

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED _____, 1883;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX AND REFERENCE INDEX.

PORTLAND:
PRINTED BY WILLIAM M. MARKS.

CHAP. 63.

TITLE SIX.

Powers and Duties of Courts of Probate.

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- CHAP. 63. Courts of probate.
- 64. Appointment, powers and duties of executors and administrators.
 - 65. Assignment of dower, partition of real estate, and distribution of personal estate.
 - 66. Insolvent estates.
 - 67. Appointment, powers and duties of guardians. Adoption of children.
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22. Register not to be counsel in cases incompatible, nor executor, &c.

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SEC. 1. Courts of probate in this state are courts of record. Each court shall have an official seal, of which the register shall have the custody. Such courts have power to issue any process necessary for the discharge of their official duties, and to punish for contempt of their authority the same as the supreme judicial court may.

Are courts of record, have a seal, and may punish for contempt. R.S., c. 63, § 1. 63 Me., 248.

SELECTION, POWERS AND DUTIES OF JUDGES OF PROBATE.

SEC. 2. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and deter-

Judges, how selected; terms com-

CHAP. 63.

mence, when.
R.S., c. 63, § 2.
Constitution, art. vi,
§ 7.

Officers to
execute pro-
cesses and
attend
courts; wit-
nesses to
appear on
penalty.
R.S., c. 63, § 3.
47 Me., 80.

Judges to
have fixed
days and
places for
holding
courts.
Adjourn-
ments.
R.S., c. 63, § 4.
27 Me., 116.

In case of
sickness, ab-
sence, inabil-
ity or death
of judge,
another
judge may
hold his
courts.
R.S., c. 63, § 5.

Jurisdiction
as to wills,
administra-
tion, adop-
tion of chil-
dren, change
of names, and
guardian-
ship.
1881, c. 38.
32 Me., 103.
45 Me., 287.
63 Me., 249.
See R. S., c.
67, § 31.

mined as provided respecting county commissioners by chapter seventy-eight; and they enter upon the discharge of their duties on the first day of January following; but, when appointed to fill vacancies, their terms commence on their appointment.

SEC. 3. Sheriffs and their deputies, coroners and constables, shall 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 the officer shall 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.

SEC. 4. Judges of probate shall have certain fixed days and places for holding their courts, and making and publishing their orders and decrees, where no express provision is made by law; and such days shall be made known by public notifications thereof in their respective counties; they may adjourn their courts to any time not beyond the next regular day, and appoint special courts, when they deem it necessary; 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, by posting notice thereof at the probate office, until the judge can attend or some other judge can be notified and attend.

SEC. 5. During the sickness, absence from the state or inability of the judge of probate in any county to hold the regular terms of his court, such terms, at the request of said judge or of the register of the same county, may be held by the judge of any other county; and in case of the death of the judge of any county, all necessary terms of the probate court for that county, may, at the request of the register, be held by the judge of another county, until the vacancy is filled. The orders, decrees and decisions of the judge holding such terms, shall have the same force and validity as if made by the judge of the county in which such terms are held.

SEC. 6. The judge for each county may take the probate of wills, grant letters testamentary or of administration on the estates of all deceased persons, who, at the time of their decease, were inhabitants or residents of his county, or who, not being residents of the state, died leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person who is under sentence of death and confined in the state prison awaiting his execution, or of imprisonment for life in the state prison; and shall have jurisdiction of all matters relating to the settlement of such estates. He may grant leave

to adopt children, change the names of persons, appoint guardians for minors and others according to law, and have jurisdiction as to persons under guardianship, and [as] to whatever else is conferred on him by law. CHAP. 63.
1876, c. 59.

SEC. 7. When a case is originally within the jurisdiction of the probate court in two or more counties, the one which first commences proceedings therein, shall retain the same exclusively throughout; and the jurisdiction assumed in any case, except cases of fraud, so far as it depends on the residence of any person, or the locality or amount of property, shall not be contested in any proceeding whatever, except on an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record. Court first
commencing
probate pro-
ceedings, to
have juris-
diction.
R.S., c. 63, § 7.
58 Me., 227-8.
63 Me., 249.

SEC. 8. When any judge of probate is interested either in his own right, in trust, or in any other manner, or is within the degree of kindred, by which in law he may, by any possibility, be heir to any part of the estate of any person deceased, to an amount in either case not less than one hundred dollars, such estate shall be settled in the probate court of any adjoining county, which shall have as full jurisdiction thereof, as if the deceased had died therein. If his interest arises after he has regularly assumed jurisdiction of such estate, or existed at the time of his appointment to office; and in all cases where an executor, administrator, or guardian, whose trust is not fully executed, becomes judge of probate for the county in which his letters were granted, further proceedings therein shall be transferred to the probate court in any adjoining county, and there completed as if such court had had original jurisdiction thereof; and in all such cases the register of probate in such adjoining county, shall transmit copies of all records relating to such estate, to the probate office of the county where such estate belongs, to be there recorded. When judge
is interested,
jurisdiction
transferred
to adjoining
county.
R.S., c. 63, § 8.

SEC. 9. Where parts of a county are designated by law for a separate probate district, it shall be deemed a county for all purposes of this and other applicable chapters; and appeals from the judge of probate thereof shall be cognizable in the county where such district is situated. Probate dis-
tricts deem-
ed counties
for certain
purposes.
R.S., c. 63, § 9.

SEC. 10. Every judge of probate, upon first entering on the duties of his office, shall examine the records, decrees, and certificates, and the proceedings connected therewith, which his predecessor left without being signed and authenticated, and if he finds them correct, he shall sign and authenticate them, and they shall then be as valid to all intents and purposes, as if *it* [such duty] had been done by his predecessor while in office. Judge to
certify un-
finished acts
of his
predecessor.
R.S., c. 63, § 10.

SEC. 11. All oaths, required to be taken by executors, adminis- Oaths re-

CHAP. 63. quired may be taken before judge, register or justice of the peace. R.S., c. 63, § 11.

How administrators, etc., may make oath to accounts. 1881, c. 8.

When judge may appoint commissioner to administer oath. R.S., c. 63, § 12.

Judge not to be counsel in cases incompatible. R.S., c. 63, § 13.

Registers, how selected; oath, bond, powers and duties. R.S., c. 63, § 14. Constitution, art. vi, § 7.

trators, trustees, or guardians, except to the truth of accounts by them rendered, and all oaths required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by license of any judicial or probate court, may be administered by the judge or register of probate or by any justice of the peace; and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded. When no objection is made by parties interested, to the allowance of an account, administrators, executors, guardians and trustees may make oath thereto before a justice of the peace, and when they reside beyond the limits of the state, before a commissioner for the state of Maine or a United States consul.

SEC. 12. If any person, required to make oath to any account to be settled by the judge of probate, is unable to attend by reason of infirmity or otherwise, or resides more than thirty miles from the place where the court of probate is held, the judge by a commission issued for the purpose, may authorize any disinterested magistrate to administer such oath, who shall return a certificate thereof to the judge, with such commission and account annexed, and the vouchers to prove the same.

SEC. 13. No judge of probate shall have a voice in judging and determining, nor be attorney or counsellor in or out of court in any civil action or matter, which depends on or relates to any sentence or decree made by him in his office; nor in any civil action for or against any executor, administrator, guardian, or trustee under any last will and testament, as such, within his county.

SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

SEC. 14. Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as provided respecting county commissioners by chapter seventy-eight, and they enter upon the discharge of their duties on the first day of January following; but the term of those appointed to fill vacancies shall commence immediately. All registers, before acting, shall be duly sworn, and give bond to the treasurer of their county with sufficient sureties, in the sum of not less than one hundred, nor more than one thousand dollars, at the discretion of the judge of probate, who shall certify his approval thereon; and they shall have the care and custody of all files, papers, and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship

granted, bonds approved, accounts allowed, and such orders and decrees of the judge, and other matters, as he directs. CHAP. 63.

SEC. 15. The condition of such bond shall be for keeping up, seasonably, and in good order, the records of the court ; making and keeping correct and convenient alphabets of the records, and for the faithful discharge of all other duties of [the] office ; and if such register forfeits his bond, he shall thenceforth be forever disqualified from holding said office, and if he neglects to complete his records for more than six months at any one time, sickness or any extraordinary casualty excepted, such neglect shall be adjudged a forfeiture.

Conditions of bond ; penalty for breach.
R.S., c. 63, § 15.
69 Me., 368.

SEC. 16. Within thirty days after a will has been duly proved and allowed in the probate court, or in the supreme court of probate, *it shall be the duty of* the register of probate *to* [shall] make out and certify to the register of deeds in the county where the real estate is situated, a true copy of so much of said will as devises real estate, with the description of said real estate, so far as any description can be furnished from said will, and the name of the testator and of the devisee ; and *it shall be the duty of* the register of deeds receiving such copy *to* [shall] forthwith file the same, minuting thereon the time of the reception thereof as aforesaid, and record the same *in the same manner as now provided by law for recording* [like a] deeds of real estate.

Register to certify copy of will to register of deeds within thirty days after proof, if real estate is devised.
1879, c. 118.
Sec. c. 64, § 42.

Duty of register of deeds.

SEC. 17. For his service aforesaid, the register of probate shall *be paid* [receive] fifty cents for each copy so certified *as aforesaid*, and the register of deeds *the sum of* fifty cents for entering and recording [the] same, said sums to be paid by the executor or administrator when said will is proved *as aforesaid*, to the register of probate, who shall pay fifty cents to the register of deeds at the time said certified copy *shall be* [is] furnished to him ; and the executor or administrator shall charge said sums in his account *rendered against the estate*.

Fees to be paid by executor or administrator.
1874, c. 186.

SEC. 18. In case of the death or absence of the register, the judge of probate shall appoint a suitable person to act as register, until the register resumes his duties, or another is qualified in his stead ; and he shall be duly sworn, and, if the judge require it, give bond as in case of the register.

If register is absent or dead, judge may appoint register pro tem.
R.S., c. 63, § 16.

SEC. 19. Every judge of probate and the justices of the supreme court of probate, shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall put it in suit ; and the money thus recovered shall be applied *for* [toward] the expenses of duly completing the records of such register under the direction of said judge, and the

Judges of probate and of the supreme court to inspect register's conduct, &c.
R.S., c. 63, § 17.

CHAP. 63. surplus, if any, shall enure to the county ; but if it is not sufficient for that purpose, the treasurer may recover the deficiency of the register in an action on the case.

Proceedings
if register is
unable or
neglects his
duties.
R.S., c. 63, § 18.

SEC. 20. When a register is unable to perform his duties or neglects them, the judge of probate shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time ; and such person shall be paid by the treasurer in proportion to the time he has served, and the amount deducted from the register's salary.

Records may
be complet-
ed and cer-
tified in case
of vacancy.
R.S., c. 63, § 19.

SEC. 21. When there is a vacancy in the office of register, and the records are incomplete, they may be completed and certified by the person appointed to act as register, or by the succeeding register.

Register not
to be counsel
in probate
cases.
R.S., c. 63, § 20.

SEC. 22. No register of probate shall be attorney or counsellor in or out of court in any suit or matter pending in the court, of which he is register, nor in any appeal therefrom ; nor be executor, administrator, trustee, guardian, commissioner of insolvency, appraiser or divider of any estate in any case, that is within the jurisdiction of said court, nor be in any manner interested in the fees or emoluments arising therefrom.

SUPREME COURT OF PROBATE.

S. J. court
to be su-
preme court
of probate.
Appeal.
R.S., c. 63, § 21.

SEC. 23. 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 out of the United States, and had no sufficient attorney within the state, within twenty days after his return or appointment of such attorney. (a)

Appellant to
file bond
and reasons
of appeal ;
service on
other
parties.
R.S., c. 63, § 22.
53 Me., 185.

SEC. 24. 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 also file in the probate office the reasons of appeal ;

(a) 19 Me., 260 ; 27 Me., 82 ; 30 Me., 538 ; 34 Me., 44 ; 44 Me., 63 ; 51 Me., 424 ; 52 Me., 195 ; 53 Me., 186, 558 ; 54 Me., 342 ; 56 Me., 413 ; 58 Me., 227 ; 68 Me., 413, 415.

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.

SEC. 25. If any such person from accident, mistake, defect of notice, or otherwise without fault on his part, omits to claim or prosecute his appeal as aforesaid, the supreme court, if justice seems to require a revision, may, upon reasonable terms, allow an appeal to be entered and prosecuted with the same effect, as if it had been seasonably done ; but not without due notice to the party adversely interested, nor unless the petition therefor is filed with the clerk of said court within one year after the decision complained of was made, said petition to be heard at the term next after the filing thereof.

Court may allow appeal accidentally omitted.
R.S., c. 63, § 23.
57 Me., 227.

SEC. 26. If the appellant fails to enter and prosecute his appeal, the supreme court, upon the complaint of any person interested in the case, may affirm the former sentence, assess reasonable costs for the complainant, and take such further order thereon, as law and justice require.

Proceedings when appeal is not prosecuted.
R.S., c. 63, § 24.

SEC. 27. After an appeal is claimed, and the bond and reasons of appeal filed, all further proceedings, in pursuance of the matter appealed from, shall cease, until the determination of the supreme court thereon.

Proceedings in probate court cease after appeal.
R.S., c. 63, § 25.

SEC. 28. Such appeal shall be cognizable at the next term of the supreme court, held after the expiration of thirty-four days from the date of the proceeding appealed from, [subject to exceptions to be disposed of by the supreme court sitting in the district,*] and said court [held by a single judge within and for the county*,] 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.

