

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

115-

OF THE

FORTY-NINTH LEGISLATURE

OF THE

STATE OF MAINE.

1870.

Published by the Secretary of State, agreeably to Resolves of June 28, 1820,
February 26, 1840, and March 16, 1842.

AUGUSTA:
SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.
1870.

PUBLIC LAWS
OF THE
STATE OF MAINE.
1870.

Chapter 111.

CHAP. 111.

An act to amend chapter eighty-one of the revised statutes, concerning the commencement of civil actions.

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

SECT. 1. So much of section twenty-eight of chapter eighty-one of the revised statutes, as authorizes attachments of estates for a term of years, to be preserved by recording the same in the office of the town clerk, is repealed; and such attachments shall be recorded in the office of the registry of deeds, like attachments of other interests in real estate.

R. S., chap. 81, sect. 28, relating to attachment of real estate, amended.

SECT. 2. This act shall take effect when approved.

Approved March 5, 1870.

Chapter 112.

An act additional to and amendatory of "an act establishing the times of holding the several terms of the supreme judicial court," approved February twenty-eight, one thousand eight hundred and sixty-seven.

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

SECT. 1. In addition to the terms now provided by law, the supreme judicial court shall be held annually, by one of the justices thereof, in the county of Oxford, at Paris, on the first Tuesday of December.

Terms of the supreme judicial court for Oxford county.

SECT. 2. This act shall take effect when approved.

Approved March 7, 1870.

Chapter 113.

An act additional further regulating probate courts and proceedings.

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

SECT. 1. In case of the death of any judge of probate, the judge of another county may, at the request of the register of the vacant county, hold all necessary terms of the probate court in that county until the vacancy is filled.

During a vacancy any judge of probate may preside at the request of the register.

SECT. 2. The third section of chapter sixty-three of the revised statutes is amended so that the last clause shall read as follows: 'And in case of the absence of the judge or vacancy in the office at the time of holding any court, the register may adjourn the same

R. S., chap. 63, sect. 3, relating to the holding of probate court, amended.

CHAP. 113. by posting notice thereof at the probate office until the judge can attend, or some other judge can be notified and attend.'

R. S., chap. 63, sect. 16, relating to vacancy in office of the register, amended.

SECT. 3. The same chapter is amended by adding at the end of section sixteen: 'when, by reason of death or other cause there is a vacancy in the office of register, and the records are incomplete, they may be completed and certified by his successor or by the person appointed to act as register.'

R. S., chap. 64, sect. 1, relating to the custody of wills, amended.

SECT. 4. Chapter sixty-four of the revised statutes is amended, so that the last three lines of the first section shall read as follows: 'until he delivers the will, or is released by the judge, or otherwise by order of law; and he shall also be liable to the action of any party for the damage sustained by such neglect.'

R. S., chap. 64, sect. 3, relating to the probate of wills, amended.

SECT. 5. The same chapter is amended by adding, at the end of the third section, 'or in the cases described in the preceding section, upon the depositions of one or more of them, substantiating the facts.'

R. S., chap. 64, sect. 41, relating to what may be omitted in the inventory, amended.

SECT. 6. The same chapter is amended in the second specification of section forty-one, so as to read as follows: 'The wearing apparel of the deceased, not exceeding one hundred dollars in value if he left a widow and minor children or either, in which case they shall be entitled to such apparel.'

R. S., chap. 65, sect. 13, relating to distribution of personal estates, amended.

SECT. 7. Chapter sixty-five of the revised statutes is amended by adding at the end of section thirteen, 'and when additional personal property belonging to said estate comes to the knowledge of the judge after an allowance has been made, he may make a further allowance from such additional property.'

R. S., chap. 65, sect. 16, relating to an allowance to husbands, amended.

SECT. 8. The same chapter is amended so that section sixteen shall read as follows: 'Upon the decease of a wife whose estate is solvent, the judge may make an allowance to her husband from her personal estate, in the same manner as to a widow from the estate of her husband.'

