

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

SEVENTY-FOURTH LEGISLATURE

OF THE

STATE OF MAINE

1909

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PRIVATE AND SPECIAL LAWS

OF THE

STATE OF MAINE

As Passed by the Seventy-fourth
Legislature

1909

CHAP. 84

May purchase or lease connecting roads.

May cross navigable waters.

May take and condemn land.

Organization made valid.

Section 4. Said corporation may purchase or lease the railroad of any corporation with which it may be connected, and may be sold or leased to any such corporation.

Section 5. Said corporation is hereby authorized to construct, operate and maintain its road by means of bridges, fills and structures over and across all navigable waters within said towns under such regulations as may by the secretary of war of the United States be prescribed therefor.

Section 6. Said corporation shall have the same right to take and condemn land for its said right of way, gravel beds, terminals, stations and other purposes to be held as for public uses as have steam and electric railroads under the general law, and the same shall be condemned in the same manner and the damages assessed in like manner as is provided for steam railroads.

Section 7. The organization of the Rockland, South Thomaston and Saint George Railway is hereby ratified, confirmed, made legal and valid. The mortgage of the Rockland, South Thomaston and Owls Head Railway and all proceedings had thereon; the foreclosure of the same and the sale of the property and franchises of the last named railway, and the transfer thereof to the Rockland, South Thomaston and Saint George Railway are hereby ratified, approved, and made legal, valid and binding to all intents and purposes.

Approved March 3, 1909.

Chapter 84.

An Act in relation to the Gardiner Municipal Court of the City of Gardiner.
Be it enacted by the People of the State of Maine, as follows:

Warrants, when returnable.

Section 1. All warrants alleging any offense to have been committed within the city of Gardiner shall be made returnable before the Gardiner Municipal Court.

Inconsistent acts repealed.

Section 2. All acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 3, 1909.

Chapter 85.

An Act to provide for the restoration of the records of the Court of Probate for the County of Cumberland.

Be it enacted by the People of the State of Maine, as follows:

Whereas, the records, files, documents and papers of the court of probate for the county of Cumberland in the state of

Maine were destroyed by fire on the twenty-fourth day of January, in the year of our Lord one thousand nine hundred and eight; and

Whereas, by reason of said loss and destruction there exists an immediate and urgent necessity for legislation providing for the recovery, replacement, and restoration of said records, files, documents and papers, and for special provisions pertaining to the orderly and more efficient administration of the affairs of said court, and the settlement of estates therein, all of which facts, in the determination of the senate and house of representatives in the legislature assembled, constitute an emergency within the meaning of the provisions of the constitution of this state. Now therefore,

Be it enacted by the People of the State of Maine, as follows:

Section 1. Executors, administrators of all classes, testamentary and other trustees, guardians, surviving partners, assignees, and any fiduciary or trust officers over whom or whose estates said court had or has jurisdiction, or their legal representatives, or any other person interested, having in his proper possession any original letters testamentary of administration, guardianship, adoption, trusteeship, surviving partnership, assignment, license, commission or any document or paper granting license, power or authority duly issued to any such administrative officers from said court under the seal thereof, or any copy of the same duly attested by the register of said court prior to said day, may present the same to the judge of said court, at any session thereof, accompanied by a petition verified by oath, that the same may be recorded in said court. Whereupon the judge being satisfied as to the same shall order such papers to be recorded by the register. After the same have been so recorded they may be received again by such petitioner.

Trust offices may present original letters, etc., for record.

Section 2. A duly authenticated copy of any will or one which is under the seal of the court or attested by the register which was admitted to probate in said court before the day aforesaid, may on petition verified by oath be presented to the judge in like manner by the person officially in possession of the same, or his representative or by any other interested person and the same together with the certificate of authentication or attestation of the register shall be recorded anew and after such record the original may be received again by the person presenting the same.

Copy of will with certificate shall be recorded anew.

Section 3. Duly authenticated, certified or attested copies 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

Copy of other recorded instrument to be recorded, and attested copy

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of exact copy of original which was on record.

recorded anew, and may be received again by such petitioner. Also an attested or certified copy of any instrument purporting to be an exact copy of the original which was on record in said court prior to said date and which has become a public record either in this or in any other state or country may be presented to the judge together with a petition verified by oath and the same after approval may be admitted to the records of this court.

Holder of such paper may be cited to present same.