Appeal to be heard at next term ; proceedings.
R.S., c. 63, § 26.
44 Me., 63.
45 Me., 584.
53 Me., 186.
64 Me., 208.

SEC. 29. Any person claiming under an heir at law shall have the same rights in all proceedings in probate courts, including rights of appeal, that the heir may have.

Claimants under heir, have same rights as heir.
1881, c. 90.

COSTS AND FEES.

SEC. 30. In all contested cases in the original or appellate

Costs may be

* [NOTE. These clauses are proposed to remove a doubt as to the jurisdiction of the law court, suggested by Hon. Nathan Webb, of Portland.]

CHAP. 63. court of probate, legal costs may be allowed to either party, to be paid by the other, or to either or both parties, to be paid out of the estate in controversy, as justice requires; and executions may be issued therefor as in courts of common law.

Register's fees for copies.
R.S., c. 63, § 28.

SEC. 31. The register shall receive for such copies as are taxable by law twelve cents a page; but he shall have no fee for taking from the files of his office, or transporting to the place where the probate court is held, papers necessary for the settlement of any estate or account in said court, nor for furnishing to those entitled to it, one copy of each will proved.

Fees of executors, administrators, guardians and trustees.
R.S., c. 63, § 29.

SEC. 32. Executors, administrators, guardians and trustees, may be allowed one dollar for every ten miles travel to and from the court, and one dollar for each day's attendance; and also, at the discretion of the judge, having regard to the nature, liability and difficulty attending their trusts, a commission not exceeding five per cent. on the amount of personal assets that come into their hands, and, in cases where legal counsel is necessary, a reasonable sum for professional aid.

Pay for appraisers of estate, &c.
1876, c. 108.

SEC. 33. Appraisers of estates, commissioners for examining claims against insolvent estates or determining disputed claims, and commissioners appointed to make division of estates and for assigning widows' dower, may be allowed a reasonable compensation therefor, for the time actually employed, including travel and expenses. Witnesses to the execution of wills, or in any issue before the probate court, one dollar a day, and six cents a mile, going and returning; the fees of witnesses to wills, appraisers, and commissioners on insolvent estates, or disputed claims, shall be paid by the executors, administrators, trustees or guardians, and allowed in the settlement of their accounts.

—witnesses before probate court.

—how paid.

Expenses of partition and assignment of dower. Process if not paid.
R.S., c. 63, § 31.

SEC. 34. When a partition of real estate or assignment of dower is made by order of any judge of probate, the expenses thereof shall be paid by the parties interested in proportion to their interests; but when such expenses accrue prior to the closing of the final account of any executor or administrator of the deceased owner of such real estate, having in his hands sufficient personal assets for the purpose, the judge of probate may order him to pay such expenses, and allow the same in his account, after due notice and hearing thereon. In case of neglect or refusal of any person liable to pay such expenses of partition and assignment of dower, the judge of probate may issue a warrant of distress against such delinquent for the amount due from him, and the costs of the process.

Fees of register in case of foreign estates.

SEC. 35. When administration is granted on the estate of any person not a resident of this state, or the will of any such person is proved, or administration is granted to any public administrator,

or a guardian is appointed for a minor not a resident of this state, the register of probate shall have a reasonable compensation, to be fixed by the judge, for entering and filing the orders and decrees, and making the necessary records relating thereto, to be paid by the executor, administrator or guardian, and allowed to him in his account. CHAP. 64.
R.S., c. 63, § 32.

SEC. 36. The judge of probate shall have a reasonable compensation for hearing and reducing to writing questions and answers of any party accused of concealing or embezzling property belonging to any estate or person under guardianship, to be paid by the person requesting the examination. Fees of
judge for
taking dis-
closures.
R.S., c. 63, § 33.

SEC. 37. Each county shall provide necessary printed blanks and record books for the probate courts. Blanks and
records.
R.S., c. 63, § 34.

NOTICES.

SEC. 38. In all laws relating to probate courts and proceedings, the words "public notice" denote notice published three weeks successively in a newspaper printed in the county, or, if none, in the state paper; the words "personal notice" denote service by a copy given in hand or left at the place of last and usual abode, seven days at least before the time of hearing; and the words "due notice" denote public or personal notice, at the discretion of the judge. Notice in
probate pro-
ceedings
defined.
R.S., c. 63, § 35.

SEC. 39. Any notice to be published in a newspaper, shall be published in such paper printed in the county as the party required to publish it selects, unless the judge deems such paper unsuitable from want of circulation or [for] other substantial reason. Parties may
select news-
paper for
notices.
R.S., c. 63, § 36.

CHAPTER 64.

APPOINTMENT, POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS.

LIMITATIONS.

SEC. 1. In what cases administration shall not be granted, nor wills proved.

WILLS AND EXECUTORS.

SEC. 2. Wills may be deposited in the registry of probate; how to be indorsed; when and to whom to be delivered.

3. Duty of executors and others having custody of wills. Penalty for neglect.

4. When witnesses are distant or unable to attend, depositions may be taken.

5. If no objection to a will, one witness or deposition only required.

6. When letters testamentary may be granted.

7. Wills lost or carried out of the state, how to be proved.

- CHAP. 64. SEC. 8. Will may prescribe what bond, if any, executor shall give.
 9. Bonds of executors. Conditions.
 10. Bond if executor is residuary legatee.
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WILLS MADE IN OTHER STATES OR COUNTRIES.

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ADMINISTRATORS.

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ADMINISTRATORS WITH THE WILL ANNEXED, AND DE BONIS NON.

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 24. Bond of administrator with the will annexed, and de bonis non.

PUBLIC ADMINISTRATORS.

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SPECIAL ADMINISTRATORS.

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 35. Not to be sued by creditor without decree of judge.
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EXECUTORS IN THEIR OWN WRONG.

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44. Appointment of appraisers.
45. Warrants of appraisal may be revoked.
46. How choses in action shall be appraised.
47. Additional inventories may be required.
48. What may be omitted from the inventory.
49. When additional bonds may be required.
50. When sales of personal estate may be ordered. Collection of demands sold.
51. For what executors and administrators shall account.
52. Reference or compromise of claims may be authorized.
53. Special commissioners may be appointed on disputed claims.
54. Executor or administrator neglecting to pay debts, guilty of waste.
55. When accounts shall be rendered; notice and examination.
56. All property received to be accounted for.
57. Also income of real estate used by executor or administrator.
58. Executor or administrator may insure property in his hands.
59. Allowance may be made for monuments or grave stones.
60. What debts and expenses of deceased married women may be paid.
61. Debts of husbands and wives to each other are to be paid.
62. Claims against estate to be verified by affidavit, if required.
63. Claims of executors or administrators, how to be adjusted.
64. When one of several executors or administrators is removed or resigns, proceedings.
65. Chancery remedies between co-executors and co-administrators.
66. Previous acts of those removed valid.
67. Action on bond limited to six years, except in case of fraudulent concealment.

EMBEZZLEMENT OF THE PROPERTY OF DECEASED PERSONS.

- SEC. 68. Persons suspected of embezzlement may be cited and examined. Limitation.
69. Persons intrusted with estate of deceased may be cited to account.
70. Penalties for refusal in either case.

LIMITATIONS.

SEC. 1. No administration shall be granted on the estate of any [intestate*] deceased person, unless it appears to the judge that he left personal estate to the amount of at least twenty dollars, or owed debts to that amount, and left real estate of the value of twenty dollars; and when no administration is granted for want of such estate, the personal property of the deceased shall become the property of the widow, or, if none, of the next of kin, who shall not, in such case, be chargeable as executors in their own wrong. After the lapse of twenty years from the decease of any person, no probate of his last will, or administration on his estate shall be originally granted, unless it appears that there are moneys due to said estate from the United States; but this shall not apply to foreign wills previously proved and allowed in some other state or country.

In what cases administration shall not be granted, nor will proved. R.S., c. 64, § 1. 22 Me., 553. 52 Me., 196. 63 Me., 379.

* [NOTE BY THE COMMISSIONER. The addition of the word "intestate" is suggested by Hon. Henry C. Peabody, of Portland, judge of probate for Cumberland county, to relieve this section from possible conflict with § 20.]

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WILLS AND EXECUTORS.

Wills may be deposited in the registry of probate; how to be indorsed, when and to whom to be delivered.
R.S., c. 64, § 2.

SEC. 2. A will may be deposited for safe keeping in the registry of probate in the county where the testator lives; and the register on being paid the fee of one dollar, shall receive and keep said will, and give a certificate of the deposit thereof. Such will shall be inclosed in a sealed wrapper, indorsed with the name and residence of the testator, and the date when deposited, and may have indorsed thereon the name of any person to whom it is to be delivered after the death of the testator, and shall not be opened nor read, until delivered to the testator, or to some person authorized to receive it by an order in writing signed by the testator and attested by one witness, and the register may require, if he thinks proper, the person presenting such order to make oath that the same is genuine. After the death of the testator the will shall be delivered to the person, if any, entitled by the indorsement on the wrapper to receive it; or, if not demanded before the next probate court after the death of the testator, it may then be publicly opened and retained in the probate office until offered for probate; or, if the jurisdiction of the estate belongs in another court, it shall be delivered to the executors, or other persons entitled to the custody thereof, to be presented for probate in such other court.

Duty of executors and others having custody of wills. Penalty for neglect.
R.S., c. 64, § 3.
5 Me., 493.
6 Me., 276.
52 Me., 172.

SEC. 3. Every person having the custody of a will, shall, after the testator's death, deliver it into the probate court having jurisdiction thereof, or to the executor therein named; and any such executor, having such will in custody, shall file it in the court having jurisdiction thereof. If any such executor or other person without reasonable cause, neglects so to do, for thirty days after notice of the testator's death, he having been duly cited for that purpose, he may be committed to the county jail by the judge's warrant, there to be kept in close custody, until he so 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 which he sustains by such neglect.

When witnesses to a will are distant or unable to attend, depositions may be taken.
R.S., c. 64, § 4.

SEC. 4. When any of the witnesses to a will offered for probate live out of the state, or more than thirty miles distant, or, by age or indisposition of body are unable to attend court, their depositions, taken before any magistrate authorized by commission from such judge, shall be competent evidence in the absence of such witnesses.

If no objection to a will, one witness or one deposition only

SEC. 5. When it clearly appears to the judge by the written consent of the heirs at law or otherwise, that there is no objection to the probate of any will, he may decree probate thereof upon the testimony of one or more of the three subscribing witnesses

required by law, who can substantiate all the requisite facts; or, in the cases described in the preceding section, upon the depositions of one or more of them, substantiating the facts.

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required.
R.S., c. 64, § 5.

SEC. 6. When any will is duly proved and allowed, the judge of probate may issue letters testamentary thereon to the executor named therein, if he is legally competent, accepts the trust, and gives bond to discharge the same when required; but if he refuses to accept on being duly cited for that purpose, or if he neglects for twenty days after probate of the will so to give bond, the judge may grant such letters to the other executors, if there are any capable and willing to accept the trust.

When letters testamentary may be granted.
R.S., c. 64, § 6.
46 Me., 237,
248.
See § 20.

SEC. 7. When the last will of any deceased person, who had his domicile in *this* [the] state at the time of his death, is lost, destroyed, suppressed or carried out of the state, and cannot be obtained after reasonable diligence, the execution and contents thereof may be proved by a copy and the legal testimony of the subscribing witnesses to the will, or by any other evidence competent to prove the execution and contents of a will, and upon proof of the continued existence of such lost will up to the time of the decease of said testator unrevoked, letters testamentary shall be granted as on the last will of the deceased, the same as if the original had been produced and proved.

Wills lost or carried out of the state, how to be proved.
R.S., c. 64, § 7.

SEC. 8. Letters testamentary may issue, or sales of real estate be made under the provisions of a will, without the executor giving bond, or by his giving one in a specified sum, when the will so provides; but when it appears necessary or proper, the judge, on application of parties interested, may require him to give bond as in other cases.

Will may prescribe what bond, if any, executor shall give.
1876, c. 81.
Proviso.

SEC. 9. Every executor before entering on the execution of his trust shall give bond, except when otherwise provided in the will, with sufficient sureties resident in *this* [the] state, in such sum as the judge of probate orders, payable to him or his successors, with condition, in substance, as follows:

Bond of executors.

Conditions.
R.S., c. 64, § 9.
54 Me., 456.

First.—To make and return to the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the testator, which are by law to be administered, and which come to his possession or knowledge.

Second.—To administer, according to law and to the will of the testator, all his goods, chattels, rights and credits.

Third.—To render, upon oath, a just and true account of his administration within one year, and at any other times, when required by the judge of probate.

Fourth.—To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between the

CHAP. 64. representation of insolvency and the sale of such real estate for the payment of debts, by waste or trespass committed on any building thereon, or on any trees standing and growing thereon, except as necessary for repairs or fuel for the family of the deceased; or by waste or trespass of any other kind; and for such damages as he recovers for the like waste or trespass committed thereon.

Bond, if executor is residuary legatee.
R.S., c. 64, § 10.
67 Me., 122.

SEC. 10. If such executor is a residuary legatee, the condition of his bond, instead of the preceding, shall be to return an inventory as aforesaid, and to pay all the debts and legacies of the testator, unless the estate from some unexpected event should prove insufficient therefor.

What executors may act. Powers of majority.
R.S., c. 64, § 11.
54 Me., 456.

