

MAINE STATE LEGISLATURE

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PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

TENTH LEGISLATURE,

AT ITS

SESSION HELD IN JANUARY, 1830.

—◆—
Published agreeably to the Resolve of the 28th June, 1820.
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1830.

virtue of this act, shall have the same force and effect, and subject all the parties to the same consequences as if taken and sworn to in open court.

SECT. 3. *Be it further enacted,* That the fees of the justice for notice to the parties, and for taking the examination aforesaid, shall be the same as is provided by law in case of taking depositions.

[*Approved by the Governor, March 15, 1830.*]

Fees.



CHAPTER CCCCLXX.

AN ACT further to regulate the jurisdiction and proceedings of the Courts of Probate.

SECT. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That any person or persons interested in a probate bond, or in a judgment that may have been rendered on such bond, shall have a right to institute a suit thereon without applying to the Judge of Probate, to whom given or in favor of whom rendered, or his successor. And instead of endorsing on the writ for whose benefit the suit is brought, as is now provided, he or they instituting such suit, shall allege in the writ, his or their own name, place of abode and addition, and that the same is sued out by him or them in the name of ———, Judge of Probate, for the county of ———. And in case such suit is not sustained, the court before whom the same is pending, shall render judgment and issue execution for costs against such person or persons so instituting such suit; but no judgment shall be rendered against the Judge of Probate, whose name is made use of in the writ. And where the name, place of abode, and addition of the plaintiff in interest is not set forth in the writ as aforesaid, the same shall abate.

Probate bonds, suits on, to be in name of interested party. Judge not liable for costs.

SECT. 2. *Be it further enacted,* That the Judges of Probate, in their respective counties,

shall allow from and after the passage of this act, as fees to the several persons hereinafter mentioned as follows: to executors, administrators, guardians and trustees, one dollar for every ten miles travel to and from the court, and one dollar for each day's attendance, and in cases where legal counsel is necessary, a reasonable sum for professional aid shall be allowed by the Judge. To executors and administrators for their services in settling estates, and to guardians and trustees for their responsibility and services a commission not exceeding five per cent. on the amount of personal assets that may come to their hands; but in both cases to be at the discretion of the Judge, he having regard to the nature, liability and difficulty attending their respective trusts. *Provided*, That in no case shall the whole amount of commissions on the same assets exceed the rate aforesaid, though their respective accounts may have been rendered and settled at different times. To subscribing witnesses to wills on the Probate thereof, the same fees for travel and attendance, as are allowed to witnesses in the Supreme Judicial Court. To appraisers on estates, and to commissioners for receiving and allowing claims against insolvent estates, and to commissioners appointed to make division of estates, and for assigning and setting out widow's dower, a reasonable compensation shall be allowed, not exceeding two dollars per day for the time actually employed, including travel and expenses. Which fees to witnesses, appraisers, and commissioners, shall be paid by the executor, administrator or guardian, when they accrue, prior to the close of their administration or guardianship, and shall be allowed them respectively in the settlements of their accounts.

SECT. 3. *Be it further enacted*, That the respective Judges of Probate shall have power to appoint, at their discretion, appraisers as now provided by law, to be under oath, in all cases, when any estate shall come to the knowledge or posses-

Probate fees for Executors, administrators, guardians, appraisers, commissioners and witnesses of wills.

Warrant of appraisement to issue for 2d inventory; in such cases, and all warrants to appraise minors' estate to be returned as directed in the warrant.

sion of any executor, administrator or guardian, after he shall have returned an inventory into the probate office ; the warrant in such case, and in all cases for the appraisement of minor's estate, to be made returnable at such time as shall be therein directed.

