

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FORTY-EIGHTH LEGISLATURE

OF THE

STATE OF MAINE.

1869.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1869.

Chapter 8.**CHAP. 8.**

An act in addition to and in amendment of chapter sixty-three of the revised statutes.

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

SECT. 1. Courts of probate in this state are courts of record. The seal of the judge is the seal of the court; and the register of the same court has custody of said seal.

Probate courts declared courts of record.

SECT. 2. In case of the sickness, absence from the state, or inability of the judge of probate in any county, to hold the regular terms of his court, the judge of probate of any other county, at the request of the judge or register of probate for the county where the emergency arises, may hold any regular term of such court, and his orders, decrees and decisions, shall have the same force and validity as if made by the judge of said county.

In case of inability of the judge in any county to hold court, any other probate judge upon request may hold said court.

SECT. 3. The second section of chapter sixty-three of the revised statutes is amended so as to read as follows :

R. S., chap. 63, sect. 2, relating to officers to serve processes, amended.

'Sect. 2. Sheriffs and their deputies, coroners and constables, shall serve and execute all legal processes directed to them by any judge of probate; and such judge may, when he deems it necessary, require any such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which attendance the officer shall be entitled to be paid as in other courts for similar services; and any person summoned before the judge as a witness, refusing to appear and give evidence, is liable to the same penalties and damages, as for such refusal before the supreme judicial court.'

SECT. 4. The tenth section of the same chapter is amended by inserting after the word "judge," the words 'or register;' and all oaths described in said tenth section, except to the truth of accounts rendered, may be administered by the judge or register of probate, or any justice of the peace.

R. S., chap. 63, sect. 10, relating to person before whom oaths are to be made, amended.

SECT. 5. The fourteenth section of the same chapter is amended by striking out all after the word "allowed," near the end of said section, and inserting the words 'and such orders and decrees of the judge, and other matters, as he directs.'

R. S., chap. 63, sect. 14, relating to duties of registers, amended.

SECT. 6. The nineteenth section of the same chapter is amended so that it shall read as follows :

R. S., chap. 63, sect. 19, relating to supreme court of probate and appeals thereto, amended.

'Sect. 19. The supreme judicial court is the supreme court of probate, and has appellate jurisdiction in all matters determinable by the several judges of probate; and any person aggrieved by any order, sentence, decree or denial, of such judges, except the appointment of a special administrator, may appeal therefrom to the supreme court, to be held within and for the same county, if he claims his appeal within twenty days from the date of the proceeding appealed from; or, if at that time he was beyond sea, or

CHAP. 9.

out of the United States, and had no sufficient attorney within the state, within twenty days after his return, or constitution of such attorney.'

R. S., chap. 63, sect. 20, relating to filing of bond and reasons of appeal by the appellant, amended,

SECT. 7. The twentieth section of the same chapter is amended so as to read as follows :

'Sect. 20. Within the time limited for claiming an appeal, the appellant shall file, in the probate office, his bond to the adverse party, or to the judge of probate for the benefit of the adverse party, for such sum, and with such sureties, as the judge approves ; conditioned to prosecute his appeal with effect, and pay all intervening costs and damages, and such costs as the supreme court taxes against him ; and within said limited time he shall also file in the probate office the reasons of appeal ; and fourteen days at least before the sitting of the appellate court, shall serve all the other parties, who appeared before the judge of probate in the case, with a copy of such reasons, attested by the register of probate ; but in case of controversy between a person under guardianship and his guardian, the supreme court may sustain an appeal on the part of the ward without such bond.'

R. S., chap. 63, sect. 24, relating to the time of hearing the appeal and order thereat, amended.

SECT. 8. The twenty-fourth section of the same chapter is amended so as to read as follows :

'Sect. 24. Such appeal shall be cognizable at the next term of the supreme court, which is held after the expiration of thirty-four days, after the date of the proceeding appealed from, and said court may reverse or affirm, in whole or in part, the sentence or act appealed from ; pass such decree thereon as the judge of probate ought to have passed ; remit the case to the probate court for further proceedings ; or take any order therein that law and justice require ; and if, upon such hearing, any question of fact occurs, proper for a trial by jury, an issue may be formed for that purpose under the direction of the court and so tried.'

Approved February 3, 1869.

Chapter 9.

An act additional to chapter eighty-seven of the revised statutes.

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

Limitation of actions against executors and administrators upon claims against their testators and intestate.

No action shall be maintained against an executor or administrator, upon any claim against the estate of his testator or intestate, unless such claim has been presented in writing to such executor or administrator, and payment thereof demanded, at least thirty days before the commencement of said action.

Approved February 3, 1869.