SEC. 11. When two or more persons are named executors in any will, and are not released by the will from giving bonds, none shall act as such, or intermeddle, except those who give bonds as aforesaid; but a majority of those legally qualified, unless it is otherwise prescribed in such will, may do all the acts in the execution of such trust, which all could do, and all acts so done are as valid in law as if all had agreed thereto; and a suit may be maintained against the executors, so acting, on their bond, for the benefit of any person aggrieved by their acts, without joining the other parties to such bond.

WILLS MADE IN OTHER STATES OR COUNTRIES.

Wills made in other states or countries, when to be proved and allowed here.
R.S., c. 64, § 12.

SEC. 12. Any will executed in another state or country, according to the laws thereof, may be presented for probate in this state, in the county where the testator resided at the time of his death, and proved and allowed, and the estate of the testator settled, the same as in case of wills executed in this state.

Wills proved in other states or countries may be allowed in this state. Proof, notice, hearing and decree.
R.S., c. 64, § 13.
4 Me., 138.

SEC. 13. Any will proved and allowed in another state or country, according to the laws thereof, may be allowed and recorded in this state in the manner and for the purposes hereinafter mentioned. A copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the judge of probate in any county in which there is estate real or personal on which the will can operate; whereupon the judge shall assign a time and place of hearing, and cause public notice thereof to be given, the first publication to be thirty days at least before the time so assigned. After such hearing, if the judge considers that the instrument should be allowed in this state as the will of the deceased, he shall order the copy to be filed and recorded.

Validity of certain wills established.
1874, c. 169, § 1.

SEC. 14. Such will shall have the same force as if it had been originally proved and allowed in the same court in the usual manner, but nothing herein shall give any operation and effect to the

will of an alien different from what it would have, if originally proved and allowed in this state. CHAP. 64.
12 Me., 131.

SEC. 15. After allowing and recording any will as aforesaid, the judge of probate may grant letters testamentary, or of administration with the will annexed thereon, and proceed in the settlement of the estate found in this state, in the manner provided by the laws of this state with respect to the estates of persons who were inhabitants of any other state or country; and the letters thus granted shall extend to all the estate of the deceased within this state, and exclude the jurisdiction of the probate court in every other county. Such administration may be granted in any county in which lands of the testator, subject to the operation of his will, remain undisposed of after the lapse of more than twenty years from his decease. Letters may be granted and the estate settled.
R.S., c. 64, § 15.

NUNCUPATIVE WILLS.

SEC. 16. No letters testamentary or probate of any nuncupative will, shall pass the seal of any court of probate, until fourteen days after the decease of the testator; nor shall such will be approved and allowed at any time, unless due notice is given to all persons interested, specifying that the will to be proved is a nuncupative will. When nuncupative wills may be approved; notice.
R.S., c. 64, § 16.

ADMINISTRATORS.

SEC. 17. Upon the decease of any person intestate the judge of probate having jurisdiction shall grant administration of such intestate's goods or estate to the widow, husband, next of kin, or husband of the daughter of the deceased, or to two or more of them, as he thinks fit, if the applicant is over the age of twenty-one years and in other respects suitably qualified for the trust, but if they are unsuitable, or being residents in the county, they after due notice neglect or refuse for thirty days from the decease of the intestate to take out letters of administration he may commit administration on such estate to such person or persons as he deems suitable. Administration on the estate of deceased persons intestate, how made.
1874, c. 169, § 2.
22 Me., 553.
32 Me., 103.

SEC. 18. When any person, by due course of law, is under sentence of death or of imprisonment in the state prison for life, and confined in pursuance thereof, he shall be deemed in law from the time of such imprisonment, to all intents and purposes, as civilly dead; and his estate shall be administered upon and distributed, and his contracts and relations to persons and things affected, in all respects as if he *was* [were] dead. Estates of persons under sentence of death or imprisonment for life to be administered.
R.S., c. 65, § 18.
47 Me., 469.

SEC. 19. Every administrator, before entering on the execution of his trust, shall give bond with good and sufficient sureties Bonds of administrators.

CHAP. 64. resident within *this* [the] state, in such sum as the judge orders,
 Conditions. payable to him or his successors, with condition, in substance, as
 R.S., c. 64, § 19. follows:

65 Me., 471. *First*.—To make and return into the probate court, within three months, a true inventory of all the real estate and all the goods, chattels, rights and credits of the deceased, which come into his possession or knowledge.

65 Me., 471. *Second*.—To administer according to law all the goods, chattels, rights and credits of the deceased.

65 Me., 471. *Third*.—To render, upon oath, a true account of his administration within one year, and at any other times when required by the judge of probate.

Fourth.—To pay and deliver any balance, or any goods and chattels, rights and credits, remaining in his hands upon the settlement of his accounts, to such persons as the judge of probate directs.

Fifth.—To deliver the letters of administration into the probate court, in case any will of the deceased is thereafter duly proved and allowed.

62 Me., 308. *Sixth*.—To account, in case the estate should be represented
 65 Me., 471. insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between the representation of insolvency and the sale of such real estate for the payment of debts, by waste or trespass committed on any building thereon, or on any trees standing and growing thereon, except as necessary for repairs or fuel for the family of the deceased; or by waste or trespass of any other kind; and for such damages as he recovers for the like waste or trespass committed thereon.

ADMINISTRATORS WITH THE WILL ANNEXED, AND DE BONIS NON.

Administra-
tor, with will
annexed,
when to be
appointed.
1881, c. 21.
See § 6.

SEC. 20. If there is no person that the judge can appoint executor of any will according to the provisions of section six; or if the only one appointed neglects to file the required bond within the time therein allowed, he may commit administration of the estate, with the will annexed, to such person as he would be authorized to appoint if the deceased had died intestate; and when an executor is under twenty-one years of age at the time of the probate of the will, administration may be granted, with the will annexed, during the minority of such executor unless there is another executor who accepts the trust, in which case the estate shall be administered by such other executor until the minor arrives at full age, when he may be admitted as joint executor with the former, upon giving bonds as before provided.

Executors or
administra-
tors may be

SEC. 21. When an executor or administrator, residing out of the state, after being duly cited 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, the judge of probate 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 in the estate, 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 executor[s] whom he may succeed.

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removed.
1874, c. 221.

Judge may
commit ad-
ministration
to other
persons.

SEC. 22. When an unmarried woman, who is joint or sole executor or administrator, marries, her husband shall not exercise such trust in her right, but her authority is thereby extinguished; and the other executor or administrator, if any, may proceed in discharging the trust, as if she *was* [were] dead. If there is no other, administration with the will annexed or otherwise may be granted, as provided in the preceding section.

Power of
female exe-
cutor or ad-
ministrator
ceases on
marriage;
proceedings.
R.S., c. 64, §22.
56 Me., 302.
63 Me., 432.

SEC. 23. The executor of an executor shall have no authority as such to administer the estate of the first testator; but on the death of the sole or surviving executor of any last will, administration of said estate not already administered may be granted with the will annexed, to such person as the judge of probate thinks fit.

Death of ex-
ecutor; pro-
ceedings.
R.S., c. 64, §23.

SEC. 24. Every person, who is appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give such bond to the judge of probate as is required of an executor. Every administrator de bonis non shall give bond as is required of an executor or administrator, as the case demands.

Bond of ad-
ministrator
with the
will annex-
ed, and de
bonis non.
R.S., c. 64, §24.

PUBLIC ADMINISTRATORS.

SEC. 25. The governor, with advice of council, when a vacancy occurs in any county, shall appoint a public administrator therein, who shall take out letters of administration and administer on the estate of any person who dies intestate in such county, not known to have in *this* [the] state any heirs or kindred who can lawfully inherit such estate; and account in like manner, and give bonds to the judge of probate with like conditions, as in cases of ordinary administration, and with the further condition, in substance, that he will comply with the provisions of the following section.

Appoint-
ment, duty
and bonds of
public ad-
ministrators.
R.S., c. 64, §25.

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When the judge may revoke his powers.
R.S., c. 64, §26.

SEC. 26. If, before the estate of such deceased is fully settled, any last will and testament of his is produced and duly proved, or if any of his heirs, next of kin, or his widow makes application in writing to the judge of probate having jurisdiction of the estate, and claims the right to administer thereon, or to have some other suitable person appointed to that trust, the judge shall revoke the former administration and grant letters testamentary, or new administration, as the case requires; and thereupon the public administrator shall surrender his letters of administration to the judge of probate, settle his account, and deliver to his successor all sums of money in his hands, and all the goods, chattels, rights and credits of said deceased, not administered upon.

When he may be licensed to sell real estate.
R.S., c. 64, §27.
See c. 71, §1, spec. 9.

SEC. 27. The judge of probate may grant license to a public administrator to sell the real estate of such deceased, for the payment of debts and incidental charges, as to other administrators; and also, after three years from the granting of administration, to sell any or all of such real estate, at public or private sale, although not needed for that purpose, if he is satisfied that it would be for the interest of all concerned, and that no heir, or other persons, except creditors, directly interested in such estate, can be found in the United States.

Proceedings in such sales.
R.S., c. 64, §28.

SEC. 28. In such cases, the judge of probate and such administrator shall observe all the provisions of law as to bonds, notices, oaths and other requirements as in the sale of real estate by other administrators.

Balance in his hands to be paid to state treasurer.
R.S., c. 64, §29.

SEC. 29. When there is, in the hands of such public administrator, an amount of money, more than is necessary for the payment of the deceased's debts and other purposes of administration, he shall be required by the judge of probate to deposit it with the treasurer of state, who shall receive it; and the state shall be responsible for the principal thereof, for the benefit of those who may lawfully claim it; and the governor and council, on application and proof, may order the treasurer to pay it over.

Notice to be given to state treasurer.
R.S., c. 64, §30.

SEC. 30. In such case, the judge of probate shall give notice to the treasurer of state of such amount, and from what estate receivable; and if said administrator neglects, for three months after the order of the judge therefor, to deposit the same, the treasurer shall cause his probate bond to be put in suit for the recovery thereof.

Balance, if not claimed in twenty years, forfeited to state.
R.S., c. 64, §31.

SEC. 31. If the heirs, widow, or next of kin, to any such intestate, or other lawful claimants, do not demand such money within twenty years from the time of its deposit, it shall be forfeited to the state.

SPECIAL ADMINISTRATORS.

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SEC. 32. When from any cause there is a delay in granting letters testamentary or of administration, the judge of probate may appoint a special administrator, who shall, notwithstanding any pending appeal, proceed in the execution of his duties until it is otherwise ordered by the supreme court of probate; and he shall give bond, like other administrators, conditioned that he will make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which come to his possession or knowledge; and that he will truly account, on oath, for them and deliver them to the person lawfully authorized to receive them. When by reason of the removal or discharge of executors or administrators, and appeals from the decrees of removal or discharge, there is no executor or administrator to act, the judge may appoint a special administrator, who shall have the same powers, and perform the same duties as other special administrators, until such appeals are disposed of and some executor or administrator may legally act.

When a special administrator may be appointed. Bond to be given. R.S., c. 64, § 32.

SEC. 33. He shall collect all the goods, chattels, and debts of the deceased, control and cause to be improved all his real estate, and collect the rents and profits thereof, and preserve them for the executor or administrator thereafter appointed; and for that purpose may maintain suits, and sell such perishable and other goods as the judge orders; pay the expenses of the funeral and last sickness, and of his administration; debts preferred under the laws of the United States; public rates and taxes, money due the state from the deceased, and [pay] to the widow, if any, and if not, to the guardian of the children under fourteen years of age, for their temporary support, such sums as the judge orders, having regard to the state and amount of the property; and sums so paid to the widow or guardian shall be deducted, if the estate is solvent, from the share of the widow or children, but if insolvent, [shall] be considered by the judge in his allowance to them.

His powers and duties. R.S., c. 64, § 33. 63 Me., 355.

SEC. 34. Such administrator shall be allowed such compensation for his services, as the judge thinks reasonable, not exceeding that allowed to other administrators; and on the granting of letters testamentary or of administration, his powers shall cease, and he shall forthwith deliver all the goods, chattels, money, and effects of said deceased in his hands, and the executor or administrator may prosecute any suit commenced by the special administrator, as if it had been commenced by himself.

His compensation. When his powers cease; proceedings. R.S., c. 64, § 34.

SEC. 35. No special administrator shall be liable to an action by any creditor of the deceased, without an application by such

Not to be sued by creditor

CHAP. 64. creditor to the judge of probate, and his decree authorizing it ;
without de- and the limitation of all suits against the estate shall begin to run
cree of from the time of granting letters testamentary or of administration
judge. in the usual form, as if such special administration had not been
R.S., c. 64, § 35. granted.

In certain cases, letters may be granted to executor, pending appeal. Proceedings. R.S., c. 64, § 36. SEC. 36. When a will has been proved and allowed by the judge of probate and an appeal made therefrom, he may, instead of appointing a special administrator as aforesaid, grant letters testamentary to the executor named in such will, who shall give bond and proceed in the settlement of such estate, as if no appeal had been made ; and after *the* payment of the just debts and charges of administration, he shall retain in his hands all the remaining avails of such estate to await the result of the case in the supreme court of probate, and then pay the same, under the direction of the judge of probate, to the parties legally entitled thereto.

EXECUTORS IN THEIR OWN WRONG.

