REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Effect of amendment.—The 1961 amendment inserted "female" near the beginning of the last paragraph and deleted "South Portland High School or the" preceding "Hallowell".

Sec. 32. Incorrigible child; transfer to reformatory for men or reformatory for women.—Any child committed to the center whose presence therein may be seriously detrimental to the well-being of the center, or who willfully and persistently refuses to obey the rules and regulations of said center may be deemed incorrigible, and upon recommendation of the superintendent may be transferred to a reformatory with the approval of the commissioner of institutional service, but no child shall be transferred under the age of 15. To so transfer, the superintendent shall certify that the child is incorrigible upon the mittimus in the case with the recommendation that transfer to the appropriate reformatory be effected. Upon approval by the commissioner of institutional service, the transfer may be effected any time thereafter. It shall be the duty of the officers of the reformatory to receive any person so transferred and the remainder of the original commitment shall be executed at the reformatory, except that in the event a child so transferred has, in the opinion of the superintendent of the reformatory and of the superintendent of the center, benefited from the program at the reformatory, to such an extent that return to the center would be in the best interest of the child and of the community, such child may be returned to the center. The reason for such return shall be certified by the recommending superintendents on the mittimus and certification of the return shall be made by the recommending superintendents to the commissioner of mental health and corrections, giving their reasons therefor. (1959, c. 342, § 1. 1963, c. 108, § 3.)

Effect of amendment.—The 1963 amendment added the exception at the end of the fourth sentence and also added the last sentence.

Sec. 33. Discharge.—The superintendent shall cause to be discharged all children committed to the center at the expiration of their minority and may, on consent of the department of institutional service, discharge any child as rehabilitated during such child's term of commitment. (1959, c. 342, § 1.)

Chapter 153.

Courts of Probate.

Courts of Record. Jurisdiction in Equity.

Sec. 2. Jurisdiction in equity.—The courts of probate shall have jurisdiction in equity, concurrent with 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 complaint according to the usual course of proceedings in civil actions in which equitable relief is sought. (R. S. c. 140, § 2. 1961, c. 317, § 490.)

Effect of amendment.—The 1961 amendment deleted "the supreme judicial court and" formerly preceding "the superior court" in the first sentence of this section and substituted "complaint" for "bill or petition" near the middle of the second sentence and "civil actions in which equitable relief is sought" for "equity" at the end of that sentence.

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, 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. 1963, c. 351, § 11.)

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.

The 1963 amendment deleted the reference to c. 27, § 145, in the last paragraph.

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."

Sec. 9. Jurisdiction.—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; 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. (R. S. c. 140, § 9. 1945, c. 378, § 75. 1961, c. 395, § 53.)

Effect of amendment.—The 1961 amendment, effective on its approval, June 17, 1961, deleted "also on the estate of any person confined in the state prison under sentence of imprisonment for life" in the first sentence.

Sec. 10. Reporter; duties.—The judge of any court of probate or court of insolvency may appoint a reporter to report the proceedings at any hearing or examination in his court, whenever such judge deems it necessary or advisable. Such reporter 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 such other proceedings at such hearing or exami-

nation as the judge directs; and when required by the judge shall furnish for the files of the court a correct 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 reporter shall transcribe his said notes in full by questions and answers. (R. S. c. 140, § 10. 1961, c. 281, § 3.)

Effect of amendment.—The 1961 amendment substituted "reporter" for "stenographer" three times in this section and deleted "and legible longhand or" preceding "typewritten transcript" in the second sentence.

Sec. 14. When examination before some person appointed by judge, he may appoint reporter.—When an examination is taken before some person appointed by the judge to take it, the judge may appoint a reporter to attend such examination for the purposes mentioned in section 10, and the duties of such reporter 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. (R. S. c. 140, § 14. 1963, c. 414, § 145.)

Effect of amendment.—The 1963 amendment deleted "also" following "may" near the beginning of the section and substituted "reporter" for "stenographer" twice in the first sentence.

Sec. 17. When judge or register interested, proceeding in adjoining county.

Nothing in this section shall be deemed to require removal to another county by reason of the judge or register of probate having been named as executor, trustee or guardian of minor children in a will, provided he receives no benefit from the will and the record of the court discloses the filing of his declination to act as such executor, trustee or guardian, if no objection is raised by any interested party at the hearing on the petition for probate of the will. (R. S. c. 140, § 17. 1961, c. 256.)

Effect of amendment.—The 1961 amendment added the paragraph above set out as the second paragraph of this section. As the first paragraph was not affected by the amendment, it is not set out.

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 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 $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. 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. 1961, c. 345, § 3.)

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.

The 1961 amendment deleted the former third sentence of the third paragraph, relating to the retention of fees for copies.

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."

