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Duty of Sheriffs and Other Officers.

Sec. 10. Sheriff to deliver securities to treasurer.—Each sheriff, as often as every 3 months, shall deliver to the treasurer of his county all securities by him taken for fines and costs, on the liberation of poor convicts from prison pursuant to law. (R. S. c. 137, § 10. 1957, c. 254, § 2.)

Effect of amendment. — The 1957 amendment deleted the words "notes or other" formerly appearing preceding the word "securities".

Chapter 153.

Courts of Probate.

Judges of Probate.

Sec. 3. Judges; terms; salary.

Androscoggin, $3,950,
Aroostook, $4,000,
Cumberland, $6,500,
Franklin, $1,600,
Hancock, $3,500,
Kennebec, $5,000,
Knox, $2,400,
Lincoln, $2,700,
Oxford, $3,800,
Penobscot, $5,000,
Piscataquis, $2,350,
Sagadahoc, $2,500,
Somerset, $3,500,
Washington, $2,500,

(1955, c. 255; c. 266, § 6; c. 316; c. 319, § 6; c. 347; c. 394, § 6; c. 445, § 6; c. 447, § 4; c. 459, § 8; c. 470, § 8. 1957, c. 416, §§ 7, 16, 29, 35, 46, 53, 61, 70, 80.)

Effect of amendments.—This section was amended ten times by the Public Laws of 1955. Chapters 255, 266, 316, 319, 347, 394, 445, 447, 459 and 470 increased the salaries of the judges of probate in Knox, Franklin, Cumberland, Sagadahoc, Androscoggin, Penobscot, Washington, Lincoln, Oxford and Kennebec counties respectively. As to Franklin, Sagadahoc, Washington and Lincoln counties, the amendments were made retroactive to January 1, 1955.

The 1957 amendment increased the salaries for Androscoggin, Aroostook, Franklin, Hancock, Lincoln, Penobscot, Piscataquis, Somerset, and Washington counties. As to Androscoggin, Lincoln, Piscataquis, and Washington counties, the amendment was made retroactive to January 1, 1957.

As the rest of the section was not changed, only the lines relating to the salaries increased by the amendments are set out.

Registers of Probate.

Sec. 22. Registers elected; bond; salary; copies.

Androscoggin, $3,200,
Aroostook, $3,000,
Cumberland, $4,200,
Franklin, $2,100,
Hancock, $2,900,
Kennebec, $4,000,
Lincoln, $2,500,
Oxford, $3,300,

Penobscot, $3,750,
Piscataquis, $2,400,
Sagadahoc, $2,000,
Somerset, $2,800,
Waldo, $2,500,
Washington, $2,800,
(1955, c. 266, § 7; c. 319, § 7; c. 394, § 7; c. 411, § 3; c. 445, § 8; c. 447, § 3; c. 459, § 9; c. 464, § 5; c. 470, § 9. 1957, c. 416, §§ 8, 17, 30, 36, 47, 54, 62, 71, 75, 81.)

Effect of amendments.—This section was amended nine times by the Public Laws of 1955. Chapters 266, 319, 394, 411, 445, 447, 459, 464 and 470 increased the salaries of the registers of probate in Franklin, Sagadahoc, Penobscot, Cumberland, Washington, Lincoln, Oxford, Androscoggin and Kennebec counties respectively. As to Franklin, Sagadahoc, Washington and Lincoln counties, the amendments were made retroactive to January 1, 1955.

The 1957 amendment increased the salaries for Androscoggin, Aroostook, Franklin, Hancock, Lincoln, Penobscot, Piscataquis, Somerset, Waldo, and Washington counties. As to Androscoggin, Lincoln, Piscataquis, Waldo, and Washington counties, the amendment was made retroactive to January 1, 1957.

As the rest of the section was not changed, only the lines relating to the salaries increased by the amendments are set out.

Sec. 27. Register pro tempore.—In case of the absence of the register or in case of a vacancy in the office of the register of probate due to death, resignation or any other cause, 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 the case of the register. (R. S. c. 140, § 27. 1955, c. 283.)

Effect of amendment.—The 1955 amendment rewrote this section.

Supreme Court of Probate.

Sec. 32. Supreme court of probate; appellate jurisdiction; special guardians.

I. GENERAL CONSIDERATION.

Such right must be affirmatively alleged and established.

In accord with 1st paragraph in original. See Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

And appellant confined to questions raised, etc.

In accord with original. See Jones v. Thompson, 151 Me. 462, 121 A. (2d) 366.

Though findings by supreme court of probate, etc.

In accord with original. See In re Royal's Appeal, 152 Me. 242, 127 A. (2d) 484; Waning, Appellant, 151 Me. 239, 117 A. (2d) 347; Thibault v. Fortin, 152 Me. 59, 122 A. (2d) 545; Jones v. Thompson, 151 Me. 462, 121 A. (2d) 366.

