

MAINE STATE LEGISLATURE

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SEVENTY-FOURTH LEGISLATURE

HOUSE.

No. 254

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINE.

AN ACT to provide for the restoration of the records of the
Court of Probate for the County of Cumberland.

WHEREAS, the Records, files, documents and papers of the Court of Probate for the County of Cumberland in the State of Maine were destroyed by fire on the twenty-fourth day of January, A. D. one thousand nine hundred and eight; and

WHEREAS by reason of said loss and destruction there exists an immediate and urgent necessity for legislation providing for the recovery, replacement and restoration of said records, files, documents and papers, and for special provisions pertaining to the orderly and more efficient administration of the affairs of said court, and the settlement of estates therein, all of which facts, in the determination of the Senate and House of

Representatives in the Legislature assembled, constitute an emergency within the meaning of the provisions of the Constitution of this State.

NOW THEREFORE, *Be it enacted by the People of the State of Maine*, as follows:

Section 1. Executors, administrators of all classes, testamentary and other trustees, guardians, surviving partners, assignees, and any fiduciary or trust officers over whom or whose estates said court had or has jurisdiction, or their legal representatives, or any other person interested, having in his proper possession any original letters testamentary of administration, guardianship, adoption, trusteeship, surviving partnership, assignment, license, commission or any document or paper granting license, power or authority duly issued to any such administrative officers from said court under the seal thereof, or any copy of the same duly attested by the register of said court prior to said day, may present the same to the judge of said court, at any session thereof, accompanied by a petition verified by oath, that the same may be recorded in said court. Whereupon the judge being satisfied as to the same shall order such papers to be recorded by the register. After the same have been so recorded they may be received again by such petitioner.

Sect. 2. A duly authenticated copy of any will or one which is under the seal of the court or attested by the register which was admitted to probate in said court before the day aforesaid, may on petition verified by oath be presented

5 to the judge in like manner by the person officially in pos-
6 session of the same, or his representative or by any other
7 interested person and the same together with the certificate
8 of authentication or attestation of the register shall be re-
9 corded anew and after such record the original may be re-
10 ceived again by the person presenting the same.

Sect. 3. Duly authenticated, certified or attested copies of
2 any other instrument or paper which had been recorded in
3 the registry of said court before the day aforesaid, may be
4 presented to the judge in like manner, and the same shall
5 be recorded anew, and may be received again by such peti-
6 tioner. Also an attested or certified copy of any instrument
7 purporting to be an exact copy of the original which was on
8 record in said court prior to said date and which has become
9 a public record either in this or in any other state or country
10 may be presented to the judge together with a petition veri-
11 fied by oath and the same after approval may be admitted
12 to the records of this court.

Sect. 4. Upon the petition verified by oath of any person
2 interested, if the judge shall be satisfied that any important
3 subsisting interests require that any instrument, paper or
4 copy, mentioned in the three preceding sections, should be
5 so presented and recorded, he may on petition alleging rea-
6 sonable cause issue a citation to any person alleged to be the
7 holder of said paper requiring him to produce and present
8 the same, or show cause to the contrary. If the person cited
9 shall not appear after proof of personal notice, or if upon

10 his appearance he shall neglect or refuse to perform the
11 order and decree of the court, the judge may commit him to
12 the jail of said county there to remain at the expense and
13 charge of the county until he shall be discharged by the
14 judge of probate, or by some justice of the supreme judicial
15 court. Instruments, papers and copies procured under any
16 such citation shall be recorded anew and returned as herein-
17 before provided.

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

Sect. 6. Any paper purporting to be a copy of a will, but
2 not duly authenticated nor under the seal of the court, nor
3 attested by the register and not a part of any public record,
4 alleged to have been admitted to probate in said court before
5 the day aforesaid, may upon petition verified by oath be pre-
6 sented to the judge by any person interested, praying that
7 such copy may be verified and established as the will of the
8 testator. After public notice and hearing if the judge shall
9 determine that the allegations and prayers of the petition
10 are sustained, he shall decree that such copy be established
11 as the will of the testator and shall order the same to be
12 recorded. Such record and certified copies of the same shall
13 be prima facie evidence in any court of the contents of such
14 will and admissible as secondary evidence thereof.