SECT. 4. *Be it further enacted,* That the Judges of Probate for their respective counties, shall have power to grant license to guardians of minors, persons non compos, and spendthrifts, to sell the real estate of their wards, where necessary for the payment of debts and for their support, legal expenses and charges of sale, and may include in such license in anticipation of accruing expenses in cases of support, a sum not exceeding one hundred dollars. And where it shall be necessary for the purposes aforesaid, or for the payment of debts, that a guardian should be authorized to sell some part of the real estate of his ward, or that an executor or administrator should be authorized to sell some part of the real estate of testator or intestate, for the payment of debts or legacies, and by a partial sale the residue thereof would be greatly injured, the said Judges of Probate respectively, may authorize said guardian, executor, or administrator to sell and convey at public auction, or private sale, the whole of such real estate or such entire parts thereof as will not injure the residue ; said Judges observing the provisions of law respecting the granting of licenses for the sale of real estate. And every guardian, executor, and administrator, licensed to sell real estate, shall give notice of such sale as required by law, whether authorized to sell at public auction or private sale. *Provided,* The right to an appeal shall be allowed as in other cases.

SECT. 5. *Be it further enacted,* That Guardians of spendthrifts and of persons non compos mentis, may allow their wards, who have families, the use of such personal property as the Judge of Probate shall decide to be necessary for them and

License to sell real estate to be granted by Judge of Probate to guardians, for debts and maintenance may include \$100 in anticipation.

May grant license to sell the whole when partial sale would injure.

Notice of sale to be given whether sold at public or private sale.

Appeal secured.

Guardians of non compos, &c. may retain personal estate under direction of the Judge, and notwithstanding, be licensed to sell real estate

their families. And license may be granted to any such guardian to sell the real estate where necessary for the payment of debts or the support of their wards and families, notwithstanding there may be personal property reserved for the purpose aforesaid.

SECT. 6. *Be it further enacted,* That Executors, administrators, and guardians, shall in all cases of license obtained to sell real estate, prior to making such sale give bond with sufficient sureties to the Judge of Probate for the county, having jurisdiction of the settlement of such estate, that they will observe all the provisions of law for the sale of real estate by executors, administrators and guardians, and that the proceeds of the sale shall be truly applied and accounted for according to law.

Bonds in all cases to be given before sale.

SECT. 7. *Be it further enacted,* That executors shall be accountable for the personal property of their testators as appraised, so far as necessary for the payment of debts and legacies in the same way and manner that administrators are made accountable, and may apply for license to sell so much thereof as may be necessary for the purpose aforesaid, in like manner as is provided for administrators. And wherever an executor is a residuary legatee, the condition of the bond which by law is provided that he may give, to pay debts and legacies shall be so far altered, as to require that an inventory shall be returned as in other cases, and where such inventory shall be legally returned and the estate from any unexpected event, proves insufficient for the payment of debts, the same may be represented insolvent, and the executor, after having truly accounted for all the property and estate, in the same way and manner that administrators are required to, in cases of insolvency, he and his sureties shall be permitted to plead in bar, to any action that may be brought on his bond, such insolvency and settlement of the estate.

Exrs. may be licensed to sell personal estate when needed for payment of debts, &c.; if residuary legatee, may give bond to return inventory; if estate prove insolvent, may plead it in bar.

SECT. 8. *Be it further enacted,* That whenever by a decree of distribution to the creditors of any estate represented insolvent, it shall appear that the assets in the hands of the Executor or administrator are sufficient for the payment of the full amount of the claims allowed by the Commissioners; and there shall afterwards appear to exist other just claims against such estate, not laid before the commissioners, and the executor or administrator shall be apprehensive that there may not be sufficient property belonging to the estate to pay all such claims, together with the charges of administration, he may make representation thereof to the Judge of Probate, and it shall be his duty to issue another commission of insolvency, returnable in sixty days, and like proceedings shall be had thereon as in other cases—and the Judge of Probate shall upon another and final settlement of the administration account of such executor or administrator, which it shall be his duty to make within such time as the Judge shall direct, decree and order a distribution among such creditors in proportion to their several claims aforesaid, of the assets remaining after deducting the amount of the claims allowed by the first commission and charges of administration, the payment of which in full shall in no wise be prevented by such subsequent representation of insolvency and the proceedings thereon. *Provided however,* That no creditor of such estate, where there may have been a decree of distribution, founded upon a report of commissioners of insolvency as aforesaid, shall be entitled to have his claim allowed under such second commission, unless demand be made upon the executor or administrator for payment thereof, within three years next after his acceptance of his said trust, and he shall be in no wise liable to an action therefor after that time. And such second commission of insolvency shall not be issued unless the representation by the executor or administration herein provided for, be made

