

# MAINE STATE LEGISLATURE

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# L A W S

OF THE

## STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....  
VOL. I.  
.....

Published according to a resolve of the State, passed  
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

.....  
1821.

**ERRATA:**

**The following leaf is  
inserted because one or more pages  
in this chapter have errors  
noticed and corrected here.**

VOLUME THE FIRST.

Page.  
 40 L. 12 of the page for 'preceding' read 'presiding'  
 54 Sec. 4 L. 14 of Sec. for 'time' read 'term'  
 55 7 2 for 'a' read 'or'  
 55 7 9 before the word 'said' insert 'the'  
 56 9 3 for 'the' read 'her'  
 57 1 6 for 'to' read 'in'  
 58 1 5 for 'and' after the word 'house'  
 read 'or'  
 61 in the title of the act, ch. vi. insert 'the' before the  
 word 'crimes'  
 62 Sec. 2 L. 9 of S. before the word 'offender' insert 'such'  
 69 16 8 for 'Treasurer' read 'Treasury'  
 73 1 15 after the word 'for' insert 'the'  
 77 13 6 for 'to' read 'of'  
 78 first line of the page, dele the word 'by'  
 80 L. 2 of the p. after the word 'willingly' insert 'aid or'  
 80 17 for 'counterfeited' read 'counterfeit'  
 82 1 after the word 'in' insert 'all'  
 82 Sec. 7 L. 4 of Sec. after the word 'devised' dele 'or'  
 and insert '  
 83 Sec. 7 L. last of S. for 'aggravations' read 'aggravation'  
 84 10 6 for 'and' read 'or'  
 90 1st L. of p. for 'Commissioner' read 'Commissioners'  
 90 L. 20 before the word 'Commissioner' insert 'said'  
 97 6 for 'assumst' read 'assumpsit'  
 97 14 for 'cover, read 'covin'  
 98 at the end of the act for 'January' read 'February'  
 99 L. 17 of p. after the word 'year' dele ' ; ' & insert ' , and '  
 100 15 at the end of the line insert 'the'  
 105 at the end of the Act for '1820' read '1821'  
 108 L. 14 of page, for 'nuisances' read 'nuisance'  
 108 20 after the word 'each' insert 'one'  
 111 25 after the word 'fail' insert 'of'  
 113 11 for 'on' read 'or'  
 144 last for 'performance' read 'performing'  
 145 Sec. 2 L. 9 of Sec. after the word 'of' insert 'the'  
 147 7 6 before the word 'release' for 'to'  
 read 'a'  
 150 Sec. 6 L. 2 of Sec. for 'in' read 'is'  
 151 in the title, before the word 'Lands' insert 'reserved'  
 153 1st line of the p. for 'whenever' read 'wherever'  
 155 last before the word 'Court' for 'a' read 'any'  
 156 Sec. 4 L. 26 of Sec. for 'notification' read 'notifications'  
 159 9 8 for 'purpose' read 'purposes'  
 167 14 5 for 'votes' read 'vote'  
 193 4 10 dele 'such'  
 199 17 1 for 'when' read 'where'  
 202 22 6 after the word 'near, dele 'to'  
 202 23 10 for 'be' read 'he'  
 203 24 16 for 'of' read 'in'  
 203 25 16 for 'meeting' read 'meetings'  
 205 L. 18 of p. before the word 'estate' insert 'other'  
 210 2 before the word 'tenement' insert 'other'  
 215 4 before the word 'guardians' insert 'guard-  
 dian or'  
 226 Sec. 73 L. 6 of Sec. dele 'a'  
 229 3 last for 'agreeably' read 'agreeable'  
 230 7 19 for 'agreeably' read 'agreeable'  
 231 8 6 for 'resided' read 'reside'  
 242 2 5 for 'sentence' read 'sentences'  
 245 7 3 after the word 'herein' insert 'be-  
 fore'  
 247 L. 7 of the act, ch. 56, after the word 'otherwise' in-  
 sert 'interested'  
 247 11 for 'statement' read 'statements'  
 247 Sec. 1 L. 2 of Sec. for 'whenever' read 'wherever'  
 248 3 1 for 'whenever' read 'wherever'  
 248 3 14 for 'Justice' read 'Justices'

Page.  
 252 L. 3 of p. for 'where' read 'wherein'  
 257 5 after the word 'have' insert 'his or'  
 265 Sec. 39 L. 3 of Sec. for 'when' read 'where'  
 271 L. 1 and 3 of p. for 'affect' read 'effect'  
 271 Sec. 6 L. 2 of Sec. before the word 'execution'  
 insert 'the'  
 278 19 4 for 'on' read 'in'  
 280 L. 2 of p. for 'have' read 'had'  
 281 22 for 'of' read 'on'  
 283 13 for 'lies' read 'lays'  
 283 last before the word 'defendant' insert 'the'  
 284 Sec. 32 L. 2 of Sec. for 'a' read 'any'  
 288 5 18 for 'whenever' read 'wherever'  
 291 9 4 for 'as' read 'or'  
 292 L. 4 of p. for 'examinations' read 'examination'  
 293 Sec. 13 L. 5 of Sec. after the word 'article' in-  
 sert 'or articles'  
 297 7 5 for 'and' read 'or'  
 301 L. 8 of p. for 'he' read 'be'  
 309 24 between the words 'the' and 'day' should  
 be a '  
 310 20 for 'debt' read 'debtor'  
 311 2 for 'with' read 'and of'  
 312 7 for 'summon' read 'summons'  
 312 9 between the words 'our' and 'Court'  
 should be a '  
 318 31 for 'writ' read 'writ a'  
 328 Sec. 8 L. 4 of Sec. for 'grieved' read 'aggrieved'  
 353 L. 14 of p. at the end of the line insert 'the'  
 361 Sec. 1 L. 18 of Sec. for 'cause' read 'case'  
 370 3 10 for 'to' read 'of'  
 371 2 7 dele 'to'  
 373 L. 15 of p. before the word 'require' insert 'to'  
 376 Sec. 1 L. 10 of Sec. dele 'the' before the word  
 'payment'  
 378 at the end of the act, for '17' read '20'  
 378 in the title, for 'selection' read 'selecting'  
 379 Sec. 4 L. 5 of Sec. before the word 'divide' in-  
 sert 'shall'  
 394 1 9 for 'part' read 'parts'  
 395 1 8 for 'acceptances' read 'accep-  
 tance'  
 404 1 34 before the word 'authorized'  
 insert 'hereby'  
 407 7 4 dele 'the'  
 414 last word of the 1st act on the page, for 'therein'  
 read 'thereon'  
 423 Sec. 3 L. 15 of Sec. after the word 'assignments'  
 insert 'thereof, and also of the assignments'  
 424 Sec. 6 L. 13 of S. after the word 'papers' insert 'as'  
 425 L. 7 of p. before the word 'action' insert 'an'  
 428 22 for 'twelve' read 'twenty'  
 431 8 for 'fifteen' read 'fifty'  
 432 first line of the page should be put after the third  
 432 L. 5 of the p. dele 'entering'  
 432 between the 28th and 29th lines of the p. insert  
 'Every blank writ of attachment, with a sum-  
 mons thereon, fifteen cents'  
 432 L. 37 of p. for 'judgment' read 'jurymen'  
 435 9 for 'appear' read 'appears'  
 435 10 for 'make' read 'makes'  
 435 18 for 'taking' read 'taxing'  
 444 Sec. 1 L. 6 of Sec. before the word 'records' in-  
 sert 'the'  
 445 1 9 for 'within' read 'of'  
 445 1 19 after the word 'escape' insert  
 'sickness'  
 455 11 1 after the word 'of' insert 'the'

mon Pleas, to recover the penalty or forfeiture of any recognisance taken or entered into in criminal prosecutions, either by principal or sureties, or by witnesses to appear at either of the aforesaid Courts, and give evidence on the part of the State, when the forfeiture, breach or non-performance of the condition of such recognisance shall be found by the default or confession of the party, or by verdict of a Jury, or upon demurrer, the Court before which such action may be brought, may render judgment therein for the State according to the circumstances of the case, and the situation of the party, and may remit either the whole, or any part of the penalty of such recognisance, upon such terms and conditions as to them shall seem reasonable and just; any law or usage to the contrary notwithstanding.

[Approved February 20, 1821.]

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## CHAPTER LI.

An Act to regulate the jurisdiction and proceedings of the Courts of Probate.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That a Court of Probate shall be held within the several counties of the State: and there shall be in the manner the Constitution directs, some able and learned person in each county in the State, appointed or to be appointed Judge, for taking the probate of wills, and granting administrations on the estates of persons deceased, being inhabitants of, or resident in the same county at the time of their decease; or having died without the State, and leaving estate of any kind within the same; for appointing guardians to minors and other persons; for examining and allowing the accounts of executors, administrators, or guardians, and for such other matters and things as the Courts of Probate within the several counties aforesaid, shall by law, have cognizance and jurisdiction of. And the said Judges of Probate shall have full power and authority to make out such process or processes as may be needful for the discharge of the trust reposed in them; and all Sheriffs, Deputy Sheriffs, Coroners and Constables, are required duly to serve and execute all legal warrants, or other pro-

pal, sureties or witnesses—  
Courts may remit all or part of the penalty.

Courts of Probate established.

Judge of Probate—powers and jurisdiction.

cess to them directed, by any Judge of Probate. And contempt of authority in any cause or hearing before any Judge of Probate, shall, and may be punished in like manner as such contempt of authority in any Circuit Court of Common Pleas, may or can by law be punished.

When Judge is interested &c. in any estate, administration, &c. to be in most ancient adjoining county.

