NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 4

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 158.

Guardians. Adoption of Persons. Change of Name.

Sections 1- 3. Guardians for Minors.
Sections 4-10. Guardians and Conservators for Adults.
Sections 11-30. Powers and Duties.
Sections 31-33. Guardians Ad Litem; Next Friend.
Sections 34-35. Discovery of the Ward's Estate.
Sections 36-43. Adoption of Persons.
Section 44. Change of Name.

Guardians for Minors.

Cross references.—See c. 41, § 233, re liability of guardian for injury by minor to schoolhouse and school furnishings; c. 45, § 32, re guardian may settle and give release of damages for land of ward taken by railroad corporation; c. 59, § 161, re minors may hold shares in loan and building associations; c. 153, § 45, re fees of guardians, etc.; c. 153, § 48, re guardians to pay stenographer's fees; c. 166, §§ 16, 18, 19, re care and custody of the person of minor children; c. 166, § 21, re payments by order of court may be made to minors in certain cases.

Sec. 1. Appointment of guardians; when judge interested. — The judge of probate may appoint guardians to minors resident in his county, or out of the state and having estate in his county; but no executor or administrator on an estate shall be guardian or special guardian to a minor interested therein, unless he is the parent of such minor or is nominated as such guardian in the will of which he is an executor; but when any judge is interested, either in his own right, in trust or in any other manner, or is within the 6th degree of kindred, such appointment shall be made by a judge in any adjoining county and the record of said appointment shall show why it was so made. (R. S. c. 145, § 1. 1953, c. 320, § 1.)

Cross reference.—See note to c. 153, § 9, re appeal from appointment of guardian.

History of section.—As to history of provision of this section relating to interest of judge, see Marston, Petitioner, 79 Me. 25, 8 A. 87.

The power of appointing guardians is committed to the judge of probate for the county in which the person who is put under guardianship resides. He is not limited in his selection of guardian to residents of the county or state. The whole power is committed to him to determine, under the circumstances of each case, the propriety of appointment, and the selection and competency of the person, and his doings in this particular are open to revision by the supreme judicial court only by appeal. Berry v. Johnson, 53 Me. 401.

Nonresident may be appointed.—This chapter does not limit the probate court, in its selection of guardians, to persons resident in this state. Berry v. Johnson, 53 Me. 401.

Appointment of administrator as guardian is void.—The appointment of an administrator to be guardian of minor children, interested in the estate, is void. Nor would his appointment as guardian furnish any legal inference that he had been previously discharged from the administratorship. Sawyer v. Knowles, 33 Me. 208.

Applied in Peacock v. Peacock, 61 Me. 211.

Quoted in Waitt, Appellant, 140 Me. 109, 34 A. (2d) 476.

Sec. 2. Guardians nominated and appointed.—If the minor is under 14 years of age, the judge may nominate and appoint his guardian; but a guardian for such minor, named by the deceased father in his last will or, if the father has died without making such nomination, named by the deceased mother in her last will, shall be appointed, if suitable. If the minor is over that age, he may nominate his own guardian in the presence of the judge or register of probate or in writing certified by a justice of the peace; and if approved by the judge, such nominee shall be appointed, although the minor has a guardian appointed before he was 14 years

of age; but if not thus approved or if the minor resides out of the state, or being cited by the judge, neglects to nominate a suitable person who will accept the trust, the judge may nominate and appoint as if he were under 14. (R. S. c. 145, § 2.)

No class of persons can claim to be guardians as matter of strict legal right. By this chapter, the appointment of guardians is entrusted to judges of probate as matter of discretion. Lunt v. Aubens, 39 Me. 392.

Suitability of guardian is question of fact.—When there is no legal disqualification, whether a person appointed as guardian is suitable person to discharge that trust is a question of fact and not of law. Lunt v. Aubens, 39 Me. 392.

Judge who appointed original guardian determines suitability of minor's nominee for new guardian.—The judge of probate who first acquired jurisdiction over the minor and his estate, and has already appointed a guardian, shall determine whether the minor's nominee for a new guardian is suitable and should under all the circumstances be appointed in the place and stead of the one already performing that duty. Dorr v. Davis, 76 Me. 301.

When notice to minor required.—When the minor is over fourteen years of age and has the right to nominate his guardian, he should be cited to appear. But in case of a minor under two years of age, the judge of probate appoints upon petition. This section recognizes the distinction between appointing guardians for those under and those over fourteen years, requiring a citation in the latter case and not in the former. However, the guardian being appointed, different considerations apply when the question arises as to the care of the person and education of the minor. Peacock v. Peacock, 61 Me. 211.

When notice unnecessary.—Where the minor is under fourteen years of age and is a resident within the county of the judge of probate to whom petition was made, and the father is deceased and the mother is a resident of another state, there is no necessity of notice. There is nobody within the jurisdiction to be cited to appear, if a citation were to be required. Nor does this section direct the giving of a citation in such case. Peacock v. Peacock, 61 Me. 211.

Applied in Witham, Appellant, 85 Me. 360, 27 A. 252.

Sec. 3. Power over minor's person and property.—Such guardian shall have the care and management of all his ward's estate and continue in office until the ward is 21 years of age unless sooner lawfully discharged; but the care of the person and the education of the minor shall be jointly with the father and mother, if competent, or if one has deceased, with the survivor, if competent; otherwise these duties devolve on the guardian; and in any case, the judge may decree them to him, if he deems it for the welfare of the minor, until his further order. (R. S. c. 145, § 3.)

Cross reference.—See c. 166, § 19, re judge of probate or superior court justice may decree as to care and custody when parents live apart.

Guardian has entire control of ward's estate.—The law confers upon a guardian the entire control of his ward's estate. Homstead v. Loomis, 53 Me. 549.

But custody pertains to the guardian only when there is no father or mother competent to transact their own business. Coltman v. Hall, 31 Me. 196.

To the natural guardians the law commits the child's care and custody, even if he has a guardian appointed by the probate court. Shaw v. Small, 124 Me. 36, 125 A. 496.

The mother, after the death of the father, is entitled to the care and education of her minor children, but this does not authorize her to make contracts with other persons for their services in a manner not authorized by statute, or to receive compensation for services rendered in consequence of an unauthorized contract. Pray v. Gorham, 31 Me. 240.

Guardian is entitled to custody as against stepmother. — The stepmother, however competent, is not entitled to the custody of a child, as against the guardian. Coltman v. Hall, 31 Me. 196.

And as against relative to whom deceased father had given child.—If a child has no father or mother, the guardian is entitled to the custody as against a relative to whom its father, a few days before his death and in view of that event, had made a verbal gift of the child "to take care of, have and keep, as his own child." Coltman v. Hall, 31 Me. 196.

Notice of guardian's petition for custody required.—Upon a guardian's petition for the care of his ward's person to be committed to him, under this section,

notice to the living parent of the child must be given. Peacock v. Peacock, 61 Me. 211.

Ward over twenty-one is no longer "under guardianship."—When a ward becomes twenty-one years of age, the authority of the guardian ceases. He can no longer act as guardian. He can no longer manage the estate. His only duty is to settle his account, and deliver the estate remaining in his hands to his ward. Thus the ward is no longer "under guardianship" after he becomes of age. Curtiss v. Morrison, 93 Me. 245, 44 A. 892.

Guardians and Conservators for Adults.

Cross Reference.—See c. 153, § 32, re appointment of special guardians.

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, being under foreign guardianship or conservatorship 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.)

Cross references.—See c. 113, § 58, re guardian ad litem. See note to § 9, re case in which either guardian or conservator may be appointed.

Discretionary power of probate court.—The discretionary power of the probate court in the matter of the appointment of a guardian is well settled. Hogan, Appellant, 135 Me. 249, 194 A. 854.

Prospective ward is entitled to fullest opportunity to defend himself.—Proceedings under this section for the appointment of a guardian to a person over twenty-one years of age involve not only the proposed ward's right to manage his own estate, but also the custody of his person. It needs no argument, therefore, to emphasize the necessity that such person should have the fullest opportunity to defend himself against such proceedings. Farnum, Appellant, 107 Me. 488, 78 A. 901.

"Unsound mind" defined.—As used in this section, the term "unsound mind" relates to the ability of the person to transact business; it is such debility or impairment of mentality as deprives the person affected of competency to manage his estate. Eastman, Appellant, 135 Me. 233, 194 A. 586.

Paragraph II refers to two classes of persons.—Paragraph II of this section provides for an appointment of a guardian by the judge of probate for two classes of persons: First, those who have become incapable of managing their affairs "by excessive drinking, gambling, idleness or debauchery of any kind," and second, those "who so spend or waste their estate as to expose themselves or families to want or suffering, or their towns to expense." Young v. Young, 87 Me. 44, 32 A. 782.

The latter class of persons referred to in paragraph II was intended to include such heedless, improvident and wasteful persons as thereby expose themselves and families to want, without any reference to habits of drinking and debauchery. Young v. Young, 87 Me. 44, 32 A. 782.

Petition for appointment of guardian under paragraph II held sufficient.—See Young v. Young, 87 Me. 44, 32 A. 782.

Records of court must show that ward falls within class named in this section.—

To place a citizen under guardianship, the records of the court must show that he falls within that class of persons named in this section, for whom a guardian may be appointed, and these facts must appear affirmatively, by distinct allegation, and not by implication nor by way of inference from the facts. Overseers of Poor v. Gullifer, 49 Me. 360.

Decree presumed to be based on hearing and proof.—Where a decree contains all the elements required by this section as a basis for the appointment of a guardian to a person of the second class mentioned in paragraph II, it must be presumed to be based upon a hearing by the probate judge, and satisfactory proof of the material allegation in the petition. Young v. Young, 87 Me. 44, 32 A. 782.

