

MAINE STATE LEGISLATURE

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PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

SIXTH LEGISLATURE,

AT ITS SESSION, HELD IN JANUARY, 1826.

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PUBLISHED AGREEABLY TO THE RESOLVE OF THE 28th OF JUNE, 1826.

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Portland.

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1826.

Land Agent, on sale of timber to require half of payment in cash and security for residue ;

SECT. 2. *Be it further enacted,* That in all cases where the Land Agent is authorized to sell land or timber, it shall be his duty, at the time of making such sale, to require payment of one third of the purchase money and sufficient security for payment of the residue to the State in three equal annual instalments with interest annually.

— and to cause debts to State to be collected.

SECT. 3. *Be it further enacted,* That it shall be the duty of the Land Agent to collect, or cause to be collected all sums now due and which may become due, in such manner as he may think most safe and expeditious, and to pay over the same to the Treasurer of the State, as soon as may be after it is collected.

Part of former act repealed.

SECT. 4. *Be it further enacted,* That the fourth section of the Act passed February twenty-fifth, one thousand eight hundred and twenty-four, to promote the sale and settlement of the public lands, be, and the same hereby is repealed.

Agent authorized to execute deeds in certain cases.

SECT. 5. *Be it further enacted,* That the Land Agent be, and he hereby is authorized to execute deeds in behalf of the State, conveying any lands which have been or may be granted by the Legislature, so soon as the grantees have complied with the conditions of their respective grants.

[*Approved by the Governor, March 8, 1826.*]

CHAPTER CCCXLVII:

AN ACT additional to "An Act regulating Judicial process and proceedings."

Powers & duties of Auditors appointed by Judicial Courts; and when to be appointed.

SECT. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if in any action, before the Supreme Judicial Court, or Court of Common Pleas, it shall appear, that an investigation of accounts, or an examination of vouchers is necessary, for the purposes of justice between the parties, the Court may, on the motion of either party, if made within the first four days of the term at which

the action is entered, or afterwards, with the consent of both parties, appoint an auditor or auditors to state the accounts between the parties; and the duty of auditors, so appointed, shall be to arrange the items of the accounts depending, consider the principles on which they depend, and examine the vouchers offered in their support, and as far as convenient to note the same in their statement; and make report to the Court, as soon as may be, for the purpose of aiding the Court in their direction of the cause. And if the parties agree that the auditor or auditors shall have power to examine witnesses and depositions, according to the principles of law, such power shall be expressed in the rule certifying their appointment; and in that case, their report shall be submitted to the Jury, to be by them considered, in connection with all other evidence adduced; and the Court shall allow a meet compensation to the auditor or auditors to be taxed in favor of the prevailing party, and cost for parties and witnesses in like manner as in references under a rule of Court; and witnesses shall be under the same obligations, when legally summoned, to attend and testify before auditors, as before arbitrators or referees. And unless witnesses shall certify under their hands in writing their travel and attendance in order that the same may be put on file and made up in the taxation of the costs of the party at whose request they have attended before any auditor, arbitrators, referees, Justice of the Peace, or other Court, they shall not be entitled to demand and recover their fees of said party.

Effect of Auditors' report;

their compensation.

Witnesses bound to attend before them;

their fees, &c.

SECT. 2. *Be it further enacted,* That the provisions of the thirteenth section of "An Act respecting executors, administrators and guardians, and the conveyance of real estate in certain cases," be, and the same are extended to all agreements in writing, signed by the testator or intestate, to convey any real estate, which he or she was prevented, by death, from completing;

Courts may authorize Executors, &c. to make deeds, in order to carry into effect agreements of testator, &c. in writing.

and whenever any real estate mentioned in the sixteenth section of said Act, shall not be necessary for the payment of debts, legacies, annuities or charges of administration, the same may be divided and distributed according to the rule of distribution provided in said section, by a committee to be appointed by the Judge of Probate, having jurisdiction of the settlement of such estate, directing like proceedings to be had as in the case of the division of the real estate of any deceased person, and of which he died seized, among his, or her heirs or devisees; or said Judge of Probate having determined it to be most for the benefit of the parties in interest, may license and authorize the administrator or executor of such estate to make sale and conveyance of the same in like manner, as of such real estate for the payment of debts, legacies, annuities, or charges of administration, and shall order distribution of the proceeds thereof as personal estate among the heirs or devisees.