Sect. 7. Any person interested under a will alleging upon
2 his behalf that there exists a copy that would be governed
3 by the preceding section, but that the same cannot be ob-
4 tained except by the aid of legal process, may present his
5 petition under oath to the judge praying for a time to be
6 appointed for a hearing thereon, and for the verification
7 and establishment of such copy when produced as the will
8 of the testator. The judge may thereupon appoint a time
9 and place for such hearing and issue a citation under the
10 seal of the court to any person alleged to be the holder
11 thereof, requiring him to appear at such time and place
12 and produce such alleged copy or show cause to the con-
13 trary. If the person cited shall not appear after proof of
14 personal notice, or if upon his appearance he shall neglect
15 to perform the order and decree of the court, he shall be
16 liable for the like offence and punished as described in sec-
17 tion four of this chapter. Such alleged copy when pro-
18 duced may be established as the will of the testator with
19 the same limitations and conditions prescribed in the pre-
20 ceding section.

Sect. 8. Any person who, before the day aforesaid, had
2 given bond to the judge of probate as executor, adminis-
3 trator, guardian, trustee or surviving partner or assignee
4 or in any trust or fiduciary capacity, and the estate in ques-
5 tion not having been fully settled, may give a new bond
6 in the like capacity, and for like purposes, in such penal
7 sum and with such sureties as the judge requires. If any

8 such trust officer does not voluntarily give a new bond as
9 required by this section, any person interested under the
10 original bond may upon his petition have a citation from
11 the judge of probate to the principal in such bond, requir-
12 ing him to appear and show cause why a new bond should
13 not be given. Personal notice shall be given to the prin-
14 cipal and such notice to other interested parties as may
15 appear of record as the judge in his discretion shall direct.
16 If the person cited shall not appear, or if upon his appear-
17 ance and after a decree of the court requiring him to give
18 a new bond, he shall neglect for the space of fourteen days
19 to give the same, he shall thereupon by a proper decree of
20 the court cease to have any authority in the capacity or
21 for the purpose for which his original bond was given,
22 and shall be removed from his office, but shall remain liable
23 for his preceding acts or neglect, and for all property and
24 effects held by him in his official capacity, until he shall
25 have fully accounted for and paid over the same accord-
26 ing to law; but the judge for sufficient cause shown may
27 grant in his discretion a reasonable extension of time for
28 filing said bond beyond the said fourteen days. The forms
29 and conditions of new bonds to be given under this act
30 and those given since January twenty-fourth, nineteen hun-
31 dred and eight, on matters pending prior to said date shall
32 be the same as the regular probate bonds now required
33 by law, and if any trust officer has already performed
34 any of the conditions of the new bond he shall not be

35 required to do the same act again unless such condition
36 would be required under the old bond, provided, however,
37 that no new or additional liability shall be created under
38 such new bond.

Sect. 9. A copy or abstract as near as may be of any
2 inventory, account, license, also a copy or abstract as near
3 as may be of any petition or paper of any kind which is
4 not under the seal of the court or attested by the register
5 or become a public record and which has been passed upon
6 by the judge of probate and admitted to the records before
7 the day aforesaid, may be presented to the judge by any
8 trust officer or any person interested together with a peti-
9 tion alleging under oath that such copy or abstract is the
10 exact duplicate or abstract as near as may be of the original.
11 The judge shall thereupon cause public notice to be given
12 on such copy or abstract and petition and on return of the
13 same and after hearing, being satisfied that the allegations
14 concerning such copy or abstract are true, he shall decree
15 that the same be admitted to the records of the court; and
16 such records and certified copies thereof shall be prima facie
17 evidence in any court of the contents of any copy or ab-
18 stract placed upon the probate records under this section,
19 and admissible as secondary evidence thereof.