Who are ex- SEC. 37. If any person sells or embezzles any of the goods or
ecutors in effects of a deceased person liable to administration, before taking
their own out letters testamentary or of administration thereon and giving
wrong ; bond accordingly, he shall be liable to the actions of the creditors
liability. and other persons aggrieved as an executor in his own wrong, and
R.S., c. 64, § 37. also to the rightful executor or administrator for the full value of
15 Me., 117. the goods or effects of the deceased taken by him, and for all
48 Me., 349. damages caused by his acts to said estate ; and he shall not be
54 Me., 482. allowed to retain any part of the goods or effects, except for such
57 Me., 25. funeral expenses, debts of the deceased or other charges actually
58 Me., 435. paid by him, as the rightful executor or administrator would have
65 Me., 420. [had] to pay.

PROVISIONS RELATING TO BOTH EXECUTORS AND ADMINISTRATORS

Notice of appointment, by executors and administrators. R.S., c. 64, § 38. SEC. 38. Every executor or administrator, within three months after giving bond for discharge of his trust, shall cause notice of his appointment to be posted up in two or more public places, to be specified by the judge, in the town where the deceased last dwelt, if in *this* [the] state, and such further notice as the judge in writing directs.

Notice when deceased lived out of state. R.S., c. 64, § 39. SEC. 39. If the deceased was not an inhabitant [of] or resident in *this* [the] state at the time of his decease, public notice shall be given in some newspaper, or such other notice as the judge directs.

Notice proved by affidavit filed and recorded. SEC. 40. An affidavit of the executor or administrator, or of the person employed by him to give such notice, filed with a copy of the notice, in the probate court, within one year after giving

bond as aforesaid, and recorded, shall be evidence of the time, place and manner, in which the notice was given.

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R.S., c. 64, §40.

SEC. 41. Executors or administrators residing out of the state at the time of giving notice of their appointment, shall appoint an agent or attorney in the state and insert his name and address in such notice. Demand or service made on said agent or attorney, shall bind the principals and the estate in their care as if made on themselves.

Ex'r or adm'r living out of state must appoint agent or att'y in state.
1872, c. 6.

SEC. 42. Executors and administrators shall cause so much of wills as devise[s] real estate to be recorded in the registry of deeds.

Devises of real estate, recorded.
1872, c. 79.
1874, c. 186, §1.
See c. 63, § 17.

SEC. 43. Every executor or administrator within three months after his appointment, or within such further time, not exceeding three months, as the judge allows, shall make and return upon oath into the probate court, a true inventory of the real estate and of all the goods, chattels, rights and credits of the deceased, which are by law to be administered and which come to his possession or knowledge.

Inventory, when to be returned.
R.S., c. 64, §41.
61 Me., 471.

SEC. 44. The real estate, goods and chattels, comprised in the inventory, shall be appraised by three disinterested persons appointed by the judge of probate and duly sworn; and when any part of such estate is in another county, the judge may appoint three appraisers for such county to return an inventory thereof, who shall be sworn.

Appointment of appraisers.
R.S., c. 64, §42.

SEC. 45. Any warrant for the appraisement of an estate, may be revoked by the judge for sufficient cause, and a new one issued if deemed necessary.

Warrants may be revoked.
R.S., c. 64, §43.

SEC. 46. Such of the credits of the deceased, and rights to personal property not in possession, as the appraisers judge to be available as assets, they shall enumerate in a schedule part of said inventory, with the names of the debtors or parties obligated, the sums supposed to be due thereon, and the nature of the rights aforesaid, whether absolute or conditional; and state, in one general sum at the foot of such schedule, the amount which in their judgment may be realized from the same, exclusive of expenses and risk of settlement or collection.

How choses in action shall be appraised.
R.S., c. 64, §44.

SEC. 47. The judge of probate at any time afterward, when any estate or effects, rights, or credits come to the knowledge or possession of any executor or administrator, may require of him an additional inventory; and appraisers in like manner shall be appointed and sworn; and return shall be made within the time directed by the judge in his warrant.

Additional inventories may be required.
R.S., c. 64, §45.

SEC. 48. The following articles shall be omitted in making the inventory, and shall not be administered upon as assets:

What omitted from inventory.
R.S., c. 64, §46.

First.—All the articles of apparel or ornament of the widow

CHAP. 64. according to the degree and estate of her husband, and the apparel and school books of minor children of the deceased.

Second.—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.

Third.—Such provisions and other articles, not exceeding fifty dollars in value, as have necessarily been consumed in the family of the deceased before the appraisal of such estate.

61 Me., 471.

Fourth.—Any sum of money becoming due on the death of the deceased from an insurance on his life effected by him, after deducting the amount of premium paid therefor within three years, with interest, provided such deceased left a widow or issue; but such sum shall be disposed of as provided by section ten, chapter seventy-five.

When additional bonds may be required.
R.S., c. 64, § 47.
71 Me., 450.

SEC. 49. If, after the return of any inventory, or in the progress of the settlement of any estate, the judge finds that the bonds given by any executor or administrator are too small in amount, or insecure for want of responsible sureties; he may require additional or larger bonds, or other sureties, and if said executor or administrator does not furnish the same, his authority may be revoked and some other person appointed in his place.

When sales of personal estate may be ordered. Collection of demands sold.
R.S., c. 64, § 48.

SEC. 50. The judge of probate, when he deems it necessary for the speedy payment of the debts of the deceased, or for the benefit of all parties interested, may order all or any of the goods and chattels, rights and credits, pews or interests in pews in a meeting house, not distributed, to be sold at public or private sale; and the executor or administrator shall account for the same as sold. Any personal estate or rights of action thus sold, may be assigned to the purchaser, and collected in the name of the executor or administrator, the purchaser giving him reasonable indemnity against costs, but reserving to debtors their rights of set-off; or the purchaser may sue therefor in his own name, subject to the same defence as if sued in the name of the executor or administrator. The legal rights of persons to whom specific legacies are bequeathed, are not to be affected by this section.

For what executors and administrators shall account.
R.S., c. 64, § 49.
51 Me., 173.

SEC. 51. Every executor or administrator shall be held to account for the personal property and effects named in the inventory at the appraised value, unless sold under license as provided in the preceding section; but in case of credits and rights to property not in possession, if loss accrues without his fault or negligence, he may be allowed the amount of such loss in his account of administration; and if any goods or effects not sold under license, allowed to the widow, nor distributed to the heirs or devisees, are shown to be of greater value than they were appraised at, he shall account for the additional value.

SEC. 52. The judge of probate may authorize executors or administrators to adjust, by arbitration or compromise, any claims for money or other property in favor of or against the estates by them represented.

SEC. 53. When one or more claims against the estate of a person deceased, though not insolvent, are deemed by the executor or administrator to be exorbitant, unjust or illegal, on application in writing to the judge of probate, and after notice to the claimants, the judge, if upon hearing, he is satisfied that the allegations in said application are true, may appoint two or more commissioners, who shall, after being duly sworn, and [after] notifying the parties as directed in their commission, meet at convenient time and place, and determine whether any and what amount shall be allowed on each claim, and report to the judge at such time as he may limit. Sections five, six, seven, eight, twelve, thirteen, fourteen, sixteen and seventeen of chapter sixty-six, shall apply to such claims, and the proceedings thereon. No action shall be maintained on any claim so committed, unless proved before said commissioners; and their report on all such claims shall be final, saving the right of appeal.

SEC. 54. When any executor or administrator neglects or unreasonably delays to raise money out of the estate under his charge, or to pay the same where due, and thereby subjects said estate to be taken in execution, he shall be deemed guilty of waste and unfaithful administration.

SEC. 55. Every executor or administrator shall render his accounts agreeably to the condition of his bond; and the judge of probate may require him to account, when he deems it necessary. Reasonable notice shall be given before the allowance of any such account. On the examination of such account, the accountant may be interrogated under oath in relation to the same, and such record of his answers made as the judge requires.

SEC. 56. Every executor or administrator shall be chargeable in his account with all goods, chattels, rights, and credits of the deceased, which come to his hands and are by law to be administered, whether included in the inventory or not; with all the proceeds of real estate sold for the payment of debts, legacies, and incidental expenses, and with all the interest, profit, and income, that in any way come to his hands in his said capacity from any estate of the deceased.

SEC. 57. If any part of the real estate is used or occupied by the executor or administrator, he shall account for the income thereof to the devisees or heirs in the manner ordered by the judge of probate, with the assent of the accountant, and of other parties present at the settlement of his account; and if the parties do not agree on the sum to be allowed, it shall be determined by three

CHAP. 64.

Reference or compromise.
R.S., c. 64, §50.
26 Me., 538.
55 Me., 124.

Special commissioners may be appointed on disputed claims.

R.S., c. 64, §51.
See c. 66, §27.
61 Me., 239,
242.
67 Me., 116,
117, 225, 459.

Executor or administrator neglecting to pay debts, guilty of waste.
R.S., c. 64, §52.

Accounts, when rendered; notice and examination.
R.S., c. 64, §53.
18 Me., 58.
27 Me., 83.
49 Me., 409,
563.
See c. 66,
§§ 26, 27.

All property received to be accounted for.
R.S., c. 64, §54.
39 Me., 18.
49 Me., 67.
62 Me., 308.

Also income of real estate used.
R.S., c. 64, §55.
62 Me., 309.
63 Me., 355.

CHAP. 64. disinterested persons, appointed for that purpose by the judge of probate, whose award, accepted by the judge, shall be final.

SEC. 58. Any executor or administrator may insure, at the expense of the estate, any property of the deceased that may become assets in his hands, or which he holds in trust by the provisions of a will.

SEC. 59. In the settlement of the accounts of executors and administrators, the judge may allow a reasonable sum for the erection of monuments or grave stones ; but, in insolvent estates, the sum shall not exceed twenty dollars.

SEC. 60. In the settlement of the estate of a married woman, debts contracted by her for the benefit of herself or her family, for which the credit was given to her, and for which her husband is not liable or is not able to pay, shall be paid by her executor or administrator, and allowed in his account ; also all reasonable expenses occasioned by her last sickness.

SEC. 61. Executors or administrators may pay debts due from a deceased husband to his wife, or from a deceased wife to her husband, as if the marriage relation had never existed between them.

SEC. 62. Executors or administrators may require any person making a claim against the estate of their testator or intestate, to present said claim in writing, supported by the affidavit of the claimant, or of some other person cognizant thereof, stating what security the claimant has, if any, and the amount of credit to be given, according to the best of his knowledge and belief.

SEC. 63. No private claim of any executor or administrator, against the estate under his charge, shall be allowed in his account, unless particularly stated in writing ; *and*, if such claim is disputed by a person interested, it may be submitted to referees agreed upon in writing by the interested parties present, or their agents or guardians ; and the judge may accept, or recommit their written report, made pursuant to the submission, and decree accordingly.

SEC. 64. When there is more than one executor or administrator, and either of them is removed, or his resignation accepted by the judge of probate, the others may proceed to discharge the trust reposed in them, and may bring actions of account against him and recover, by any proper legal process, such effects and assets as remain in his hands unadministered. Like actions or process may be brought by one executor or administrator against another, when the latter retains an undue proportion of the estate under their charge, and refuses either to account to the other, or [to] pay the debts, legacies, or other charges on such estate, or where the aggrieved executor is a residuary legatee.

SEC. 65. The supreme judicial court may hear and determine in equity all disputes and controversies between co-executors and

Executor or administrator may insure property.
R.S., c. 64, § 56.

Allowance for monuments or grave stones.
R.S., c. 64, § 57.

What debts and expenses of deceased married women may be paid.
R.S., c. 64, § 58.

Debts of husbands and wives to each other to be paid.
R.S., c. 64, § 59.

Claims against estates to be verified by affidavit, if required.
R.S., c. 64, § 60.

Claims of executors or administrators, how to be adjusted.
R.S., c. 64, § 61.

When one of several executors or administrators is removed or resigns, proceedings.
R.S., c. 64, § 62.

Chancery remedies between co-

co-administrators, and between their respective legal representatives, in all cases, where there is not a plain, adequate, and complete remedy at law; and in such case, the court shall have the same power and may proceed in like manner, as is provided in cases between co-partners.

SEC. 66. When letters of administration are revoked, or an executor or administrator is removed, all previous sales of real or personal estate, made in a legal manner by him and with good faith on the part of the purchaser, and all other acts, in due course of administration, done by him in good faith, shall remain valid and effectual, and he shall be accountable in the same manner as if he had not been removed.

CHAP. 64.
executors
and co-ad-
ministrators.
R.S., c. 64, § 63.

Previous
acts of those
removed
valid.
R.S., c. 64, § 64.

EMBEZZLEMENT OF PROPERTY OF DECEASED PERSONS.

SEC. 67. Upon complaint made to the judge of probate by an executor, administrator, heir, legatee, creditor or other person interested in the estate of a person deceased against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, effects or real estate of the deceased, or of having fraudulently received any such money, goods, effects, or real estate, or of aiding others in so doing, he may cite such suspected person to appear before him to be examined on oath in relation thereto, and may require him to produce for the inspection of the court and parties all books, papers or other documents within his control relating to the matter under examination; *provided* however, that this section shall not apply to any examination touching the estate of persons deceased prior to February nineteen, eighteen hundred and seventy-four.*

Embezzle-
ment of es-
tate of de-
ceased per-
sons, pro-
ceedings in
case of.
1874, c. 168, § 1.

Proviso.
1874, c. 168, § 2.
1874, c. 262.

