

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

FORTY-SIXTH LEGISLATURE

OF THE

STATE OF MAINE.

1867.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1867.

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Remedy for neglect of such inspection and marking.

shall manufacture and sell within this state any such oil or burning fluid, without first causing it to be inspected and marked as aforesaid, or that has been so inspected and marked as unsafe for illuminating purposes, he shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment six months in the county jail.

Penalty for making sale without inspection and marking.

SECT. 4. No person shall sell any such oil or burning fluid without first causing each cask or vessel of the same to be duly inspected and marked as aforesaid, unless it has already been so inspected and marked in this state or elsewhere; and if any person shall sell such oil or burning fluid that has not been so inspected and marked, or that has been so inspected and has been marked as unsafe for illuminating purposes, he shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the county jail six months.

Prosecutions by indictment.

SECT. 5. All prosecutions under the second, third and fourth sections of this act shall be by indictment.

Right and duty of selectmen of towns and of mayor, aldermen and police of cities.

SECT. 6. The selectmen of towns, and the mayor, aldermen and police of cities, or any one of them, shall have the right at all times to examine all such oils and fluids kept in their respective cities and towns for sale, and to cause the same to be inspected and tested; and it shall be their duty to do so in all cases where they are informed or believe such oils or fluids are kept for sale in violation of law; and whenever they shall find any person keeping or selling any such oil or fluid in violation of the provisions of this act, it shall be their duty to cause such persons to be prosecuted therefor.

SECT. 7. This act shall take effect on and after the first day of June, eighteen hundred and sixty-seven.

Approved March 1, 1867.

Chapter 128.

An act to provide for the restoration of the records of the court of probate for the county of Cumberland.

WHEREAS, the records and files of the probate court for Cumberland county were wholly destroyed by the calamitous fire in the city of Portland, on the fourth day of July last,

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

Original letters of administration or guardianship or any licenses, &c.,

SECT. 1. Executors, administrators, guardians, assignees and testamentary trustees, or their representatives, having in their possession any original letters of administration or guardianship, or any licenses or other papers, issued under the probate laws from

said court before the fourth day of July, eighteen hundred and sixty-six, may present such original papers to the judge of the court at any regular session, and the register shall thereupon record the same, as the judge shall direct. Such papers may also be presented by any other person interested, to be recorded in like manner. After such record the originals may be received again by the person presenting the same.

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may be recorded as judge may direct.

SECT. 2. Duly authenticated copies of any will and of the probate thereof, which was admitted to probate in said court and recorded before the day aforesaid, may be presented to the judge in like manner by the person officially in possession of the same, or his representative, or by any other person interested; and the same, together with the certificates of authentication, shall be recorded anew by the register.

Authenticated copies of wills and probate thereof, may be recorded anew.

SECT. 3. Duly authenticated copies of the record of any other instrument or paper which had been recorded in the registry of said court before the day aforesaid, may be presented to the judge in like manner, and the same shall be recorded anew.

Authenticated copies of the record of other instruments, &c., may be recorded anew.

SECT. 4. Upon the petition of any person interested, if the judge shall be satisfied that any important subsisting interests require that any instrument, paper or copy of record, mentioned in the three preceding sections, should be so presented and recorded, he may issue a citation to any person alleged, with reasonable cause, to be the holder thereof, requiring him to present the same, or show cause to the contrary. If the person cited shall not appear, after proof of personal notice, or if upon his appearance he shall neglect or refuse to perform the order and decree of the court, the judge may commit him to the common jail of the county, there to remain until he shall be discharged by the judge of probate, or by some justice of the supreme judicial court. Instruments, papers and copies procured under any such citation shall be recorded anew as hereinbefore provided.

The holder of any instrument, paper or copy of record may be required to present the same or show cause to the contrary.

The person cited to present such papers may be committed on refusal to comply with order of court.

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

Effect of records made under preceding sections.

SECT. 6. Any paper purporting to be a copy, but not duly authenticated, of any will alleged to have been admitted to probate in said court before the day aforesaid, may be presented to the judge in like manner by any person interested, upon his written petition praying that such copy may be verified and established as the will of the testator. Any person interested under such a will, alleging upon his belief, that a copy of the same exists, but that the same cannot be obtained except by the aid of legal process, may present his petition to the judge praying for a time to be appointed for a hearing thereon, and for the verification and establishment of such copy, when produced, as the will of the testator.

How copies of wills not duly authenticated may be established as will of testator.