Sect. 10. If any executor, administrator, guardian, trust-
2 tee, or surviving partner or other person shall have in his
3 possession any copy of an account, inventory, license or
4 other paper which has been admitted to record before the

5 day aforesaid, any interested party desiring that it shall
6 be so placed upon the records may present his petition to
7 the judge praying for a time to be appointed for a hearing
8 thereon, and for the verification and establishment of such
9 copy when produced as a copy of the original. The judge
10 shall thereupon appoint a time and place for such hearing
11 and issue a citation to any person alleged to be the holder
12 thereof, requiring him to present the same or show cause
13 to the contrary. If the person cited shall not appear after
14 proof of personal notice, or if upon his appearance he shall
15 neglect to perform the order and decree of the court, he
16 shall be liable and punished as for the like offence as de-
17 scribed in section four of this chapter; such alleged copy
18 when produced may be admitted to the records of the court
19 by complying with section nine of this chapter.

Sect. 11. Nothing in this act contained shall prevent any
2 person interested under any probate bond, given before the
3 day aforesaid, from having and prosecuting any remedies
4 therein, to which he is entitled under the general laws of
5 this State.

Sect. 12. In case of any insolvent estate, where the report
2 of commissioners had been returned before the day afore-
3 said but no final distribution had thereon, the judge upon
4 the application of the executor or administrator, or of any
5 person interested, after public or personal notice shall hear
6 the parties upon the proofs they shall exhibit, of the con-
7 tents of such report, and shall determine and establish the

8 claims to be allowed and paid, according to the proofs so
9 given. The register of probate shall make a schedule of
10 the claims so established, and a decree for distribution and
11 order of payment thereof shall be made by the judge; sub-
12 ject, however, to the rights of any party, under pending
13 appeals, or of creditors holding contingent claims, as now
14 provided by law. In cases where a report of commissioners
15 on disputed claims had been returned prior to said date,
16 and in the settlement of any estate it becomes necessary to
17 prove said report, said proof shall be made by complying
18 with the requirements herein specified for proof of the
19 report of the commissioners in insolvent estates.

Sect. 13. The action of the probate court in admitting
2 to the record duly authenticated or certified copies of wills,
3 letters of appointment and any other probate papers under
4 the seal of said court or the attestation of the register,
5 between the said twenty-fourth day of January and the date
6 this act shall take effect is hereby ratified and approved and
7 all such papers referred to in this section are hereby made
8 a part of the records of said court, and such records and
9 certified copies thereof are evidence in any court in accord-
10 ance with section five of this chapter.

Sect. 14. Any administrator or executor or his personal
2 representative or attorney who had returned into court his
3 affidavit of notice of appointment prior to January twenty-
4 fourth, nineteen hundred and eight, shall be allowed to
5 file with the register upon the approval of the judge a

6 sufficient copy of the same under oath and the judge shall
7 use his discretion in determining what constitutes a suffi-
8 cient copy of the original affidavit and he shall have the
9 authority to make a proper decree in accordance with the
10 facts in any case, and the same shall be prima facie evi-
11 dence of the giving of such notice of appointment and the
12 filing of the same in said court, and the said copy, if allowed
13 by the judge, shall have the same effect upon the limitations
14 of actions against such executors and administrators as the
15 original affidavit so filed in said court.

Sect. 15. The judge shall have the power to make such
2 rules of court as appear to him necessary and proper and
3 to make such blanks and forms as will be necessary to
4 facilitate the practice under this act.