SEC. 68. Upon complaint of any such party, that a person intrusted by an executor or administrator with any part of such estate, refuses to render to him a full account thereof when required, the judge of probate may cite such person to appear before him and to render a full account under oath of any money, goods, chattels, bonds, accounts or other papers belonging to such estate, taken into his custody, and of his doings in relation thereto.

Persons in-
trusted
with estate
of deceased
may be cited
to account.
R.S., c. 64, § 66.

SEC. 69. If any person duly cited as aforesaid, refuses to appear and submit himself to such examination, or to answer all lawful interrogatories, or to produce such books, papers or documents, the judge shall commit him to the jail of the county, there to remain until he submits to the order of the court, or is discharged by the complainant or the supreme judicial court; and he shall also be liable to any injured party in an action on the case, for all the damages, expenses and charges arising from such refusal.

Penalties for
refusal in
either case.
R.S., c. 64, § 67.

* [NOTE. The commissioner hopes that he has given a correct construction to section two of 1874, c. 168; for he regards 1874, c. 262 as substantially *functus officio* since February 18, 1880.]

CHAP. 65.

CHAPTER 65.

ASSIGNMENT OF DOWER, PARTITION OF REAL ESTATE, AND
DISTRIBUTION OF PERSONAL ESTATE.

ASSIGNMENT OF DOWER AND OTHER LIFE INTERESTS.

- SEC. 1. In what cases the judge of probate may assign dower.
2. Commissioners to be appointed and sworn; how to assign dower.
3. Special assignment of dower, when it cannot be by metes and bounds; widow's rights may be secured.
4. Widow may waive jointure and claim dower in certain cases.
5. Widow may waive provision in husband's will, and claim dower.
6. Rights of surviving husband in wife's lands, and how assigned.
7. Use of one half of deceased husband or wife's estate, when to be assigned to survivor.

PARTITION OF REAL ESTATE.

- SEC. 8. In what cases the judge may make partition of real estate.
9. Reversions or remainders may be divided.
10. Appointment, oath and duties of commissioners.
11. Partition of estate in different counties.
12. Proceedings when equal division cannot be made.
13. Proceedings when interest of heir or devisee has been alienated.
14. When such interest is under attachment.
15. What estate shall be included in the partition.
16. Any owner may apply for partition. Notice.

PROVISIONS APPLYING TO ASSIGNMENT OF DOWER, AND TO PARTITION OF
REAL ESTATE.

- SEC. 17. Warrant may be revoked. Proceedings.
18. Guardians to be appointed for minors, and agents for owners out of the state.
19. Proceedings when land is owned in common with other parties.
20. Return of commissioners may be set aside or re-committed. Record and effect when accepted.

ALLOWANCES TO WIDOWS AND OTHERS.

- SEC. 21. Allowances to widows from personal estate.
22. Mortgage debts allowed may be assigned.
23. Temporary allowances during litigation.
24. Widow may have ninety days' support in her husband's house.
25. Allowance to minor children, if no widow. When allowance may be divided.
26. Allowance to husband from his wife's estate.

DISTRIBUTION OF PERSONAL ESTATE AMONG HEIRS AND DEVISEES.

- SEC. 27. Remainder of personal estate how to be distributed. Proceedings if order of distribution is not executed.
28. Distribution of specific articles.
29. Debts may be assigned; conditions.
30. Bond may be required in certain cases.
31. Legatee may sue for legacy.

DISTRIBUTION OF LANDS HELD IN MORTGAGE OR TAKEN ON EXECUTION. CHAP. 65.

- SEC. 32. Lands held in mortgage or taken on execution before foreclosure, to be treated and sold as personal estate.
33. To be sold by license for payment of debts, legacies, &c.
34. In case of death of executor or administrator, proceedings.
35. Distribution if not redeemed or sold for debt.

DISTRIBUTION OF THE ESTATES OF PERSONS DECEASED OUT OF THE STATE.

- SEC. 36. Estates of persons deceased out of the state, how to be disposed of.
37. Proceedings if such persons died insolvent.
38. If any residue, how to be distributed.
39. Proceeds of sale of land under a foreign will, how disposed of.

ASSIGNMENT OF DOWER AND OTHER LIFE INTERESTS.

SEC. 1. The judge of probate, having jurisdiction of the settlement of a deceased husband's estate, may assign dower to the widow, when her right of dower is not disputed by the heirs or devisees, in the lands of which the husband died seized, in any county, including a wood lot or other land used with the farm or dwelling house, though not cleared, but not including wild lands.

When judge may assign dower.
R.S., c. 65, § 1.
23 Me., 278.
44 Me., 47.
45 Me., 493.
46 Me., 123.
53 Me., 246.

SEC. 2. He may issue his warrant to three discreet and disinterested persons to assign the dower by metes and bounds, when it can be done without prejudice to the whole estate; who shall be duly sworn, and shall assign the same equally and impartially, without favor and affection, as conveniently as may be, in one or more parcels, for the best interest of the parties.

Commissioners to be appointed and sworn.
R.S., c. 65, § 2.

SEC. 3. When a division by metes and bounds cannot be conveniently made, dower shall be assigned in a special manner, as of a third part of the rents and profits; in which case the judge may, if he deems it necessary, require the parties having the estate to secure the widow's share by mortgage or otherwise.

Special assignment of dower.
R.S., c. 65, § 3.

SEC. 4. When a jointure or pecuniary provision has been made before marriage for the benefit of an intended wife, without her consent, or has been made after marriage, she may, within six months after her husband's death, elect, in writing filed in the probate court, to waive such provision, and claim her dower; otherwise her dower shall be barred.

Widow may waive jointure in certain cases.
R.S., c. 65, § 4.
49 Me., 463.

SEC. 5. When a specific provision is made for a widow in her husband's will, she shall, within six months after probate thereof, make her election, whether to accept it or claim her dower; but shall not be entitled to both, unless it appears by the will that the testator plainly so intended.

Widow may waive husband's will.
R.S., c. 65, § 5.
1 Me., 150.
32 Me., 133.
36 Me., 215.

SEC. 6. Upon the decease of a wife whose estate is solvent, the judge, unless she made provision for her husband in her will which he has not duly waived, or unless his right is disputed by her heirs or devisees, may cause one third of any real estate of which she died seized to be assigned to the husband for his use during life, in the manner and with the rights of dower.

Rights of surviving husband in wife's lands, and how assigned.
R.S., c. 65, § 6.

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Use of half of husband's or wife's real estate, when to be assigned to survivor.
R.S., c. 65, § 7.

SEC. 7. When a husband or wife dies intestate, leaving no issue, and the estate is solvent, the judge, if the right of the survivor is not disputed by the heirs, may cause one half of any real estate of which the deceased died seized, to be assigned to the survivor for use during life, in the manner and with the rights of dower.

PARTITION OF REAL ESTATE.

In what cases the judge may make partition of real estate.
R.S., c. 65, § 8.
35 Me., 421.

SEC. 8. The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all his real estate in *this* [the] state, among his heirs, or devisees, and all holding under them, when the proportions of the respective parties are not in dispute between them, or do not appear to the judge to be uncertain, depending upon the construction of any devise or other conveyance, or upon other questions that he thinks proper for the consideration of a jury and a court of common law.

Reversions or remainders may be divided.
R.S., c. 65, § 9.

SEC. 9. Any reversion or remainder vested in his heirs, expectant on the determination of any particular estate under his will or otherwise, may in like manner be divided, either during the existence of such particular estate, or after its determination.

Appointment, oath and duties of commissioners.
R.S., c. 65, § 10.

SEC. 10. The partition shall be made by three disinterested commissioners, appointed by said judge, who shall first be duly sworn, and make such partition pursuant to the will of the deceased, or the laws regulating the descent of intestate estates, as the case may be, among all the parties owning shares, whether they joined in the petition therefor or not.

Partition of estate in different counties.
R.S., c. 65, § 11.

SEC. 11. If there is estate in different counties to be divided, the judge may appoint separate commissioners for each county and issue warrants accordingly; and in such case, the partition shall be made of the estate in each county, as if there were no other to be divided.

Proceedings when equal division cannot be made.
R.S., c. 65, § 12.
47 Me., 271.
62 Me., 114.

SEC. 12. When the whole or any part of the premises, of greater value than any party's share, cannot be divided without great inconvenience, the same may be assigned to any one or more of the parties, who will accept it and pay to the others such sums of money, as the commissioners award to make the partition just; but such partition shall not be established by the court, until all such sums are paid or secured, with interest, to the satisfaction of the parties entitled thereto; nor if inconsistent with the condition of the devise, under which they claim; but in such assignment males shall be preferred to females, and the elder to the younger children of the same sex.

Proceedings when interest of heir or devisee has been alienated.

SEC. 13. No conveyance of the interest of any heir or devisee, in the lands of the deceased, by deed, levy of execution, or otherwise, shall take from the judge of probate his jurisdiction to divide and assign such lands in manner aforesaid; but the same shall

enure to the equitable owner of the part so conveyed; and in case of the unequal division provided for in the preceding section, such owner may make written application, to the judge, before he accepts such division, for the share of such heir or devisee, and after notice to such heir or devisee, the judge may decide in favor of such owner, and he shall be entitled to receive said share of the money, or so much thereof, as is proportional to his equitable interest.

CHAP. 65.
R.S., c. 65, § 13.

SEC. 14. If the share of any such heir or devisee is under attachment, the judge, on like application from the plaintiff in the suit or the attaching officer, shall require the money, not exceeding the amount of the attachment, to be paid to the officer, who shall be answerable therefor in his official capacity, subject to the rights of the parties, as if originally attached.

When such interest is under attachment.
R.S., c. 65, § 14.

SEC. 15. When such partition is made on the application of an heir or one holding under him, it shall be made among all the owners, and include all the ancestor's estate, which any interested party requires to have included; and when made on the application of a devisee or one holding under him, it shall be made of all the estate held by him jointly or in common with others holding under the testator, which any devisee requires to have included.

What estate shall be included in the partition.
R.S., c. 65, § 15.
12 Me., 464.

SEC. 16. Such partition may be ordered on the petition of any of the owners of any share, after giving personal notice to each of the other owners in the state, and public notice if any reside out of the state.

Any owner may apply for partition.
Notice.
R.S., c. 65, § 16.

PROVISIONS APPLYING TO ASSIGNMENT OF DOWER, AND TO PARTITION OF REAL ESTATE.

SEC. 17. The judge may, for sufficient cause, revoke any warrant issued by him for the assignment of dower, or for making partition, or for settling or determining other interests in real or personal estate, and grant a new warrant, or proceed otherwise, as circumstances may require.

Warrant may be revoked.
Proceedings.
R.S., c. 65, § 17.

SEC. 18. If it appears to the court that any minor or insane person, who has no guardian in the state, is interested in the premises, the court shall assign him a guardian for the suit, to appear for him and defend his interest; and if any owner resides without the state, having no agent therein, the judge shall appoint an agent to act for him.

Guardians to be appointed for minors, and agents for owners out of the state.
R.S., c. 65, § 18.

SEC. 19. When any of the real estate, of which partition or the assignment of dower is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition or assignment of dower to be given to the co-tenant, which [notice] shall contain a description of the premises to be divided, and of the proportion claimed as belonging to the estate of the deceased;

Proceeding when land is owned in common with other parties.
R.S., c. 65, § 19.
31 Me., 110.

CHAP. 65. specify the time and place of hearing the case, and be served by delivering to him, or leaving at the place of his abode an attested copy thereof, at least fourteen days before the time of hearing ; but if the co-tenant does not reside in *this* [the] state, such notice shall be given as the judge requires. At the time appointed in the notice, the judge shall hear the parties, determine their respective rights in such estate, and direct the commissioners first to divide and set off the estate of the deceased from that of such other persons, and then make the partition or assignment of dower prayed for.

Return of
commission-
ers may be
set aside, or
recom-
mitted.
Record, and
effect when
accepted.
R.S., c. 65, § 20.
12 Me., 199.

SEC. 20. The judge may set aside the return of the commissioners, and commit the case anew to the same or other commissioners. The return, when accepted by the court, shall be recorded in the probate office, and in the registry of deeds for the county in which the lands lie, and be binding, to all intents and purposes, upon all persons interested, saving to them the right of appeal to the supreme court of probate.

ALLOWANCES TO WIDOWS AND OTHERS.

Allowances
to widows
from per-
sonal estate.
R.S., c. 65, § 21.
31 Me., 67.
39 Me., 18.
46 Me., 539.
50 Me., 238.
52 Me., 199.
53 Me., 185.
54 Me., 534.
68 Me., 124.

SEC. 21. In the settlement of any intestate estate, or of any testate estate which is insolvent or in which no provision is made for the widow in the will of her husband, or she duly waives the provision made, the judge may allow the widow so much of the personal estate, besides her ornaments and wearing apparel, as he deems necessary, according to the degree and estate of her husband, and the state of the family under her care ; and he may also allow her any one pew in a meeting-house, of which the deceased died seized, and such allowance, when recorded, shall vest the title in her ; and when an estate, which, at the time of said allowance, was considered insolvent, ultimately appears to be solvent, the judge by a subsequent decree may make the widow a further reasonable allowance. And when, after an allowance has been made from any estate, additional personal property belonging to said estate comes to the knowledge of the judge, he may make a further allowance to her from such additional property.

Mortgage
debts allow-
ed may be
assigned.
R.S., c. 65, § 22.
54 Me., 535.