Where court had jurisdiction, appointment is not void.—The proceedings of courts of probate in relation to the appointment of guardians of insane persons are not void, however irregular or erroneous, if the court had jurisdiction of the subject matter of the proceeding. Hovey v. Harmon, 49 Me. 269.

Guardianship raises rebuttable presumption of mental unsoundness.—The fact of guardianship, such appointment having been on allegation and proof of unsound mind, raises the presumption that some degree or form of mental unsoundness afflicts the ward, but this is rebuttable. Eastman, Appellant, 135 Me. 233, 194 A. 586.

Application of wife for guardianship over husband.—See Howard, Petitioner, 31 Me. 552.

Applied in Raymond v. Wyman, 18 Me. 385; Paine v. Folsom, 107 Me. 337, 78 A. 378; Whiting, Appellant, 110 Me. 232, 85 A. 791; McKenzie, Appellant, 123 Me. 152, 122 A. 186; Friendship v. Bristol, 132 Me. 285, 170 A. 496.

Stated in Waitt, Appellant, 140 Me. 109, 34 A. (2d) 476.

Cited in Raymond v. Sawyer, 37 Me. 406.

Sec. 5. Hearing; adjudication.—The judge shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving the person for whom a guardian is requested with a copy of the application and order of the court, at least 14 days before the day of hearing. If, upon such hearing, he adjudges that such person is insane, a spendthrift or incapable as aforesaid, he shall appoint a guardian. (R. S. c. 145, § 5.)

Judge can act only when statutory notice has been given.—On application for guardianship, without inquisition, the judge of probate can act only when the statutory notice has been given and the person affected is in court. Unless notice has been given, the presence of the person in court and his consent to the proceedings are not sufficient to give jurisdiction. Winslow v. Troy, 97 Me. 130, 53 A. 1008.

Person of unsound mind cannot waive notice.—A person of unsound mind is incapable of giving consent, or waiving statutory notice. Winslow v. Troy, 97 Me. 130, 53 A. 1008.

And decree is void where no notice was given.—A decree of the probate court, upon application of municipal officers, adjudging a person to be of unsound mind and appointing a guardian for him is void, when it appears that the fourteen days' prior notice authorized by statute was not given to him, and no inquisition was had. Winslow v. Troy, 97 Me. 130, 53 A. 1008.

Sec. 6. Contracts made after notice and filing copy of application in registry of deeds void.—When such application is made and notice issued thereon by the judge, the applicants may cause a copy of their application and the order of the court thereon to be filed in the registry of deeds for the county; and if a guardian is appointed thereupon, all contracts, except for necessaries, and all gifts, sales or transfers of real or personal estate made by such person after said filing and before the termination of the guardianship are void; but this section does not add anything to the validity of any such act previous to said filing. (R. S. c. 145, § 6.)

Cross reference.—See note to § 7, re expenses incurred in defending against application for guardianship.

Stated in Farnum, Appellant, 107 Me. 488, 78 A. 901.

Sec. 7. Allowance to ward to defend himself. — When a guardian is thus appointed, the judge shall make an allowance to be paid by the guardian from

the ward's estate for all his reasonable expenses in defending himself against complaint. (R. S. c. 145, § 7.)

Purpose of section.—By section 6 of this chapter, providing that all contracts, except for necessaries, made by the ward after filing a copy of the application in the registry of deeds, are void; a person against whom an application for a guardian has been made is thereby necessarily hindered and impeded in defending himself against it, and he may be, under the provisions of that statute, rendered utterly helpless and defenseless in the premises. It was to afford a remedy for such condition that this section was enacted, and it should be construed, if permissible, to effectuate such remedy. Farnum, Appellant, 107 Me. 488, 78 A. 901.

"Reasonable expenses" are all expenses reasonably incurred in defending ward.—The "reasonable expenses" which the judge of probate may allow include all the expenses that have been reasonably incurred in defending the ward against the application for guardianship, and such expenses, if allowed, are to be paid by the guardian from the ward's estate to the person found entitled to them. Farnum, Appellant, 107 Me. 488, 78 A. 901.

Including expenditures made by third person.—This section, authorizing an allowance from a ward's estate for reasonable expenses in defending guardianship proceedings, extends to expenditures by a third person, permitting him to invoke the statute on his own behalf, and not requiring him to enforce his demand as an ordinary creditor. Farnum, Appellant, 107 Me. 488, 78 A. 901.

Claim is properly presented by petition in name of claimant.—A claim under this section for expenses in defending a ward against guardianship proceedings is properly presented by petition in the name of the claimant. Farnum, Appellant, 107 Me. 488, 78 A. 901.

Sec. 8. Authority and duties.—Such guardians shall have the custody of the persons of their wards, if resident in the state, except so far as the court of probate may from time to time otherwise order; and every guardian appointed over any person for gambling, idleness, drinking or debauchery shall inculcate upon him habits of sobriety and industry, and when of sufficient health and strength, with the approbation of the judge, may bind him out to labor, not exceeding 6 months at any one time, or employ him in his own service; giving credit for his earnings or such sum as he receives therefor. (R. S. c. 145, § 8.)

Sec. 9. Appointment of conservator; dismissal.—Whenever any person shall deem himself unfitted by reason of infirmities of age or physical disability to manage his estate with prudence and understanding, he may apply to the judge of probate for the county in which he resides for the appointment of a conservator of his estate, and thereupon the judge of probate may upon hearing, after such notice as he may order, appoint some suitable person as conservator of his estate and such appointment shall not disfranchise the person for whose estate such conservator is appointed. The judge may, on said application, appoint the husband or wife of such a person to be his or her conservator. The person so appointed shall give bond to the judge of probate in such sum and with such sureties, resident in the state, or with a surety company authorized to do business in the state, as surety, as the judge accepts, conditioned as provided in section 12, and all provisions of law relating to the management of estates of adult persons under guardianship shall apply to such conservator; but when any 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.

The judge of probate may dismiss any conservator when it appears necessary, or at his own request, or when the judge shall find that the person under conservatorship has become capable of managing his own estate with prudence and understanding. If the case requires it, the judge may appoint another conservator in place of the former one. But previous to such removal, except at his own request, personal notice shall be given to the conservator, or public notice if his

residence is out of the state or unknown, to appear and show cause to the contrary. (R. S. c. 145, § 9. 1951, c. 249. 1953, c. 218, § 2.)

Discretionary power of probate court.—The discretionary power of the probate court in the matter of the appointment of a guardian is well settled. No different rule can apply when the appointment of a conservator is sought, as the proceeding is but a voluntary application for a guardian with limited powers, dignified under the law by another name. Hogan, Appellant, 135 Me. 249, 194 A. 854.

Either a guardian or a conservator may be appointed for an adult person of sound mind but unfitted or incompetent to manage his own estate by reason of infirmities of age or physical disability. If such a person has sufficient mental capacity to understand the nature and consequences of his application for a conservator, his wishes, if conducive to his welfare and particularly his contentment of mind, may properly be given great weight in determining which appointment is to be made. Hogan, Appellant, 135 Me. 249, 194 A. 854.

Question whether guardian or conservator should be appointed addressed to discretion of court.—Under the facts, the question whether a guardian or a conservator should be appointed was addressed to the sound judgment and discretion of the justice presiding in the supreme court of probate. The welfare of the ward was the controlling consideration. Hogan, Appellant, 135 Me. 249, 194 A. 854.

Sec. 10. Transfer of proceedings to county of original jurisdiction when disability of judge removed.—In all cases where the appointment of a guardian or conservator is made by a judge of probate in any adjoining county, or the administration of a ward's estate is transferred to any adjoining county by reason that the judge of probate of the county where the ward or wards reside is interested either in his own right, in trust or in any other manner, or is within the 6th degree of kindred, whenever the disability of the judge of probate is removed before the proceedings have been fully completed, the proceedings shall then be transferred to the probate court which otherwise would have had jurisdiction or to the probate court of original jurisdiction for the completion of the administration of such estate; and in all such cases the register in such adjoining county shall transmit copies of all records relating to such estate to the probate office of the county where such estate belongs to be there recorded. (R. S. c. 145, § 10.)

Powers and Duties.

Sec. 11. Married woman as guardian.—A married woman who has attained the age of 21 years may be appointed guardian and perform all the duties of such trust without any act or assent on the part of her husband; and when an unmarried woman who is guardian marries, her authority is not thereby extinguished, but she shall continue to perform all the duties of such trust without any act or assent on the part of her husband. (R. S. c. 145, § 11.)

Sec. 12. Bond of guardian. — Every guardian or special guardian, appointed for a minor or other person, shall give bond to the judge of probate in such sum and with such sureties, resident in the state or with a surety company authorized to do business in the state, as surety, as the judge accepts, conditioned as follows:

I. For the faithful discharge of his trust;

II. To render a true and perfect inventory of the estate, property and effects of his ward within the time limited by law;

III. To render a just and true account of his guardianship when by law required;

IV. At the expiration of his trust, to deliver all moneys and property which, on a final and just settlement of his accounts, appear to remain in his hands. (R. S. c. 145, § 12. 1953, c. 320, § 2.)

Cross reference.—See c. 60, § 219, re foreign insurance companies as sureties on bonds.

Principles applicable to bond of administrator apply to bond of guardian.—The duties of a guardian in many respects

are similar to those of an administrator, and the bonds required of one and the other are also substantially the same, so far as their duties are analogous. The principles which have been judicially settled touching the legal obligations of an administrator will apply to the like obligations of a guardian. Pierce v. Irish, 31 Me. 254.

Breach of, or omission to give, special bond is not breach of general bond.—A breach of the special bond under a license to sell real estate does not constitute a breach of the general bond of guardianship given under this section, and consequently an omission to give the special bond violates none of the conditions in the general bond. Williams v. Morton, 38 Me. 47.

