

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
VOLUME 4

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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1959

Chapter 153.

Courts of Probate.

Courts of Record. Jurisdiction in Equity.

Sec. 2. Jurisdiction in equity.

Cited in *Swan v. Swan*, 154 Me. 276, 147 A. (2d) 140.

Judges of Probate.

Sec. 3. Judges; terms; salary.—Judges of probate are elected or appointed as provided in the constitution. Only attorneys at law admitted to the general practice of law in this state and resident therein may be elected or appointed as judges of probate. 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.

Judges of probate in the several counties shall receive annual salaries as set forth in chapter 89, section 254.

The fees to which judges of probate are entitled by law shall be taxed and collected and paid over by the registers of probate to the county treasurers for the use of their counties with the exception of the fees provided in section 6 of this chapter and chapter 27, section 145, which shall be retained by the judge who collects the same in addition to his salary. (R. S. c. 140, § 3. 1945, c. 36; c. 161, § 7; c. 167, § 5; c. 205, § 2; c. 240, § 1; c. 262, § 3; c. 280, § 8; c. 296; c. 322, § 7. 1947, c. 118; c. 154, § 7; c. 157, § 6; cc. 283, 299; c. 371, § 2. 1949, c. 188, § 1; c. 215, § 1; cc. 254, 256, 294; c. 424, § 6. 1951, c. 197; c. 311, § 7; c. 312, § 8; c. 313, § 6; c. 315. 1953, cc. 27, 62, 117; c. 142, § 4; c. 179, § 4; c. 216, § 5; c. 247, § 4; c. 269, § 8; c. 276, § 7; c. 278, § 8; c. 348. 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. 1959, c. 372, § 9.)

Effect of amendments.—Prior to the 1959 amendment the salaries were set out in this section. The 1959 amendment rewrote the second paragraph, which formerly provided for monthly payments from the treasuries of the counties paid on the last day of each month, and changed the form of reference in the last paragraph.

The 1955 and 1957 amendments related to particular salaries.

Editor's note.—P. L. 1959, c. 372, amending this section, provided in sections 12, 13 and 14 thereof as follows:

"Sec. 12. Private and special laws amended. All private and special laws, providing salaries and clerk hire for judges and recorders of municipal courts to be paid from the county treasury, shall be

amended to read, in place of the salaries set forth therein, 'shall receive such salaries as established by the Revised Statutes of 1954, chapter 89, section 254, as amended,' and further amended by striking out all provisions for clerk hire.

"Sec. 13. Effective date in certain counties. The salaries set forth in section 7 as they relate to the Counties of Androscoggin, Aroostook, Hancock, Kennebec, Knox, Lincoln, Piscataquis, Somerset, Waldo and York shall be retroactive to January 1, 1959.

"Sec. 14. Effective date. The salaries as set forth in section 7 shall be effective October 1, 1959, except as otherwise provided in this act."

Registers of Probate.

Sec. 22. Registers elected; bond; salary; copies.—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 89, and they enter upon the discharge of their duties on the first day of Janu-

ary 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 \$2,500. 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. 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 10 days after its approval, to be filed in his office.

Registers of probate in the several counties shall receive annual salaries as set forth in chapter 89, section 254.

The salaries of the registers of probate shall be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service. Fees charged by them for such copies shall be retained by them and not paid to the county. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the statutory fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds shall be deemed to be official fees for the use of the county.

Nothing in this section shall be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge. (R. S. c. 140, § 22. 1945, c. 39; c. 161, § 6; c. 167, § 6; c. 228; c. 240, § 2; c. 261, § 2; c. 280, § 9; cc. 289, 310; c. 319, § 2; c. 322, § 8. 1947, cc. 119, 296, 306, 326. 1949, cc. 176, 177; c. 188, § 2; c. 215, § 2; c. 260, § 2; c. 308, § 5; c. 360; c. 424, § 7; c. 432. 1951, c. 199; c. 311, § 8; c. 312, § 9; c. 313, § 7; c. 345. 1953, c. 121; c. 142, § 5; c. 209; c. 216, § 6; c. 247, § 5; c. 269, § 9; c. 276, § 8; c. 278, § 9; c. 288, § 3. 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. 1959, c. 372, § 10.)