R. S., chap. 65, sect. 23, relating to sale of lands held in mortgage, amended.

SECT. 9. The same chapter is amended in the twenty-third section by striking out all after the words "probate court," and inserting 'in the same manner as personal estate of the deceased; and the judge may, if he deems it necessary, require due notice to be given before granting such license, and also an additional bond from the executor or administrator.'

R. S., chap. 66, sect. 11, relating to appeals, amended.

SECT. 10. Chapter sixty-six, section eleven, is amended, so as to read as follows: 'The claimant, the administrator, an heir at law or any creditor may appeal from the decision of the commissioners, by giving written notice thereof at the probate office within twenty days after their report is made. If the appellant is an heir at law or creditor other than the claimant, he shall file in the probate office with his notice of appeal a bond to the claimant with sureties, to the satisfaction of the judge, for the payment of all costs awarded against him. When the appeal is made by

any party other than the claimant, he is to give notice to the claimant within thirty days, by service of a copy, attested by the register, on him, his agent or attorney, personally or by leaving it at his last and usual place of abode, if any within the state; otherwise, notice is to be given as the judge directs.'

SECT. 11. The same chapter is amended, so that section eighteen shall read as follows: 'Claims not presented, and claims disallowed, without appeals taken, are forever barred from recovery by suit. Claims disallowed cannot be filed and proved in set off, except to the amount of counter claims on behalf of the estate. But when after distribution, further assets come into the hands of the administrator, claims not presented to the commissioners, on petition to the judge of probate, and after due notice, if proved or not disputed, may be allowed and paid as provided for contingent claims.'

R. S., chap. 66, sect. 18, relating to the barring of certain claims, amended.

SECT. 12. Chapter sixty-seven of the revised statutes, section two, is amended, so that a minor having a guardian can nominate another only when the present guardian was appointed before the minor was fourteen years of age.

R. S., chap. 67, sect. 2, relating to nomination of guardians of minors, amended.

SECT. 13. The same chapter is amended in section fifteen, so that a judge of probate may grant license to guardians to sell stocks and other property of their wards named in said section, and invest the proceeds in other stocks or property, with or without notice, as the judge may deem necessary.

R. S., chap. 67, sect. 15, relating to sale of wards' estate, amended.

SECT. 14. Chapter fifty-nine of the revised statutes, is amended, by adding at the end of section twenty-seven: 'When the parents have abandoned the child and ceased to provide for its support, the consent of the guardian, next of kin, or some person so appointed, shall be sufficient to authorize the adoption.'

R. S., chap. 59, sect. 27, relating to adoption of children, amended.

SECT. 15. The same chapter is amended, by adding at the end of the twenty-ninth section, as follows: 'And the judge of probate, on the death of either of his adoptors, may make a reasonable allowance to said child from the personal estate of the deceased, if the circumstances of the case demand it.'

R. S., chap. 59, sect. 29, relating to legal effect of adoption, amended.

SECT. 16. Chapter sixty-nine of the revised statutes, is amended, by adding the following section:

R. S., chap. 69, relating to estates of deceased partners, amended.

'Sect. 6. The person filing such bond may apply for commissioners on disputed claims, with like proceedings and effect as in case of administrators or executors; or, if the partnership estate appears to be insufficient to pay the partnership debts, he may represent it to be insolvent, commissioners may be appointed, claims proved and allowed, and the partnership assets distributed to pay such as are allowed, and like proceedings shall be had as are prescribed in chapter sixty-six, so far as applicable, and with like effect. Nothing herein shall invalidate the right of claimants to recover from the surviving partner or the estate of the deceased

CHAP. 113. partner any balances due them after the partnership property is exhausted. When, in cases heretofore arising, such proceedings have been had, they shall be held valid.

R. S., chap. 71, sect. 1, relating to cases where judges of probate may license sales and exchanges of real estate, amended.