Applied in Wing v. Rowe, 69 Me. 282.
Cited in Hudson v. Martin, 34 Me. 339.

Sec. 13. Nonresident guardian or conservator to appoint agent in state.—No person residing out of the state shall be appointed a guardian or conservator unless he shall have appointed an agent or attorney in the state. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the probate office for the county in which the principal is appointed, and by such appointment the subscriber shall agree that the service of any legal process against him as such guardian or conservator or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such guardian or conservator shall, if made on such agent, have like effect as if made on himself personally within the state, and such service shall have such effect. A guardian or conservator who after his appointment removes from and resides without the state shall so appoint an agent within 30 days after such removal. If an agent appointed under the provisions of this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as above provided. The powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. Neglect or refusal by a guardian or conservator to comply with any provision of this section shall be cause for removal. A guardian or conservator residing out of the state shall not appoint his coguardian or coconservator, residing in this state, as his agent. (R. S. c. 145, § 13.)

Sec. 14. Inventory of ward's estate.—The judge or register shall appoint 1 or 3 disinterested persons to appraise the ward's estate; and the guardian shall return the inventory under oath, within such time as the judge in his warrant directs, if the ward is a minor, and in all other cases, within 3 months after his appointment or within such further time as the judge allows. Only 1 appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable to do so; otherwise 3 appraisers shall be appointed. The warrant for an inventory may be revoked for cause and a new one issued if deemed necessary. (R. S. c. 145, § 14.)

Sec. 15. Management of ward's estate; licensed to mortgage real estate of ward.—The guardian shall manage the estate of his ward frugally and without waste; apply the income and profits thereof, so far as are needed for the comfortable and suitable maintenance of the ward and his family, and if they are insufficient for that purpose, he may use the principal; and when an exigency occurs, the guardian may apply for a license to sell or mortgage the estate of his ward and devote the proceeds to the purpose contemplated by his license. Before a license to mortgage the real estate of a ward is granted, notice shall be given as prescribed in section 5 of chapter 163 relating to sales of real estate, and the guardian shall give bond to the judge, with sureties to his satisfaction, conditioned to truly apply and account for the proceeds of the mortgage according to the license; but no mortgage shall be made except for such amount, time and rate as the court shall determine in its decree granting license. Such mortgage and the

indebtedness secured thereby shall bind only the estate of the ward. (R. S. c. 145, § 15.)

In the management of the ward's estate, it is for a guardian to apply the income and profits for the maintenance of the ward; if these are insufficient, principal may be used. The use of principal may involve selling property; borrowing money is an alternative mode of raising funds. Post v. First Auburn Trust Co., 130 Me. 313, 155 A. 555.

Ward is to have maintenance without creation of unnecessary debts.—From the provisions of this section it cannot be doubted that the ward is to have the maintenance referred to, from the property belonging to him, without the creation of any debts, unnecessarily, against him by the guardian. Preble v. Longfellow, 48 Me. 279.

Guardian is not authorized to make advances for maintenance of ward. — A guardian is not authorized by law to make advances from his own means for the maintenance of his ward, but is bound to provide for such maintenance from the income and, if necessary, the principal of the ward's personal estate, and, if these are insufficient, to obtain license of court and sell real estate of the ward to provide the means required. Preble v. Longfellow, 48 Me. 279.

And cannot maintain action for such advances when ward is of age.—A guardian cannot, by making advancements for his ward's support, make the ward his debtor upon arriving at full age, and an action cannot be maintained by the guardian against his late ward, when of age, to obtain remuneration for such advancements, nor for a balance due him on his guardianship account as adjusted and allowed by the probate court. Preble v. Longfellow, 48 Me. 279.

A guardian has no power or authority to bind the estate by a covenant of warranty. Such a covenant is binding upon the grantor personally. Pelletier v. Langlois, 130 Me. 486, 157 A. 577.

A guardian conveying property by warranty deed binds himself and his heirs, and he and they are estopped from asserting any claim to an interest therein whether it be a present or an after-acquired interest. Pelletier v. Langlois, 130 Me. 486, 157 A. 577.

Power of guardian is coextensive with that of executor.—The power of a guardian over the personal estate of his ward is coextensive with that of an executor of a will. Post v. First Auburn Trust Co., 130 Me. 313, 155 A. 555.

And he is not obliged to procure license to sell or mortgage personalty.—This section, in providing that the probate court may license a guardian to sell or mortgage the estate of his ward, is, in relation to personal estate, permissive and not restrictive. A guardian may protect the interests of himself and sureties by procuring a license, and thus establish in advance that a sale or mortgage is for the interest of the ward, instead of leaving that fact open to dispute at a future day, but he is not obliged to do so. Post v. First Auburn Trust Co., 130 Me. 313, 155 A. 555.

Misapplication of borrowed money by guardian.—If one loans to a guardian on collateral of the ward, with knowledge or reason to know that the guardian intends to misapply the money, or that he is in fact applying it to his own private use, the pledge is not good. When, however, one loans in good faith it is of no moment what becomes of the borrowed money. The lender is not bound to see to its application. Post v. First Auburn Trust Co., 130 Me. 313, 155 A. 555.

Sec. 16. Application of property of minor children to their support. —If a minor, having a father alive, has property sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of his father's family and to all the circumstances of the case, the expenses of his maintenance and education may be defrayed out of his own property, in whole or in part, and the charges therefor allowed accordingly in the settlement of the guardian's account. (R. S. c. 145, § 16.)

Sec. 17. Guardian to pay ward's debts, collect dues, appear for him in court and may insure estate.—He shall settle all accounts of his ward; pay all his just debts out of his personal estate so far as it will go without disposing of effects necessary for the use and comfort of the ward and his family, and in case of deficiency thereof, then out of the real estate; demand, sue for and receive all his dues, compound for the same and give discharges thereof on such

terms as the judge authorizes; appear for and represent his ward in all legal proceedings unless another is appointed for that purpose as guardian or next friend; and may insure any estate of his ward at the expense of the estate and do all necessary acts relating to such insurance. (R. S. c. 145, § 17.)

The choses in action of the ward do not become the property of the guardian. They are not on his appointment transferred to him, either by the common law or by statute. Hutchins v. Dresser, 26 Me. 76.

And he cannot sue thereon in his own name.—The provision of this section that a guardian may "demand, sue for, and receive all debts due" to the ward, cannot be construed to authorize him to maintain a suit in his own name to recover them. That such was not the intention is apparent from the last clause of this section, which provides, that he shall appear for and represent his ward in all legal suits and proceedings. In such cases he has no personal interest in the suit, and is but a statute agent, which may be changed pending the suit without abating it. Hutchins v. Dresser, 26 Me. 76. See Raymond v. Sawyer, 37 Me. 406.

Law regards ward as party to proceedings.—In legal procedure generally, where guardianship intervenes, the law regards the ward, and not his guardian, as the party to the proceedings. Raymond v. Sawyer, 37 Me. 406.

And guardian appears for ward but does not become party.—In the prosecution and defense of suits, the guardian who appears for his ward does not become a party to the proceedings; and if judgment be rendered against the ward, it may be satisfied by his property. Raymond v. Sawyer, 37 Me. 406.

A creditor may sue the ward, and perhaps, if his claim is disputed, he ought to have its validity determined in such an action before attempting to compel the guardian to pay it. Homstead v. Loomis, 53 Me. 549.

If he has notice served on guardian.—A creditor of a ward may sue him, taking care to have notice of the suit served upon the guardian. If such notice be not served, the judgment obtained against the ward will be erroneous and liable to be reversed. Homstead v. Loomis, 53 Me. 549.

And judgment may be satisfied out of ward's estate.—It has been held that a creditor may maintain an action against an insane person, who must be defended by his guardian, and if judgment be against such person, that it may be satisfied from his estate, in the hands of his guardian. Raymond v. Sawyer, 37 Me. 406.

Execution cannot issue against guardian, nor is he liable for costs.—Whether a ward is defended by a guardian or next friend, the ward alone is the party to the litigation. A guardian or prochein ami is no party to the suit. They only "appear for and represent" their ward. Not being, then, parties to the suit against their ward, no execution can or should issue against them, and they are not liable for costs. Sanford v. Phillips, 68 Me. 431.

And a person indebted for property purchased of the guardian cannot be held as trustee in a suit against the ward, because to do so would deprive the guardian of his rightful authority over the ward's estate. Homstead v. Loomis, 53 Me. 549.

It is duty of guardian to pay all ward's just debts.—As a part of the general policy of the law, which subjects the property of an owner to the payment of his debts, it is made the duty of guardians to pay all just debts due from their wards, out of their estates. Raymond v. Sawyer, 37 Me. 406.

Without disposing of effects necessary for use and comfort of ward. — It is the duty of a guardian to pay all the just debts of his ward so far as he can without disposing of effects necessary for the use and comfort of the ward and his family. Homstead v. Loomis, 53 Me. 549.

It is not guardian's duty to sell furniture not subject to execution. — It is not the duty of a guardian to make sale of the household furniture of the ward, not subject to be taken on execution, for the payment of his debts. Fuller v. Wing, 17 Me. 222.

Nor is he bound to apply ward's pension money to pre-existing debts.—The guardian of a person non compos mentis who is entitled to a pension from the United States is not bound to apply the pension money in his hands to the payment of pre-existing debts of his ward. Fuller v. Wing, 17 Me. 222.

Creditor may sue on guardian's bond for failure to pay ward's debts. — A refusal of a guardian to comply with his duty to pay the just debts of his ward will constitute a breach of the guardianship bond, and the creditor may resort to a suit upon it, for indemnity. Raymond v.

Sawyer, 37 Me. 406. See Homstead v. Loomis, 53 Me. 549.