Effect of amendments.—Prior to the 1959 amendment the salaries were set out in this section. The 1959 amendment divided the third sentence of the first paragraph into two sentences, substituted "\$2,500" for "\$1,000" in that sentence, rewrote the second paragraph, which formerly provided for monthly payments from the treasuries of the counties paid on the last day of each month, and substituted "The salaries of the registers of probate" for "The sums above mentioned" at the beginning of the third paragraph.

The 1955 and 1957 amendments related to particular salaries.

Editor's note. — P. L. 1959, c. 372, amending this section, provided in sections 12, 13 and 14 thereof as follows:

"Sec. 12. Private and special laws amended. All private and special laws, pro-

viding salaries and clerk hire for judges and recorders of municipal courts to be paid from the county treasury, shall be amended to read, in place of the salaries set forth therein, 'shall receive such salaries as established by the Revised Statutes of 1954, chapter 89, section 254, as amended,' and further amended by striking out all provisions for clerk hire.

"Sec. 13. Effective date in certain counties. The salaries set forth in section 7 as they relate to the Counties of Androscoggin, Aroostook, Hancock, Kennebec, Knox, Lincoln, Piscataquis, Somerset, Waldo and York shall be retroactive to January 1, 1959.

"Sec. 14. Effective date. The salaries as set forth in section 7 shall be effective October 1, 1959, except as otherwise provided in this act."

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.

By agreement of parties only, appeal may be taken to the law court either on agreed statements of facts or upon evidence reported by the judge of probate, in all matters determinable by the several judges of probate, as in the superior court. The law court shall have the same jurisdiction of all questions of law arising on said appeals as if they had come from the supreme court of probate. All provisions of law and rules of court relative to appeals from the superior court shall apply to such cases. Decisions of the law court in all such cases appealed directly from the probate court to said law court shall be certified to the register of probate of the county from which such appeal originated, with the same effect as if said appeal had originated in the supreme court of probate of said county. (R. S. c. 140, § 32. 1947, c. 244. 1949, c. 6. 1953, c. 219. 1959, c. 317, § 285.)

I. GENERAL CONSIDERATION.

Effect of amendment.—The 1959 amendment rewrote the third paragraph of this section.

As the rest of the section was not affected by the amendment, it is not set out.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

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.

Cited in *Swan v. Swan*, 154 Me. 276, 147 A. (2d) 140.

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.

Sec. 33. Bond and reasons of appeal; service on other parties; service on resident attorney of record sufficient.—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, within 34 days from the date of the proceeding appealed from, 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. (R. S. c. 140, § 33. 1959, c. 317, § 286.)

Effect of amendment.—The 1959 amendment substituted the words “within 34 days from the date of the proceeding appealed from” for the words “14 days at

least before the sitting of the appellate court” near the end of the first sentence.

Effective date of 1959 amendment.—See note to § 32.

Sec. 34. Court may allow appeal accidentally omitted. — If any such person from accident, mistake, defect of notice or otherwise without fault on his part omits to claim or prosecute his appeal, the supreme court or probate, if justice requires a reversion, 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. (R. S. c. 140, § 34. 1959, c. 317, § 287.)

Effect of amendment.—The 1959 amendment deleted “as aforesaid” formerly following “his appeal” near the beginning of the section and eliminated “and said petition shall be heard at the next term after

the filing thereof” at the end of the section.

Effective date of 1959 amendment.—See note to § 32.

Sec. 37. Appeal, when heard.—Such appeal to the supreme court of probate shall, unless the court otherwise directs, be in order for hearing at the first term of court held not less than 10 days after the service of the notice of appeal, 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. 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. (R. S. c. 140, § 7. 1959, c. 317, § 288.)

Effect of amendment.—The 1959 amendment divided this section into two sentences, and substituted “to the supreme court of probate shall, unless the court otherwise directs, be in order for hearing at the first term of court held not less than 10 days after the service of the notice of

appeal” for “shall be cognizable at the next term of the supreme court of probate held after the expiration of 34 days from the date of the proceeding appealed from” near the beginning of this section.

Effective date of 1959 amendment.—See note to § 32.

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 treas-

urers 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 amend-

atory 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.

Administrators.

Sec. 20. Repealed by Public Laws 1959, c. 276.

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 had received the property by inheritance from a deceased resident of this state. (R. S. c. 141, § 36. 1957, c. 397, § 55.)

Effect of amendment. — The 1957 amendment substituted "section 39" for "the preceding section", and also substituted "state tax assessor" for "attorney general".