SEC. 2. *Be it further enacted,* That whenever any Judge of Probate shall be interested as heir or legatee, creditor or debtor, or within the degree of kindred which by the laws of this State, he might by any possibility be heir in the estate of any person deceased, within the county of such Judge, such estate shall be settled in the Probate Court of the most ancient next adjoining county; and the will, if any, of such deceased person, may be there proved, or administration granted, as the case may require; and all other proceedings had thereon, in such adjoining county, as if such deceased person had belonged to, or died within the same. And whenever due application shall be made in writing to the Judge of Probate of such adjoining county, for the probate of a will, or the granting of letters of administration, in virtue of this Act, he shall, after giving due public notice thereof, proceed thereon and settle such estate as fully, and to all intents as he might any other estate within his proper jurisdiction: *Provided always,* That nothing herein contained shall take away the right of appeal to the Supreme Court of Probate, as allowed in other cases.

Register's power and duty.

SEC. 3. *Be it further enacted,* That there shall be in manner as the Constitution directs, a suitable person in each county appointed, or to be appointed Register of wills, administrations, accounts, decrees, orders, determinations and other writings, which shall be made, granted or decreed upon by the Judges of Probate, in their respective counties; which Register shall be sworn to the faithful performance of the duties of his office, and have the care and custody of all files, papers and books, to the Probate Office belonging; and in case of the death, sickness or necessary absence of the Register, it shall and may be lawful for the Judge of Probate to nominate and appoint some meet person to officiate as a Register, to be sworn as aforesaid, until the standing Register shall be able to attend his duty, or until a new one shall be appointed by the Governor and Council.

Judge of Probate may appoint Register pro tempore.

SEC. 4. *Be it further enacted,* That no Judge of Probate shall be allowed or admitted to have a voice in judging and determining, nor be permitted to be of counsel, or to act as an attorney either in or out of Court, in any civil action, or other process or matter whatsoever, which may depend on, or have relation in any way to any sentence or decree, made or passed by him in his office aforesaid. Nor shall he be of counsel or attorney in any civil action for or against any executor, administrator or guardian, as such within the county in which such said Judge shall reside. And no Register of Probate shall be appointed an administrator or commissioner of insolvency, appraiser or divider of, or upon any estate, or in any manner be interested in the fees and emoluments arising therefrom; or be of counsel, or in any way, directly or indirectly, act as an attorney in any matters and things whatsoever, which are or may be pending in the Court of Probate, of which he is Register, or in any appeals therefrom.

Judge not to be of counsel, &c.

Register not to be administrator, appraiser, &c. nor counsel.

SEC. 5. *Be it further enacted,* That the Judges of Probate, in the respective counties shall have certain fixed days for the making and publishing of their orders and decrees; and such days shall be made known by public notifications thereof in the several counties; and all orders and decrees of Judges of Probate shall be made in writing and duly recorded.

Judges to have stated court days.

SEC. 6. *Be it further enacted,* That the Supreme Judicial Court shall be the Supreme Court of Probate, and shall have appellate jurisdiction of all matters determinable by the Judges of Probate in their respective counties; and all appeals from any order or decree of a Judge of Probate, shall be to the said Supreme Court of Probate accordingly.

Sup. Judicial Court to be appellate Court from Probate.

SEC. 7. *Be it further enacted,* That after the decease of any person intestate, administration of such intestate's goods and estate shall be granted unto his widow or next of kin upwards of twenty-one years of age, or to both, as the Judge of Probate shall think fit, within thirty days; and an inventory shall be taken of all the real estate, goods and chattels, rights and credits of the deceased, within three months, by three suitable persons, appointed by the Judge of Probate, who shall be sworn to the faithful discharge of their

Administration, to whom granted;

inventory, &c. appraisers, how appointed.

trust; and when any part of such estate lies without the limits of the county, in which the Judge of Probate lives, who has jurisdiction of the settlement of such estate, he may appoint three suitable persons, within the county where such estate may be, to take an inventory thereof, who shall be sworn in manner as aforesaid. And after the expiration of thirty days from the death of any person intestate, in case the widow or next of kin shall refuse or neglect to take out letters of administration, being cited before the Judge of Probate, for that purpose, if resident within the county, the said Judge of Probate may commit administration of such estate to some one or more of the principal creditors; and in case of their refusal to such other person or persons as the said Judge shall think fit. And every administrator shall, before entering upon the execution of the trust, give bond to the Judge of Probate, with good and sufficient sureties resident within this State, upon condition among other things, to make and return upon oath, a true inventory of the estate administered upon, into the Probate office, within three months, and to render an account of administration within one year from the time of taking administration; which bond shall be in form following:

Administrators to give bond:

Form of bond.

Know all men by these presents, That we                      within the State of Maine, are holden and stand firmly bound and obliged unto                      , Judge of Probate of wills, and for granting administration within the county of                      , in the full and just sum of                      to be paid to the said                      and his successors in said office; to the true payment whereof, we do bind ourselves and each of us, our, and each of our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals. Dated the                      day of                      , in the year of our Lord one thousand eight hundred and                      .

The condition of this obligation is such, that if the above bounden                      , administrator of all and singular the goods and estate of                      , deceased, do make or cause to be made, a true and perfect inventory of all and singular the real estate, goods and chattels, rights and credits of said deceased, which have or shall come to the hands, possession or knowledge of                      , the said                      , or into the hands



or possession of any other person or persons for \_\_\_\_\_, and the same so made, do exhibit or cause to be exhibited upon oath into the Registry of the Court of Probate of the said county of \_\_\_\_\_, at or before the \_\_\_\_\_ day of \_\_\_\_\_ next ensuing; and the same goods and chattels, rights and credits, and all other the goods and chattels, rights and credits of the said deceased, at the time of \_\_\_\_\_ death, which at any time after shall come to the hands and possession of the said \_\_\_\_\_, or into the hands and possession of any other person or persons for the said \_\_\_\_\_, do well and truly administer according to law; and further to make or cause to be made, a just and true account of \_\_\_\_\_ said administration, upon oath, on or before the \_\_\_\_\_ day of \_\_\_\_\_ which will be in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, and all the rest, residue and remainder of the said goods and chattels, rights and credits, which shall be found remaining upon the said administration account, (the same being first examined and allowed by the Judge, for the time being, of Probate of Wills and for granting administrations within the county of \_\_\_\_\_, aforesaid) shall deliver and pay unto such person or persons respectively, as the said Judge by his decree or sentence, pursuant to law, shall limit<sup>d</sup> and appoint: and if it shall hereafter appear, that any last will and testament was made by said deceased, and the executor or executors therein named do exhibit the same into the Court of Probate of the said county of \_\_\_\_\_, making request to have it allowed and approved accordingly; if the said \_\_\_\_\_ above bounden, being thereunto required, do render and deliver the said letter of administration (approbation of such testament being first had and made) into the said Court; then the before written obligation shall be void and of none effect, or else shall abide and remain in full force and virtue.

Sealed and delivered }  
in presence of us, }

SEC. 8. *Be it further enacted*, That when any person who has died or shall die intestate without the State, shall leave estate of any description within the same to be administered, any person interested in such estate shall be entitled to letters of administration thereon in like manner as if such in-

Administration may be granted on the estate of persons dying out and leaving estate within the State.

testate had died within the State; and the Judge of Probate of any county, wherein such estate shall be found, shall have power to grant such letters of administration accordingly, which shall extend to all the estate of such intestate within the State, and the same estate shall be settled in the county where such letters of administration shall have been first granted; and after such letters shall have been granted and notice thereof given by the administrator in like manner as in other cases, any new letters of administration on the same estate shall be void.

Judge to-examine and approve all Probate bonds.

SEC. 9. *Be it further enacted,* That in all cases wherein by law bonds are required to be given to any Judge of Probate, or to be filed in the Probate office, it shall be the duty of the said Judge first to examine and approve of such bonds, and upon their being so approved, but not otherwise, the said Judge shall order the same to be filed or recorded in the Probate office.

Administrators to account for personal estate as appraised, unless sold by order of Judge.

SEC. 10. *Be it further enacted,* That every administrator shall be held to account with the Judge of Probate, for the personal estate of the deceased, as the same shall be appraised, unless the said Judge shall think it will be more for the benefit of the parties interested, otherwise to dispose of the same, in which case the said Judge shall order the same or any part thereof, to be sold at public auction, or at private sale in such manner as he shall determine will best serve the interest of all parties interested; and the administrator shall account for such estate as the same shall have been sold: *Provided always,* That such sale shall be ordered within the term of three months from the return of the inventory, and not afterwards, unless the said Judge of Probate, shall for special reasons, think proper to allow a further term not exceeding six months.

If sold, to be within three months from return of inventory.

Wills to be filed in Probate office within thirty days after death of testator;

SEC. 11. *Be it further enacted,* That whenever any executor or executors of the last will of any person deceased, knowing of their being so named and appointed, shall neglect to cause such will to be filed within thirty days next after the death of the testator in the Probate office of the county where he last dwelt, and proved and recorded within such time as the Judge of Probate shall limit and appoint; or present the said will, and in writing declare his, her or their refusal, every executor so neglecting his or her trust

and duty in that behalf, (without just excuse made and accepted by the Judge of Probate for such delay) shall forfeit a sum not exceeding sixteen dollars a month, from and after the time limited as aforesaid, until he, she or they shall cause said will to be filed and probate thereof to be made, or present the same as aforesaid; and such forfeiture shall be had and recovered by any party interested in the estate devised by such will, and by no other person, by action of debt in the Circuit Court of Common Pleas, holden within and for the county where such will ought by law to be proved; and in case of such forfeiture being incurred as aforesaid, judgment may be rendered by the Court for any sum not exceeding sixteen dollars a month as aforesaid, for and during the time of delay above mentioned; and upon any such refusal of the executor or executors, the Judge of Probate shall commit administration of the estate of the deceased, with the will annexed, unto the widow or next of kin to the deceased, or one or more of the devisees, or in case of their refusal, to one or more of the principal creditors, as he shall think fit.

Forfeiture for executor's neglect,

and how recovered.

Judge may grant admin. c. t. a. in case of executor's refusal, &c.