But judgment in such case would not go against estate of ward.—One cannot be sued in his capacity of guardian, so as to render the estate of his ward liable to be taken on execution, for the judgment in such case would go against the defendant, and not against the goods and estate of his ward in his hands. Raymond v. Sawyer, 37 Me. 406.

Applied in Harding v. Skolfield, 125 Me. 438, 134 A. 567.

Sec. 18. Power as to ward's real estate.—He may join in and assent to a partition of his ward's real estate on a petition or other legal process therefor; appoint an appraiser of real estate taken on execution against or in favor of his ward; and when his ward, prior to the guardianship, had lawfully contracted to convey real estate on conditions and had failed to do so, he may convey it according to the terms of the contract and shall be accountable therefor on his bond. (R. S. c. 145, § 18.)

Assignment of dower by guardian.—See Curtis v. Hobart, 41 Me. 230.

Applied in Young v. Tarbell, 37 Me. 509.

Sec. 19. Adjustment of claims.—The guardian of an insane or incapacitated adult may apply for commissioners to be appointed to decide upon claims against his ward's estate deemed exorbitant, unjust or illegal; or may, if necessary, represent said estate insolvent, with like proceedings, rights and liabilities as in case of estates of deceased persons. (R. S. c. 145, § 19.)

Cross reference. — See c. 157, § 23, re insolvency of estate in hands of executors and guardians.

Guardian not liable for costs when estate represented insolvent. — Where after the commencement of a suit the defendant is adjudged insane and a guardian appointed, by whom his estate is represented insolvent and the suit defended, the guardian is not liable for costs, although by statute, in certain cases, when an estate has been rendered insolvent costs are allowed against an administrator. Sanford v. Phillips, 68 Me. 431.

Sec. 20. May refer action by rule of court.—Guardians of minors, insane and incompetent persons, spendthrifts and convicts may, under agreement of parties, refer by rule of court any action pending in the superior court in favor of or against their ward on any claim or demand for money or other property in which said ward is interested, to any justice of such court or any person appointed by said justice, whose decision, when accepted by said court, is final. (R. S. c. 145, § 20.)

Sec. 21. Adjustment by arbitration or compromise. — The judge of probate may authorize any such guardian to adjust by arbitration or compromise any claim for money or other property in favor of or against any ward represented by him. (R. S. c. 145, § 21.)

Sec. 22. Sale of ward's stocks, chattels and pews; investment of funds.—On petition of the guardian or any party interested, the judge, with or without notice to other persons interested as he deems necessary, may authorize or require the guardian to sell or transfer any personal property held by him as guardian, or any pews or interest in pews belonging to such estate, as goods and chattels, and to invest the proceeds of such sale and also all other moneys in his hands in real estate or in any other manner most for the interest of all concerned; and may make such further order and give such directions as the case requires for managing, investing and disposing of the effects in the hands of the guardian, or for buying in any particular estate, remainder, reversion, mortgage or other incumbrance upon real estate belonging to the ward.

The judge, upon the application of the guardian, may authorize him to invest income or principal of the estate of the ward in policies of life or endowment insurance or annuity contracts, issued by a life insurance company authorized to do business in the state, on the life of the ward or on the life of a person in whose life the ward has an insurable interest; and the judge may authorize the guardian

to exercise for the benefit of the ward all rights and powers under such policies or contracts. (R. S. c. 145, § 22. 1953, c. 74, § 1.)

Investment of ward's funds.—See Hines v. Ayotte, 135 Me. 103, 189 A. 835.

Sec. 23. Dismissal or removal of guardian; marriage of female ward terminates guardianship.—The judge may dismiss any guardian when it appears necessary or at his own request, and if the case requires it, may appoint another in his place; but previous to such removal, except at his own request, personal notice shall be given to the guardian, or public notice if his residence is out of the state or unknown, to appear and show cause to the contrary; and on the marriage of any female ward under 21 years of age, the authority of her guardian ceases. (R. S. c. 145, § 23.)

Judge may act to remove guardian upon petition or upon his own knowledge.—As his own views of necessity or expediency are to control his action, the judge may remove, with or without appointing a successor, as in his judgment will best promote the interests of the ward. So he may act in the matter upon the petition of those interested, or upon his own knowledge derived from the official conduct of the guardian as disclosed in the records of his court. The subject matter of appointment and removal is submitted to his judgment and discretion. Hovey v. Harmon, 49 Me. 269.

And he may accept resignation voluntarily made.—The right of the judge to remove, after notice, on his own motion or upon petition, includes the right to accept a resignation voluntarily made. Hovey v. Harmon, 49 Me. 269.

He is not obliged to appoint a successor.—When the guardian is dismissed, whether on his own petition or on that of another, the judge of probate is not obliged necessarily to appoint a successor. If the reason for the original appointment had ceased, as in case of a recovery, then the necessity of making a new one would cease with it. Hovey v. Harmon, 49 Me. 269.

If the lunatic recovers, the judge should not appoint a guardian, for the lunacy and the protection of the lunatic's estate, which constitute the reasons for, and the justification of, his judicial action, will have ceased. Hovey v. Harmon, 49 Me. 269.

Petition must be brought by party in interest.—A petition for removal of a guardian must, under established procedure, be brought by a party in interest. A guardian ad litem, appointed by a probate court in Massachusetts for a particular proceeding there pending, does not qualify as a party in interest. Waitt, Appellant, 140 Me. 109, 34 A. (2d) 476.

Notice of dismissal of guardian on his own petition not required. — Proceedings as to the dismissal of the guardian upon his own petition are not invalid because, before his removal from his guardianship, no public notice in relation thereto is given. Hovey v. Harmon, 49 Me. 269.

Proceedings not void if court had jurisdiction. — The proceedings of courts of probate in relation to the appointment of guardians of insane persons are not void, however irregular or erroneous, if the court had jurisdiction of the subject matter of the proceeding. The same principle is equally applicable to the removal of a guardian. Hovey v. Harmon, 49 Me. 269.

Sec. 24. Settlement of guardian's accounts. — Every guardian shall settle his account with the judge at least once in 3 years and as much oftener as the judge cites him for that purpose; and neglect or refusal to do so is a breach of his bond. He may be removed therefor, although the ward may be indebted to him, and if the judge is satisfied that such neglect or refusal is willful or without reasonable cause, the guardian shall forfeit all allowance for his personal services. (R. S. c. 145, § 24.)

No other tribunal than a court of probate is competent to pass upon accounts of guardians, which have been duly rendered. Pierce v. Irish, 31 Me. 254.

Duty of judge of probate. — It is the peculiar province of the judge of probate to take care that guardians render accounts with their wards as frequently as the law requires, and also whenever he supposes that it may be for the interest of wards. He has a supervision over the pecuniary affairs of minors, they having no others who can be legally called upon to look after and protect their rights

against their guardians. It is his duty to examine guardians' accounts rendered to him, and adjudicate thereupon. Pierce v. Irish, 31 Me. 254.

The probate judge is given authority to safeguard the pecuniary rights of minors by citing the guardian to settle an account. This procedure is designed to protect the interests of the minors, requires no formal intervention, and is expressly provided for by this section. Waitt, Appellant, 140 Me. 109, 34 A. (2d) 476.

But neglect to account causes forfeiture of compensation though guardian not cited. — A guardian is not entitled to any compensation for services if he neglects to settle a guardianship account once in every three years, unless prevented by sickness or unavoidable accident, although he was never cited to make such a settlement. Starrett v. Jameson, 29 Me. 504.

Three years do not commence until assets have come into guardian's hands. —The first three years, within which a guardian is bound to settle a guardianship account, do not commence until assets shall have come into his hands. Hudson v. Martin, 34 Me. 339.

Personal representative of deceased guardian should settle his account.—That the personal representative of a deceased guardian, appointed by the court having jurisdiction of his estate or will, is the proper person to settle his account of his guardianship, admits of no doubt. Woodbury v. Hammond, 54 Me. 332.

Liability to account continues until final account has been rendered and accepted. —The fact that the estate of the deceased guardian has been represented insolvent, before the account was rendered, does not make any difference in the course of proceedings. The liability to account, unless discharged by the ward after arriving at full age, continues until a final account has been rendered and accepted. Neither the insolvency of the guardian or his estate, nor the lapse of six years after the ward arrives at the age of twenty-one, will operate as a release from that liability, or absolve the guardian or his personal representative from the duty to account. Woodbury v. Hammond, 54 Me. 332.

Account may be settled after ward has come of age. — A guardianship account may be settled by the judge of probate, after the minority of the ward has expired. Pierce v. Irish, 31 Me. 254.

It is no objection that the account is settled after the ward has become of age, so long as it embraces nothing except what accrued during the minority. Woodbury v. Hammond, 54 Me. 332.

Notice of settlement during minority of ward is not required.—In a settlement of a guardian's account, this section requires no notice to be given. The reason for this is obvious, touching the settlement during the ward's minority. The notice would be immaterial. The ward is supposed incapable of action. It is the duty of the judge of probate to guard his rights, when the guardian is adversely interested. Pierce v. Irish, 31 Me. 254.

In the settlement of a guardian's account in probate, during the minority of the ward, notice is not required to be given, unless a new guardian is appointed, whose duty it is to appear before the probate court and object to the account, and take an appeal from any decree of the judge. Hudson v. Martin, 34 Me. 339.

But ward should be notified and heard upon settlement after majority. — When the settlement takes place after the majority of the ward, the judge is not exonerated from a continued vigilance over his affairs. It is proper, however, that a ward, having the right to act in his own behalf, should be notified and heard. Pierce v. Irish, 31 Me. 254.