CHAP. 128. The petitioners may summon any person by subpoena duces tecum, issued by the register of probate, to appear at such time and produce such alleged copy. For disobedience of such summons in any manner, the person summoned shall be liable as for the like offence in any court. Every petition presented under this section shall be supported by the oath of the petitioners taken before the judge or register of probate, or some justice of the peace. Upon all such petitions the judge shall order such notice as is required by law upon the probate of original wills, and such other notice as he may deem suitable. Upon the return of such notice in any case, if the judge shall determine that the allegations and prayers of the petition are sustained and warranted by the proofs exhibited, he shall decree that such copy be established as the will of the testator, or that such statement be established as the substance of the will of the testator, and shall order the same to be recorded. Such record and certified copies of the same shall be prima facie evidence in any court of the contents of such will, or of the substance of the same, and admissible as secondary evidence thereof.

Record and certified copy thereof, to be prima facie evidence, &c.

New bonds may be given to judge of probate voluntarily.

Consequence of failure to give new bond when required.

Forms and conditions of new bond, and rights and remedies thereon.

Sale of real estate not to be made hereafter on licenses granted prior to July 4, 1866.

SECT. 7. Any person who, before the day aforesaid, had given bond to the judge of probate as executor, administrator, guardian, assignee, trustee or surviving partner, may voluntarily give a new bond in the like capacity, and for like purposes, in such penal sum and with such sureties as the judge requires. Any person interested under the original bond may have a citation from the judge of probate to the principal in such bond, requiring him to appear and show cause why a new bond should not be given. Personal notice shall be given to such principal, and such notice, under this and the preceding clause of this section, to other parties interested as the judge shall direct. If the person cited shall not appear, or if upon his appearance and after a decree of the court requiring him to give a new bond, he shall neglect for the space of fourteen days to give the same, he shall thereupon by a proper decree of the court, cease to have any authority in the capacity or for the purpose for which his original bond was given, and shall be removed from his office, but shall remain liable for his preceding acts or neglect, and for all property and effects held by him in his official capacity, until he shall have fully accounted for and paid over the same according to law. The forms and conditions of new bonds to be given under this act, may be prescribed by the judge of probate, conforming the same as nearly as may be to the provisions of law in analogous cases; and all parties interested under such new bonds may have such rights and remedies thereon, as are provided by law in case of other probate bonds.

SECT. 8. From and after the time that this act shall take effect, no sale of real estate shall be made under any licenses granted by the court before the fourth day of July, eighteen hundred and sixty-six.

SECT. 9. Any executor, administrator, guardian, trustee, assignee or surviving partner, who had returned an inventory before the day aforesaid, may apply to the judge for a warrant of appraisal, for a new inventory to be returned by him, of all the property and assets belonging to the estate, which he represents, not before lawfully disposed of. The judge shall prescribe a time, at which such new inventory and appraisal shall be returned, and shall require the applicant to return, at the same time, a copy or an abstract as nearly may be, of the original inventory, and of all preceding inventories of the same estate, together with a copy or an abstract as nearly as may be, of the last preceding account, settled by such applicant, before the day aforesaid. The judge may, in his discretion, order notice of the time appointed for such returns, to all parties interested.

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New inventories may be filed.

SECT. 10. Any persons interested may apply to the judge, for a citation to any such executor, administrator, guardian, trustee, assignee or surviving partner, requiring him to make and present such new inventory, copy or abstract of preceding inventories, and copy or abstract of such last account, after notice as provided in the preceding section. If the person cited shall not appear, or shall fail to comply with the decree of the court, the judge may remove him from his office or trust, without further notice; and shall have like power to remove any person failing to make returns, as required in the preceding section.

Consequence of failure to file new inventory, &c., when required.

SECT. 11. All the inventories and copies or abstracts returned under the two preceding sections, shall be verified by oath of the persons returning the same; and if the judge shall be satisfied that such copies or abstracts of prior inventories and accounts, are substantially true, he shall order the same to be recorded. Such record and certified copies thereof, shall be prima facie evidence in any court, of the contents of such inventories, and of the contents and settlement of such accounts.

Inventories and copies or abstracts under two preceding sections verified by oath, may be recorded. Record and certified copies thereof to be prima facie evidence, &c.

SECT. 12. The representatives of any deceased executor, administrator, guardian, trustee or surviving partner, may do, and may be required to do, whatever is required in the three preceding sections, except the making and returning of new inventories.

Rights and duties of representatives of deceased executors, &c.

SECT. 13. In any case, where before the day aforesaid, a warrant for appraisal for the making of an inventory had been issued, but not returned, such return may now be made; and the warrant and inventory so returned shall be accepted by the judge, as in other cases, and recorded, subject to the rights of any parties interested. In any case, where, before the day aforesaid, such warrant had been ordered, but not issued, a new warrant for the like purpose may be issued, and the return thereof, with an inventory, if made, and duly verified, at any time within three months from the passage of this act, shall excuse the party for any previous omission to return the same.

