

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eighty-fourth Legislature

OF THE

STATE OF MAINE

1929

Published by the Secretary of State, in accordance with the Resolves of the Legislature
approved June 28, 1820, March 18, 1840, and March 16, 1842.

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

1929

PUBLIC LAWS
OF THE
STATE OF MAINE

As Passed by the Eighty-fourth Legislature

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tion shall not prevent any other pure or mixed liquors from being considered intoxicating.'

Approved April 5, 1929.

Chapter 230.

An Act Relative to Affidavits of Plaintiffs in Actions on Account Annexed.

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

R. S., c. 87, sec. 127; P. L., 1925, c. 96; relating to affidavit of plaintiff prima facie evidence; further amended. Section one hundred and twenty-seven of chapter eighty-seven of the revised statutes, as amended by chapter ninety-six of the public laws of nineteen hundred and twenty-five, is hereby further amended by adding after the word "deputy" in the thirteenth line of said section, as amended, the words 'or assistant,' so that said section, as amended, shall read as follows:

'Sec. 127. Signature certified by a clerk of a court of record, a deputy or assistant clerk. In all actions brought on an itemized account annexed to the writ, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the suit with all proper credits given, and that the prices or items charged therein are just and reasonable, shall be prima facie evidence of the truth of the statement made in such affidavit, and shall entitle the plaintiff to the judgment, unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, secretary or treasurer. If the said affidavit be made before a notary public using a seal without the state, his authority as a notary public to act and to administer an oath shall be certified thereto and the genuineness of his signature certified by a clerk of a court of record or by a deputy or assistant clerk of the same and have the seal of said court attached thereto.'

Approved April 5, 1929.

Chapter 231.

An Act Relative to Executors and Administrators.

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

Sec. 1. R. S., c. 68, sec. 24; relating to removal of executors or administrators, amended. Section twenty-four of chapter sixty-eight of the revised statutes is hereby amended by striking out the word "cited" in the second line of said section and by inserting in place thereof the word 'ordered' and by adding at the end of said section the following sentence:

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'An appeal from the decree of removal of an executor or administrator shall not suspend or vacate the decree pending decision by the supreme court of probate,' so that said section, as amended, shall read as follows :

'Sec. 24. Rendering of accounts ordered by judge of probate; appeal shall not vacate decree pending. When an executor or administrator, residing out of the state, after being ordered by the judge of probate, neglects to render his accounts and settle the estate according to law, or when any executor or administrator, joint or sole, becomes insane or otherwise unsuitable to perform the trust, refuses or neglects to do so, or mismanages the estate, said judge may remove him ; and he may accept the resignation of any joint or sole executor or administrator, when he is satisfied, after public or personal notice to those interested, and a hearing, that there is reasonable cause therefor, and that it will not be detrimental to the estate or to those interested therein ; and in either case, if there is no other executor or administrator to discharge the trust, the judge may commit administration of the estate not already administered, with the will annexed or otherwise, as the case requires, to such persons as he thinks fit, as if the one resigned or removed were dead ; and such administrator shall have the same powers and be liable to the same obligations as other administrators or executors whom he succeeds. An appeal from the decree of removal of an executor or administrator shall not suspend or vacate the decree pending decision by the supreme court of probate.'

Sec. 2. R. S., c. 68, sec. 44 ; P. L., 1917, c. 133, sec. 3 ; relating to agents or attorneys of non-resident executors and administrators, further amended. Section forty-four of chapter sixty-eight of the revised statutes, as amended, by section three of chapter one hundred and thirty-three of the public laws of nineteen hundred and seventeen, is hereby further amended by striking out in the fifteenth line of said section, as amended, the words "and give public notice thereof" and by striking out in the eighteenth and nineteenth lines of said section, as amended, the words "and public notice thereof given," so that said section, as amended, shall read as follows :