Settlement will not protect guardian from liability to account for omitted item. —If the guardian, in the settlement of his account, omits an entire item which he ought to have credited to the ward, that settlement will not protect him from liability, in his next settlement, to account for such item. Starrett v. Jameson, 29 Me. 504.

Waiver of damages for neglect to settle account.—A neglect for three years to settle a guardianship account, except in certain cases, is a breach of the bond. But if the ward examines the final account, and discharges the balance, by taking a negotiable note for its amount, and afterwards the account is accordingly settled in the probate court, the damages accruing to the ward from the breach of the bond will be considered as included in the settlement, or waived. Pierce v. Irish, 31 Me. 254.

Account assented to by ward after he has come of age.—When it appears to the judge that the ward has had full knowledge of the account after he has arrived at full age, and has in writing assented to its correctness, upon an examination, it cannot be said with propriety that the judge has exceeded his power in allowing the account. The notice, which can be of

service to the ward, has been received, and he has virtually been heard, so far as is useful to him. Pierce v. Irish, 31 Me. 254.

Settlement with ward after marriage and during minority does not release guardian. — A settlement with the ward after her marriage and during her minority, and taking her discharge of all matters in his hands as guardian, will not release the guardian from liability on his bond after refusal to appear in probate court and account when cited so to do. An action of debt, under this section, commenced in such a case by authority of the judge of probate for the breach of the bond, is maintainable. Wing v. Rowe, 69 Me. 282.

Appeal from decree allowing account. —See Starrett v. Jameson, 29 Me. 504; Pierce v. Irish, 31 Me. 254; Bradstreet v. Bradstreet, 64 Me. 204.

Action on bond for failure to account. —See Bailey v. Rogers, 1 Me. 186.

Sec. 25. Upon settlement of account, judge to examine bond and may require new bond.—Whenever a guardian settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond and shall indorse thereon the fact that such examination has been made. If he then, or at any time, finds the bond insufficient in amount or the sureties unsatisfactory, he shall require a new bond in such amount and with such sureties as he may approve, and such guardian failing to give such new bond shall be removed and another appointed. (R. S. c. 145, § 25.)

Cross references. — See c. 160, § 3, re bond of testamentary trustee; c. 164, § 2, re sufficiency of probate bonds.

Cited in Moore, Appellant, 112 Me. 119, 90 A. 1088.

Sec. 26. Oath to account.—When an account is rendered by two or more joint guardians, the judge may allow it upon the oath of either. (R. S. c. 145, § 26.)

Sec. 27. Guardian of person out of state.—The guardianship first lawfully granted of any person residing without the state extends to all his estate within the same and excludes the jurisdiction of the probate court in every other county. (R. S. c. 145, § 27.)

Sec. 28. Nonresident guardian and ward entitled to property in state.—If a guardian and his ward are both residents of any other state or territory of the United States, and such ward is entitled to personal property of any description in this state, and such guardian produces to the probate court or other court of competent jurisdiction of the county in which such property or the principal part thereof is situated, a full and complete transcript from the records of a court of competent jurisdiction in the state or territory in which he and his ward reside, duly exemplified or authenticated, showing that he has been appointed guardian of such ward and that he has given a bond and security in the state or territory in which he and his ward reside, in double the value of the property of such ward, and also showing to such court that a removal of the personal property of such ward will not conflict with the terms or limitations attending the right by which the ward owns the same, then such transcript may be recorded in such court, and such guardian shall be entitled to receive letters of guardianship of the estate of such ward from such court, which shall authorize him to demand, sue for and recover any such property, and remove the same to the place of residence of himself and his ward. Such court may order any resident guardian, executor or administrator, having any of the estate of such ward, to deliver the same to such nonresident guardian; provided that all known debts of such estate have been paid. (R. S. c. 145, § 28.)

Sec. 29. Disability of adults under guardianship; dismissal of guardian.—When a person over 21 years of age is under guardianship, he is incapable of disposing of his property otherwise than by his last will or of making any contract, notwithstanding the death, resignation or removal of the guardian. When, on application of any such person or otherwise, the judge finds that a

guardian is no longer necessary, he shall order the remaining property of the ward to be restored to him, except a legal compensation to the guardian for his services. (R. S. c. 145, § 29.)

This section prohibits all express contracts by the insane. They cannot be liable on any express promise. Sawyer v. Lufkin, 56 Me. 308.

But the estate of an insane person may be held when the law implies a contract. The estate of the insane is legally, as well as equitably, liable for necessaries furnished in good faith, and under circumstances justifying their being so furnished. Sawyer v. Lufkin, 56 Me. 308.

Thus estate is liable for necessary nursing and care furnished in good faith.—At common law, the estate of an insane person, over twenty-one years of age and under guardianship, is liable for necessary nursing and care furnished in good faith and under justifiable circumstances. And this liability is not changed by this section. Sawyer v. Lufkin, 56 Me. 308.

This section recognizes the principle that a man may be of unsound mind in one respect and not in all respects, that there may be partial insanity of the testator, some unsoundness of mind, that does not in any way relate to his property or disposition of the same by will. In re Chandler's Will, 102 Me. 72, 66 A. 215.

Thus incapacity of guardianship does not work estoppel on proponents of will. —The incapacity of guardianship is simply a fact which may be proven like any other fact tending to establish mental incapacity; it does not work an estoppel upon the proponents of a will. The law recognizes that a person may require a guardian by reason of incapacity in one particular, while, in other respects, he may be entirely competent. In re Chandler's Will, 102 Me. 72, 66 A. 215.

Although a person of age does not have, as between living persons, the faculty to transact business, he may nevertheless have testamentary power. He may still be capable of making a will. This section so recognizes. Eastman, Appellant, 135 Me. 233, 194 A. 586.

And presumption of testamentary incapacity arising from decree may be overcome.—Any presumption of testamentary incapacity arising from a decree of unsound mind may be overcome by testimony as to the facts and circumstances connected with the execution of the instrument. In re Chandler's Will, 102 Me. 72, 66 A. 215.

Evidence necessary to rebut presumption. — The only burden upon the proponents of a will to overcome the disability imposed by guardianship is to prove by a preponderance of the evidence that the testator at the time of executing the will was of sound mind, in the legal sense. If the guardianship was imposed on account of the impairment of some particular function of the brain which did not materially interfere with the judgment, comprehension and memory, it might require scarcely any evidence at all to remove the effect of it. On the other hand, if it was imposed on account of long standing and chronic insanity involving the destruction of all these faculties, no amount of evidence could overcome it. In re Chandler's Will, 102 Me. 72, 66 A. 215.

Incapacity removed by subsequent discharge of guardian. — Whatever disability was imposed upon a person by the appointment of a guardian over him as a person non compos mentis, without a previous formal decree as to his mental conditions, was removed by the subsequent discharge, by the judge of probate, of such guardian upon his own petition and without notice. Hovey v. Harmon, 49 Me. 269.

Applied in Cantillon v. Walker, 146 Me. 160, 78 A. (2d) 782.

Sec. 30. Special guardian for minor or adult. — When a petition is pending for the appointment of a guardian for a minor or for an adult, the judge of probate authorized by law to make such appointment, in his discretion may, at any time and without notice, appoint a special guardian who shall have the same powers and perform the same duties with respect to the estate of the ward as a guardian appointed under the provisions of this chapter. (1953, c. 320, § 3.)

Guardians Ad Litem; Next Friend.

Sec. 31. Guardian ad litem; next friend.—Nothing in this chapter affects the power of any court to appoint a guardian to defend the interests of any minor or other incapacitated person in any suit pending in such court, nor their

power to allow or appoint anyone as next friend of such person to commence, prosecute or defend any suit in his behalf. (R. S. c. 145, § 30.)

Infant must appear by guardian. — The rule respecting the appearance of an infant, whether of sound or unsound mind is that he must appear by guardian. King v. Robinson, 33 Me. 114.

But one of unsound mind of full age must appear by attorney. King v. Robinson, 33 Me. 114.

Court may appoint guardian ad litem for party of unsound mind. — Under this section the court is unauthorized by implication to appoint a guardian ad litem when a party was not of sound mind before the suit was commenced. King v. Robinson, 33 Me. 114.

But its omission to do so cannot be assigned as error. — The court can have no knowledge of the fact that a party is non compos mentis until it receives it from some proper source; and it is then a matter of discretion to be exercised or not according to its judgment upon the proof presented. Thus, there being no legal obligation resting upon the court or upon the plaintiff to ascertain the facts and have a guardian ad litem appointed, its omission cannot be assigned as error. King v. Robinson, 33 Me. 114.

And plaintiff has no duty to ascertain mental capacity of defendant. — The law does not appear to have imposed it as a duty to be performed by a plaintiff, to ascertain the mental capacity of a defendant and to bring it before the court for its consideration, that a guardian ad litem may be appointed. It may be prudent in cases of doubt for him to do so, lest his judgment should be liable to be disturbed by a petition for a review, or possibly by a suit in equity. King v. Robinson, 33 Me. 114.

Suit may be brought on behalf of minor by next friend.—It is not necessary that a legal guardian or a guardian ad litem should be appointed in order that a minor should prosecute a suit at law or equity. In such cases actions may be brought, entered in court and pursued to judgment on behalf of the minor by a next friend. The practice is too well settled to require discussion. It is recognized in this section and § 32. Ayer v. Androscoggin & Kennebec Ry., 131 Me. 381, 163 A. 270.

Next friend is not necessarily one of kin. — A prochein ami, or next friend, is not necessarily one of kin, but may be any person who will undertake the infant's cause, and according to the theory of the law he is appointed by the court. Such power of appointment is recognized as existing in any court of common law by our statute. Leavitt v. Bangor, 41 Me. 458.

