

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

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FORTY-SIXTH LEGISLATURE.

HOUSE.

No. 58.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SIXTY-SEVEN.

AN ACT to provide for the restoration of the records of the court of probate for the county of Cumberland.

WHEREAS, the records and files of the probate court for Cumberland county were wholly destroyed by the calamitous fire in the city of Portland, on the fourth day of July last,

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. Executors, administrators, guardians, 2 and testamentary trustees, or their representatives, 3 having in their possession any original letters of ad- 4 ministration or guardianship, or any licenses or other 5 papers authorizing any official acts under the probate 6 laws, issued from said court before the fourth day of

7 July, eighteen hundred and sixty-six, may present
8 such original papers to the judge of the court at any
9 regular session, and the register shall thereupon re-
10 cord the same, as the judge shall direct. Such papers
11 may also be presented by any other person interested,
12 to be recorded in like manner. After such record the
13 originals may be received again by the person present-
14 ing the same.

SECT. 2. Duly authenticated copies of the record
2 of any will and of the probate thereof, which was ad-
3 mitted to probate in said court and recorded before
4 the day aforesaid, may be presented to the judge in
5 like manner by the person officially in possession of
6 the same, or his representative, or by any other per-
7 son interested; and the same, together with the cer-
8 tificates of authentication, shall be recorded anew by
9 the register.

SECT. 3. Duly authenticated copies of the record
2 of any other instrument or paper which had been re-
3 corded in the registry of said court before the day
4 aforesaid, may be presented to the judge in like man-
5 ner, and the same shall be recorded anew.

SECT. 4. Upon the petition of any person inter-
2 ested, if the judge shall be satisfied that any impor-
3 tant subsisting interests require that any instrument,

4 paper or copy of record, mentioned in the three pre-
5 ceding sections, should be so presented and recorded,
6 he may issue a citation to any person alleged, with
7 reasonable cause, to be the holder thereof, requiring
8 him to present the same, or show cause to the con-
9 trary. If the person cited shall not appear, after
10 proof of personal notice, or if upon his appearance he
11 shall neglect or refuse to perform the order and decree
12 of the court, the judge may commit him to the com-
13 mon jail of the county, there to remain until he shall
14 be discharged by the judge of probate, or by some
15 justice of the supreme judicial court. Instruments,
16 papers and copies procured under any such citation
17 shall be recorded anew as hereinbefore provided.

SECT. 5. The records made under the preceding
2 sections, and duly certified copies thereof, shall be
3 conclusive evidence in any court of the contents of
4 the instruments and papers so recorded.

SECT. 6. Any papers purporting to be a copy, but
2 not duly authenticated, of any roll alleged to have
3 been admitted to probate in said court before the day
4 aforesaid, may be presented to the judge in like man-
5 ner by any person interested, upon his written peti-
6 tion praying that such copy may be verified and es-
7 tablished as the will of the testator. Any person

8 interested under such a will, alleging upon his belief,
9 that a copy of the same exists, but that the same can-
10 not be obtained except by the aid of legal process,
11 may present his petition to the judge praying for a
12 time to be appointed for a hearing thereon, and for
13 the verification and establishment of such copy, when
14 produced, as the will of the testator. The petition-
15 ers may summon any person by subpoena duces tecum,
16 issued by the register of probate, to appear at such
17 time and produce such alleged copy. For disobedi-
18 ence of such summons in any manner, the person sum-
19 moned shall be liable as for the like offence in any
20 court. Any person interested under such a will, al-
21 leging upon his belief that no copy of the same exists,
22 may present his petition to the judge, with a written
23 statement setting forth as fully as may be, the sub-
24 stance of such will, and praying that the same may
25 be verified and established as the substance of the
26 will of the testator. Every petition presented under
27 this section shall be supported by the oath of the peti-
28 tioners taken before the judge or register of probate,
29 or some justice of the peace. Upon all such petitions
30 the judge shall order such notice as is required by
31 law upon the probate of original bills, and such other
32 notice as he may deem suitable. Upon the return of

33 such notice in any case, if the judge shall deter-
34 mine that the allegations and prayers of the petition
35 are sustained and warranted by the proofs exhibited,
36 he shall decree that such copy be established as the
37 will of the testator, or that such statement be estab-
38 lished as the substance of the will of the testator, and
39 shall under the same be recorded. Such record and
40 certified copies of the same shall be prima facie evi-
41 dence in any court of the contents of such will, or of
42 the substance of the same, and admissible as second-
43 ary evidence thereof.