SEC. 12. *Be it further enacted,* That when a will shall be offered for probate to any Judge of Probate in this State, and the witnesses live out of the State, or more than thirty miles distant, or by reason of age or indisposition of body are unable to appear and give evidence in court, the deposition of such witness in writing taken before any person or persons duly authorized by dedimus potestatem by such Judge of Probate, shall have the same force and effect as though the witness was present, and testified in open Court.

Judge may grant dedimus to take depositions of witnesses to wills in certain cases.

SEC. 13. *Be it further enacted,* That where it shall clearly appear to the Judge of Probate either by the consent of heirs at law in writing, or by other satisfactory evidence, that there is no objection to the Probate of any will, it shall be lawful for the said Judge, at his discretion, to decree probate thereof, upon the testimony of one or more of the three subscribing witnesses required by law, as the said Judge shall think proper, whether such witnesses are within the process of the said Judge or otherwise.

Judge may approve of will in certain cases, on testimony of one or more witnesses.

SEC. 14. *Be it further enacted,* That when the executor or any other person interested in a will that has been proved

Copy of wills proved in for-

oign Courts, may be filed, &c. in Probate Court of county where estate may be that is devised.

and allowed in a Court of Probate in any of the United States, or in a Court of Probate in any other State or Kingdom, pursuant to the laws of such State or Kingdom, shall produce a copy of such will, with a copy of the probate thereof, under the seal of the Court where the same will has been proved and allowed, unto any Judge of Probate in any county in this State, where the testator had estate, real or personal, whereon the same will may operate, and shall, in writing desire the same may be filed and recorded in the Probate Office in the same county, pursuant to this statute, the said Judge shall assign a time and place for taking the same into consideration, and shall cause notice thereof to be made in some public newspaper three weeks successively, thirty days at the least before the time assigned, to the end that any person may appear and shew cause against the filing and recording the same; and if at the time assigned no sufficient objection is made, the said Judge may cause the same copy to be filed in the Probate Office, and direct the same to be there recorded: saving always an appeal to any person aggrieved, to the Supreme Court of Probate.

Notice to be given.

Appeal allowed.

Proviso as to operation of such wills.

*And provided further*, That nothing in this Act shall be construed to make valid any will or codicil that is not attested and subscribed in the manner the laws of this State direct, nor to give operation and effect to the will of an alien different from that which such will would have had before the passing of this Act.

Executor to give bonds to return inventory, &c.

SEC. 15. *Be it further enacted*, That every executor named in a will hereafter to be proved, and taking upon himself that trust, shall give bond to the Judge of Probate with sufficient sureties, resident in this State, to return upon oath a true and perfect inventory of the testator's estate into the Probate office within three months, and to render an account of his proceedings thereon, in the same manner administrators are by law obliged to do, unless such executor or executors are residuary legatees; in which case bond may be given by him or them to pay the debts and legacies of the testator; and in case such executor or executors shall neglect or refuse, for the space of twenty days, to give bond as aforesaid, the Judge of Probate may commit administration of the estate of such testator, with the will annexed, to

or to pay debts and legacies.

Proceedings in case of neglect of executor—

some other person, in like manner as he may grant the same when the executor refuses the trust; and when the executor is under the age of twenty one years at the time of the probate of the will, administration may be granted with the will annexed during the minority of such executor. And where there are divers persons named executors, in any will hereafter to be proved, none shall act as such, but those who give bond as aforesaid.

and when he is a minor,

and when there are divers executors, &c.

SEC. 16. *Be it further enacted,* That when any person who shall hereafter be appointed executor of any will, shall, at the time of the probate of the same, live without this State, he shall before letters testamentary are issued to him, enter into bonds to the Judge of Probate for the county in which the testator lived, with sufficient sureties, being inhabitants of the said State, for his faithful performance of the trust reposed in him: and if such executor shall refuse to enter into such bonds, administration shall be granted with the will annexed, in the same manner as if such executor declined the trust.

Executor living without the State, to give bond in county where testator lived, &c.

SEC. 17. *Be it further enacted,* That when the copy of any will which has been proved and allowed in any Probate Court in any of the United States or in any foreign State or kingdom, shall be directed to be filed and recorded in any Probate Court in this State pursuant to this Act, the filing and recording thereof shall be of the same force and effect as the filing and recording of an original will proved and allowed in the same Court of Probate; and the said Judge may thereupon proceed to take bond of the executor, or grant administration of the said testator's estate, lying in this State, with the will annexed, and settle the said estate in the same way and manner as by law he may or can the estates of testators, whose wills have been duly proved before him.

Effect of filing and recording copies of wills proved out of State.

SEC. 18. *Be it further enacted,* That whenever an executor or administrator shall be appointed to the estate of any person deceased, and shall take upon himself that trust, by giving bond faithfully to discharge the duties thereof, as the law directs, he shall make known the same within three months, by causing notice thereof to be posted up in some public place in the town or plantation where the deceased

What notice must be given by executors and administrators of their appointment.

was resident, and had his home at the time of his death; and shall also give such further notice thereof as the Judge of Probate shall in writing direct. And if the deceased was neither an inhabitant nor resident within this State at the time of his death, the executor or administrator shall give such notice of his undertaking that trust, as the Judge of Probate that issued the letter of administration, or approved the will, shall in writing direct: and affidavit of the executor or administrator made and filed in the same Probate Office, within seven months after undertaking that trust, accompanied with an original notification (or a copy thereof) of his undertaking that trust, and recorded in the Probate Office, shall be admitted as evidence of the time, place and manner notice was given.

Mode of perpetuating evidence of such notice.

Executors and administrators, living out of State, or removing after appointment, and neglecting to render account

SEC. 19. *Be it further enacted,* That when any executor of any last will and testament, or administrator of an estate, shall reside without this State at the time of taking upon him that trust, or shall afterwards remove out of this State and shall neglect or refuse, after due notice from the Judge of Probate to render his account and make a settlement of such estate with the creditors, legatees or heirs, or their legal representatives; or when any executor or administrator shall become insane, or otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him, the Judges of Probate in their respective counties within this State, are authorized and empowered to remove from office such executor or administrator and grant letters of administration, with the will annexed (or otherwise as the case may require) to such person as to the said Judge shall seem meet. And the administrator thus appointed shall have the same power and authority to administer the estate of the deceased, not administered by such former executor or administrator, and be subjected to the same duties as if the executor or administrator were dead. And when a feme sole shall jointly with one or more persons, be appointed executrix, or administratrix, and after such appointment shall during the life of the other co-executor or co-administrator marry, such marriage shall not make the baron an executor or administrator in her right; but shall operate as an extinguishment or determination of such woman's pow-

or becoming insane or unsuitable, may be removed.

Feme sole appointed co-executor shall lose her authority by intermarriage.

ver and authority. And the other executor or executors, administrator or administrators, may proceed to discharge the trust reposed in them in the same way and manner as if such woman were dead. And the executor of an executor, shall not in consequence thereof, become an executor of the first testator; but in every such case, administration may be granted upon the goods and estate of the first testator, unadministered, with the will annexed, to such person or persons as the Judge of Probate may think fit. And where there is more than one executor or administrator, and any or either of them shall be removed from office by the Judge of Probate for any of the causes mentioned in this section, the other executor or executors, administrator or administrators, may proceed to discharge the trust reposed in him or them, in the same manner, as if said executor or executors, administrator or administrators so removed were dead; and may bring actions of account against them, and recover by any proper legal process such effects, and assets as remain in their hands unadministered at the time of their removal.

One or more executors, &c. may be removed in case &c.

Sec. 20. *Be it further enacted,* That no administration of the goods or estate of any deceased person, not administered upon by a former executor or administrator, shall be granted until it shall evidently appear to the Judge of Probate, by the oath of the party applying or otherwise, that there is personal estate of such deceased person to the amount of twenty dollars or upwards, or debts of the like or greater value due from such deceased person unpaid, nor shall administration be originally granted upon the estate of any deceased person after the expiration of twenty years from the death of such person.

No administration to be granted on estate of less value than \$20.

Sec. 21. *Be it further enacted,* That when an executor or administrator shall exhibit a claim in writing, against his testator or intestate, to the Judge of Probate, having cognizance thereof for allowance, and the same shall be disputed by any person interested adversely in the allowance thereof, it shall be lawful for the said executor or administrator, and the legatees or heirs whose interest will be affected by the issue thereof, to submit the determination of such claim to referees who may be mutually agreed upon by the parties interested; and the Judge of Probate, before whom

Disputed claims of executor or administrator may be referred before Judge.

Submission to  
be in writing,  
&c.

such submission is made, may receive, approve and allow the report of such referees, made in writing pursuant to the submission, and decree accordingly: *Provided*, The submission be made in writing, and signed by all the parties interested therein, or their agents duly authorized thereunto, and when any of the parties are minors, by his or their guardians duly appointed.

Income of real estate to be appraised by Committee appointed by Judge.

SEC. 22. *Be it further enacted*, That when a dispute shall arise respecting the occupation, use and improvement of real estate in the hands of the executor or administrator, and the quantum he ought to credit in his account therefor, it shall and may be lawful for the Judge of Probate to appoint three disinterested persons living near to the estate, to ascertain the true value thereof; and the report of them, or the major part of them, made thereupon, in writing, after hearing the parties and accepted by the Judge, shall be the sum the executor or administrator shall be charged with, in his account, and no more.

Administrator, or executor to account for such income as appraised.

Judges may compel by citation, &c. persons entrusted with estate by executors or administrators to disclose on oath, &c.

SEC. 23. *Be it further enacted*, That the several Judges of Probate be, and hereby are empowered to convene before them any person that has been or may hereafter be entrusted by any executor or administrator with any part of the estate of the testator or intestate, who shall refuse upon a citation issued by the Judge of Probate for that purpose, to appear before him, and render a full account, upon oath of any money, goods or chattels, and of any bonds, accounts or other papers belonging to the estate of the testator or intestate, which he shall have taken into his hands or custody, and of his proceeding for and in behalf of such executor or administrator in his capacity as such. And if such person shall refuse to render account as aforesaid, such Judge may proceed against him in the way and manner herein directed for persons suspected of concealment, who refuse to answer interrogatories upon oath.