Though father has right as next friend to control litigation of children. — The father is the proper person to conduct litigation in behalf of his infant children, and to control the same as next friend, unless his interests be hostile or he be guilty of some default or neglect. Bernard v. Merrill, 91 Me. 358, 40 A. 136.

But this does not make him party to suit.—The right of a father as next friend to control the litigation of his infant children does not so far make him a party to the suit as to personally bind him by the result. This right, while a personal one, is to be exercised for the child. The suit is the child's suit. Damages recovered belong to the child. It is doubtful if the father, who prosecutes as next friend can discharge the judgment, as it is said his authority is only commensurate with the writ. Bernard v. Merrill, 91 Me. 358, 40 A. 136.

Both the next friend and the guardian ad litem are mere agents, appointed either theoretically or in fact by the court, to conduct the business of the suit for the real parties whom they represent. In all such cases, the infant is the real party whose rights are bound by the judgment. Leavitt v. Bangor, 41 Me. 458.

Next friend is not liable for costs. — A prochein ami may be regarded as a party for certain purposes, such as receiving notices to take depositions and the like, but he is not a party in such a sense as would make him responsible for costs. Leavitt v. Bangor, 41 Me. 458.

But he may control prosecution of suit. —The next friend, although not liable for costs in this state, may control the prosecution of the suit. Even should the infant employ counsel, who procures the suit dismissed, the entry would be void, because the infant could not appear by attorney as the employment would be null. Bernard v. Merrill, 91 Me. 358, 40 A. 136.

Court may revoke appointment of next friend. — It has been decided that the courts may not only appoint a prochein ami but they have authority to revoke any such appointment, even during the progress of the suit. Leavitt v. Bangor, 41 Me. 458.

Sec. 32. Settlement of suit not valid unless approved by court.—No settlement of any suit brought in behalf of an infant by next friend or defended on his behalf by guardian or guardian ad litem shall be valid unless approved by the court in which the action is pending, or to which the writ is returnable, or affirmed by an entry or judgment. The court may make all necessary orders for protecting the interests of the infant and may require the guardian ad litem or next friend to give bond to truly account for all money received in behalf of the infant. When the court in which such suit is pending or to which it is returnable is in vacation, the judge of that court, or, if the suit is pending in or returnable to the superior court, any justice of the superior court, shall have the power to approve a settlement of said suit and to make all necessary orders for protecting the interests of the infant and may require the giving of a bond as above provided. (R. S. c. 145, § 31. 1945, cc. 62, 272.)

A release by a minor complainant, standing alone, is not a bar to an action to compel the father of an illegitimate child to contribute to its support and maintenance, unless it appears that the minor complainant was represented by a next friend, and that such settlement was approved by the court, or affirmed by an entry or judgment. Harding v. Skolfield, 125 Me. 438, 134 A. 567.

But next friend or his representative may settle suit with approval of court.— A next friend or person authorized to represent him has full authority to settle or discharge a right of action on behalf of a minor and to consent to an entry of judgment provided that such action is approved by the court. Ayer v. Androscoggin & Kennebec Ry., 131 Me. 381, 163 A. 270.

Counsel for minor need not be directly employed by minor or next friend. — It is not necessary that an attorney representing a minor plaintiff in the settlement of a suit should be directly employed or paid by the plaintiff or his next friend. In the absence of a fraud, any arrangement with regard to employment of counsel, acceded to by the next friend, is sufficient. Ayer v. Androscoggin & Kennebec Ry., 131 Me. 381, 163 A. 270.

Nor is it necessary that counsel should personally investigate the case or present evidence to the court. He may do no more than bring to the attention of the court the settlement agreed on by the next friend or the person authorized by the next friend to arrange the matter and satisfy himself that the court is sufficiently informed concerning the case to act intelligently. Ayer v. Androscoggin & Kennebec Ry., 131 Me. 381, 163 A. 270.

It is not necessary that either the minor or the next friend should be present when the court considers approving the settlement of an action in which a minor is plaintiff. Ayer v. Androscoggin & Kennebec Ry., 131 Me. 381, 163 A. 270.

Neither is it necessary to formally introduce evidence unless the court requires it. Ayer v. Androscoggin & Kennebec Ry., 131 Me. 381, 163 A. 270.

Settlement of minor's claim by trustees of juvenile institution. — See Harding v. Skolfield, 125 Me. 438, 134 A. 567.

Sec. 33. Special guardians for married women.—Pending any proceedings in the probate court in which any married woman is interested, when, after personal notice and a hearing, the judge is satisfied that by reason of age or mental infirmity she is incompetent to manage her affairs or protect her rights, he may appoint her husband or other suitable person her guardian for the special purpose, with power to institute or defend proceedings in law or equity necessary for the interests of his ward, and no proceeding thus instituted shall be delayed or disposed of without the consent of such guardian. (R. S. c. 145, § 32.)

Discovery of the Ward's Estate.

Sec. 34. Persons cited and examined. — Upon complaint made to the judge of probate by any guardian, conservator, ward, creditor or other person interested in the estate or having claims thereto in expectancy as heir or otherwise against anyone suspected of having concealed, embezzled or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person and proceed with him in the manner provided in relation

to those suspected of embezzling the estates of deceased persons. (R. S. c. 145, § 33.)

Sec. 35. Embezzlement by guardian or conservator.—If a guardian or conservator having the charge and custody of property embezzles the same or fraudulently converts it to his own use, he shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 10 years. (R. S. c. 145, § 34.)

History of section.—See Smith, Petitioner, 142 Me. 1, 45 A. (2d) 438.

Section is constitutional. — This section operates alike upon all persons who commit the offense, and is in no way repugnant to the fourteenth amendment to the federal constitution. State v. Whitehouse, 95 Me. 179, 49 A. 869.

Statute making embezzlement larceny does not affect this section. — Under this section, relating to embezzlement by a guardian, the punishment differs in important respects from that provided by statute for larceny. And it was not the intention of the legislature that c. 132, § 9, which makes embezzlement larceny, should affect this statute. State v. Whitehouse, 95 Me. 179, 49 A. 869.

Indictment should not contain words charging larceny.—In an indictment under this section it is neither necessary nor proper for either count to contain any words charging the commission of the crime of larceny, because the crime is not larceny. However, such words may be rejected as surplusage. State v. Whitehouse, 95 Me. 179, 49 A. 869.

Indictment held sufficient.—See State v. Whitehouse, 95 Me. 179, 49 A. 869.

Punishment for plural pilferings. — Neither the original language of this section nor that presently in use supports the claim that plural pilferings by a guardian from his trust subject him to nothing more than a single punishment. Smith, Petitioner, 142 Me. 1, 45 A. (2d) 438.

Adoption of Persons.

Sec. 36. Who may adopt person. — Any unmarried inhabitant of the state, or any husband and wife jointly, may petition the judge of probate for their county for leave to adopt a person, regardless of age, and for a change of his or her name. Any unmarried inhabitant of another state, or any nonresident husband and wife jointly, may present such petition in the probate court of the county where such person lives. The consent of the natural parents shall not be required for the adoption of a person who has reached the age of 21 years or over. (R. S. c. 145, § 35. 1945, c. 68.)

Adoption exists only by virtue of statute.—Being unknown to the common law, adoption has been introduced into those portions of this country deriving their jurisprudence from that source, and not from the civil law, solely by statute, and the effect of the act of adoption upon the status of the person adopted and upon the rights of the adopters depends upon the statute by which the act is authorized; the practice of adoption exists only by virtue of statute. Simmons, Appellant, 121 Me. 97, 115 A. 765.

Adoption is unknown to the common law; it exists solely by virtue of statute. One must accordingly look to the various legislative acts to determine the rights of the parties affected by a decree of adoption. Gatchell v. Curtis, 134 Me. 302, 186 A. 669.

And statutory procedure must be complied with.—The adoption of a minor child and the giving of it in adoption to persons other than its natural parents is a procedure and creates a status unknown to the common law. Being of purely statutory origin, a legal adoption results if the statutory procedure is followed and fails if any essential requirement of the statute is not complied with. Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

Applied in Gray v. Gardner, 81 Me. 554, 18 A. 286; Taber v. Douglass, 101 Me. 363, 64 A. 653; Cummings, Appellant, 126 Me. 111, 136 A. 662.

Sec. 37. Consent. — Before such petition is granted, written consent to such adoption must be given by the child, if of the age of 14 years, and by each of his living parents, if not hopelessly insane or intemperate; or, when a divorce has been decreed to either parent, written consent of the parent or the department of health and welfare, whichever is entitled to the custody of the child, personal

notice of such petition to be given to the parent or parents not entitled to custody, if within the jurisdiction of the court, or if beyond the jurisdiction of the court or the residence is unknown, such notice as the judge deems proper; or such consent by one parent when, after such notice to the other parent as the judge deems proper and practicable, such other parent is considered by the judge unfit to have the custody of the child.

When any child has been committed to the custody of the department of health and welfare under the provisions of section 249 of chapter 25 and the commitment order is still in effect, consent shall be given by the department and no notice need be given to the parents. The consent of the parents and the child when required must be acknowledged before a justice of the peace or notary public. If there are no such parents or if the parents have abandoned the child and ceased to provide for its support or if the parents are considered by the judge unfit to have the custody of the child and the welfare of the child is in jeopardy, consent may be given by the legal guardian; if no such guardian, then by some person appointed by the judge to act in the proceedings as the next friend of such child; if an illegitimate child and under the age of 14 years, such consent may be given by the mother of such child. Provided, however, if only one of such parents has abandoned the child and ceased to provide for its support, consent may be given by the parent who has not abandoned said child. The parents or surviving parent of such child, or the mother if such child be illegitimate, with the approval of the judge of probate of any county within the state and after a determination by such judge of probate that a surrender and release is for the best interests of all parties, may surrender and release all parental rights in and to such child and the custody and control thereof to an incorporated and licensed society, asylum, child placing agency or home in this state, or to the state department of health and welfare for the purpose of enabling such incorporated society, asylum or home, or state department of health and welfare to have such child adopted by some suitable person, and its name changed when a change is desirable, and the child made an heir at law under the provisions of this chapter. The effect of this surrender and release shall be fully explained by the judge of probate to the parent or parents executing the same. The aforementioned surrender and release approved as aforesaid shall be filed with the petition of adoption of said child in the probate court. In such cases the consent to adoption hereinbefore provided for may be given by such incorporated society, asylum or home, or state department of health and welfare. (R. S. c. 145, § 36. 1945, c. 60. 1949, c. 173. 1953, c. 258.)