II. PROCEDURAL ASPECTS.

Question whether petition can be maintained, etc.

In accord with original. See Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

III. PERSONS "AGGRIEVED".

The right of appeal, etc.

In accord with original. See Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

A guardian is not a person "aggrieved" in the sense of the word "aggrieved" as used in this section. The rights of guardians in property entrusted to them is not coupled with an interest. Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

A sister of the ward was not entitled to appeal from decree dismissing her as guardian where nowhere in the reasons for appeal was there any allegation that she was a party in interest; that she was an heir presumptive, or that her status came within the meaning of the words "person aggrieved." Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

IV. APPEALS ALLOWED AND DISALLOWED.

Guardian may not appeal from dismissal.—The exception of this section "or

any order or decree removing a guardian from office" precludes a guardian from appealing from her dismissal. Although "removal" and "dismissal" are different in definition, both acts result in relieving a guardian of his duty so that in the final analysis the result is the same, and, therefore, comes within the intent of the legislature. Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

Costs and Fees.

Sec. 44. Registers to account quarterly for fees. — Registers of probate shall account for each calendar quarter 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 for each calendar quarter to the treasurers of their respective counties not later than the 15th day of the following month. (R. S. c. 140, § 43. 1957, c. 176.)

Effect of amendment. — The 1957 amendment rewrote this section.

Sec. 45. Fees of executors, administrators, guardians, conservators, surviving partners and trustees.—Executors, administrators, guardians, conservators, surviving partners and trustees may be allowed $1 for every 10 miles travel to and from court, and $1 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 5% 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, guardians for adults and conservators 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 in any one year 1% 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. 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. (R. S. c. 140, § 44. 1949, c. 45. 1957, c. 136.)

Effect of amendment. — The 1957 amendment inserted the word "conservators" near the beginning of this section, deleted the word "however" and the words "provided that" which formerly appeared near the end of the section and made other minor changes.

Rules of Practice.

Sec. 50. Rules of practice and procedure; blanks; revision of rules and blanks; approval.—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 17, 1916, 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 30, 1916, 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 shall appoint a commission on probate rules and blanks consisting of 3 judges and 2 registers of probate. Each member of the commission shall serve for 4 years and until his successor is appointed and qualified, but membership on the commission shall terminate when he ceases to be a judge or register of probate. The commission may make new rules and blanks or amendments to existing rules and blanks as changes in statutes or convenience requires. Such 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 commission shall elect a chairman and a secretary, and shall receive no compensation for meetings of the commission but shall be reimbursed for their necessary traveling expenses. Compensation for services rendered by the secretary by direction of the commission and necessary clerical assistance and expense of printing reports of the commission shall be paid from any appropriation made therefor. (R. S. c. 140, § 49. 1955, c. 323.)

Effect of amendment.—The 1955 amendment rewrote all of this section following the first sentence. Section 2 of the amendatory act provides: "The members of the present Commission appointed by the Governor as provided by Section 50 of Chapter 153 of the Revised Statutes shall constitute the first Commission under the statutes, as amended by this act, and shall continue as members of the Commission through December 31, 1956."

Chapter 154.

Executors and Administrators.

Wills and Executors.

Sec. 6. Depositions.—When any of the witnesses of a will offered for probate, or any other witness whose testimony is required to prove the signatures of the testator or of the witnesses of such will, live out of the state or more than 30 miles distant or, by age or indisposition of body, are unable to attend court, their depositions, taken as provided in chapter 117 or before a magistrate, notary public or justice of the peace authorized by commission from the judge, shall be competent evidence in the absence of such witnesses. (R. S. c. 141, § 6. 1955, c. 4. 1957, c. 103.)

Effect of amendments. — The 1955 amendment inserted in this section the word "or any other witness whose testimony is required to prove the signatures of the testator or of the witnesses of such will."

The 1957 amendment inserted the words "notary public or justice of the peace".

Sec. 9. When letters testamentary granted.

The executor named in a will must be legally competent in the opinion of the judge of probate. The question of legal competency is one of determination by the judge. If the opinion of the judge is based upon supporting evidence, it is then not vulnerable to attack by exceptions. In re Royal's Appeal, 152 Me. 242, 127 A. (2d) 484.

Sec. 11. Bond executor shall give.

This statute confers upon the court judicial discretion regarding executor's bonds and when it appears to the judge that it is necessary or proper, he may require an executor to give bond with sureties irrespective of a testator's expressed intention. In re Royal's Appeal, 152 Me. 242, 27 A. (2d) 484.

Estates of Absentees.

Sec. 40. End of receivership.—If at the expiration of said 14 years said property has not been accounted for, delivered or paid over under the provisions of section 39, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if said absentee had died intestate within the state on the day 14 years after the date of the disappearance or absconding as found and recorded by the court, except that said receiver shall deduct from the share of each distributee and pay to the state tax assessor for the use of the state such amount as said distributee would have paid in an inheritance tax to the state if said distributee