Section 4. Upon the petition verified by oath of any person interested, if the judge shall be satisfied that any important subsisting interests require that any instrument, paper or copy, mentioned in the three preceding sections, should be so presented and recorded, he may on petition alleging reasonable cause issue a citation to any person alleged to be the holder of said paper requiring him to produce and 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 jail of said county there to remain at the expense and charge of the county 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 and returned as hereinbefore provided.

—penalty for failure.

Records made hereunder conclusive evidence.

Section 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 original instruments and papers so recorded.

Unauthenticated copy of will admitted, how.

Section 6. Any paper purporting to be a copy of a will, but not duly authenticated nor under the seal of the court, nor attested by the register and not a part of any public record, alleged to have been admitted to probate in said court before the day aforesaid, may upon petition verified by oath be presented to the judge by any person interested, praying that such copy may be verified and established as the will of the testator. After public notice and hearing if the judge shall determine that the allegations and prayers of the petition are sustained, he shall decree that such copy be established as 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 and admissible as secondary evidence thereof.

—public notice and hearing.

—such record prima facie evidence.

Holder of such copy cited to present same.

Section 7. Any person interested under a will alleging upon his belief that there exists a copy that would be governed by the

preceding section, but that the same cannot be obtained except by the aid of legal process, may present his petition under oath 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. The judge may thereupon appoint a time and place for such hearing and issue a citation under the seal of the court to any person alleged to be the holder thereof, requiring him to appear at such time and place and produce such alleged copy 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 to perform the order and decree of the court, he shall be liable for the like offense and punished as described in section four of this chapter. Such alleged copy when produced may be established as the will of the testator with the same limitations and conditions prescribed in the preceding section.

—penalty
for failure.

- Section 8. Any person who, before the day aforesaid, had given bond to the judge of probate as executor, administrator, guardian, trustee or surviving partner or assignee or in any trust or fiduciary capacity, and the estate in question not having been fully settled, may give a new bond in the like capacity, and for like purposes, in such penal sum and with such sureties as the judge requires. If any such trust officer does not voluntarily give a new bond as required by this section, any person interested under the original bond may upon his petition 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 the principal and such notice to other interested parties as may appear of record as the judge in his discretion 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; but the judge for sufficient cause shown may grant in his discretion a reasonable extension of time for filing said bond beyond the said fourteen days. The forms and conditions of new bonds to be given under this act and those given since January twenty-fourth, nineteen hundred and eight, on matters pending prior to said date shall be the same as the regular

Trust officer may
give new
bond.

—process to
secure such.

—removal
for failure
or neglect.

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probate bonds now required by law, and if any trust officer has already performed any of the conditions of the new bond he shall not be required to do the same act again unless such condition would be required under the old bond, provided, however, that no new or additional liability shall be created under such new bond.

Sworn copy
or abstract
admitted to
record.

Section 9. A copy or abstract as near as may be of any inventory, account, license, also a copy or abstract as near as may be of any petition or paper of any kind which is not under the seal of the court or attested by the register or become a public record and which has been passed upon by the judge of probate and admitted to the records before the day aforesaid, may be presented to the judge by any trust officer or any person interested together with a petition alleging under oath that such copy or abstract is the exact duplicate or abstract as near as may be of the original. The judge shall thereupon cause public notice to be given on such copy or abstract and petition and on return of the same and after hearing, being satisfied that the allegations concerning such copy or abstract are true, he shall decree that the same be admitted to the records of the court; and such records and certified copies thereof shall be prima facie evidence in any court of the contents of any copy or abstract placed upon the probate records under this section, and admissible as secondary evidence thereof.

—such
prima facie
evidence.

Holder of
copy cited to
present
same.

Section 10. If any executor, administrator, guardian, trustee, or surviving partner or other person shall have in his possession any copy of an account, inventory, license or other paper which has been admitted to record before the day aforesaid, any interested party desiring that it shall be so placed upon the records 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 a copy of the original. The judge shall thereupon appoint a time and place for such hearing and issue a citation to any person alleged 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 to perform the order and decree of the court, he shall be liable and punished as for the like offense as described in section four of this chapter; such alleged copy when produced may be admitted to the records of the court by complying with section nine of this chapter.

—penalty
for failure.

Rights under
probate
bonds pre-
served.

Section 11. 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.

Section 12. In case of any insolvent estate, where the report of commissioners had been returned before the day aforesaid but no final distribution had thereon, the judge upon the application of the executor or administrator, or of any person interested, after public or personal notice 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. In cases where a report of commissioners on disputed claims had been returned prior to said date, and in the settlement of any estate it becomes necessary to prove said report, said proof shall be made by complying with the requirements herein specified for proof of the report of the commissioners in insolvent estates.