SECT. 7. Any person who, before the day aforesaid,
2 had given bond to the judge of probate as executor,
3 administrator, guardian, trustee or surviving partner,
4 may voluntarily give a new bond in the like capacity,
5 and for like purposes, in such penal sum and with
6 such sureties as the judge requires. Any person in-
7 terested under the original bond may have a citation
8 from the judge of probate to the principal in such
9 bond, requiring him to appear and show cause why a
10 new bond should not be given. Personal notice shall
11 be given to such principal, and such notice, under
12 this and the preceding clause of this section, to other
13 parties interested as the judge shall direct. If the
14 person cited shall not appear, or if upon his appear-

15 ance and after a decree of the court requiring him to
16 give a new bond, he shall neglect for the space of
17 fourteen days, to give the same, he shall thereupon
18 cease to have any authority in the capacity or for the
19 purpose for which his original bond was given, and
20 shall be taken and deemed to be removed from his
21 office, but shall remain liable for his preceding acts or
22 neglect, and for all property and effects held by him
23 in his official capacity, until he shall have fully ac-
24 counted for and paid over the same according to law.
25 The forms and conditions of new bonds to be given
26 under this act may be prescribed by the judge of pro-
27 bate, conforming the same as nearly as may be to the
28 provisions of law in analagous cases; and all parties
29 interested under such new bonds may have such rights
30 and remedies thereon, as are provided by law in case
31 of other probate bonds.

SECT. 8. From and after the time that this act
2 shall take effect no sale of real estate shall be made
3 under any licenses granted by the court before the
4 fourth day of July, eighteen hundred and sixty-six.

SECT. 9. Any executor, administrator, guardian,
2 trustee, or surviving partners, who had returned an
3 inventory before the day aforesaid, may apply to the
4 judge for a warrant of appraisal, for a new inventory

5 to be returned by him, of all the property and assets
6 belonging to the estate, which he represents, not be-
7 fore lawfully disposed of. The judge shall prescribe a
8 time, at which such new inventory and appraisal shall
9 be returned, and shall require the applicant to return,
10 at the same time, a copy, or an abstract as nearly as
11 may be, of the original inventory, and of all preceding
12 inventories of the same estate, together with a copy, or
12 an abstract as nearly as may be, of the last preceding
14 account, settled by such applicant, before the day
15 aforesaid. The judge may, in his discretion, order
16 notice of the time appointed for such returns, to all
17 parties interested.

SECT. 10. Any persons interested may apply to the
2 judge, for a citation to any such executor, administra-
3 tor, guardian, trustee, or surviving partners, requiring
4 him to make and present such new inventory, copy or
5 abstract of preceding inventories, and copy or abstract
6 of such last account, after notice as provided in the
7 preceding section. If the person cited shall not ap-
8 pear, or shall fail to comply with the decree of the
9 court, the judge may remove him from his office or
10 trust, without further notice; and shall have like
11 power to remove any person failing to make returns,
12 as required in the preceding section. .

SECT. 11. All the inventories and copies or abstracts returned under the two preceding sections, shall be verified by oath of the persons returning the same; and if the judge shall be satisfied that such copies or abstracts of prior inventories and accounts, are substantially true, he shall order the same to be recorded. Such record and certified copies thereof, shall be prima facie evidence, in any court, to be received as secondary evidence, of the contents of such inventories, and of the contents and settlement of such accounts.

SECT. 12. The representatives of any deceased executor, administrator, guardian, trustee or surviving partner, may do, and may be required to do, whatever is required in the three preceding sections, except the making and returning of new inventories.

SECT. 13. In any case, where before the day aforesaid, a warrant for appraisal for the making of an inventory has been issued, but not returned, such return may now be made; and the warrant and inventory so returned shall be accepted by the judge, as in other cases, and recorded, subject to the rights of any parties interested. In any case, where, before the day aforesaid, such warrant had been ordered, but not issued, a new warrant for the like purpose may be

10 issued, and the return thereof, with an inventory, if
11 made, and duly verified, at any time within three
12 months from the passage of this act, shall excuse the
13 party for any previous omission to return the same.