SECT. 17. Chapter seventy-one of the revised statutes, is amended in the first section by striking out the second, third and fifth specifications, and inserting as follows: 'Second, Of the friends or guardians of minors and other incapacitated persons, that the guardians, or some other suitable persons may be authorized to sell real estate of their wards, or any trees or timber standing thereon, for the payment of debts, expenses of sale and of guardianship, and for the support of their wards, and to provide a reasonable sum in anticipation of accruing expenses, when there is not sufficient personal property therefor, exclusive of such as the judge may deem proper to reserve for the use of said wards; or to sell the same and place the proceeds at interest; or to sell it for two or more of these purposes; or to lease such real estate for any term of years, or exchange it for other real estate, when it clearly appears that such sale, lease or exchange would be for the benefit of the wards. But when licensed to be sold in order to place the proceeds at interest, any part thereof may be used for the support of the wards if it becomes necessary.'

Guardian as well as husband of an insane wife, may be licensed to sell.

SECT. 18. The same section is amended in the sixth specification, so that the guardian as well as the husband of an insane wife may be licensed to sell her rights of dower and other property.

R. S., chap. 71, sect. 1, amended, by adding additional specification.

SECT. 19. The same section is amended by inserting at the end of the section the following additional specification: 'Ninth, Of a part or all of the heirs living in different states, of a person deceased, who left real estate in this state undevise, the owners of which cannot dispose of their separate interests without loss, that the executor, administrator or other suitable person be authorized to sell such estate, and distribute the proceeds, after paying expenses, amongst such heirs, according to their respective rights therein; unless any owner objects to such sale, after public notice, the first publication to be thirty days prior to the hearing, or longer if the judge deems it necessary; the share of any absent owner to be placed on interest until called for by him or his legal representatives.'

R. S., chap. 71, sect. 5, relating to giving of notice previous to granting license, amended.

SECT. 20. The fifth section of the same chapter is amended by inserting after the words "real estate," in the second line, the words 'of the value of more than fifty dollars,' so that no license shall be granted for the sale of any such real estate of the value of more than fifty dollars, without consent or notice as provided in said fifth section.

R. S., chap. 103, sect. 17, relating to dower, amended.

SECT. 21. Chapter one hundred and three of the revised statutes is amended by striking out the last clause of section seventeen, and inserting as follows: 'The husband of a deceased wife whose

estate is solvent, shall have the use for life of one-third of her real estate, to be recovered and assigned in the manner and with the rights of dower, and shall have the same right to waive any provision made for him in her will, that a widow has with regard to her husband's will. When a husband or wife dies intestate, leaving no issue, and the estate is solvent, the survivor shall have the use for life of one-half of the real estate of the deceased, to be recovered and assigned in the manner and with the rights of dower.'

SECT. 22. Chapter one hundred and fifteen of the revised statutes is amended in the third section, so that registers of probate shall be required to furnish without compensation one copy of each will proved, but not of other documents.

R. S., chap. 116, sect. 3, relating to fees of register for copies, amended.

SECT. 23. Chapter nine of the public laws of eighteen hundred and sixty-nine is amended by adding at the end thereof the following words: 'and within two years after notice is given by the executor or administrator of his appointment.' Nothing in this section shall effect pending actions.

Public laws 1869, chap. 9, relating to limitation of actions against executors and administrators, amended.

SECT. 24. The second section of chapter one hundred and ten of the public laws of eighteen hundred and sixty-two, is hereby repealed.

Public laws 1862, chap. 110, repealed.

SECT. 25. Chapter two hundred and twelve of the public laws of eighteen hundred and sixty-three, is amended, by inserting at the end of the second section, 'and such executor or administrator may assign the mortgage and debt, and the purchaser shall have the same rights and liabilities as the purchaser of personal property sold under license of the probate court.'

Public laws 1863, chap. 212, sect. 2, relating to sale of real estate held by executor or administrator in mortgage, amended.

SECT. 26. The first section of chapter seventy-five of the revised statutes, is amended, by striking out the sixth specification, and inserting the following: 'Sixth, When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent, and the issue of those deceased; in equal shares if all are of the same degree of kindred, otherwise according to the right of representation.'

R. S., chap. 76, sect. 1, relating to rules of descent of real estate, amended.

SECT. 27. This act shall take effect when approved.

Approved March 7, 1870.