SEC. 22. When any allowance to a widow wholly or partly consists of a debt due the estate, secured by a mortgage of real or personal property, the executor or administrator, under the direction of the judge of probate, shall assign said mortgage and deliver the evidence of such debt to her.

Temporary
allowances
during
litigation.
R.S., c. 65, § 23.

SEC. 23. In the settlement of any testate estate, where no provision is made for the widow in the will of her husband, or she duly waives the provision made, the judge shall make her suitable allowances from the personal estate, from time to time, for the support of herself and family under her care, during any litigation

concerning the will; and on the final probate of the will he shall make her a final reasonable allowance from the personal estate, according to the degree and estate of her husband and the state of the family under her care. CHAP. 65.

SEC. 24. A widow may remain in the house of her husband ninety days next after his death, without being chargeable with rent therefor; and in the meantime, she shall have her reasonable sustenance out of the estate. Widow may have 90 days' support in husband's house.
R.S., c. 65, §24.

SEC. 25. In all insolvent estates, if there is no widow, the judge may make a like allowance from the personal estate to the minor children of the deceased, who are under fourteen years of age, and to those between fourteen and twenty-one years of age, who from ill health are unable to labor. And if there is a widow and such children by a former wife, the judge may, at his discretion, divide such allowance among the widow and such children of a former wife. Allowance to minor children, if no widow.
When allowance may be divided.
R.S., c. 65, §25.

SEC. 26. 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. Allowance to husband from his wife's estate.
R.S., c. 65, §26.

DISTRIBUTION OF PERSONAL ESTATE AMONGST HEIRS AND DEVISEES.

SEC. 27. When on the settlement of any account of an administrator or executor, there appears to remain in his hands any property not necessary for the payment of debts and expenses of administration, nor specifically bequeathed, the judge shall order the same to be distributed according to the will of the deceased, if any, so far as it directs, otherwise according to the provisions of law; but before any order, determining who are heirs, and the share of each, shall be passed, public or personal notice shall be given to all interested; and alienage shall be no bar to any person who in other respects is entitled to receive any part of such property. If an executor or administrator neglects to distribute the property in his hands in pursuance of such order, and the parties in interest reside out of the state, and had no actual notice of any such settlement of account, the judge, on petition of any such party, may, within six years after such settlement, order such executor or administrator to render a new account of his doings. Remainder of personal estate, how to be distributed.
Proceedings if order of distribution is not executed.
R.S., c. 65, §27.
50 Me., 191.

SEC. 28. When such surplus consists of any other property besides money, the judge may order a specific distribution of the same in proportion to the value thereof; and for this purpose he may appoint one or more appraisers to value and make such distribution under oath, and [to] make report thereof to him for his acceptance. Distribution of specific articles.
R.S., c. 65, §28.

CHAP. 65.

Debts may
be assigned;
conditions.
R.S., c. 65, § 29.

SEC. 29. If any evidence of debt, or any account due to the deceased is thus assigned, the assignee is authorized to use the name of the executor or administrator to collect the same, by suit or otherwise, on giving such indemnity against the costs, as the judge orders; saving to all supposed debtors the right to set off any claim which they have against the estate of the deceased.

Bond may
be required
in certain
cases.
R.S., c. 65, § 30.

SEC. 30. When an executor or administrator pays to a creditor, heir, or legatee, a sum exceeding thirty dollars on account of a debt, legacy, or decree of distribution, the judge of probate may authorize him to require of the payee a sufficient bond to refund so much [there-]of [as] said sum *as it* may exceed such payee's equitable proportion on final settlement of the estate; unless such payment is made to a creditor under an order of distribution of an insolvent estate.

Legatee may
sue for
legacy.
R.S., c. 65, § 31.
30 Me., 142.

SEC. 31. Any legatee of a residuary or specific legacy under a will, may sue for and recover the same of the executor, in an action of debt at common law, or other appropriate action.

DISTRIBUTION OF LANDS HELD IN MORTGAGE OR TAKEN ON EXECUTION.

Lands held
in mortgage
or taken on
execution,
before fore-
closure to be
treated and
sold as per-
sonal estate.
1878, c. 14.
6 Me., 132.
52 Me., 569.
54 Me., 535.
59 Me., 164.
61 Me., 315.

SEC. 32. Real estate held by an executor or administrator, guardian or trustee in mortgage, or taken on execution, shall, until the right of redemption has expired, be deemed personal assets, and held in trust for the persons who would be entitled to the money if paid; and if it is paid, he shall release the estate; but if it is not paid, he may sell it as he could personal estate at common law, and assign the mortgage and debt; and the purchaser shall have the same rights and liabilities as the purchaser of personal property, sold by license of the probate court. All sales so made heretofore shall be valid.

To be sold
by licence for
payment of
debts, &c.
R.S., c. 65, § 33.
61 Me., 315.

SEC. 33. Any such real estate may, for the purpose of paying debts, legacies or charges of administration, be sold by a licence of the probate court as personal estate is sold; and the judge may, if he deems it necessary, require due notice to be given before granting such licence, and also an additional bond from the executor or administrator.

In case of
death of ex-
ecutor or
administra-
tor, proceed-
ings.
R.S., c. 65, § 34.

SEC. 34. When any executor or administrator has taken land on execution for debt due the estate, and dies without disposing thereof, the judge may licence his executor or administrator to sell and convey it, to carry into effect the trust whereby it is held, or for any other legal purpose.

Distribution
if not re-
deemed or
sold for
debts.
R.S., c. 65, § 35.

SEC. 35. If such real estate is not so redeemed or sold, it shall be distributed among those who are entitled to the personal estate, but in the manner provided in this chapter for the partition of real estate; or the judge of probate or supreme judicial court, if

it would be more for the benefit of the parties in interest, may order it sold by the executor or administrator, and the money distributed as in other cases of personal estate.

CHAP. 65.

54 Me., 536.
See c. 71, § 1,
item 8.

DISTRIBUTION OF THE ESTATES OF PERSONS DECEASED OUT OF THE STATE.

SEC. 36. When administration is taken in this state on the estate of any person, who, at the time of his decease, was not an inhabitant thereof, his estate found here, after payment of his debts, shall be disposed of according to his last will, duly executed according to the laws of this state, if he left any; but if not, his real estate shall descend according to the laws of this state; and his personal estate shall be distributed according to the laws of the state or country of which he was an inhabitant; and the judge of probate, as he thinks best, may distribute the residue of said personal estate as aforesaid, or transmit it to the foreign executor or administrator, if any, to be distributed according to the law of the place where the decease[d] had his domicile.

Estates of
persons de-
ceased out
of state, how
to be dis-
posed of.
R.S., c. 65, § 36.

SEC. 37. If such person died insolvent, his estate found in this state, shall, as far as practicable, be so distributed that all his creditors here and elsewhere may share in proportion to their debts; and to this end his estate shall not be transmitted as aforesaid, until all his resident creditors have received the proportion that they would, [have had] if the whole estate applicable to the payment of creditors, wherever found, *was* [had been] divided among all said creditors in proportion to their debts without preferring any one kind of debt to another; and in such case, no foreign creditor shall be paid out of the assets found here, *till* [until] all the resident creditors have received their proportion as herein provided.

Proceedings
if such per-
son died
insolvent.
R.S., c. 65, § 37.

SEC. 38. If there is any residue, after such payment to the citizens of this state, it may be paid to any other creditors who have proved their debts here, in proportion to the amount, but no one shall receive more than would be due to him, if the whole estate were divided ratably among all the creditors as before provided; and the balance, if any, may be transmitted to the foreign executor or administrator, or if there be none such, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all the resident and foreign creditors who have proved their debts in this state.

If any resi-
due, how
distributed.
R.S., c. 65, § 38.

SEC. 39. Where lands in this state held in trust under a foreign will, for persons not residing here, have been sold, the probate court for the county in which the will has been allowed may, in its discretion, order the money to be transmitted to the trustee, if there is any, in the state or country where the testator had his domicile.

Proceeds of
sale of land
under a for-
eign will,
how dis-
posed of.
1876, c. 109.

CHAP. 66.

CHAPTER 66.

INSOLVENT ESTATES.

DISPOSAL OF INSOLVENT ESTATES.

- SEC. 1. Priority of claims and of payment.
2. When representation of insolvency need not be made.

COMMISSIONERS AND PROCEEDINGS.

- SEC. 3. When representation of insolvency is to be made. Commissioners appointed and sworn; their report. Warrant may be revoked.
4. Meetings; notice. Time allowed to prove claims; may be extended. Proceedings in case of death of commissioner.
5. How claims are to be presented and proved.
6. If claimant refuses to be examined, or testifies falsely.
7. Value of claimant's security to be deducted. Appraisal.
8. Interest on claims. Report may be recommitted. Fees. Claims of administrator.
9. Forfeiture and liability of commissioners for neglect to report seasonably.

CONTINGENT CLAIMS.

- SEC. 10. Contingent claims, how to be treated.
11. Proceedings if absolute in four years, or if not.

APPEALS.

- SEC. 12. Appeals, how and when to be made, by claimant, heir, creditor or administrator. Bond and notice, when to be given.
13. Failing to give notice, or to prosecute after notice, in case of disallowance of claim, appellant may apply to the S. J. Court.
14. Appeal, when and how prosecuted; claim deemed contingent.
15. Failing to sue seasonably, in case of allowance of claim and appeal by administrator, &c., claimant may apply to supreme court.
16. Proceedings in the suit, and judgment.
17. Appealed claims may be referred. Creditor may be examined.
18. Judgment against administrator added to claims allowed. Costs.

SUITS PENDING AND COMMENCED.

- SEC. 19. Proceedings in actions pending. Limitation.
20. Claims not presented or not allowed, barred, except in case of further assets.

MISCELLANEOUS PROVISIONS.

- SEC. 21. Penalty, if account of administration is not settled within six months after report of commissioners.
22. Waste or trespass on real estate of insolvents.
23. Insolvency of estates in hands of executors or guardians.
24. Executor who is residuary legatee may represent estate insolvent.

DECREE OF DISTRIBUTION.

- SEC. 25. Decree of distribution, when and how made; proceedings in case of further assets.

- SEC. 26. Report on exorbitant claims under section fifty-three of chapter sixty-four, accepted without appeal, final, even if estate proves insolvent. Duty of judge. CHAP. 66.
27. Account of payments may be allowed without notice.

DISPOSAL OF INSOLVENT ESTATES.

- SEC. 1. An insolvent estate, after payment of the expenses of the funeral, and of administration, is to be appropriated: Priority of claims and of payment.
- First.*—To the allowance made to the widow or widower and children. R.S., c. 66, § 1.
18 Me., 271.
19 Me., 264.
24 Me., 28.
61 Me., 471-2.
71 Me., 66.
- Second.*—To the expenses of the last sickness.
- Third.*—To debts entitled to a preference under the laws of the United States.
- Fourth.*—To public rates and taxes, and money due the state. 64 Me., 407.
67 Me., 506.
- Fifth.*—To all other debts.

A creditor of one class is not to be paid, until creditors of preceding classes, of which the administrator had notice, are fully paid.

- SEC. 2. When an estate is not sufficient to pay more than such expenses, and claims of the first four classes, the administrator is exonerated from payment of any claim of the fifth class, without making a representation of insolvency. When representation of insolvency need not be made.
R.S., c. 66, § 2.
24 Me., 28.
62 Me., 167.

COMMISSIONERS AND PROCEEDINGS.

- SEC. 3. When it appears to the administrator that an estate may be insufficient to pay the debts of the fifth class, on his application to the judge of probate, the judge shall appoint two or more commissioners to receive and decide upon all claims against the estate, except those of the administrator. They are to be first sworn, and are to make report to the court of all claims presented, and of their *disposition*, [disposal] with the sum allowed on each claim. But the judge may, for sufficient cause, revoke such appointment and issue a new commission, or proceed otherwise as the case may require. When representation is to be made.
Commissioners sworn; their report.
1876, c. 84.

- SEC. 4. The commissioners are to appoint convenient times and places for their meetings, and to give notice thereof, as the judge directs. Six months after their appointment shall be allowed in the first instance for the presentation of claims. An additional time, not exceeding in the whole eighteen months, may be allowed therefor, or for any particular claim or claims specified in the order of the judge. If any one or more of the commissioners shall die after the expiration of the eighteen months and before the commission is returned, the judge of probate may appoint new commissioners and allow an additional time not exceeding three months for the presentation of claims. Meetings; notice.
Time allowed to prove claims.
R.S., c. 66, § 4.
48 Me., 407.

- SEC. 5. Claims must be presented in writing, supported by affidavit of the claimant, or of some person cognizant thereof, stat- Proceedings in case of death of commissioners.
1872, c. 38, § 1.
- How claims are to be presented

CHAP. 66.

and proved.
R.S., c. 66, § 5.
67 Me., 197.

If claimant
refuses to be
examined, or
testifies
falsely.
R.S., c. 66, § 6.
67 Me., 197.

Value of
claimant's
security to
be deducted.
Appraisal.
R.S., c. 66, § 7.
24 Me., 38.

Interest on
claims.
Report may
be recom-
mitted.
Fees.
Claims of ad-
ministrator.
R.S., c. 66, § 8.
19 Me., 264.
48 Me., 483.

Commission-
ers of insol-
vency, for-
feiture for
neglect of
duty.
1873, c. 116, § 2.
67 Me., 115-
117.