SECT. 14. Any person, who before the day afore-
2 said, had settled a final account of any administration
3 or trust, and had fully and lawfully disposed of all
4 assets in his hands, may present to the judge, a copy
5 or abstract, as nearly as may be, of such final account,
6 and request to have the same verified and established.
7 The judge may, in his discretion, order such notice, as
8 he deems suitable and, upon the hearing of such ap-
9 plication, if he shall be satisfied that such copy or ab-
10 stract is substantially true, he shall decree that the
11 same be established and recorded. And such record
12 and duly certified copies thereof, shall be prima facie
13 of such account and of the settlement thereof, as pro-
14 vided in the eleventh section of this act.

SECT. 15. Nothing in this act contained shall pre-
2 vent any person interested under any probate bond,
3 given before the day aforesaid, from having and pros-
4 ecuting any remedies therein, to which he is entitled
5 under the general laws of this state.

SECT. 16. In case of any insolvent estate, where
2 the report of commissioners had been returned before

3 the day aforesaid, but no distribution had been de-
4 creed, or such decree had been made, but no order for
5 payment issued, the judge, upon the application of the
6 executor or administrator, or of any person interested,
7 after such public notice, as he shall deem suitable,
8 shall hear the parties, upon the proofs they shall
9 exhibit, of the contents of such report, and shall
10 determine and establish the claims to be allowed and
11 paid, according to the proofs so given. The register
12 of probate shall make a schedule of the claims so
13 established, and a decree for distribution and order of
14 payment thereof shall be made by the judge; *subject,*
15 *however,* to the rights of any party, under pending
16 appeals, or of creditors holding contingent claims, as
17 now provided by law.

SECT. 17. Recitals in deeds recorded before the day
2 aforesaid, of any proceedings had in the court of pro-
3 bate for Cumberland county, shall be prima facie evi-
4 dence of such proceedings, in all cases, where such
5 deeds are admissible in evidence for other purposes.

SECT. 18. The register of probate shall certify upon
2 the record of all instruments, copies and papers, for
3 the record of which, provision is herein made, that the
4 same are recorded under the act of eighteen hundred
5 and sixty-seven. He shall make suitable indexes of

6 such records in such form as the judge shall direct,
7 and shall employ such assistants as may be necessary,
8 to make up and complete these records, without delay.

SECT. 19. The register shall be allowed, in addition
2 to his present salary, the sum of fifteen hundred dol-
3 lars, annually, for the term of three years, from and
4 after the first day of January, eighteen hundred and
5 sixty-seven, to be paid to him, quarterly, by the
6 county treasurer, in full compensation for all his ex-
7 penses of clerk hire and other assistance under this
8 act. And he shall give such additional bond, as the
9 county commissioner may require, for the prompt and
10 faithful performance of the duties of his office.

SECT. 20. The judge of probate shall have discre-
2 tionary power to allow fees to parties in proceedings
3 before him, under this act, corresponding to the pro-
4 bate fees now established by law, for analogous cases.
5 In contested cases, he shall have like discretionary
6 power to allow costs to the prevailing party. In all
7 cases, where he shall require notice to be given, he
8 may order the cost of such notice to be paid out of the
9 estate.

SECT. 21. Appeals may be taken from any decree
2 of the judge made under the provisions of this act, in
3 the same manner and under the same limitations as

4 are provided by law in case of other probate appeals.
5 The supreme judicial court shall be authorized to es-
6 tablish such rules as it may deem expedient for the
7 summary hearing and determination of such appeals,
8 and may require all testimony upon such appeals and
9 arguments thereon to be taken and presented in writ-
10 ing, and submitted to the court at special times to be
11 appointed.

SECT. 22. This act shall take effect from and after
2 its approval by the governor.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 12, 1867. }

Laid on the table by Mr. SHEPLEY of Portland, Joint Rule be-
ing suspended, and ordered to be printed.

FRANKLIN M. DREW, *Clerk.*