Judges may call before them, &c. persons suspected of concealing or embezzling estate of persons deceased.

SEC. 24. *Be it further enacted*, That each Judge of Probate within his county, be, and hereby is authorized and empowered to call before him and to examine upon oath, any person suspected by any executor or administrator, heir, creditor, legatee or other person having lawful right or claim to the estate of any person deceased, of having con-



concealed, embezzled, or conveyed away any of the money, goods, or chattels left by the testator or intestate, for the discovery of the same. And if the person suspected as aforesaid, shall refuse to be examined, or to answer interrogatories, upon oath respecting the estate which he or she may be suspected of concealing, embezzling or conveying away, it shall and may be lawful for, and the said Judge is hereby empowered to commit such person, so refusing to be examined or answer interrogatories upon oath as aforesaid, unto the common gaol of the county, there to remain until he or she shall consent to be examined and answer interrogatories upon oath as aforesaid, or be released by the consent of the person suspecting him or her, or by order of the Supreme Judicial Court.

Judges may punish persons refusing to disclose, &c. by committing.

SEC. 25. *Be it further enacted,* That when the estate of any person deceased shall be insolvent or insufficient to pay all just debts, which the deceased owed, the same shall be distributed to and among all the creditors in proportion to the sums to them respectively due and owing, saving that debts due for taxes, and debts due to the State, and for the last sickness and necessary funeral expenses of the deceased, are to be first paid. And the executor or administrator appointed to any such insolvent estate before payment to any be made, (except as aforesaid) shall represent the condition and circumstances thereof unto the Judge of Probate. And the said Judge shall nominate and appoint two or more fit persons to be commissioners, with full power to receive and examine all claims of the several creditors; and such commissioners shall cause the times and places of their meeting to attend the creditors for receiving and examining their claims, to be made known by causing an advertisement thereof to be printed in such public newspaper or papers, or by such other notice as the Judge of Probate shall direct; and six months and such further time not exceeding eighteen months in the whole, shall be allowed by the said Judge to the creditors to bring in and prove their claims; at the end of which limited time, such commissioners shall make their report, and present upon oath a list of all the claims that shall have been laid before them, with the sum they shall allow on each claim unto the said Judge; and the

Insolvent estates to be distributed *pro rata* among all the creditors; excepting that taxes, &c. are to be paid in full.

Commissioners to receive and examine claims, to be appointed;— and to make known their time of meeting, &c.

From 6 to 18 months to be allowed to creditors, by the Judge, for procuring their claims.

Compensation for commissioners. Judge shall order them meet recompense out of the deceased's estate for their care and labour in examining the claims; and the debts due for taxes, and debts due to the State, debts incurred for the last sickness of the deceased, and necessary funeral expenses as afore provided, being first deducted, shall order the residue and remainder of the estate both real and personal (the real estate being sold according to law) to be paid and distributed to and among the creditors who shall have made out their claims with the commissioners as aforesaid, in proportion to the sums unto them respectively due and owing, saving unto the widow her right of dower in the real estate of the deceased, which dower (unless the reversion shall be sold by the executor or administrator, and distributed with the other estate which the Judge may order if he see fit, upon application therefor at the expiration of her term shall also be distributed among the creditors aforesaid in like proportion: *Provided*, That notwithstanding the report of any commissioners, any creditor whose claim is wholly, or in part rejected, may have the same determined at the common law, in case he shall give notice thereof in writing at the Probate office within twenty days after such report shall be made, and bring and prosecute his action as soon as may be, and in case the executor or administrator shall be dissatisfied with any creditor's claim allowed by the commissioners, and shall give notice thereof at the Probate office, and also to the creditor, within twenty days as aforesaid, such claim shall by the Judge of Probate be struck out of the commissioners report, unless such creditor shall commence and prosecute at the common law his claim as aforesaid as speedily as the same can be done, or unless the creditor and the executor or administrator shall agree before the Judge to submit the same to referees; in which case the determination of the referees shall be final; and when a claim shall be disputed in the course of the common law as aforesaid, execution shall not issue as in common cases, but the judgment of the Court respecting the same shall be the amount of the claim, and added to, or deducted from the commissioners' report, as the case may require. And no action brought against any executor or administrator after the estate shall be represented

Estate real and personal to be distributed among creditors, as allowed, &c.

Saving widow's dower.

Reversion may be sold.

Creditor whose claim is not allowed by commissioners may have it determined at common law.

Mode of proceeding in such cases.

or such claims may be determined by referees.

No actions against executor or admini-

insolvent, shall be sustained, except for debts due to the State, debts due for taxes, for the deceased's last sickness and funeral charges, unless the executor or administrator having objection to the claim upon which such action shall be brought, shall consent to have the same settled by course of law, in which case the judgment of the Court shall determine the said claim, and it shall be reported by the commissioners, or be added to the list of claims by the Judge of Probate. And all actions brought against any executor or administrator before the estate is represented insolvent, shall be continued until it shall appear whether the said estate is insolvent or not; and if found insolvent, the process shall be conducted as above provided. And if any creditor shall not make out his claim with the commissioners within the time of their commission, or at the common law, or before referees, in the manner this Act provides, he shall be forever barred of his debt, unless such creditor shall find some estate of the deceased not inventoried or accounted for by the executor or administrator before distribution, or unless it shall appear that such estate is not insolvent.

istrator of estate rendered insolvent to be sustained, unless, &c.

Actions brought before estate is rendered insolvent, to be continued, &c.

Creditors not making out their claims, &c. as before provided, to be barred, unless, &c.

SEC. 26. *Be it further enacted,* That the commissioners who shall be appointed by any Judge of Probate, to receive and examine the claims of the creditors to the estate of any person deceased, when represented insolvent, shall be and are hereby authorized and empowered to examine, by the oath or affirmation of the creditor, the truth of any claims presented; and the said commissioners, when they are sitting by virtue of such commission, and when it shall be adjudged expedient by a majority of them, may require of such creditor an oath or affirmation, as follows:

Commissioners to examine creditors under oath, as to their claims.

You do swear (or affirm as the case may be) that you will make true answers to the questions which shall be asked you by the commissioners relative to your claim against the estate of ——— (naming the deceased insolvent debtor) now under consideration. So help you God, (or this you do under the pains and penalties of perjury as the case may be.) And thereupon such commissisoners may inquire of the truth of any writing, demand, or the charges in any accounts exhibited as a claim against such insolvent estate, and whether the same and every part of such claim remains due

Form of oath.

and unpaid, and may put such other questions relative thereto, as shall be material and tend to discover the truth of such claim.

Violation of such oath to be deemed perjury.

SEC. 27. *Be it further enacted*, That any person who shall take such oath or affirmation, having been administered as aforesaid, and shall thereupon wilfully and corruptly make any false answer or answers to any question or questions material for the determination of the truth of the claim, in proof of which such oath or affirmation shall have been taken, and shall be thereof duly convicted, shall be adjudged guilty of the crime of perjury, and shall be liable to the pains and penalties which are or shall be by law inflicted for the punishment of such crime.

When executor or administrator neglects to settle his account for six months after final report of commissioners, creditor may sue or prosecute the executor or administrator:

SEC. 28. *Be it further enacted*, That whenever any executor of the last will, or administrator upon the estate of any person deceased, shall neglect to exhibit and settle his account of administration with the Judge of Probate where the estate has been represented insolvent, and commissioners have reported to the Judge a list of claims, within six months after such report shall be made to the Judge, or within such further time as the Judge of Probate shall think proper to allow therefor, under his hand and seal, any creditor to such estate may commence and prosecute any action, or may prosecute any action then depending, for his demand against such executor or administrator; and the Court before whom such action may be depending, shall proceed to hear and determine the same and give judgment therein, and award execution thereon, in the same manner as if such estate had not been represented insolvent. And upon the return of such execution, duly made, that the executor or administrator refused or neglected upon due request, to satisfy the same, such refusal or neglect shall be deemed waste; and upon scire facias brought, judgment shall be rendered in favour of such creditor, to recover his debt with costs, and execution shall be awarded against the proper goods or estate of such executor or administrator, and for want thereof, against his body. And if in consequence of such refusal or neglect, the real estate of the deceased shall be levied upon and taken to satisfy such execution, it shall in like man-

and court shall give judgment and execution.

If such execution be returned unsatisfied, &c.

scire facias to be issued to recover against executor or administrator for waste.

If real estate of deceased be taken on such execu-

ner be deemed waste in the executor or administrator upon such estate.

tion it shall also be deemed waste.

SEC. 29. *Be it further enacted,* That when any executor or administrator shall neglect or unreasonably delay to raise money out of the testator's or intestate's estate, or shall neglect to pay what he has in his hands, and by such neglect or delay shall subject the testator's or intestate's estate to be taken in execution, the same shall be deemed waste and unfaithful administration in such executor or administrator.

If executor, &c. neglect to raise money &c. to pay debts so that deceased's estate be taken on execution—it shall be deemed waste.

SEC. 30. *Be it further enacted,* That whenever it shall appear to any Judge of Probate, that any debtor to any estate, within his jurisdiction, is unable to pay all his just debts, and that it is reasonable that his creditors should discharge him from all demands, upon their receiving from him a fair and equitable dividend of all his estate, it shall be lawful for the executor or administrator of any deceased creditor, by the consent and approbation of such Judge, to join with those creditors who may agree in such discharge, and to sign the same upon such executor or administrator's receiving a just portion of said debtor's property to which the said deceased creditor would have been entitled.

Executor or administrator of deceased creditor may join with other creditors in compounding with debtors, in certain cases—by consent of Judge.