Commissioners heard on reports of insolvent estates.

—register to make schedule.
—decree for distribution to issue.

Section 13. The action of the probate court in admitting to the record duly authenticated or certified copies of wills, letters of appointment and any other probate papers under the seal of said court or the attestation of the register, between the said twenty-fourth day of January and the date this act shall take effect is hereby ratified and approved and all such papers referred to in this section are hereby made a part of the records of said court, and such records and certified copies thereof are evidence in any court in accordance with section five of this chapter.

Action of probate court since Jan. 24, 1908, approved, and records and copies thereof made evidence.

Section 14. Any administrator or executor or his personal representative or attorney who had returned into court his affidavit of notice of appointment prior to January twenty-fourth, nineteen hundred and eight, shall be allowed to file with the register upon the approval of the judge a sufficient copy of the same under oath and the judge shall use his discretion in determining what constitutes a sufficient copy of the original affidavit and he shall have the authority to make a proper decree in accordance with the facts in any case, and the same shall be prima facie evidence of the giving of such notice of appointment and the filing of the same in said court, and the said copy, if allowed by the judge, shall have the same effect upon the limitations of actions against such executors and administrators as the original affidavit so filed in said court.

Copy of affidavit of notice of appointment receivable and record thereof made evidence.

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Rules, etc.,
of judge ap-
proved.

Section 15. The judge shall have the power to make such rules of court as appear to him necessary and proper and to make such blanks and forms as will be necessary to facilitate the practice under this act.

New bond
required of
trust of-
ficer.

Section 16. When a paper is for the purpose of re-establishing a record as contemplated under sections one, two, three, four, six, and seven of this act, the trust officer in case the estate is not fully settled according to law, shall file with such paper a new bond, if a bond was originally required, in such penal sum and with such sureties as required by the judge, and such bond shall be in lieu of the bond destroyed by fire, and when such new bond is approved by the court the liability of the old or destroyed bond shall cease from the time of said approval to the same extent as if discharged under section three of chapter seventy-four of the revised statutes of Maine. The provisions for discharge of liability under this section applies to all cases in which new bonds have been given and approved since January twenty-fourth, nineteen hundred and eight, and the time this act shall take effect, in place of bonds burned in said fire.

—discharge
of liability
under bonds
burned.

Decree of
judge,
prima facie
evidence.

Section 17. In all cases where an inventory, account, or any other paper has been recorded before January twenty-fourth, nineteen hundred and eight, and proceedings in said court have been had since said date which are based upon such destroyed instruments so recorded, the judge being satisfied that such papers were on the records before said date, his decree in any such proceedings so had without any special finding or allegation of such recording shall be prima facie evidence in any court that all such papers were on the records of said court prior to said date.

Recitals in
deeds ad-
missible,
when.

Section 18. 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.

Certifica-
tion of reg-
ister and
index here-
under.

Section 19. The register of probate shall certify upon each volume of the records of all instruments, copies and papers, for the record of which provision is herein made, that the same are recorded under the act of nineteen hundred and nine. He shall make a suitable index of all such records and docket all proceedings in such form as the judge shall direct, and shall employ such assistance as may be necessary to make up and complete these records without delay.

Compensa-
tion of
judge and
register.

Section 20. 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, nineteen hundred and nine, 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 for 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 under this act.

Section 21. All the probate laws of this state which are not inconsistent with the provisions of this act are hereby made applicable in all cases arising hereunder.

Present
probate
laws hereto
applicable.

Section 22. A copy of the record of an abstract of any will, which in compliance with law, had prior to said date been filed in the registry of deeds, for any county in this state, is attested by the register of deeds for that county, shall be prima facie evidence that said will was duly executed and allowed, and said copy shall be admissible as evidence in any court.

Attested
copy of will
recorded
elsewhere,
evidence.

Section 23. This act shall extend and apply to any and all records and documents issued by said court under the seal thereof or attested by the register before the day aforesaid which relate to proceedings had in said court under the insolvent law so denominated.

Application
hereof to
proceedings
in insol-
vency.

Section 24. No appeal shall be allowed from the decree of the judge admitting to record, any instruments coming under sections one, two and three of this chapter, but an appeal in any other case 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.

No appeal
under sec-
tions 1-3.

—under oth-
er sections.

—supreme
court to es-
tablish
rules in ap-
peals.

Section 25. This act shall take effect when approved.

Approved March 4, 1909.