Cross reference.—See c. 25, § 250, re court orders to divest parents of legal rights.

History of section.—See Cummings, Appellant, 127 Me. 418, 144 A. 397.

Section strictly construed.—Because of the conclusiveness and far-reaching effect of an adoption decree, and the fact that it is not a mere custody decree like guardianship or other similar proceedings, every consideration of fairness to the natural parent dictates that the provisions of our statutes prescribing the conditions under which their consent may be dispensed with should receive strict construction. Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

Consent is jurisdictional fact.—Written consent to the adoption, given in one of the several methods specified in this section, is expressly made a statutory prerequisite to the exercise of the power conferred upon the court to grant a petition for adoption. It is a jurisdictional fact required by statute and must be distinctly alleged in the petition as the basis of the court's authority to act in the premises, and after decree, proof of the allegation must be shown by the records of the court. Taber v. Douglass, 101 Me. 363, 64 A. 653; Cummings, Appellant, 127 Me. 418, 144 A. 397.

Where required consent was not obtained decree is void.—Where the consent required by this section was not obtained, the procedure pointed out by the statute was not followed, jurisdiction did not attach, and the decree of adoption was null and void and conferred no rights upon the alleged adoptive parents. Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

But section dispenses with consent of parent who has forfeited right to control child.—The purpose of the legislature in the progressive course of this legislation has been to dispense with the consent of a

parent who by reason of unfitness, whether resulting in a decree of custody in the other parent or not, or by the abandonment of a child, had forfeited his or her right to control its training and its future welfare. Cummings, Appellant, 127 Me. 418, 144 A. 397.

Thus consent of one parent is unnecessary where custody has been awarded to other.—Custody in one parent granted by the probate court after separation of the parents presumably must have been predicated on the abandonment by, or some element of unfitness or indifference to the welfare of the child on the part of, the other parent. That the consent of such parent is unnecessary in case of adoption is consistent with the general purpose of this section as well as being within its terms. Cummings, Appellant, 127 Me. 418, 144 A. 397.

Provision is not limited to cases where custody was awarded by court granting divorce.—The provision of this section dispensing with the consent of the parent not having custody, where a divorce has been decreed between the parties and the custody of the child has been given to one parent, is not limited to cases where custody has been given to one parent by the court granting the divorce. Cummings, Appellant, 127 Me. 418, 144 A. 397.

And applies where custody was awarded prior to divorce.—Where the mother has obtained a divorce in another state, and previously the probate court in this state has given custody to the father, the provision of this section, that when a divorce has been decreed and custody has been given by some court having jurisdiction to one of the parents the consent of the other parent is not necessary in order to grant a petition for adoption, applies. Cummings, Appellant, 127 Me. 418, 144 A. 397.

Consent where both parents are found to have abandoned child.—See Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

Petition and decree must recite grounds for dispensing with consent.—In order to bring a case within the exceptions to the general rule requiring the consent of both parents, the petition should recite the facts depended upon, and the decree should indicate the findings of the court with regard to the allegations thus set forth. They are jurisdictional facts required by statute and must be distinctly alleged in the petition as the basis of the court's authority to act in the premises; and after decree, a proof of the allegations must be shown by the records of the court. In the absence of such a recitation of facts, it may be assumed that the consent of the mother in writing is necessary. Gauthier, Appellant, 131 Me. 28, 159 A. 329.

Recital in decree that consent was given controls.—The decree of adoption duly entered in a probate court is a record that proof was offered of the written consent of the mother, and the recital therein controls until overthrown by evidence. The fact that such written consent is not found in the files of the court is not evidence that it was not given. Gauthier, Appellant, 131 Me. 316, 162 A. 785.

Unless contrary to truth imported by entire record.—Where the decree of adoption, according to the printed forms prescribed therefor, contains the statement that "the written consent required by law has been given thereto," but construed as a finding of fact this is contrary to the truth imported by the entire record, the fact that the court of probate in giving judgment, passed upon the question of jurisdiction, does not preclude a court of common law from inquiring into this jurisdictional fact collaterally and declaring the judgment of the probate court void. Taber v. Douglass, 101 Me. 363, 64 A. 653.

A recital in the decree that "the written consent required by law" was given is equivalent to a declaration that the written consent of both parents had been procured. Gauthier, Appellant, 131 Me. 28, 159 A. 329.

Applied in Cummings, Appellant, 126 Me. 111, 136 A. 662; Cote, Appellant, 144 Me. 297, 68 A. (2d) 18.

Sec. 38. Proceedings.—Upon the filing of a petition for the adoption of a minor child, the court may in its discretion notify the state bureau of social welfare. It shall then be the duty of the bureau, either through its own workers or through a delegated agency, to verify the allegations of the petition, to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed home is suitable for the child. This information shall, as soon as practicable, be submitted by the bureau to the court in writing with a recommendation as to the granting of the petition. Thereupon, if the judge is satisfied of the identity and relations of the parties, of the ability of the petitioners

to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child is the child of the petitioners and that his name is thereby changed, without requiring public notice thereof. The court may require that the child shall have lived for 1 year in the home of the petitioners before the petition is granted, and may also require that the child, during all or part of said probationary period, shall be under the supervision of the bureau of social welfare or a licensed child placing agency.

A certified copy of the birth record of the child proposed for adoption shall be presented with the petition for adoption, provided such a certified copy can be obtained or can be made available by filing a delayed return of birth. After the adoption has been decreed the register of probate shall forthwith file with the registrar of vital statistics and the official for recording births in the town where the child was born, a report of the adoption on a form prescribed and furnished by the registrar of vital statistics. The report of the adoption shall be signed by the register of probate and the seal of the court impressed thereon. The registrar of vital statistics shall file with the proper official for recording births in the town where the child was born, a copy of the birth certificate made from the report of the adoption. Any certificate of birth of such child thereafter issued shall be issued so as to read, in all respects, as if such child had been born to such adoptive parents. (R. S. c. 145, § 37. 1953, c. 341.)

Petition must allege sufficient facts to show authority of court to make decree.—The petition of the probate court is the foundation upon which its jurisdiction and that of the supreme court of probate is based, and it must allege sufficient facts to show the authority and power of the court to make the decree prayed for. The supreme court of probate cannot act when the probate court may not. Cummings, Appellant, 127 Me. 418, 144 A. 397.

Judge must consider ability of petitioner and propriety of adoption.—This section requires the judge, even when consent of a parent is shown or rendered unnecessary, to take into consideration the ability of the petitioner and the fitness and propriety of the adoption. Cummings, Appellant, 127 Me. 418, 144 A. 397.

Validity of decree.—See Hurley v. Robinson, 85 Me. 400, 27 A. 270.

Applied in Hill, Appellant, 97 Me. 82, 53 A. 885; Virgin v. Marwick, 97 Me. 578, 55 A. 520; Cote, Appellant, 144 Me. 297, 68 A. (2d) 18.

Sec. 39. Adoption records made confidential.—All probate court records relating to any adoption decreed on or after August 8, 1953, are declared to be confidential. The probate courts shall keep the records of such adoptions segregated from all other court records. Such adoption records may be examined only upon authorization by the judge of the probate court. In any case where it is considered proper that such examination be authorized, the judge may in lieu of such examination, or in addition thereto, grant authority to the register of probate to disclose any information contained in such records by letter, certificate or copy of the record. (1953, c. 384.)

Sec. 40. Legal effect of adoption of child; descent of property.—By such decree the natural parents are divested of all legal rights in respect to such child and he is freed from all legal obligations of obedience and maintenance in respect to them; and he is, for the custody of the person and right of obedience and maintenance, to all intents and purposes the child of his adopters, with right of inheritance when not otherwise expressly provided in the decree of adoption, the same as if born to them in lawful wedlock, except that he shall not inherit property expressly limited to the heirs of the body of the adopters nor property from their collateral kindred by right of representation, and he shall stand in regard to lineal descendants of his adopters in the same position as if born to them in lawful wedlock; but he shall not by reason of adoption lose his right to inherit from his natural parents or kindred; and the adoption of a child made in any other state, according to the laws of that state, shall have the same force and effect

in this state, as to inheritance and all other rights and duties as if said adoption had been made in this state according to the laws of this state. If the person adopted died intestate, his property acquired by himself or by devise, bequest, gift or otherwise before or after such adoption from his adopting parents or from the kindred of said adopting parents shall be distributed according to the provisions of chapter 170, the same as if born to said adopting parents in lawful wedlock; and property received by devise, bequest, gift or otherwise from his natural parents or kindred shall be distributed according to the provisions of said chapter 170, as if no act of adoption had taken place. (R. S. c. 145, § 38. 1951, c. 81.)

Cross reference.—See c. 25, § 250, re court orders to divest parents of legal rights.

History of section.—See Simmons, Appellant, 121 Me. 97, 115 A. 765; Latham, Appellant, 124 Me. 120, 126 A. 626; Gatchell v. Curtis, 134 Me. 302, 186 A. 669.