SEC. 31. *Be it further enacted,* That whenever in the settlement of the estate of any person deceased, there shall be any real estate to be divided among his or her heirs or devisees, the Judge of Probate having jurisdiction of the settlement of such estate, shall by warrant directed to a committee of three discreet and disinterested freeholders, who shall be under oath, cause such real estate situated in one or more counties in the State, to be divided among the heirs or devisees of the person deceased, pursuant to his or her will or to the laws regulating the descent and distribution of intestate estates, as the case may be; and where such real estate cannot be divided among all the heirs or devisees, or their legal representatives, without great prejudice to, or spoiling the whole, the said Judge may assign the whole to one, or to so many of the heirs or devisees as the same will conveniently accommodate, always having due regard to the terms of any devise there may be in the case, and also preferring males to females, and among the children of the deceased, elder to younger sons; and if any heir or heirs, de-

Judge may cause real estate in one or more counties to be divided among heirs or devisees:

Mode of proceeding where estate cannot be divided among all the heirs without injury, &c.

vises or devisees to whom any real estate shall be so assigned, shall not accept the same and make, or secure payments to be made, as the said Judge of Probate shall direct, then, and in such case the same may be so assigned to one or more of the other heirs or devisees successively; in every case the heir or heirs, devisee or devisees to whom the same estate shall be assigned as aforesaid, paying to the other heirs or devisees, their heirs or assigns, their proportionable shares of the true value thereof on an appraisement to be made by such committee, or giving such sufficient security to pay the same, and in such convenient time or times as the said Judge of Probate shall direct, with lawful interest until paid. And no conveyance made by any heir or devisee, of his or her interest or estate in the lands of any testator or intestate, shall take from such Judge of Probate his jurisdiction and authority to divide and assign the real estate of any testator and intestate among his or her heirs or devisees, in manner aforesaid.

No conveyance by heirs or devisees to prevent division under authority of Judge.

When dower is to be assigned, or partition ordered, and such estate lies in common, Judge to order the deceased's estate to be severed, by committee, they giving notice, &c.

SEC. 32. *Be it further enacted,* That when the Judge of Probate shall issue such warrant for the purposes aforesaid, or for the assignment of dower in any such real estate, and such real estate shall lie in common and undivided with that of any other person or persons, the said Judge shall direct the committee named in such warrant, first to sever and divide the estate of the deceased from that of such other person or persons, the said committee first giving timely notice to all parties interested in said estates, that they may be present if they see fit at the making of any such divisions.

Such division recorded, &c. to be binding.

SEC. 33. *Be it further enacted,* That such division of any such real estate, made as aforesaid, and accepted by the said Judge of Probate, and recorded in the Probate office of the same county shall be binding on all persons interested:

Provision for appointment of guardians for minors, &c. and agents for persons absent.

*Provided nevertheless,* That when any minor or any person non compos mentis, or otherwise incapable to take care of their estates, or any persons who shall be out of the State, are interested either in the estate of such deceased person, or in the estate with which it so lies in common, guardians shall be appointed for such minors, persons non compos, or otherwise incapable; and some suitable person shall be appointed for such absent persons by the said Judge before

such division, to represent and act for them respectively in the making thereof: *And provided also*, That before an order for such division shall issue, it shall be made to appear to the said Judge of Probate, that the several persons interested in such estate, if living within the State, and the attorney, if any, or other suitable person or persons, appointed as aforesaid, of such as may be absent from the State, have had such due notice of such partition as the said Judge shall have ordered and have had opportunity to make their objections to the same: *Provided also*, That where an estate is devised, it shall be lawful for the said Judge to order the whole or that part of it whereof partition is applied for, to be divided among the devisees, according to their true proportions thereof, by said committee.

Notice to be given before ordering such division.

Division to be in whole or part, &c.

SEC. 34. *Be it further enacted*, That every committee appointed to make division as aforesaid, and the appraisers and commissioners appointed by the Judge to perform any service respecting the estate of any person deceased, or persons appointed to set off the widow's dower therein, and by law directed to be under oath, may be sworn before the Judge of Probate appointing them, or before some Justice of the Peace; and in case there shall be no Justice of the Peace in the town where such estate may lie, then before the Town Clerk of such town; and a certificate of such oath shall be returned by such Justice or Town Clerk, to the Probate office from which the warrant to such committee, appraisers or commissioners, shall have issued.

Committee, appraisers, commissioners &c. to be under oath.

SEC. 35. *Be it further enacted*, That all such partitions of real estate made, accepted and recorded as aforesaid, shall be valid in law to all intents and purposes, unless upon the appeal of any party aggrieved thereby, the same should be reversed or altered by the Supreme Court of Probate; but no partition shall be ordered by any Judge of Probate under this Act, when the proportions of the heirs or devisees, or any of them, shall be disputable by the tenor of the will in the case, or any other matter in writing from which it shall appear that the proportions are uncertain, and ought in the opinion of said Judge first to be legally ascertained.

Partitions of real estate so made and accepted, to be valid, unless altered on appeal.

No partition to be ordered by Judge, when proportions, &c. appear to be uncertain or disputable.

When mes-  
sage, &c. is  
of greater  
value than  
one's share,  
committee  
may assign it  
to one, he pay-  
ing the surplus  
to the party  
deficient.

SEC. 36. *Be it further enacted,* That when any message, tract of land or tenement, shall be of greater value than the share of any party in any real estate, to be divided as aforesaid, and the same message, tract of land, or other tenement, cannot without great inconvenience be sub-divided, the same may be assigned to one of the parties only, such party paying such sum or sums of money to the other parties, who in consequence thereof have less than their shares of such real estate so divided, as the committee appointed to divide the same shall award, and at such time and manner as the Judge of Probate shall direct.

Parties refus-  
ing to pay  
their propor-  
tion of the ex-  
penses of par-  
tition may be  
compelled by  
warrant of dis-  
tress from  
Judge; the ac-  
count of ex-  
penses being  
first allowed.

SEC. 37. *Be it further enacted,* That when any partition shall be made as aforesaid, and any one or more of the parties interested in the estate descended or devised, shall neglect or refuse to pay their just proportion of the charges attending the same partition, it shall be lawful for the said Judge of Probate to issue a warrant of distress against such delinquent for the amount of such proportion and costs of such process: *Provided always,* That an account of such charges be first exhibited to the said Judge, and the just proportion of such party so interested, be settled and allowed, such party having had due notice to be present at the settlement and allowance thereof.

Reversion, &c.  
may be divid-  
ed.

SEC. 38. *Be it further enacted,* That in case of any division and settlement of real estate, pursuant to the warrant of a Judge of Probate in manner aforesaid, it shall be lawful for such Judge to order a division of the reversion and remainder expectant upon determination of any estate in dower in like manner as the division of the other parts of such estate; and the division of such reversion and remainder shall be ordered and made, either at the same time with the division of the other parts of such real estate, or upon the determination of the estate in dower, at the discretion of the said Judge, whether such estate in dower shall be determined by the decease of the tenant in dower, or by the voluntary relinquishment thereof, or in any other manner.

Widow enti-  
tled to neces-  
saries, &c. in  
settlement of  
intestate es-

SEC. 39. *Be it further enacted,* That in the settlement of intestate estates, whether they be solvent or insolvent, the widow shall be entitled to her apparel, and such other and so much of the personal estate as the Judge of Probate shall



determine necessary, according to her quality and degree; regard being had to the state of the family under her care. And in cases where such allowances shall have been made from intestate estates, represented to be insolvent, which ultimately appear to be solvent, the Judges of Probate be, and hereby are respectively authorized by a subsequent decree to make such further allowances to the widow from the personal estate of her husband, having regard to what shall have been allowed as he shall deem reasonable. And whenever a testate estate shall be insolvent, the Judge of Probate shall have the same authority to allow personal estate to the widow as he possesses in case of estates intestate; and in all cases of insolvency of estates whether testate or intestate, if there be no widow, the Judge of Probate shall have the like authority to make an allowance of personal estate to the children of such deceased persons who are minors.

tates, solvent or insolvent.

Further allowance in case.

In estates testate and insolvent allowance to widow.

In all insolvent estates where there is no widow, allowance may be made to minors, of personal estate.

SEC. 40. *Be it further enacted*, That all gifts or grants made by the intestate, to any child or grand child, of any estate, real or personal, in advancement of the portion of such child or grand child, and which shall be expressed in such gift or grant, or otherwise charged by the intestate in writing, or acknowledged in writing by the child or grand child, as made for such advancement, such estate, real and personal shall be taken and estimated in the distribution and partition of the intestate's real and personal estate as part of the same, and the estate so advanced, shall be taken by such child or grand child towards his share of the intestate's estate. And the value at which such estate shall be so taken, shall be the same as above expressed or charged by the intestate, or acknowledged by the child or grand child, if any value be so expressed, charged or acknowledged, otherwise at the value thereof when given.

Advances, &c. made to children, &c. shall be estimated in partition and distribution of estates.

Mode of estimating.

SEC. 41. *Be it further enacted*, That in the distribution of the personal estate, alienage in the person claiming a distributive share thereof, as issue, widow or otherwise, shall be no impediment to such person's receiving the same.

Alienage no impediment to receiving share of personal estate.

SEC. 42. *Be it further enacted*, That whenever any heir or legatee shall be entitled to demand any distributive share or legacy in any estate, the executor or administrator of

Executor or administrator may require

bond of indemnity from heirs, &c. demanding share or legacy if Judge deem it reasonable before payment.

such estate may, before payment of such distributive share or legacy, require bonds to be given to himself, if the Judge of Probate shall deem it reasonable, with such surety or sureties as the said Judge shall approve, by the parties or any of them who shall demand payment of such distributive shares or legacies, with condition, that the party or parties, to whom the same shall be paid, shall refund a proportional part of such estate, or otherwise indemnify such executor or administrator against any demands which may be made against the testator or intestate respectively.

Executor, if residuary legatee may have action of account against co-executor.