Contingent
claims, how
to be treated.
R.S., c. 66, § 9.
32 Me., 463.
67 Me., 564.

ing what security the claimant has, if any, and the amount of credit to be given, according to his best knowledge and belief. The commissioners may require a claimant to be sworn, and may examine him on all matters relating to his claim; and administer oaths to claimants and witnesses.

SEC. 6. If the claimant refuses to submit to such examination, his claim shall be rejected. If he or a witness knowingly answers or testifies falsely in relation to any claim, he shall be deemed guilty of perjury.

SEC. 7. When a claimant holds security for his claim of less value than *the* [its] amount *of it*, he is to be allowed only the difference between it and such value, estimated by the commissioners, who shall give him a certificate thereof. If either party is dissatisfied with that valuation, the judge, on application and after notice to the other party, may appoint three disinterested men to appraise on oath such security and make return thereof, by them signed, to the court; and their appraisal shall be substituted for the first, and the amount allowed varied accordingly. If the claimant declines to take the property at such appraisal and relinquishes his claim thereon, its appraised value is to be added by the judge to the sum allowed on which he is to receive his dividend, and the property appraised is to be disposed of by the administrator.

SEC. 8. Interest is to be cast on claims allowed from the death of the debtor to the time of the commissioners' first report, unless the contract otherwise provides. At the expiration of the time limited, the commissioners are to make their report to the judge, who, before ordering distribution, may recommit it for the correction of any error appearing to him to exist. Their fees are to be paid by the administrator. Any claim which he has against the estate, is to be examined and allowed by the judge and by him annexed to the list of claims, and a proportional dividend decreed to him.

SEC. 9. Commissioners of insolvency who neglect to render their report to the judge of probate for three months after the expiration of the time allowed them by the judge for receiving claims, shall forfeit all right to compensation for their services, and may be cited by the judge to show cause for their negligence.

CONTINGENT CLAIMS.

SEC. 10. Contingent claims may be proved, and the amount allowed reported, stating their nature and distinguishing them from other claims. The judge, ordering distribution, is to leave in the hands of the administrator a sum sufficient to pay on them the percentage paid to others.

SEC. 11. If within four years after administration was granted, such claims become absolute, there is to be paid upon them a percentage equal to that paid on other claims, if it can be done without disturbing prior dividends. If they do not become absolute within that time, or if payment of an equal percentage does not exhaust the sum reserved, the residue is to be distributed to all creditors, whose claims have been proved, or allowed by the judge.

CHAP. 66.

Proceedings,
if absolute
in four years,
or if not.
R.S., c. 66, § 10.
57 Me., 564.

APPEALS.

SEC. 12. 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 creditor 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.

Appeal,
how and
when to be
made by
claimant,
heir, credi-
tor or ad-
ministrator.
Bond;
notice.
R.S., c. 66, § 11.
35 Me., 122.
36 Me., 141.
48 Me., 483.
49 Me., 87.
54 Me., 348.
61 Me., 105,
230, 242-3.
65 Me., 422.
68 Me., 413.

SEC. 13. A person, whose claim has been disallowed in whole or in part, and who by accident or mistake has omitted to give notice at the probate office in season, or, after giving such notice, has, by accident or mistake, omitted further to prosecute this appeal, may, within two years after the report is made, petition the supreme judicial court, and after notice to the administrator and hearing, leave may be given to commence a suit at the next term of the court in the county where administration was granted, for the recovery of his claim, but not after four years from granting administration. No decree of distribution can be disturbed by a judgment so recovered.

In case of ac-
cident or
mistake,
when claim
is dis-
allowed
appellant
may apply to
the supreme
court.
R.S., c. 66, § 12.
See c. 82, § 7.
68 Me., 413-5.

SEC. 14. When an appeal is so taken, or leave so granted, the claim is to be determined in an action for money had and received, commenced within three months after the report was made, or at the next term after leave was granted. Such claim is to be deemed contingent, and provision is to be made for it as in sections ten and eleven. (a)

Appeal when
and how
prosecuted;
claim deem-
ed contin-
gent.
R.S., c. 66, § 13.

SEC. 15. A person whose claim against an insolvent estate has been allowed by commissioners *on said estate* and the decision of the commissioners [has been] appealed from by the administrator, heir at law or any other creditor, and who by accident or mistake

In case of
accident or
mistake,
when claim is
allowed and
appeal taken

(a) 36 Me., 141; 55 Me., 514; 57 Me., 564; 61 Me., 242; 68 Me., 413; 71 Me., 375.

CHAP. 66. has omitted to commence an action for money had and received within the time prescribed by section fourteen, may petition the supreme judicial court, and after notice to the administrator and a hearing, the court may grant leave to commence an action at the next term of the court in the county where administration was granted for the recovery of his claim, but not after four years from granting administration, but no decree of distribution can be disturbed by judgment so recovered.

Proceedings
in the suit,
and judg-
ment.
R.S., c. 66, § 14.
68 Me., 414.

SEC. 16. The creditor, before service, *is to* [must] annex to his writ a schedule of his claims, stating the nature of them, or file it with the clerk of the court where the writ is returnable, fourteen days before its return day; or seven days before the return day, when the action is brought before a justice of the peace. At such time as the court directs, the administrator is to file an abstract of all demands of the deceased against the claimant, and judgment is to be rendered for either party for the balance ascertained at the trial.

Appealed
claim may
be referred,
and creditor
examined.
R.S., c. 66, § 15.
55 Me., 514.
67 Me., 197.

SEC. 17. When notice of appeal is given or leave granted, the parties may agree upon referees authorized to act by a rule of the probate court, whose award is final. On trial before the court or referees, the creditor may be examined on oath, as before commissioners, and with the like effect, if he refuses to be examined.

Judgment
against
adm'r to be
added to
claims
allowed.
Costs.
R.S., c. 66, § 16.

SEC. 18. If final judgment or award is made against an administrator, no execution can be issued, except for costs allowed to the prevailing party. The sum found due to the claimant is to be entered by the judge of probate, on the list of debts entitled to dividends. The administrator may charge costs awarded against him to the estate, but not when he appealed without reasonable cause shown for it. (a)

SUITS PENDING AND COMMENCED.

Actions
pending.
1881, c. 9.

SEC. 19. Actions pending on claims not preferred, when a decree of insolvency is made, may be discontinued without costs; or continued, tried and judgment rendered with the effect, and satisfied in the manner provided in cases of appeal. No action can be commenced, except on a preferred claim, after such decree. (b)

Claims not
presented or
not allowed,
barred, ex-
cept in case
of further
assets.
R.S., c. 66, § 18.
67 Me., 458-9.

SEC. 20. 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

(a) 55 Me., 525; 57 Me., 564; 60 Me., 355; 65 Me., 129; 68 Me., 431.

(b) 2 Me., 11, 112; 21 Me., 265; 36 Me., 141; 49 Me., 88; 54 Me., 348; 55 Me., 101; 57 Me., 564; 60 Me., 355; 64 Me., 407; 65 Me., 129; 68 Me., 431.

the judge of probate, and after due notice, if proved or not disputed, may be allowed and paid as provided for contingent claims. CHAP. 66.

MISCELLANEOUS PROVISIONS.

SEC. 21. If an administrator neglects to settle his account within six months after the report on claims is made, or within such further time as the judge allows, it shall be deemed a breach of his bond. (a) Penalty for delay in settling account. R.S., c. 66, § 19.

SEC. 22. When an administrator commits waste or trespass, although an heir or devisee, or consents that another *should* [may] do it, on real estate of his intestate insolvent, he is liable to account for treble the amount of the damage. He may recover damages, in an action of trespass, of a person committing the same, to be accounted for as assets, although such person is heir or devisee of the estate. Waste or trespass on real estate of insolvent. R.S., c. 66, § 20. 59 Me., 355. 62 Me., 309.

SEC. 23. The provisions of this chapter are applicable to estates under charge of executors; and of guardians of insane persons, and of spendthrifts, except so far as they cannot be applied, and an allowance for the support of their wards and their families shall take the place of an allowance to widows and children. Insolvency of estate in hands of executors and guardians. R.S., c. 66, § 21. See c. 67, § 15. 68 Me., 432.

SEC. 24. When an executor has given bond as a residuary legatee, and the estate is found to be insufficient to pay the debts, he may make a representation of insolvency; and proceedings thereon may take place as in other cases. Such proceedings and distribution operate as a bar to a suit on his bond for the recovery of a debt. Executor who is residuary legatee may represent estate insolvent. R.S., c. 66, § 22.

DECREE OF DISTRIBUTION.

SEC. 25. After the expiration of thirty days from the time when the report on claims is made, the judge *is to* [shall] make a decree of distribution of the balance in the hands of the administrator among the creditors, according to the provisions of this chapter. In case of further assets, he is to make another distribution on the same principles. Decree of distribution, when and how made. R.S., c. 66, § 23.

SEC. 26. After any such decree of distribution, the judge may, without further notice, audit and allow the account of the executor, administrator or guardian for payments made pursuant to such decree. Account of payments may be allowed without notice. R.S., c. 66, § 24.

SEC. 27. When commissioners appointed under *the provisions* of section fifty-three of chapter sixty-four have reported on any claims submitted to them, and their report has been accepted and no appeal taken, it shall be final, notwithstanding the estate afterwards proves to be insolvent, and commissioners of insolvency are appointed. The amount awarded by the first commissioners shall be entered by the judge of probate on the list of debts entitled to dividends. Report on exorbitant claims accepted without appeal, shall be final even if estate proves insolvent. 1873, c. 116, § 1. See c. 69, § 6.

(a) 5 Me., 48; 6 Me., 270; 8 Me., 25; 11 Me., 51.

CHAP. 67.

CHAPTER 67.

APPOINTMENT, POWERS AND DUTIES OF GUARDIANS. ADOPTION
OF CHILDREN.

MINORS.

- SEC. 1. Guardians for minors; exception.
 2. How nominated and appointed.
 3. Power over minor's person and property.

INSANE AND INCOMPETENT PERSONS, SPENDTHRIFTS AND CONVICTS.

- SEC. 4. Guardians for incompetent adults, in what cases to be appointed.
 5. Guardians for convicts, insane persons in the hospital, and incompetent married women, how appointed. Proceedings when municipal officers are applicants.
 6. When inquisition is to be made by municipal officers.
 7. After notice and filing copies of application, contracts of parties to be void.
 8. Allowance to ward to defend himself.
 9. Power of guardian over ward's person. Duties.

POWERS AND DUTIES OF GUARDIANS.

- SEC. 10. Bonds of guardians. Conditions.
 11. Inventory of ward's estate to be returned.
 12. How guardians shall manage ward's estate.
 13. He shall pay ward's debts, collect dues, appear for him in court, and insure his estate.
 14. He may act in partition, set out dower, appoint appraisers, and convey real estate on ward's former contract.
 15. He may adjust claims by commissioners, referees or compromise, or he may represent the estate insolvent.
 16. He may refer actions pending to judge of supreme court, or to any one by him appointed. Referee's decision final.
 17. Judge may authorize guardian to adjust any claim by arbitration or compromise.
 18. Sale of ward's stock, chattels and pews; investment of funds.
 19. A married woman not to be guardian, nor her husband in her right.
 20. Judge may dismiss guardian, or remove after notice. Marriage of female ward annuls guardianship.
 21. Settlement of guardian's accounts.
 22. His bond to be examined; proceedings if insufficient.
 23. Oath of guardian to his account.
 24. Guardian of minor out of the state.
 25. When guardian and ward are both residents of another state, but entitled to property in this state, proceedings.

DISABILITY OF ADULTS UNDER GUARDIANSHIP.

- SEC. 26. Adult under guardianship cannot convey estate, or make contracts.

GUARDIANS AD LITEM.

- SEC. 27. Guardian ad litem may be appointed. Next friend may prosecute and defend suits.
 28. Special guardians for married women in certain cases.

EMBEZZLEMENT OF THE WARD'S ESTATE.

CHAP. 67.

- SEC. 29. Persons suspected of embezzlement may be cited and examined.
 30. Penalty for embezzlement by a guardian.

ADOPTION OF CHILDREN.

- SEC. 31. Who may adopt a child.
 32. Whose consent is required.
 33. Proceedings to be had in the probate court.
 34. Legal effect of such adoption.
 35. Appeal to the supreme court of probate.
 36. Allowance to adopted child from the estate of adopters.
 37. Any decree of adoption, may, for cause, be annulled.

CHANGE OF NAME.

- SEC. 38. Adult may petition for change of name. Guardian, &c., may petition for minor.

MINORS.

SEC. 1. The judge of probate may appoint guardians to minors residing in his county, or out of the state and having estate in his county; but no executor or administrator on an estate shall be guardian to a minor interested therein, unless he is the parent of such minor; but when any judge is interested, either in his own right, in trust, or in any other manner, or is within the sixth degree of kindred, such appointment shall be made by a judge in an adjoining county, and the record of said appointment shall show why [it is] so made.*

Guardians.
 1879, c. 102,
 see § 19.
 53 Me., 403.
 61 Me., 213.
 —must be
 disinter-
 ested.
 —when
 judge is in-
 terested,
 proceedings.
 1874, c. 156.

SEC. 2. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; but a guardian for such a minor, named by the deceased father in his last will, shall be appointed if suitable. If the minor is over that age, he may nominate his own guardian in the presence of the judge or register of probate, or in writing certified by a justice of the peace; and if approved by the judge such nominee shall be appointed, although the minor has a guardian, appointed before he was fourteen years of age; but if not thus approved, or if the minor resides out of the state, or being cited by the judge, neglects to nominate a suitable person, who will accept the trust, the judge may nominate and appoint, as if he were under fourteen.