Warrants for appraisal issued prior to July 4, 1866, what proceedings authorized thereon.

When a new warrant may be issued.

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Final account,
how verified
and estab-
lished.

SECT. 14. Any person, who before the day aforesaid, had settled a final account of any administration or trust, and had fully and lawfully disposed of all assets in his hands, may present to the judge a copy or abstract, as nearly as may be, of such final account, and request to have the same verified and established. The judge may, in his discretion, order such notice as he deems suitable, and upon the hearing of such application, if he shall be satisfied that such copy or abstract is substantially true, he shall decree that the same be established and recorded. And such record and duly certified copies thereof, shall be prima facie evidence of such account and of the settlement thereof, as provided in the eleventh section of this act.

All remedies
saved under
probate bond
given prior to
July 4, 1866.

SECT. 15. Nothing in this act contained shall prevent any person interested under any probate bond, given before the day aforesaid, from having and prosecuting any remedies therein, to which he is entitled under the general laws of this state.

Proceedings
authorized in
case of insol-
vent estates.

SECT. 16. In case of any insolvent estate, where the report of commissioners had been returned before the day aforesaid, but no distribution had been decreed, or such decree had been made, but no order for payment issued, the judge, upon the application of the executor or administrator, or of any person interested, after such public notice, as he shall deem suitable, shall hear the parties, upon the proofs they shall exhibit, of the contents of such report, and shall determine and establish the claims to be allowed and paid, according to the proofs so given. The register of probate shall make a schedule of the claims so established, and a decree for distribution and order of payment thereof shall be made by the judge; subject, however, to the rights of any party, under pending appeals, or of creditors holding contingent claims, as now provided by law.

Recitals in
deeds, prima
facie evidence.

SECT. 17. Recitals in deeds recorded before the day aforesaid, of any proceedings had in the court of probate for Cumberland county, shall be prima facie evidence of such proceedings, in all cases, where such deeds are admissible in evidence for other purposes.

Register of
probate, his
duty relating
to certificates,
records and
indexes.

SECT. 18. The register of probate shall certify upon the record of all instruments, copies and papers, for the record of which, provision is herein made, that the same are recorded under the act of eighteen hundred and sixty-seven. He shall make suitable indexes of such records in such form as the judge shall direct, and shall employ such assistants as may be necessary, to make up and complete these records, without delay.

Judge of pro-
bate allowed
extra compen-
sation of \$500
annually for
three years.

SECT. 19. The judge shall be allowed in addition to his salary, as compensation for the duties required of him under this act, the sum of five hundred dollars annually, for the term of three years from and after the first day of January, eighteen hundred and

sixty-seven, to be paid to him quarterly by the county treasurer. The register shall be allowed in addition to his present salary, the sum of fifteen hundred dollars annually for the same term of time, and to be paid to him in like manner, by said treasurer, in full compensation for all his expenses of clerk hire and other assistance under this act. And he shall give such additional bond, as the county commissioners may require, for the prompt and faithful performance of the duties of his office.

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Register of probate allowed \$1,500 per annum for same time.

SECT. 20. The judge of probate shall have discretionary power to allow fees to parties in proceedings before him under this act, corresponding to the probate fees now established by law, for analogous cases. In contested cases, he shall have like discretionary power to allow costs to the prevailing party. In all cases where he shall require notice to be given, he may order the cost of such notice to be paid out of the estate.

Allowance of fees and costs by judge of probate.

SECT. 21. Appeals may be taken from any decree of the judge made under the provisions of this act, in the same manner and under the same limitations as are provided by law in case of other probate appeals. The supreme judicial court shall be authorized to establish such rules as it may deem expedient for the summary hearing and determination of such appeals, and may require all testimony upon such appeals and arguments thereon to be taken and presented in writing, and submitted to the court at special times to be appointed.

Appeals may be allowed.

S. J. C. may establish rules, &c.

SECT. 22. This act shall take effect when approved by the governor.

Approved March 1, 1867.

Chapter 129.

An act to provide for a state police in certain cases.

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

SECT. 1. There shall be an officer to be called the constable of the state, who shall be commissioned to hold said office for the term of two years, unless sooner removed. He shall be appointed, and his salary shall be fixed, by the governor and council.

State constable to be appointed for two years. Salary of, how fixed.

SECT. 2. The said constable, on application of ten or more legal voters in any city or town in this state, if he shall be satisfied that the local authorities fail to enforce any law of this state therein, and that the public good requires it, may appoint one or more deputies, resident in the county in which such city or town is situated. But the number of deputies in any one county shall in no case be more than ten. And the number shall not exceed thirty, at any one time, in the whole state. And any deputy may at any time be removed by said constable or by the governor and council.

May appoint deputies.