SEC. 43. *Be it further enacted*, That any executor being a residuary legatee, may bring an action of account against his co-executor or co-executors of the estate of the testator in his or their hands, and may also sue for, and recover his equal and proportionable part thereof; and any other residuary legatee shall have like remedy against the executors. And any person having a legacy given in any last will, may sue for, and recover the same at the common law.

Residuary and other legatees may sue executor at common law.

SEC. 44. *Be it further enacted*, That if any person shall alienate or embezzle any of the goods or chattels of any deceased person before he or she have taken out letters of administration, and exhibited a true inventory of all the known estate of the person deceased; every such person shall stand chargeable and be liable to the actions of the creditors and other persons aggrieved, as being executors in their own wrong.

Who shall be considered executors in their own wrong.

SEC. 45. *Be it further enacted*, That where two or more persons have letters of administration granted them of any intestate estate, and one or more of them take all or the greatest part of such estate into their hands, and refuse to pay the debts or personal charges of such intestate, or refuse to account with the other administrator, then, and in such case it shall be lawful for such aggrieved administrator to bring his action of account against the other administrator or administrators, and recover his proportionable share of such intestate's estate as shall belong or appertain to him.

One administrator may in certain cases have an action of account against his co-administrator.

SEC. 46. *Be it further enacted*, That the Judge of Probate in each county be and he is empowered to allow of guardians that shall be chosen by minors of fourteen years

Judge to allow guardians to be chosen by

of age, and to appoint guardians for such as shall be under that age, who shall give bond with sufficient sureties resident in this State, for the faithful discharge of their trust, to return a true and perfect inventory of the estate of such minor upon oath within three months, and to account either with the Judge or minor when such minor shall arrive to the age of twenty-one years, or at such other time as the Judge shall direct. And when any minor above the age of fourteen years shall be cited by the Judge of Probate to choose a guardian, and such minor shall refuse or neglect to appear, or appearing, shall refuse to choose a guardian, or any guardian chosen by such minor shall be unable to give bond as aforesaid, or shall refuse the trust; or when any minor above the age of fourteen years shall be without this State, in every such case the Judge of Probate shall have the same power to appoint a guardian as though such minor were under the age of fourteen years: *Provided nevertheless*, That when a minor above the age of fourteen years living more than ten miles distant from the Probate office, shall choose a guardian, such minor may have that choice certified to the Judge by any Justice of the Peace in the same county: *Provided*, No executor or administrator on an estate, shall be appointed guardian to any minor interested therein.

minors of 14 years of age, and to appoint guardians to those under 14. Guardians to give bond; to return inventory account, &c.

Minors above 14 may, if more than 10 miles distant from Probate office, have their choice certified by Justice of Peace, &c.

SEC. 47. *Be it further enacted*, That every guardian, who shall be appointed to any minor having real estate, goods and chattels, rights or credits, shall be required to return upon oath into the Probate office a true and perfect inventory of all such real estate, goods and chattels, rights and credits, within three months.

Guardians to minors to return inventory in 3 months.

SEC. 48. *Be it further enacted*, That the guardian of any minor having a right in reversion or remainder in and to any estate set off to the widow of any deceased person, as and for her dower, may, with the consent of the Judge of Probate having jurisdiction of the settlement of such estate, purchase from the tenant in dower or her assigns, her or their interest in the same, for the benefit of such minor, and from his or her personal estate. And all monies, so applied, may by such guardian, be charged to such minor in account; and all the rents and profits of such estate shall be credited to the minor, in like manner as the rents and prof-

Guardians may, in certain cases purchase remainder or reversion of tenant in dower, for benefit of minor.

Proviso.

its, which arise from his or her other estate: *Provided always*, That it be satisfactorily proved to the Judge of Probate, that such purchase will be for the manifest advantage of such minors.

Judges to appoint guardians to non compos, lunatic, idiots, &c.

SEC. 49. *Be it further enacted*, That the Judges of Probate, within their respective counties, upon request made by the friends, relations or creditors of any idiot, *non compos* or lunatic person, or by the Overseers of the poor in such town where such idiot, *non compos*, or lunatic person lives, or is an inhabitant, may direct the Selectmen of such town to make inquisition thereinto, and if the person said to be an idiot, lunatic or distracted person, shall be adjudged by the Selectmen of the town (or the major part of them) where such person resides, to be incapable of taking care of him or herself, and they shall certify the same under their hands, to the Judge, the said Judge of Probate after giving due notice to such idiot, *non compos*, or lunatic person, shall be empowered to appoint some suitable person or persons to be guardian or guardians to such idiot, lunatic, *non compos* or distracted person, directing and empowering such guardian or guardians to take care of the person and estate, both real and personal, of such person, to make a true and perfect inventory of the said estate upon oath, to be returned into and filed in the Probate office in such county.

if selectmen, after inquisition, certify them to be incapable, &c.

Guardians, so appointed, to take care of the persons & estates, and return inventory, &c.

Proceedings against persons suspected of embezzlement of property belonging to idiots, *non compos*, &c.

SEC. 50. *Be it further enacted*, That the Judges of Probate in their respective counties, are authorized and empowered, upon the complaint of any heir, creditor or other person having lawful right or claim in expectancy to the estate of any idiot, lunatic, *non compos* or distracted person, or the guardian or guardians, to proceed with any person or persons suspected of concealing, embezzling, or conveying away any of the money, goods or chattels of such idiot, lunatic, *non compos* or distracted person, in the same way and manner as is by law prescribed for persons suspected of concealing, embezzling or conveying away the money, goods or effects of deceased persons.

Guardians of such persons to manage their estate frugally, and

SEC. 51. *Be it further enacted*, That the guardian or guardians appointed as aforesaid, shall improve frugally and without waste and destruction, the estate of the idiot, *non compos*, lunatic or distracted person, and apply the annual

income and profits thereof for the comfortable maintenance and support of the said idiot, lunatic, *non compos*, or distracted person, and also of his or her household or family; and the said guardians are hereby empowered to settle accounts, receive, sue for, and recover all just debts due to the said idiot, lunatic, *non compos*, or distracted person, from any person or persons whomsoever, and to manage, improve or divide the real estate in as full and ample a manner as the said idiot, lunatic, *non compos* or distracted person might or could do, were he restored to the full use of his reason; and shall also be subject to the payment of all just debts owing by such person which were contracted before his distraction, out of his personal estate, or in case that be insufficient, then out of the real estate, being first empowered to make sale thereof by any Court having power to grant license for that purpose, in the way and manner executors or administrators are empowered to make sale of the real estate of deceased persons. And in case the income or improvement of the personal and real estate of such persons shall not be sufficient to support them, the Court aforesaid may license and authorize the guardians to make sale of the whole or part of the real estate of such person for that purpose, as occasion may require. And in case any such idiot, lunatic or distracted person shall be restored to the use of his reason, the residue and remainder of the estate, real and personal, shall be returned and delivered to him, or in case of his death, to his heirs, executors or administrators; the guardian or guardians having first such reasonable allowance out of the same for their charge and trouble as the Judge of Probate shall order.

support them comfortably—

collect debts, &c.

and pay debts previously contracted.

Apply to Courts for license to sell real estate, if necessary:

and account with their wards, if restored to reason, &c. or if dead, with their heirs, &c.

SEC. 52. *Be it further enacted*, That the Judges of Probate in their respective counties may appoint guardians for the children of lunatics, idiots, *non compos*, or distracted persons, in the same manner as though their parents were dead.

Judge may appoint guardians for children.

SEC. 53. *Be it further enacted*, That when any person by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his or her estate, as thereby to expose himself or herself, or his or her family to want; or shall by thus spending, wasting or lessening his

Judge may appoint guardians to spend-thrifts, idlers, &c.

Mode of proceedings in such cases.

or her estate, endanger or expose the town to which he or she belongs, in the judgment of the Selectmen thereof, to charge or expense for the maintenance or support of him or her, or his or her family, such Selectmen, or the major part of them, shall make a complaint in writing to the Judge of Probate for the county to which the person so spending, wasting or lessening his estate, doth belong; and if it shall appear to the said Judge of Probate, that the person complained of comes within the description of this Act, and has had due notice of the complaint exhibited against him or her, the said Judge of Probate shall appoint the said Selectmen, or the major part of them, or some suitable and discreet person or persons, guardian or guardians to such person.

Conveyances by spendthrifts after application for guardian to Judge, to be void in certain cases.

And whenever the Selectmen of any town or a major part of them, shall make application to the Judge of Probate for the appointment of a guardian to any person, who by excessive drinking, gaming, idleness or debauchery, is wasting his estate, and the Judge of Probate shall, by his decree, order notice to the person complained against, the complainants may file a copy of their said complaint, with the order of the Judge of Probate thereon, in the office of the Register of Deeds for the same county, or after the appointment of such guardian, if no such copy shall have been so filed as aforesaid. And in case a guardian shall be appointed by the Judge of Probate to the person complained against, all and every gift, bargain, sale or transfer of any real or personal estate, made by such person or persons, after the filing of the copy of said complaint and order of the Judge of Probate, with the Register of Deeds, shall be void and of no effect. And the guardian or guardians that may be thus appointed, shall, in discharging the duties of their appointment, pursue the same method, give like bond, and be under similar obligations for a faithful discharge of their trust, as guardians appointed for any idiot, lunatic, or for persons *non compos mentis*.

Guardians of spendthrifts, &c. subject to like duties, &c. as guardians to idiots, &c.

Feme sole, appointed guardian, to lose her authority by being married.

SEC. 54. *Be it further enacted,* That when a feme sole, shall be appointed by any Judge of Probate either by herself, or jointly with any other person or persons, guardian to any person either minor, idiot, *non compos*, distracted or lunatic; and after such appointment, shall marry, such mar-

riage shall not make the baron guardian in her right, but shall operate as an extinguishment or determination of such woman's power and authority.