The adopted child is not, to all intents and purposes whatever, declared to be the child of his adopters the same as if born to them in lawful wedlock, but "for the custody of the person and all rights of inheritance, obedience and maintenance." The limitation is plain. Wilder v. Butler, 116 Me. 389, 102 A. 110.

But section places child by adoption in direct line of descent.—It is as competent for the legislature to place a child by adoption in the direct line of descent as for the common law to place a child by birth there. And that is precisely what the legislature did, and what it intended to do, when in this section it declared that a legally adopted child becomes to all intents and purposes the child of the adopters, the same as if he were born to them in lawful wedlock, with the two exceptions named herein. Warren v. Prescott, 84 Me. 483, 24 A. 948.

And he may take bequest to adopting parent who died before testator.—Within the rights and powers conferred upon him by this section, and without infringement of either of the exceptions therein, an adopted child may take a devise or legacy given by will to one of his adopting parents, and thus prevent the devise or legacy from lapsing, in case the parent dies before the testator, precisely the same, and with the same limitations, as if he were a child born to such parent in lawful wedlock. In such a case, the adopted child does not take as an heir at law of the parent's kindred. He does not "inherit" the legacy from the testator. He takes as a lineal descendant of the legatee, by force of c. 169, § 10. Warren v. Prescott, 84 Me. 483, 24 A. 948.

Adopted child may inherit from natural parent.—The fact that a child has been legally adopted, and his natural mother has been divested of certain rights regarding him, does not affect the child's right to inherit from his natural mother. Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

Exceptions to adopted child's right of inheritance.—With two exceptions, an adopted child becomes, "to all intents and purposes, the child of his adopters, the same as if born to them in lawful wedlock." The exceptions are: First, that an adopted child shall not inherit property expressly limited to the heirs of the body of the adopters; and, secondly, that an adopted child shall not inherit property from the adopters' collateral kindred by right of representation. These exceptions relate to the right to inherit as heirs at law, and not to the right to take under a will. Warren v. Prescott, 84 Me. 483, 24 A. 948.

Decent of property acquired from adopting parent. — If the decedent, an adopted child, had died intestate, the property which he had acquired from his adopting father would have descended to his uncle and his aunt by adoption as his next of kin. Gatchell v. Curtis, 134 Me. 302, 186 A. 669.

Event of adoption fixes legal status of adopted child.—It is the event of adoption that fixes, under the law authorizing the adoption, the legal status of the adopted child; the child, by the event of adoption, becomes the legal child of the adopting parent, and stands, as to the property of the adopting parent, in the same light as a child born in lawful wedlock, save in so far as the exceptions in the statute authorizing the adoption declare otherwise. And when the statute authorizes a full and complete adoption, the child adopted thereunder acquires all of the legal rights and capacities, including that of inheritance, of a natural child, and is under the same duties. Virgin v. Marwick, 97 Me. 578, 55 A. 520.

But decree of adoption does not settle right of inheritance for all time.—A decree of adoption entered in accordance with power conferred by statute fixes the status of the child; it divests the natural parents of control and establishes the rights and obligations of the foster parents. It does not settle for all time the child's right to inherit property. That remains as in the

case of all persons subject to legislative regulation, until it becomes vested by the death of him whose estate may be subject to administration. The same principle of course applies to the rights of those who may inherit from the child. Gatchell v. Curtis, 134 Me. 302, 186 A. 669; Wyman, Appellant, 147 Me. 237, 86 A. (2d) 88.

And statute in force at time of death controls right of inheritance.—The statute passing and distributing the estate of the adoptive father dying intestate since the adoption, rather than that in force at the time that the child was adopted, determines whether the child is capable of taking the relation of an inheritor to the property that the parent left. Latham, Appellant, 124 Me. 120, 126 A. 626.

The statute in force at the date of the death of an adopted child controls the right of inheritance from such child. Gatchell v. Curtis, 134 Me. 302, 186 A. 669.

This section makes reference to two classes of adoptions. One may be termed the domestic or local adoption made under the laws of the state of Maine. The other, an adoption made outside the state of Maine. Wyman, Appellant, 147 Me. 237, 86 A. (2d) 88.

Purpose of provision as to persons adopted in another state.—The provision of this section relating to adoption of a child made in another state, according to the laws of that state, apparently was passed by the legislature in an attempt to clarify the matter of foreign adoption. That is, adoptions legally made outside of the state of Maine and in accordance with the law of the particular state or territory where the adoption took place. Wyman, Appellant, 147 Me. 237, 86 A. (2d) 88.

Status of adoption created by another state is given effect.—The status of adoption, created by the law of a state having jurisdiction to create it, will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law. Wyman, Appellant, 147 Me. 237, 86 A. (2d) 88.

But status of adoption and right of inheritance are distinguishable.—There is considerable difference between the status of adoption, that is, the relationship of parent and child, and the right or capacity of the adopted child to inherit, because under our decisions the right of inheritance applicable to local adoptions does not arise until the death of a decedent while the status of adoption becomes effective at the date of the decree of adoption. Wyman, Appellant, 147 Me. 237, 86 A. (2d) 88.

As to right of inheritance of person adopted in another state, see Wyman, Appellant, 147 Me. 237, 86 A. (2d) 88, decided under this section as it stood before the 1951 amendment thereto, which altered the provisions relating to inheritance by adopted children and to foreign adoptions.

Interpretation of words "child or children" in will or deed as affected by adoption.—This section simply fixes the status of the adopted child in case of the intestacy of his adopters, where the rights of inheritance are involved. It is also held to have a bearing upon the intention of the grantor or testator who is himself the adopter. But it is of no particular aid in determining whether an adopted child is within or without the designaton of "child" or "children" as used in a deed or will where the grantor or testator is other than the adopter. Wilder v. Butler, 116 Me. 389, 102 A. 110.

Where one makes provision in his will for his own "child or children" by that designation he should be held to have included an adopted child, since he is under obligation in morals, if not in law, to make provision for such child. When, in a will, provision is made for "a child or children" of some other person than the testator, an adopted child is not included, unless other language in the will makes it clear that he was intended to be included. In making a devise over from his own children to their "child or children" there is a presumption that the testator intended "child or children" of his own blood, and did not intend his estate to go to a stranger to his blood. Woodcock, Appellant, 103 Me. 214, 68 A. 821; Wilder v. Butler, 116 Me. 389, 102 A. 110.

Policy of life insurance payable to "children" of assured.—A policy of life insurance was issued to the wife of the assured and payable to her or her legal representatives for her sole separate use, and in case of her death before that of her husband, the amount to be paid to "their children." They had no child by birth, but had one by gift and adoption. It was held that the adopted child took the insurance under the express terms of the policy. Martin v. Aetna Life Ins. Co., 73 Me. 25.

A policy of life insurance, payable to the assured, his executors, administrators or assigns, for the benefit of his widow, if any, otherwise for the benefit of his surviving children, passes by the will of the assured to a child adopted afterward, no widow or issue surviving, it being the intention of the testator to provide for that person surviving him who stood in the legal relation of a child. Virgin v. Marwick, 97 Me. 578, 55 A. 520.

Adopted child takes legal settlement of

adopting parents.—A minor who was legally adopted under our statutes by a man and his wife as their child thereupon took the legal settlement of those persons instead of longer following the settlement of his natural parents, the effect of the decree of adoption being to transfer the settlement of the child from the settlement of his parents to that of his adopters. Waldoborough v. Friendship, 87 Me. 211, 32 A. 880. See Virgin v. Marwick, 97 Me. 578, 55 A. 520.

Applied in Cummings, Appellant, 126 Me. 111, 136 A. 662.

Cited in Thompson, Appellant, 114 Me. 338, 96 A. 238.

Sec. 41. Appeal to supreme court of probate.—Any petitioner or any such child by his next friend may appeal from such decree to the supreme court of probate, in the same manner and with the same effect as in other cases, but no bond to prosecute his appeal shall be required of such child or next friend, nor costs be awarded against either. (R. S. c. 145, § 39.)

By this section a right of appeal is given only to the petitioner and to the child by its next friend. Moore v. Phillips, 94 Me. 421, 47 A. 913.

But this section does not repeal or supersede c. 153, § 32.—C. 153, § 32, providing for appeals from probate decrees by "any persons aggrieved," is not in any part repealed or superseded by this section. This section, though a subsequent enactment, does not supersede or limit the former statute, but rather supplements and extends it. Cummings, Appellant, 126 Me. 111, 136 A. 662.

And that statute gives right of appeal to natural parent.—A decree of adoption which divests a mother of all legal rights in respect to her minor child bears directly upon the mother's interest. By such decree she is aggrieved and from it has the right of appeal under c. 153, § 32. Cummings, Appellant, 126 Me. 111, 136 A. 662.

Next of kin of adopting parent have no right of appeal.—A person, without issue, having adopted a child under the provisions of this chapter, died within twenty days after the decree of adoption had been made in the probate court. The next of kin, being the mother, brothers and sisters, entered an appeal from the decree of adoption. It was held that the appellants had no right of appeal, either before or after the death of their ancestor. Gray v. Gardner, 81 Me. 554, 18 A. 286.

Sec. 42. Allowance to adopted child. — The judge of probate, on the death of either of said adopters, may make a reasonable allowance to such child from the personal estate of the deceased if the circumstances of the case demand it. (R. S. c. 145, § 40.)

Sec. 43. Decree of adoption annulled.—Any judge of probate may, on petition of two or more persons, after notice and hearing and for good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted under the provisions of this chapter. (R. S. c. 145, § 41.)

Change of Name.

Sec. 44. Petition to judge of probate.—If a person desires to have his name changed, he may petition the judge of probate in the county where he resides; or, if he is a minor, his legal custodian may petition in his behalf, and the judge, after due notice, may change the name of such person and shall make and preserve a record thereof. (R. S. c. 145, § 42.)