

# MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

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1961 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 4

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**Discard Previous Pocket Part Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1961

## Chapter 157. Insolvent Estates.

Sections 19-20. Actions Pending and Commenced.

### Appeals.

**Sec. 13. Petition for leave to bring action, after failing to prosecute appeal.**—A person, whose claim has been disallowed in whole or in part and who by accident or mistake has omitted to give notice at the probate court in season, or after giving such notice has by accident or mistake omitted further to prosecute his appeal may, within 2 years after the report is made, petition the superior court and, after notice to the administrator and hearing, leave may be given to commence within 30 days a civil action in the county where administration was granted for the recovery of his claim, but not after 4 years from granting administration. No decree of distribution can be disturbed by a judgment so recovered. (R. S. c. 144, § 13. 1961, c. 317, § 510.)

**Effect of amendment.**—The 1961 amendment substituted “within 30 days a civil action” for “a suit at the next term of the court” in the first sentence of this section.

**Sec. 14. Proceedings on appeal.**—When an appeal is so taken or leave is so granted, the claim shall be determined in a civil action commenced within 3 months after the report was made or within 30 days after leave was granted. Such claim shall be deemed contingent and provision shall be made for it as in sections 10 and 11. (R. S. c. 144, § 14. 1961, c. 317, § 511.)

**Effect of amendment.**—The 1961 amendment substituted “a civil action” for “an action for money had and received” and “within 30 days” for “at the next term” in the first sentence of this section.

**Sec. 15. If claim allowed and appeal taken by administrator, heir or creditor, claimant may apply to superior court.**—A person whose claim against an insolvent estate has been allowed by commissioners and their decision has been appealed from by the administrator, heir at law or any other creditor, and who by accident or mistake has omitted to commence a civil action within the time prescribed by section 14, may petition the superior court, and after notice to the administrator and a hearing, the court may grant leave to commence an action for the recovery of his claim within 30 days after leave is granted, in the county where administration was granted, within 4 years from granting administration, but no decree of distribution can be disturbed by a judgment so recovered. (R. S. c. 144, § 15. 1961, c. 317, § 512.)

**Effect of amendment.**—The 1961 amendment substituted “a civil action” for “an action for money had and received” and “within 30 days leave is granted” for “at the next term of the court” in this section.

### Actions Pending and Commenced.

**Sec. 20. Claims not presented or not allowed, barred, except in case of further assets.**—Claims not presented and claims disallowed without appeal are forever barred from recovery by civil action. Claims disallowed cannot be filed and proved in a counterclaim, except to the amount of counterclaims on behalf of the estate; but when, after distribution, further assets come into the hands of the administrator, claims not presented to the commissioners, on petition to the judge, and after due notice if proved or not disputed, may be allowed and paid like contingent claims. (R. S. c. 144, § 20. 1961, c. 317, § 513.)

**Effect of amendment.**—The 1961 amendment substituted “civil action” for “suit” at the end of the first sentence of this section and substituted “a counterclaim” for “setoff” in the second sentence.

### Miscellaneous Provisions.

**Sec. 22. Waste or trespass on real estate of insolvent.**—When an administrator commits waste or trespass, although an heir or devisee, or consents that another may do it, on real estate of his intestate insolvent, he shall account for treble the amount of the damage. He may, in a civil action, recover damages of a person committing the same, to be accounted for as assets, although such person is heir or devisee of the estate. (R. S. c. 144, § 22. 1961, c. 317, § 514.)

**Effect of amendment.**—The 1961 amendment substituted “a civil action” for “an action of trespass” in the last sentence of this section.

## Chapter 158.

### Guardians. Adoption of Persons. Change of Name.

#### Guardians for Minors.

**Cross reference.**—See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

#### Sec. 3. Power over minor's persons and property.

**Petition insufficient.**—A probate petition for custody of a minor child alleging merely that there is “occasion” for the ap- pointment of a guardian is insufficient under this section. *Legault v. Levesque*, 150 Me. 192, 107 A. (2d) 493.

#### Guardians and Conservators for Adults.

**Sec. 4. Appointment of guardians for adults.**—The judge of probate may appoint guardians to the following persons resident in his county, or resident out of the state, and having estate in his county, although over 21 years of age, on written application of any of their friends, relatives or creditors or of the municipal officers or overseers of the poor of the town where they reside; but when the judge is interested, either in his own right, in trust or in any other manner, or is within the 6th degree of kindred, said application shall be made to and such appointment shall be made by the judge in any adjoining county and the record of said appointment shall show why it was so made:

**I.** All persons, including those insane or of unsound mind and married women who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates or to protect their rights;

**II.** Persons who, by excessive drinking, gambling, idleness or debauchery of any kind, have become incapable of managing their own affairs, or who so spend or waste their estate as to expose themselves or families to want or suffering or their towns to expense;

**III.** Convicts committed to the state prison for a term less than for life.

The judge may, on said application, appoint the husband or wife of such a person to be his or her guardian. (R. S. c. 145, § 4. 1953, c. 218, § 1. 1957, c. 216.)

**Effect of amendment.**—The 1957 amendment deleted the words “being under foreign guardianship or conservator- ship” which formerly appeared preceding the words “and having estate in his county” in the introductory paragraph.

#### Powers and Duties.

**Sec. 29. Disability of adults under guardianship; dismissal of guardian.**

Quoted in *Wattrich v. Blakney*, 151 Me. 289, 118 A. (2d) 332.