

MAINE STATE LEGISLATURE

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FORTY-NINTH LEGISLATURE.

SENATE.

No. 35.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SEVENTY.

AN ACT additional further regulating probate courts and proceedings.

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

SECTION 1. In case of the death of any judge of
2 probate, the judge of another county may, at the
3 request of the register of the vacant county, hold all
4 necessary terms of the probate court in that county
5 until the vacancy is filled.

SECT. 2. The third section of chapter sixty-three
2 of the revised statutes is amended so that the last
3 clause shall read as follows: "And in case of the
4 absence of the judge or vacancy in the office at the
5 time of holding any court, the register may adjourn
6 the same, by posting notice thereof at the probate

7 office, until the judge can attend, or some other judge
8 can be notified and attend.”

SECT. 3. The same chapter is amended by adding
2 at the end of section sixteen: “when, by reason of
3 death or other cause, there is a vacancy in the office
4 of register, and the records are incomplete, they may
5 be completed and certified by his successor or by the
6 person appointed to act as register.”

SECT. 4. Chapter sixty-four of the revised statutes
2 is amended, so that the last three lines of the first
3 section shall read as follows: “until he delivers the
4 will, or is released by the judge, or otherwise by order
5 of law; and he shall also be liable to the action of any
6 party for the damage sustained by such neglect.”

SECT. 5. The same chapter is amended by adding,
2 at the end of the third section, “or in the cases de-
3 scribed in the preceding section, upon the depositions
4 of one or more of them, substantiating the facts.”

SECT. 6. The same chapter is amended in the
2 second specification of section forty-one, so as to read
3 as follows: “The wearing apparel of the deceased,
4 not exceeding one hundred dollars in value, if he left
5 a widow and minor children or either, in which case
6 they shall be entitled to such apparel.”

SECT. 7. Chapter sixty-five of the revised statutes
2 is amended by adding at the end of section thirteen,

3 “and when additional personal property belonging to
4 said estate comes to the knowledge of the judge after
5 an allowance has been made, he may make a further
6 allowance from such additional property.”

SECT. 8. The same chapter is amended so that sec-
2 tion sixteen shall read as follows :—“Upon the decease
3 of a wife whose estate is solvent, the judge may make
4 an allowance to her husband from her personal estate,
5 in the same manner as to a widow from the estate of
6 her husband.”

SECT. 9. The same chapter is amended in the
2 twenty-third section, by striking out all after the words
3 “probate court,” and inserting, “in the same manner
4 as personal estate of the deceased ; and the judge
5 may, if he deems it necessary, require due notice to
6 be given before granting such license, and also an
7 additional bond from the executor or administrator.”

SECT. 10. Chapter sixty-six, section eleven, is
2 amended, so as to read as follows :—“The claimant,
3 the administrator, an heir-at-law or any creditor, may
4 appeal from the decision of the commissioners, by giv-
5 ing written notice thereof at the probate office within
6 twenty days after their report is made. If the appel-
7 lant is an heir-at-law or creditor other than the claim-
8 ant, he shall file in the probate office with his notice
9 of appeal a bond to the claimant with sureties, to the

10 satisfaction of the judge, for the payment of all costs
11 awarded against him. When the appeal is made by
12 any party other than the claimant, he is to give notice
13 to the claimant within thirty days, by service of a
14 copy, attested by the register, on him, his agent or
15 attorney, personally, or by leaving it at his last and
16 usual place of abode, if any within the state; other-
17 wise, notice is to be given as the judge directs.”

SECT. 11. The same chapter is amended, so that
2 section eighteen shall read as follows:—“Claims not
3 presented, and claims disallowed, without appeals
4 taken, are forever barred from recovery by suit.
5 Claims disallowed cannot be filed and proved in set
6 off, except to the amount of counter claims on behalf
7 of the estate. But when after distribution, further
8 assets come into the hands of the administrator, claims
9 not presented to the commissioners, on petition to the
10 judge of probate, and after due notice, if proved or
11 not disputed, may be allowed and paid as provided
12 for contingent claims.”

SECT. 12. Chapter sixty-seven of the revised stat-
2 utes, section two, is amended, so that a minor having
3 a guardian can nominate another only when the present
4 guardian was appointed before the minor was fourteen
5 years of age.

SECT. 13. The same chapter is amended in section

2 fifteen, so that a judge of probate may grant license
3 to guardians to sell stocks and other property of their
4 wards named in said section, and invest the proceeds
5 in other stocks or property, with or without notice, as
6 the judge may deem necessary.

SECT. 14. Chapter fifty-nine of the revised statutes,
2 is amended, by adding at the end of section twenty-
3 seven :—“When the parents have abandoned the child
4 and ceased to provide for its support, the consent of
5 the guardian, next of kin, or some person so appointed,
6 shall be sufficient to authorize the adoption.”

SECT. 15. The same chapter is amended, by adding
2 at the end of the twenty-ninth section, as follows :—
3 “And the judge of probate, on the death of either of
4 his adoptors, may make a reasonable allowance to said
5 child from the personal estate of the deceased, if the
6 circumstances of the case demand it.”