SEC. 55. *Be it further enacted,* That any Judge of Probate may dismiss any guardian of a minor, idiot, *non compos* or lunatic person, or of persons who spend their estates by excessive drinking, idleness or debauchery, whenever it shall appear to the said Judge, to be necessary or expedient; and to appoint some other guardian in his place: *Provided always,* That no such guardian shall be dismissed as aforesaid, before he shall have had notice in writing, from said Judge, fourteen days at least before the time of hearing, to appear and show cause why he should not be so dismissed.

Judge may dismiss guardians when necessary.

SEC. 56. *Be it further enacted,* That before any guardian shall transfer or draw from any loan office, bank, insurance office or other corporation, any loan office certificate, or share in such bank, insurance office or other corporation, or any stock in any public fund, belonging to the ward of such guardian, it shall be the duty of such guardian to obtain license so to do, from the Judge of Probate of the county where such guardian has been or shall be appointed; and upon neglect thereof, such guardian shall be removed from office, and shall be considered as having forfeited his probate bond.

Guardians not to transfer stocks, &c. belonging to their wards without license from Judge of Probate.

SEC. 57. *Be it further enacted,* That in any case where the oath of an executor, administrator or guardian, is or may be required by law to be made personally before the Judge of Probate, to an inventory, or to any account which is to be settled by such Judge, and such executor, administrator or guardian, shall be unable by reason of sickness, bodily infirmity or otherwise, to attend before such Judge, it shall be lawful for such Judge by commission of *dedimus potestatem*, to authorize any disinterested Justice of the Peace to administer such oath, a certificate whereof shall be returned to such Judge, together with such commission and inventory or account and the vouchers to prove the same.

Judge may grant dedimus to administer oaths to executor, administrator, and guardians in certain cases.

SEC. 58. *Be it further enacted,* That all persons who are or may be constituted trustees of any estate, real, personal or mixed, belonging to minors or other persons, to whom

Trustees of estates of minors and others, appoint-

ed by will, to  
give bond to  
Judge.

Condition of  
such bond.

Provisions as  
to cases in  
which bonds  
shall not be  
required.

such estate has been or may be devised, in trust for such minors or other person, by the last will and testament of any person, shall, except in the cases hereinafter mentioned, give bond to the Judge of Probate of the county in which such last will and testament has been or shall be proved, approved and allowed, with sufficient surety or sureties within the State, in such sum as the said Judge shall order, conditioned for the faithful execution of such trust according to the true intent and meaning of the testator; and that the trustee shall make a true and perfect inventory of the real estate, goods and chattels, rights and credits of such minors or others, to be returned, filed and recorded in the Probate office of such county at such time as the said Judge shall order, and that the said trustee will annually render an account to the said Judge of the annual income and profits thereof; and at the expiration of such trust will adjust and settle his accounts with the said Judge, and will pay and deliver over all balances and sums of money or other property that may be due, and give possession of the other estate belonging to such minors or others with which such trustees may have been entrusted: *Provided nevertheless*, That no trustee, so long as he shall continue faithfully to execute the trust, shall be obliged to give bond as aforesaid, in any case in which the testator in his last will shall have directed or requested, that such bond should not be given, nor in any case, in which all the cestui que trusts being of full age, and legal capacity, shall signify to the Judge of Probate his or her request, that such bond should not be taken: *And provided also*, That no person appointed a trustee before the passing of this Act, and having entered upon the execution of the trust without having given bond as aforesaid, shall be obliged to give such bond, or be subject to any of the requirements of this Act, unless after being cited to appear before the said Judge upon complaint in writing, it shall appear to the said Judge upon a full hearing, that it is necessary that such bond should be given in order to secure the faithful execution of such trust: *And provided also*, That such bond shall not be required of any such trustee who entered upon the execution of his trust before the passing of an Act, entitled, "An Act requiring the trustees of the prop-



erty of minors and others to give bond in certain cases," made and passed on the twenty fifth day of February in the year of our Lord one thousand eight hundred and eleven, and who has continued and shall continue faithfully to execute his trust: *And provided also*, That nothing in this or in either of the following sections shall be construed to take away any of the powers which are now by law vested in the Supreme Judicial Court.

SEC. 59. *Be it further enacted*, That any person who has been, or shall be constituted a trustee as aforesaid, and who shall neglect or refuse to give bond as aforesaid, shall be considered as having declined the acceptance of such trust; and the trustee or trustees who may be appointed by the Judge of Probate as is hereinafter provided, shall and may thereupon be authorized to demand and receive of the trustees originally appointed as aforesaid, all such estate as may have come to their hands by virtue of such trust, and to manage, pay and deliver over such property to said minors and others, in the same manner and under the same restrictions, obligations and duties as guardians are now by law obliged to do.

Trustees refusing to give bond, how to be proceeded with.

SEC. 60. *Be it further enacted*, That any trustee appointed either by the testator as aforesaid, or by the Judge of Probate, shall upon request in writing to the said Judge be permitted to resign the trust, first accounting for, and paying and delivering over such estate as shall have come to his hands by virtue of such trust, to such other person as the said Judge shall appoint a trustee in his stead: *Provided always*, That no such resignation except in the case of an executor or administrator who shall succeed to such trust upon the decease of his testator or intestate, shall be accepted and allowed; unless it shall clearly appear to the said Judge to be expedient and proper.

Trustees in certain cases may resign.

SEC. 61. *Be it further enacted*, That in case any person who has been, or shall be appointed a sole trustee; or any two or more persons, who have been or shall be appointed joint trustees in any last will, no provision being therein made for perpetuating such trust, and such sole trustee or any one or more of such joint trustees shall decline the acceptance of the trust, or shall die either before or after having accepted

In certain cases of vacancy of one or more trustees by death or otherwise, Judge to appoint others in their places.

the trust, or shall neglect or refuse to comply with the provisions of this Act; the respective Judges of Probate shall, after notice to the cestui que trusts, appoint one or more suitable persons to be trustee or trustees in the place of the trustee or trustees, so dying or declining to accept as aforesaid; and any trustee or trustees appointed by the Judge of Probate shall be holden and bound by the provisions of this Act, in the same manner as if he or they had been so appointed in and by such last will; and the estate, so given in trust by such last will shall vest in the trustee or trustees so appointed by the said Judges of Probate, in like manner to all intents and purposes as the same vested in the original trustee or trustees under such last will.

Judge may remove trustees, whenever disqualified, or unsuitable, and appoint others.

SEC. 62. *Be it further enacted,* That when any trustee, appointed either by any testator or by any Judge of Probate, shall, in the opinion of the Judge of Probate, be disqualified for the discharge of the trust, by becoming *non compos mentis* or otherwise incapable or evidently unsuitable for the execution of such trust, it shall be lawful for the said Judge, after notice to such trustee, and the parties interested in the trust estate to remove such trustee, and to appoint and substitute another in his stead. And whenever any person shall be appointed and substituted as a trustee by the Judge of Probate as aforesaid in the place of any former trustee, who may either have been removed from office or have deceased, or have declined or resigned the trust as aforesaid, the person so appointed and substituted by the said Judge, shall give bond with sufficient surety or sureties, and shall be held to perform all the duties prescribed in the fifty eighth section of this Act: *Provided however,* That it shall be in the discretion of the said Judge to direct an inventory to be made and returned or not, by such new trustee, who in no manner whatever shall be deemed a trustee, or authorized to act as such, until such bond shall be given.

Trustees so substituted to give bond, &c.

Judge to require new bonds, when sureties are insufficient, on application of persons interested—after giving notice:

SEC. 63. *Be it further enacted,* That whenever the sureties in any bond given to the Judge of Probate, shall be evidently insufficient for the purposes of such bond, the Judge of Probate, on the petition of any person interested, and after due notice to the principal and sureties on such bond, shall have authority to require from time to time new

bonds with sufficient surety or sureties in the case; and whenever any surety or sureties on any bond given to the Judge of Probate, shall, at any time after six years from the date of such bond, petition the Judge of Probate, that he or they may be discharged from any further responsibility upon such bond, the said Judge after due notice to all persons interested, may in their discretion discharge such surety or sureties from all further responsibility on such bond, and the said principal or principals shall in all such cases be required to procure other sufficient surety or sureties upon such bond, or upon a new bond to be given to the Judge of Probate for the purpose. And if such principal or principals shall not within such time as shall be ordered by said Judge, give such new bonds as may be required by virtue hereof; he, she or they shall be removed from their trust, and some other person or persons shall be appointed in his, her or their stead.

and may require new sureties, if sureties apply, &c.:

and remove from their trust such as do not comply with such order.

SEC. 64. *Be it further enacted,* That any person aggrieved at any order, sentence, decree, or denial of any Judge of Probate in any county, may appeal therefrom to the said Supreme Court of Probate: *Provided,* Such appeal be claimed within one month from the time of making such order, sentence, decree or denial, and bond be given and filed in the Probate office by the appellant, within ten days after such appeal shall be claimed and granted, for the prosecution thereof to effect, at the next Supreme Court of Probate, and for paying all intervening costs and damages, and such costs as the said Supreme Court of Probate shall tax against him. And such appeal shall be taken notice of, and proceeded upon at the next term of the Supreme Judicial Court, which shall be holden next after the expiration of thirty four days after such appeal shall be made, within and for the county where such order, sentence, decree or denial was made; and the appellant shall file the reasons of appeal, in the Probate Court appealed from, within ten days after the bond is given, and shall serve the adverse party or parties with an attested copy of such reasons, fourteen days at least before the sitting of the said Supreme Court of Probate, at which the trial is to be had. And when it shall appear from the reasons of appeal, that the sanity of the testator, or the

Appeal allowed from all decrees, orders, &c. of Judge, to Supreme Court,

if claimed within one month, and conditions, &c. complied with.