Estate represented insolvent proving to be solvent on return of claims, the creditors therein named to receive the full amount of their claims. Creditors not returned in the first commission may prove their demands under a second commission, and receive what of estate may remain after the payment in full of the first list of creditors and charges of Administration.

Proviso.

Limitation.

within one month after the expiration of the said three years.

SECT. 9. *Be it further enacted,* That whenever the executor, or administrator of any estate, shall pay to any creditor, heir or devisee of such estate, any sum exceeding thirty dollars, on account of a debt due from such estate, or in pursuance of a devise, or a decree of distribution among the heirs of such estate, he shall have a right before payment to require of every such creditor, heir or devisee, a bond in the sum so to be paid with reasonable and sufficient surety, conditioned to refund so much of the sum paid as aforesaid, as upon a final settlement of the estate, the same shall appear to exceed the proportion or amount to which such creditor, heir or devisee is legally and justly entitled. *Provided,* That such bond shall not be required when such payment is made under a decree of distribution to creditors. *And provided also,* That the bond herein provided for, shall not be required, unless the Judge of Probate, upon an examination into the circumstances of the estate shall so order and determine.

Bond may be required under the direction of Judge of Probate before payment of debts, legacy, or distribution share exceeding \$30. Vide, chapter 51 sec. 42.

SECT. 10. *Be it further enacted,* That every guardian, shall render and settle his account with the Judge of Probate in their respective counties once in three years, and as much oftener as cited by said Judge for that purpose, and on neglect or refusal to settle his account as aforesaid, it shall be deemed and held a breach of his bond and a sufficient cause for his removal from said trust, and he shall also forfeit his claim to an allowance for personal services, unless it shall appear to the Judge of Probate, that such neglect arose from sickness or other unavoidable accident.—And it shall be the duty of Judges of Probate on the settlement by any guardians of his account as aforesaid, if prior to his becoming legally discharged, to examine his guardianship bond, and if the sureties therein have become insufficient, or the same is insufficient in the penal amount, a new

Guardians to render accounts once in 3 years. Neglect of, a breach of bond unless, &c. their bonds to be then examined, new bonds may be required.

To be removed in case.

bond shall be required with such sureties as the Judge shall decide to be sufficient. And in case any guardian shall neglect to furnish such new bond within such time as said Judge shall order, he shall be removed and some other suitable person appointed in his place.

Guardians of spend-thrifts and non-compos, to give bond.

SECT. 11. *Be it further enacted,* That every guardian appointed to any idiot, non-compos or lunatic person, or to any spendthrift shall give bond to the Judge of Probate, with sufficient sureties, resident within the State for the faithful discharge of his trust, to render a true and perfect inventory of the estate, property and credits of his ward within three months, as appraised by three suitable persons under oath, to be appointed by the Judge of Probate, and to render a just and true account of his guardianship as often and whenever by law required, and at the expiration of his trust, to pay and deliver over all monies and property, which on a final and just settlement of his accounts shall appear to be remaining in his hands.

Former acts repealed.

SECT. 12. *Be it further enacted,* That all laws and parts of laws inconsistent with the provisions of this Act, be, and the same hereby are repealed.

[Approved by the Governor, March 16, 1830.]



CHAPTER CCCCLXXI.

AN ACT to prevent the destruction of Moose and Deer.

Penalty for killing moose or deer between Jan. 1st and Sept. 1st.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person shall, after the passing of this Act, between the first day of January and the first day of September, in any year, hunt and kill any Moose or Deer in this State, he shall forfeit and pay for every Moose or Deer, so killed, the sum of fifteen