Mode of distributing certain real estate of intestates and testators among heirs, &c.

S. J. C. to have concurrent jurisdiction with G. P. in actions between towns.

SECT. 3. *Be it further enacted*, That the Supreme Judicial Court, shall have original and concurrent jurisdiction with the Court of Common Pleas, in all actions between town and town.

Appeals regulated.

SECT. 4. *Be it further enacted*, That any party, aggrieved at the judgment of the Court of Common Pleas in any action, real or personal, in which an issue has been joined, and which was originally commenced in said Court, may appeal therefrom to the Supreme Judicial Court, next to be held in the county where such judgment shall be rendered; and the appellant shall recognize, with sufficient surety or sureties, in such sum as the Court may direct, to prosecute his appeal, and to pay all such costs as may be awarded against him in said suit after such appeal. And, if the plaintiff shall appeal, and on the final judgment, shall not recover greater debt or damages than were rendered for him in the Court of Common Pleas, the defendant shall recover against him such costs, as may arise after the

Appellant to recognize.

appeal, and shall have his execution for the same accordingly. And, if the defendant shall appeal, and the debt or damage recovered by the plaintiff in the Court of Common Pleas, shall be reduced, he shall recover his costs which may arise after the appeal. And, if the appellant shall fail to enter his appeal in the Supreme Judicial Court, the same Court may render such judgment for the appellee, as justice may require: *Provided*, That no stipulation, made by the parties in the Court of Common Pleas, reserving the right to waive the pleadings, shall be allowed, except in real actions, actions of replevin, and trespass *quare clausum fregit*, actions where the title to real estate comes in question, complaints for flowage, actions between towns, and in all other personal actions, in which the debt or damages demanded, exceed the sum of one hundred dollars; but the Supreme Judicial Court may order a repleader, or amendments, upon such terms and conditions, as to them may appear reasonable.

Reduction of damages.

Affirmation of judgment.

Waiver of former pleas and amendment restricted.

SECT. 5. *Be it further enacted*, That whenever a review is granted by the Supreme Judicial Court, and the plaintiff fails to enter the same at the next term thereof, the entry of such action of review may be allowed at the second term of said Court, holden after said review is granted; and the plaintiff shall be authorized to prosecute the same to final judgment.

S. J. C. may allow entry of writ of review at second term after granting.

SECT. 6. *Be it further enacted*, That, if any person shall be indicted for any capital offence, at any term, holden by one of the Justices of the Supreme Judicial Court, such Justice is hereby authorized to cause the person, so indicted, to be arraigned before the Court holden by him as aforesaid, and to render judgment, and to pronounce the sentence of the law, if the person arraigned shall voluntarily plead guilty; and if the person indicted shall plead not guilty to such indictment, such Justice, after designating counsel for the prisoner, and doing all things necessary and proper, preparatory for the trial, and assign-

In case of indictment for capital offence, one Judge may arraign; and may sentence if defendant plead guilty.

ing a day therefor, shall give notice to one or both of the other Justices of said Court, that he or they may attend the Court, at the same term, on the day assigned for the trial.

Tenants in common, &c. may join or sever in petitions for partition writs, &c.—& survivors may proceed in case of decease of either of parties.

SECT. 7. *Be it further enacted,* That tenants in common, tenants claiming under a common ancestor, parceners, and joint tenants all, or any two or more of them, may join or sever in petitions for partition, and in writs of entry, or writs of right: And whenever they join, and either of the petitioners or demandants shall decease, the Court, in which the petition or action may be pending, may allow the petition or writ to be so amended, as that the same may proceed to trial in the name of the survivor or survivors, for his or their share or shares.

Parts of former acts repealed.

SECT. 8. *Be it further enacted,* That the twenty-fifth section of the Act to which this is additional, and the fourth and seventh sections of an Act to establish a Court of Common Pleas, passed on the fourth day of February, one thousand eight hundred and twenty-two, be, and hereby are repealed.

[*Approved by the Governor, March 8, 1826.*]

STATE OF MAINE.

SECRETARY OF STATES' OFFICE,
PORTLAND, MAY 1, 1826.

I HEREBY CERTIFY, That the Laws contained in this pamphlet have been compared with the originals deposited in this Office, and appear to be correctly printed.

AMOS NICHOLS, *Secretary of State.*