When and how such appeals are to be prosecuted; and mode of trial, &c.

attestation of the witnesses in his presence, as the law directs, is the question in controversy, on any will or codicil, the said Supreme Court of Probate may for the determination thereof, direct a real or a feigned issue to be tried before a Jury in the same Court at the expense of the appellant, in case the issue be found against him. And in case the party or parties appealing fail in the prosecution of the said appeal to effect, then the adverse party or any person interested in the sentence or decree so appealed from, shall have the benefit of the same, by filing a complaint before the Supreme Court of Probate in like manner as is provided by law for affirming the judgment of the Circuit Court of Common Pleas, in the Supreme Judicial Court; and the Supreme Court of Probate may assess reasonable costs, in all cases that may be brought before them, by way of appeal, from the respective Judges of Probate, and grant execution therefor: *Provided always*, That any person beyond sea; or out of the United States, who shall have no sufficient attorney within the State at the time of such order, sentence, decree or denial, shall have one month after his or her return, or constitution of such attorney: to claim and prosecute an appeal as aforesaid.

Costs, how assessed; execution, &c.

Proviso. in favour of persons beyond sea, &c. as to privilege of appeal.

Supreme Court to grant appeal in certain cases on petition, after right of appeal is lost.

Limitation to one year for petition.

SEC. 65.: *Be it further enacted*, That whenever any person has been, or shall be aggrieved by any order, sentence, decree, denial or decision of any Judge of Probate in any county, and such person by accident, mistake or otherwise shall not have appealed to the Supreme Court of Probate agreeably to the provisions of law, the said Supreme Court of Probate upon petition to them, and after notice to the person or persons interested to support such order, sentence, decree, denial or decision, and upon its appearing that the petitioner has not lost his appeal by his own neglect, and that justice requires a revision of such order, sentence, decree, denial or decision, may grant an appeal therefrom, to be entered, heard and determined in the said Supreme Court of Probate: *Provided always*, That such petition shall be preferred within one year next after such order, sentence, decree, denial or decision shall have been made by such Judge of Probate.

SEC. 66. *Be it further enacted,* That whenever there shall be an appeal from any order or decree of any Judge of Probate of any county to the Supreme Court of Probate as aforesaid, and the appellant shall file in the Probate office, his reasons of appeal, and give bonds to prosecute the same to effect, according to law, and shall give notice thereof to the adverse party; in such case, all further proceedings, in consequence of such order, sentence, decree, denial or decision, shall be staid until a final determination shall be had thereon in the said Supreme Court of Probate.

Proceedings before Judge to be staid on appeal claimed, reasons of appeal and bond filed, &c.

SEC. 67. *Be it further enacted,* That any person aggrieved by any order, sentence, decree or denial of any Judge of Probate, upon any matter touching such trust as aforesaid, may appeal therefrom, as in any other case of an order, sentence, decree or denial of a Judge of Probate. And the Supreme Court of Probate and the Judges of Probate, respectively, may in their discretion award reasonable costs to either or both parties, in all those cases where justice shall require it, and shall grant execution therefor.

Appeal allowed from orders, decrees, &c. of Judge relating to trusts.

Power of Supreme Court as to costs in such cases.

SEC. 68. *Be it further enacted,* That the Judges of Probate of the respective counties shall have the same authority which the Courts of Common Law have upon petition to empower and license executors, administrators and guardians of minors or others, to sell the real estate of their testators, intestates and wards, respectively, for the payment of just debts and legacies, with incidental charges, and charges of administration; and such authority to sell shall extend as well to any real estate which is or may have been held by such testator or intestate in mortgage, and of which such executor or administrator shall have recovered seizin and possession, or which shall have been set off on execution to such executor or administrator for the use of the widow, heirs or devisees of such testator or intestate, as to the other real estate of such testator or intestate: first giving notice to all persons interested as by law required in case of petition for such licenses to said Courts of Common Law: *Provided,* That an appeal shall be allowed from any order, sentence, decree, denial or decision of any Judge of Probate, respecting any petition for such license in like manner as in other cases.

Judge of Probate may license executors, administrators and guardians to sell real estate for payment of debts, legacies and charges.

giving notice.

Appeal allowed on order for sale, &c.

Persons licensed to sell real estate in such cases—to make oath;

form of their oath.

SEC. 69. *Be it further enacted,* That every executor, administrator, guardian or other person, who shall have or obtain a license from any Court according to law, for selling real estate of any person deceased, or under guardianship, shall, previous to fixing upon the time and place of the sale of such estate, take the following oath or affirmation before the Judge of Probate, or before some Justice of the Peace; whose certificate thereof shall be returned to the Judge of Probate, to wit: "I A. B. do solemnly swear, (or affirm as the case may be) that in disposing of the estate lately belonging to \_\_\_\_\_, now deceased, (or under guardianship as the case may be) I will use my best skill and judgment in fixing on the time and place of sale; and that I will exert my utmost endeavours to dispose of the same in such manner as will produce the greatest advantage to all persons interested therein; and that without any sinister views whatever."

Suits on bonds to Judge of Probate to be brought in Supreme Judicial Court, and to be endorsed, for whose benefit, &c.

SEC. 70. *Be it further enacted,* That all suits brought in the name of any Judge of Probate upon a probate bond of any kind shall be originally commenced in the Supreme Judicial Court held within or for the county in which the said Judge of Probate shall belong. And the writ in addition to the usual endorsement of the name of the plaintiff or his attorney, shall also have the name of the person or persons, for whose particular use and benefit the suit is brought written thereon.

In suits on such bonds, when principal is out of State and not served with the process, Court may continue the suit, &c.

SEC. 71. *Be it further enacted,* That when any suit shall be brought on a probate bond, and the principal named in the bond is living and resident within this State, and shall not be named in the writ, or if named, shall not be attached or summoned to answer thereunto, it shall and may be lawful for the Court, at the request of the surety or sureties that may be attached or summoned thereby, to continue the same cause to the next term, or to some distant day in the same term, if, upon a consideration of the circumstances attending the suit, they shall determine such continuance reasonable or expedient; to the end such surety or sureties may purchase out a writ in such form as the same Court shall direct, for attaching the property, securing the person or summoning the principal to come in and become a party to the

suit; and in case the principal (after being attached or summoned upon such process fourteen days or more, prior to the time of his being directed to appear and answer) shall not appear and answer, the Court are hereby authorized and empowered to render judgment against him in the same way and manner they might have done, had such principal been duly named and legally summoned by the original writ which commenced the suit, and he had neglected to appear, or appearing had neglected to make answer thereto.

Judgment how to be rendered.

SEC. 72. *Be it further enacted,* That when the suit is instituted at the desire of a creditor of the deceased, such creditor must first have his debt or damages ascertained by judgment of Court, and likewise make it appear that a demand has been made of the administrator therefor; and that the administrator has refused or neglected to satisfy the same; or to show goods or estate of the deceased for that purpose.

Preliminary proceedings necessary when suit is to be instituted on Probate bond for benefit of creditor.

When the estate is insolvent, the creditor must produce a copy of the order of distribution of the estate of the deceased among the creditors, particularly specifying each creditor's claim, and the dividends they are severally entitled unto; and that a demand has been made of the administrator for his particular dividend; or the copy of a judgment recovered against the executor or administrator pursuant to the provision contained in the twenty-eighth section of this Act.

—when for creditor against insolvent estate.

When an heir has the suit brought for his part of the personal estate, he must exhibit a copy of the decree of the Probate Court, ascertaining its quantum; and that he has made a demand thereof upon the administrator. And when the administrator shall refuse or neglect to account upon oath for such property of the intestate as he has received, after he has been cited by the Judge of Probate for that purpose, execution shall be awarded against him for the full value of the personal property of the deceased that has come to his hands, without any discount, abatement or allowance for charges and expenses of administration or debts paid. And in cases where any administrators shall have received the personal property of an intestate, and shall not have exhibited upon oath a particular inventory thereof, execution shall be awarded against him for such a part of the penalty of his administration bond, as the Supreme Court of Probate

—when for heir for his distributive share.

Execution how to be awarded against administrator refusing to account for property of intestate.

—how to be awarded when administrator has received personal property not inventoried.

—recovery  
how to be dis-  
tributed.

Judgment and  
proceedings  
upon bonds in  
other cases.

Manner and  
form of judg-  
ments on ad-  
ministration  
bonds.

Proceedings  
in suits on  
bonds of trust-  
tees.

Penalty for re-  
fusing to ap-  
pear at Pro-  
bate Courts af-  
ter being cit-  
ed.

shall, on full consideration of all the circumstances of the case, judge reasonable; to be distributed among the parties interested, agreeably to the directions of law. The like judgment and proceedings (so far as they can with propriety take place) are to be had upon bonds of executors, guardians and others, given to the Judges of Probate Courts in their said capacity.

SEC. 73. *Be it further enacted,* That when it shall appear upon a hearing in chancery on an administration bond, for whose particular use and benefit the money for which execution issues is to enure, the judgment shall be rendered, that the plaintiff in his said capacity (naming him) now have execution for ~~the~~ being a part of the penalty forfeited and costs taxed at ~~the~~ for the use of A. B. of C. in the county of S. (addition) a creditor or heir of E. F. deceased (as the case may be.) And the person to whose use judgment shall be rendered in the name of the Judge of Probate as aforesaid, may sue out execution thereon, and have the same levied on personal or real estate, as he may find it necessary, and shall be deemed and taken to be the creditor, to every intent and purpose whatever. And when there are several persons to whose use the monies recovered on an administration bond are to enure, there shall be as many separate and distinct judgments, in form aforesaid.

SEC. 74. *Be it further enacted,* That any bonds given pursuant to this Act by any trustee, or trustees, may be put in suit by order of the Judge of Probate to whom the same shall have been given, for the benefit either of all or any of the minors or other persons interested in the estate given in trust as aforesaid; and the proceedings in such case shall be the same as in the cases of suits on other Probate bonds.

SEC. 75. *Be it further enacted,* That when any person shall be cited to appear as a witness before the Judge of Probate in any cause or hearing, and such person shall refuse to appear or give evidence, he or she shall be liable to the like penalty or damage as such person would be liable unto for refusing to appear or give evidence in any Circuit Court of Common Pleas.

[Approved March 20, 1821.]