Sec. 27. Deputy register of probate.—Any register of probate in this state may, if he so desires, appoint any person who is employed on a full-time basis in said probate office as the deputy register of probate for said county and said deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as said deputy shall have the same force and effect as the signature of the register. The register in said county shall be responsible for all the official acts of his deputy and said appointment as deputy shall not entitle said person to any additional salary.

In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. 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. 1963, c. 190.)

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

The 1963 amendment again rewrote this section, which formerly related to appointment of a register pro tempore.

Sec. 28. Judges to inspect register's conduct of office.—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 bring a civil action. 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. If it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in a civil action. (R. S. c. 140, § 28. 1961, c. 317, § 491.)

Effect of amendment.—The 1961 amendment divided this section into three sentences, substituted "bring a civil action" for "put it in suit" at the end of the present first sentence and substituted "a civil action" for "an action on the case" at the end of the section.

Sec. 31. Register not counsel in probate cases; nor draft or aid in drafting any paper which he is required to record.—No register shall be an attorney or counselor in or out of court in any action 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 17, 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 $1,000 or by imprisonment for not more than 11 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 $100, to be recovered by any complainant in a civil action for his benefit or by indictment for the benefit of the county. (R. S. c. 140, § 31. 1961, c. 317, § 492.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the beginning of this section and "a civil action" for "an action of debt" near the end of the 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.

Applied in Petition of Wagner, 155 Me. 257, 153 A. (2d) 619; Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.

Stated in Bangor & Aroostook R. R. Co. Re: P. U. C. Certificate J #44, 159 Me. 86, 188 A. (2d) 485.

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.

Applied in Petition of Wagner, 155 Me. 257, 153 A. (2d) 619.

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 of 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.

Wherein omission to appeal was, etc.

In accord with original. See Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.

And upon proof thereof, judge determines, etc.

In accord with 2nd paragraph in original. See Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.

Upon proof of the jurisdictional prerequisites of the petition, it devolved upon the plaintiff to demonstrate to the supreme court of probate that justice required a revision. Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.

Petition addressed to judicial discretion.

The petition authorized under this section is addressed to the judicial discretion of the justice of the supreme court of probate who should happen to hear it. When the determination of any question rests in the judicial discretion of a court, no other court can dictate how that discretion shall be exercised, nor what decree shall be made under it. Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.

And determination of issues of fact, etc.

Findings of fact by a justice presiding in the supreme court of probate are conclusive and not to be reviewed by the law court if the record shows any evidence to support them. Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.

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. 40. Fees payable to registers of probate. — Registers of probate shall receive for:

I. Devises of real estate. Making and certifying to the register of deeds copies of devises of real estate, $4. Said sum shall be paid by the executor or administrator when said will is proved. Of said sum $1.50 shall be paid by the register of probate to the register of deeds when such certified copy is furnished to him.

II. Petition to probate. Receiving and entering each petition to probate a

will, and each petition for the administration of an estate, when the estimated value of the estate, as stated in the petition, is $1,000 or over, $5.

III. Copies. Making copies from the records of the court, 50¢ for the first page plus 25¢ for each additional page; except the charge for furnishing to the executor or administrator one copy of each will proved shall be 50¢.

IV. Certificate of appointment. Each certificate, under seal of the court, of the appointment and qualification of an administrator, executor, guardian or trustee, 50¢ and for each double certificate, $1. (R. S. c. 140, § 40. 1949, c. 404, § 5. 1961, c. 345, § 1.)

Effect of amendment.—The 1961 amendment rewrote this section.

Secs. 41-43. Repealed by Public Laws 1961, c. 345, § 2.

Cross reference.—For present provisions as to fees payable to registers, see § 40.

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.

Sec. 48. Compensation of reporters. — Reporters appointed under this chapter shall be allowed $20 a day for their services in court or at an examination, and travel at the rate of 10¢ a mile.

Transcript rates shall be in accordance with chapter 113, section 188, for transcript furnished for the files of the court and shall be paid by the county in which the court or examination is held, after the reporter's bill has been allowed by the judge of the court in which the services were rendered. 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 reporter'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 chapter 162, section 42, subsection I. (R. S. c. 140, § 47. 1947, c. 289, § 1. 1961, c. 281, § 4.)

Effect of amendment.—The 1961 amendment rewrote this section.

Sec. 49. Reporters to furnish copies.—Such reporters shall furnish correct 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 transcript rates prescribed in chapter 113, section 188. (R. S. c. 140, § 48. 1947, c. 289, § 2. 1961, c. 281, § 5.)

Effect of amendment.—The 1961 amendment substituted "reporters" for "stenographers", deleted "also", deleted "and legible longhand or" and substituted "transcript rates prescribed in chapter 113, section 188" for "15¢ for every 100 words of the copy furnished" at the end of the section.

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."

Notices.

Sec. 52. "Notice" in probate proceedings defined.

Applied in Patterson v. Patterson, 158 Me. 253, 182 A. (2d) 672.