditors who have proved their debts in this state.

Sec. 35. Proceeds of sale of land under a foreign will, how disposed of. R. S. c. 78, § 35. Where lands in this state held in trust under a foreign will, for persons not residing here, have been sold, the probate court for the county in which the will has been allowed may, in its discretion, order the money to be transmitted to the trustee, if there is any, in the state or country where the testator had his domicile.

CHAPTER 144.

INSOLVENT ESTATES.

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Distribution of Insolvent Estates

Sec. 1. Priority of claims and of payment. R. S. c. 79, § 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. 81, § 88, re assignees, receivers, executors, etc. to pay taxes from money in their hands; 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; 126 Me. 555.

Sec. 2. When representation of insolvency need not be made. R. S. c. 79, § 2. When an estate is not sufficient to pay more than such expenses and claims of the first 4 classes, the administrator is exonerated from payment of any claim of the 5th 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; 116 Me. 212.