SECT. 16. Chapter sixty-nine of the revised statutes
2 is amended, by adding the following section :

3 *Sect. 6.* The person filing such bond may apply
4 for commissioners on disputed claims, with like pro-
5 ceedings and effect as in case of administrators or
6 executors ; or, if the partnership estate appears to be
7 insufficient to pay the partnership debts, he may rep-
8 resent it to be insolvent, commissioners may be
9 appointed, claims proved and allowed, and the part-

10 nership assets distributed to pay such as are allowed,
11 and like proceedings shall be had as are prescribed in
12 chapter sixty-six, so far as applicable, and with like
13 effect. Nothing herein shall invalidate the right of
14 claimants to recover from the surviving partner or the
15 estate of the deceased partner any balances due them
16 after the partnership property is exhausted. When,
17 in cases heretofore arising, such proceedings have been
18 had, they shall be held valid.”

SECT. 17. Chapter seventy-one of the revised stat-
2 utes, is amended in the first section, by striking out
3 the second, third and fifth specifications, and inserting
4 as follows:—“Second—Of the friends or guardians
5 of minors and other incapacitated persons, that the
6 guardians, or some other suitable persons, may be
7 authorized to sell real estate of their wards, or any
8 trees or timber standing thereon, for the payment of
9 debts, expenses of sale and of guardianship, and for
10 the support of their wards, and to provide a reason-
11 able sum in anticipation of accruing expenses, when
12 there is not sufficient personal property therefor, exclu-
13 sive of such as the judge may deem proper to reserve
14 for the use of said wards; or to sell the same and
15 place the proceeds at interest; or to sell it for two or
16 more of these purposes; or to lease such real estate
17 for any term of years, or exchange it for other real

18 estate, when it clearly appears that such sale, lease or
19 exchange would be for the benefit of the wards. But
20 when licensed to be sold in order to place the proceeds
21 at interest, any part thereof may be used for the sup-
22 port of the wards if it becomes necessary.”

SECT. 18. The same section is amended in the sixth
2 specification, so that the guardian as well as the hus-
3 band of an insane wife may be licensed to sell her
4 rights of dower and other property.

SECT. 19. The same section is amended by inserting
2 at the end of the section the following additional speci-
3 fication :—“ Ninth—Of a part or all of the heirs living
4 in different states, of a person deceased, who left real
5 estate in this state undevise, the owners of which
6 cannot dispose of their separate interests without loss,
7 that the executor, administrator or other suitable per-
8 son be authorized to sell such estate, and distribute the
9 proceeds, after paying expenses, amongst such heirs,
10 according to their respective rights therein ; unless
11 any owner objects to such sale, after public notice, the
12 first publication to be thirty days prior to the hearing,
13 or longer if the judge deems it necessary ; the share
14 of any absent owner to be placed on interest until
15 called for by him or his legal representatives.

SECT. 20. The fifth section of the same chapter is
2 amended by inserting after the words “ real estate,”

3 in the second line, the words “ of the value of more
4 than fifty dollars,” so that no license shall be granted
5 for the sale of any such real estate of the value of
6 more than fifty dollars, without consent or notice as
7 provided in said fifth section.

SECT. 21. Chapter one hundred and three of the
2 revised statutes is amended by striking out the last
3 clause of section seventeen, and inserting as follows :—
4 “ The husband of a deceased wife whose estate is sol-
5 vent, shall have the use for life of one-third of her real
6 estate, to be recovered and assigned in the manner and
7 with the rights of dower, and shall have the same right
8 to waive any provision made for him in her will, that
9 a widow has with regard to her husband’s will. When
10 a husband or wife dies intestate, leaving no issue, and
11 the estate is solvent, the survivor shall have the use
12 for life of one-half of the real estate of the deceased,
13 to be recovered and assigned in the manner and with
14 the rights of dower.”

SECT. 22. Chapter one hundred and fifteen of the
2 revised statutes is amended in the third section, so that
3 registers of probate shall be required to furnish with-
4 out compensation one copy of each will proved, but
5 not of other documents.

SECT. 23. Chapter nine of the public laws of 1869
2 is amended by adding at the end thereof the following

3 words :—“ and within two years after notice is given
 4 by the executor or administrator of his appointment.”
 5 Nothing in this section shall effect pending actions.

SECT. 24. The second section of chapter one-hun-
 2 dred and ten of the public laws of 1862, is hereby
 3 repealed.

SECT. 25. Chapter two hundred and twelve of the
 2 public laws of 1863 is amended, by inserting, at the
 3 end of the second section, “ and such executor or ad-
 4 ministrator may assign the mortgage and debt, and
 5 the purchaser shall have the same rights and liabilities
 6 as the purchaser of personal property sold under license
 7 of the probate court.”

SECT. 26. The first section of chapter seventy-five
 2 of the revised statutes is amended by striking out the
 3 sixth specification, and inserting the following :—
 4 “ Sixth—When a minor dies unmarried, leaving prop-
 5 erty inherited from either of his parents, it descends
 6 to the other children of the same parent, and the issue
 7 of those deceased ; in equal shares if all are of the
 8 same degree of kindred, otherwise according to the
 9 right of representation.”

STATE OF MAINE.

IN SENATE, February 24, 1870.

Report from the Committee on the Judiciary, by Mr. LINDSEY
of Somerset, and printed under the Joint Rule.

SAMUEL W. LANE, *Secretary.*