'Sec. 44. Not to be appointed unless agent or attorney in the state has been appointed. No person residing out of the state shall be appointed an executor or administrator, unless he shall have appointed an agent or attorney in the state. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the registry of probate for the county in which the principal is appointed, and by such appointment the subscriber shall agree that the service of any legal process against him as such executor or administrator, or that the service of any such process against him in his individual capacity in any action founded upon or aris-

ing out of any of his acts or omissions as such executor or administrator shall, if made on such agent, have like effect as if made on himself personally within the state, and such service shall have such effect. An executor or administrator who after his appointment removes from and resides without the state shall so appoint an agent within thirty days after such removal. If an agent appointed under the provisions of this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as above provided; the powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. Neglect or refusal by an executor or administrator to comply with any provision of this section shall be cause for removal. An executor or administrator residing out of the state shall not appoint his co-executor or co-administrator, residing in the state, as his agent.'

Sec. 3. R. S., c. 68, sec. 57; relating to accounts when rendered; amended. Section fifty-seven of chapter sixty-eight of the revised statutes is hereby amended by striking out the word "Reasonable" in the third line of said section and by inserting in place thereof the word 'Public' and by adding after the word "account" in the fourth line the words 'unless waived by all parties in interest other than creditors;,' so that said section, as amended, shall read as follows:

'Sec. 57. Public notice shall be given before allowance of account. Every executor or administrator shall render his accounts agreeably to the condition of his bond; and the judge may require him to account, when he deems it necessary. Public notice shall be given before the allowance of any such account unless waived by all parties in interest other than creditors. On the examination thereof, the accountant may be interrogated under oath in relation to the same, and such record of his answers shall be made as the judge requires.'

Sec. 4. R. S., c. 68, sec. 70; relating to foreign executors, administrators, guardians, conservators or trustees, amended. Section seventy of chapter sixty-eight of the revised statutes is hereby amended by inserting after the word "state" in the second line of said section the words 'committee of the person or property' and by inserting after the word "conservator" in the sixteenth line of said section the word 'committee,' so that said section, as amended, shall read as follows:

'Sec. 70. Foreign executor, administrator, guardian, conservator, committee of the person or property, or trustee may be licensed to collect and receive personal property. Any executor, administrator, guardian, conservator of the property of any person living out of the state, committee

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of the person or property, or trustee duly appointed in another state or in a foreign country and duly qualified and acting, who may be entitled to any personal estate in this state, may file an authenticated copy of his appointment in the probate court for any county in which there is real property of his trust, or, if there is no such real property, in any county in which there is personal estate of his trust or to which he may be entitled, and may upon petition to said court, after due notice to all persons interested, be licensed to collect and receive such personal estate or to sell by public or private sale, or otherwise dispose of, and to transfer and convey, shares in a corporation or other personal property, if the court finds that there is no executor, administrator, guardian, conservator or trustee appointed in this state who is authorized so to collect and receive such personal estate or to dispose of such shares or other personal property, and that such foreign executor, administrator, guardian, conservator, committee, or trustee will be liable to account for such personal estate or for the proceeds thereof in the state or country in which he was appointed; and that no person resident in this state and interested as a creditor or otherwise objects to the granting of such license or appears to be prejudiced thereby; but no such license shall be granted to a foreign executor or administrator until the expiration of six months after the death of his testator or intestate, nor until all inheritance taxes payable to this state, if any, are paid or secured.'

Approved April 5, 1929.

Chapter 232.

An Act Relative to Share of a Child or His Issue Having No Devise Under a Will.

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

R. S., c. 79, sec. 9; relating to a child or his issue, having no devise, takes as an heir, amended. Section nine of chapter seventy-nine of the revised statutes is hereby amended by adding at the end thereof the following sentences:

'Upon the hearing on the petition for allowance of such will, or thereafter prior to allowance of the final account, upon special petition alleging the facts and after such reasonable notice as the judge of probate may order, evidence may be offered in the probate court and the judge of probate may determine as a fact that such omission was intentional or was not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator, from which decree an appeal will be to the supreme court of probate. Upon final judgment being entered such child or issue shall be thereupon barred from claiming his said share in the testator's estate, a copy of such decree shall be filed in the