Sect. 16. When a paper is for the purpose of re-establish-
2 ing a record as contemplated under sections one, two, three,
3 four, six and seven of this act, the trust officer in case the
4 estate is not fully settled according to law, shall file with
5 such paper a new bond, if a bond was originally required,
6 in such penal sum and with such sureties as required by
7 the judge, and such bond shall be in lieu of the bond de-
8 stroyed by fire, and when such new bond is approved by
9 the court the liability of the old or destroyed bond shall
10 cease from the time of said approval to the same extent
11 as if discharged under section three of chapter seventy-four
12 of the revised statutes of Maine. The provision for dis-
13 charge of liability under this section applies to all cases in

14 which new bonds have been given and approved since Jan-
15 uary twenty-fourth, nineteen hundred and eight, and the
16 time this act shall take effect, in place of bonds burned
17 in said fire.

Sect. 17. In all cases where an inventory, account, or
2 any other paper had been recorded before January twenty-
3 fourth, nineteen hundred and eight, and proceedings in
4 said court have been had since said date which are based
5 upon such destroyed instruments so recorded, the judge
6 being satisfied that such papers were on the records before
7 said date, his decree in any such proceedings so had with-
8 out any special finding or allegation of such recording shall
9 be prima facie evidence in any court that all such papers
10 were on the records of said court prior to said date.

Sect. 18. Recitals in deeds recorded before the day afore-
2 said of any proceedings had in the court of probate for
3 Cumberland county, shall be prima facie evidence of such
4 proceedings, in all cases where such deeds are admissible in
5 evidence for other purposes.

Sect. 19. The register of probate shall certify upon such
2 volume of the records of all instruments, copies and papers,
3 for the record of which provision is herein made, that the
4 same are recorded under the act of nineteen hundred and
5 nine. He shall make a suitable index of all such records
6 and docket all proceedings in such form as the judge shall
7 direct, and shall employ such assistants as may be necessary
8 to make up and complete these records without delay.

Sect. 20. The judge shall be allowed in addition to his
2 salary, as compensation for the duties required of him under
3 this act, the sum of five hundred dollars annually for the
4 term of three years from and after the first day of January,
5 nineteen hundred and nine, to be paid to him quarterly
6 by the county treasurer. The register shall be allowed in
7 addition to his present salary, the sum of fifteen hundred
8 dollars annually for the same term of time, and to be paid
9 to him in like manner, by said treasurer, in full compen-
10 sation for all his expenses for clerk hire and other assist-
11 ance under this act. And he shall give such additional bond
12 as the county commissioners may require, for the prompt
13 and faithful performance of the duties of his office under
14 this act.

Sect. 21. All the probate laws of this State which are
2 not inconsistent with the provisions of this act are hereby
3 made applicable in all cases arising hereunder.

Sect. 22. A copy of the record of an abstract of any will,
2 which in compliance with law, had, prior to said date been
3 filed in the registry of deeds for any county in this State,
4 if attested by the register of deeds for that county, shall
5 be prima facie evidence that said will was duly executed
6 and allowed, and said copy shall be admissible as evidence
7 in any court.

Sect. 23. This act shall extend and apply to any and all
2 records and documents issued by said court under the seal
3 thereof or attested by the register before the day aforesaid

4 which relate to proceedings had in said court under the
5 insolvent law so denominated.

Sect. 24. No appeal shall be allowed from the decree
2 of the judge admitting to record any instruments coming
3 under sections one, two and three of this chapter, but an
4 appeal in any other case may be taken from any decree of
5 the judge made under the provisions of this act, in the same
6 manner and under the same limitations as are provided by
7 law in case of other probate appeals. The supreme judicial
8 court shall be authorized to establish such rules as it may
9 deem expedient for the summary hearing and determination
10 of such appeals, and may require all testimony upon such
11 appeals and arguments thereon to be taken and presented in
12 writing, and submitted to the court at special times to be
13 appointed.

Sect. 25. This act shall take effect when approved.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,

Augusta, Feb. 19, 1909.

Reported by Mr. MONTGOMERY from Committee on
Judiciary and ordered printed under joint rules.

E. M. THOMPSON, *Clerk.*