Guardians,
 how nomi-
 nated and
 appointed.
 R.S., c. 67, § 2.
 53 Me., 403.
 61 Me., 213.

SEC. 3. Such guardian shall have the care and management of all his ward's estate, and continue in office until the ward is twenty-one years of age, unless sooner lawfully discharged; but the father, if alive and competent to transact his own business, if not, the mother, while unmarried and thus competent, shall have the care of the person and education of the minor; otherwise,

Power over
 minor's per-
 son and
 property.
 R.S., c. 67, § 3.
 31 Me., 197.
 53 Me., 550.
 61 Me., 214.

* [NOTE. The act of 1879, c. 102, appears to overlook the important act of 1874, c. 156, providing for cases where the judge is interested, and that omission may perhaps by strict construction be held to repeal it; but such cannot, in the opinion of the commissioner, have been the legislative intention.]

CHAP. 67. these duties shall devolve on the guardian; and in any case the judge may decree them to him, if he deems it for the welfare of the minor, till his further order.

INSANE AND INCOMPETENT PERSONS, SPENDTHRIFTS, AND
CONVICTS.

Guardians
for incompet-
ent
adults, when
to be ap-
pointed.
R.S., c. 67, § 4.
48 Me., 360.
49 Me., 273,
361.

SEC. 4. The judge of probate may appoint guardians to the following persons belonging to his county, though over twenty-one years of age, on written application of any of their friends, relatives, or creditors, or of the municipal officers or overseers of the poor of the town where they reside :

First.—Persons who are insane, or of unsound mind, including married women, who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates, or to protect their rights.

Second.—Persons, who, by excessive drinking, gaming, idleness, or debauchery of any kind, have become incapable of managing their own affairs, or who so spend, or waste their estate, as to expose themselves or families to want or suffering, or their towns to expense.

Third.—Convicts, committed to the state prison for a term less than for life.

Guardians
for convicts,
insane per-
sons in the
hospital, and
incompetent
married
women, how
appointed.
Proceedings
when muni-
cipal officers
are appli-
cants.
R.S., c. 67, § 5.
18 Me., 386.

SEC. 5. Guardians may be appointed, on application as aforesaid, for convicts, and for persons certified by the municipal officers of any town to have been committed by them to the insane hospital, upon proof of the facts, without further action of the municipal officers, or personal notice to the parties; and for insane or incompetent married women, after personal notice and a hearing upon proof of the alleged insanity or incompetency, without inquisition by the municipal officers of the town. In all cases where the municipal officers or overseers of the poor are applicants, if they have given at least fourteen days' notice to such person by serving him with a copy of their application, the judge may adjudicate thereon without further inquisition, if such person is present, or on such further notice, if any, as he thinks reasonable. Or, if such officers have not given such notice, the judge shall cause personal notice to be given to the party, before the hearing and adjudication.

When inquisi-
tion is to be
made by
municipal
officers.
R.S., c. 67, § 6.
18 Me., 386.

SEC. 6. In all other cases, the judge shall issue his warrant to the municipal officers of the town where such person resides, requiring them to make inquisition into the allegations made in the application; and they shall decide, upon such evidence as they are able to obtain, whether such allegations are true; and, as soon as may be, report the result to the judge; and if he shall, on said report, after personal notice to the other party, and a hear-

ing thereon, adjudge that such person is insane, a spendthrift, or incapable as aforesaid, he shall appoint a guardian. CHAP. 67.

SEC. 7. When such application is made, and notice issued thereon by the judge of probate, the applicants may cause a copy of their application, and the order of the court thereon, to be filed in the registry of deeds for the county; and if a guardian is appointed thereupon, all contracts, except for necessities, and all gifts, sales, or transfers of real or personal estate made by the person after said filing and before the termination of the guardianship, shall be void; but this section shall not by implication add any thing to the validity of any such act previous to said filing.

After notice, and filing copy of application, contracts of parties to be void.
R.S., c. 67, § 7.

SEC. 8. When a guardian is thus appointed, the judge shall make an allowance, to be paid by the guardian from the ward's estate, for all his reasonable expenses in defending himself against the complaint.

Allowance to ward to defend himself.
R.S., c. 67, § 8.

SEC. 9. Such guardians shall have the custody of the persons of their wards, if resident in the state, except so far as the court of probate may from time to time otherwise order; and every guardian appointed over any person for gaming, idleness, drinking, or debauchery, shall inculcate upon him habits of sobriety and industry, and when of sufficient health and strength, with the approbation of the judge of probate, he may bind him out to labor, not exceeding six months at any one time, or employ him in his own service; giving credit for his earnings, or such sum as he receives therefor.

Power of guardian over ward's person. Duties.
R.S., c. 67, § 9.

POWERS AND DUTIES OF GUARDIANS.

SEC. 10. Every guardian, appointed for minors or other persons, shall give bond to the judge of probate in such sum and with such surety or sureties, resident in *this* [the] state, as the judge accepts, conditioned as follows:

Bond of guardian. Conditions.
R.S., c. 67, § 10.
22 Me., 554.
31 Me., 260.

First.—For the faithful discharge of his trust.

Second.—To render a true and perfect inventory of the estate, property, and effects of his ward, within the time limited by law.

Third.—To render a just and true account of his guardianship when by law required. 69 Me., 283.

Fourth.—At the expiration of his trust, to deliver over all moneys and property, which, on a final and just settlement of his accounts, appear to remain in his hands.

SEC. 11. The judge of probate shall appoint three disinterested persons to appraise the estate of the ward; and the guardian shall return the inventory under oath, within such time as the judge in his warrant directs, if the ward is a minor, and in all other cases, within three months after his appointment, or such further time as the judge may allow. The warrant for an inventory may be revoked for cause, and a new one issued if deemed necessary.

Inventory of ward's estate to be returned.
R.S., c. 67, § 11.

CHAP. 67.

How guardians shall manage ward's estate.

R.S., c. 67, § 12.
48 Me., 280.
See c. 59, § 23.

SEC. 12. The guardian shall manage the estate of his ward frugally and without waste; and apply the income and profits thereof, *as* [so] far as needed, for the comfortable and suitable maintenance of the ward and his family, and if they are insufficient for that purpose, he may use the principal; and when any exigency occurs, the guardian may apply to a proper court for a license to sell the estate of his ward, and apply the proceeds to the purposes contemplated by his license.

He shall pay ward's debts, collect dues, appear for him in court, and insure his estate.

R.S., c. 66, § 13.
17 Me., 224.
48 Me., 281.
53 Me., 550.
68 Me., 432.

SEC. 13. He shall settle all accounts of his ward; pay all his just debts out of his personal estate, so far as it will go without disposing of effects necessary for the use and comfort of the ward and his family, and in case of deficiency thereof, then out of the real estate; demand, sue for, and receive all his dues, compound for the same, and give discharges thereof, on such terms as the judge of probate authorizes; appear for and represent his ward in all legal proceedings, unless another is appointed for that purpose as guardian or next friend; and [he] may insure any estate of his ward at the expense of the estate, and do all necessary acts relating to such insurance.

He may act in partition, set out dower, appoint appraisers, and convey on ward's contract.

R.S., c. 67, § 14.

SEC. 14. He may join in and assent to a partition of his ward's real estate on a petition or other legal process therefor; assign and set out dower in such estate to any widow entitled thereto; appoint an appraiser of real estate taken on execution against or in favor of his ward; and when his ward, prior to the guardianship, had lawfully contracted to convey real estate on conditions, and had failed to do so, he may convey it according to the terms of the contract, and shall be accountable therefor on his bond.

He may adjust claims by com'rs, reference or compromise, or represent estate insolvent.

R.S., c. 67, § 15.
68 Me., 431.
See c. 60, § 23.

SEC. 15. The guardian of any insane or incapacitated adult may apply for commissioners to be appointed to decide upon claims against his ward's estate, deemed exorbitant, unjust or illegal; may be authorized to refer or compromise claims for or against said estate; or may, if necessary, represent said estate insolvent, with like proceedings, rights and liabilities, as in the case of estates of deceased persons.

Guardian may refer action where ward is interested, to judge of S. J. court or his appointee.

1877, c. 180, § 1.
Decision final.

SEC. 16. Guardians of minors, insane, and incompetent persons, spendthrifts, and convicts, are authorized, by agreement of parties, to refer, by rule of court, any action hereafter pending in the supreme judicial court, in favor of or against their ward, on any claim or demand for money or other property in which said ward is interested, to any judge of said court, or any person appointed by said judge, whose decision, when accepted by said court, shall be final.

Adjustment by arbitration or

SEC. 17. The judge of probate may authorize any such guardian to adjust, by arbitration or compromise, any claim for

money or other property, in favor of or against any ward represented by him.

SEC. 18. The judge of probate, on petition of the guardian or any party interested with or without notice to other persons interested, as the judge deems necessary, may authorize or require the guardian to sell or transfer any stock in the public funds, or other personal property held by him as guardian, or any pews or interest in pews in a meeting-house, belonging to such estate, as goods and chattels, and to invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner most for the interest of all concerned; and the judge may make such further order, and give such directions, as the case requires for managing, investing, and disposing of the effects in the hands of the guardian, or for buying in any particular estate, remainder, reversion, mortgage, or other incumbrance upon any real estate belonging to the ward.

SEC. 19. No married woman, during her coverture, shall be appointed guardian; and if any female guardian is married, her authority, as such, shall cease; nor shall her husband be guardian in her right.*

SEC. 20. The judge of probate may dismiss any guardian, when it appears necessary, or on the request of such guardian, and if the case require it, appoint another in his place; but previously to any such removal, except by request of the guardian, personal notice shall be given to such guardian, or public notice if his residence is out of the state or unknown, to appear and show cause to the contrary; and on the marriage of any female ward under twenty-one years of age, the authority of her guardian shall cease.

SEC. 21. Every guardian shall settle his account with the judge of probate at least once in three years, and as much oftener as the judge cites him for that purpose; and on neglect or refusal to do so, he shall be deemed to have broken the condition of his bond; be liable to removal therefor, although the ward may be indebted to him; and forfeit all allowance for his personal services, unless it appears to the judge that such neglect arose from sickness, or other unavoidable accident.

SEC. 22. On the settlement of every account of the guardian, except when intended as a final one, the judge shall examine his bond, and if then or at any time it is found insufficient in amount or responsibility of sureties, he shall require a new and sufficient one; and if the guardian does not give it, he shall be removed, and another appointed.

CHAP. 67.

compromise,
1877, c. 180, § 2.
Sale of
ward's
stocks, chat-
tels and
pews; in-
vestment of
funds.
R. S., c. 67, § 16.

A married
woman not
to be
guardian.
R. S., c. 67, § 17.

Judge may
dismiss guar-
dian, or re-
move after
notice.
R. S., c. 67, § 18.

Marriage of
female ward
annuls guar-
dianship.

Settlement
of guardian's
accounts.
R. S., c. 67, § 19.
1 Me., 186.
31 Me., 200.
54 Me., 343.
64 Me., 210.
69 Me., 283.

His bond to
be exam-
ined; pro-
ceedings if
insufficient.
R. S., c. 67, § 20.
See c. 72, § 2.

* [QUERY. May not this section conflict with the fourth and fifth lines of section one? A doubt suggested by Hon. John A. Waterman, of Gorham.]

CHAP. 67. SEC. 23. When an account is rendered by two or more joint guardians, the judge of probate may allow it upon the oath of any one of them.

Oath of guardian to his account.

R.S., c. 67, § 21.

Guardian of minor out of the state.

R.S., c. 67, § 22.

SEC. 24. The guardianship first lawfully granted, of any person residing without the state, shall extend to all his estate within the same, and exclude the jurisdiction of the probate court in every other county.

When guardian and ward are both residents of other states, but entitled to property in this state, proceedings. 1876, c. 75.

SEC. 25. *In all cases where* [If] any guardian and his ward *may* [are] both *be* residents of any other state or territory of the United States, and such ward may be entitled to property of any description in this state, such guardian on producing to the probate court, or other court of competent jurisdiction of the county in which such property or the principal part thereof is situated, a full and complete transcript from the records of a court of competent jurisdiction in the state or territory in which he and his ward reside, duly exemplified or authenticated, showing that he has been appointed guardian of such ward, and that he has given a bond and security in the state or territory in which he and his ward reside, in double the value of the property of such ward, and also showing to such court that a removal of the property of such ward will not conflict with the terms or limitations attending the right by which the ward owns the same, then such transcript may be recorded in such court, and such guardian shall be entitled to receive letters of guardianship of the estate of such ward from such court, which shall authorize him to demand, sue for and recover any such property, and remove the same to the place of residence of himself and his ward. And such court may order any resident guardian, executor or administrator, having any of the estate of such ward or wards, to deliver the same to such non-resident guardian: *Provided*, [that] all debts known to exist against such estate have been first paid.

Resident guardians to deliver estate to non-resident guardians. Proviso.

DISABILITY OF ADULTS UNDER GUARDIANSHIP.

Adults under guardianship cannot dispose of estate, or make contracts. R.S., c. 67, § 23. 56 Me., 310.

SEC. 26. When a person over twenty-one years of age is under guardianship, he shall be deemed incapable of disposing of his property otherwise than by his last will, or of making any contract, notwithstanding the death, resignation, or removal of the guardian; and in such case a new guardian may be appointed without further intervention from the municipal officers. When on application of any such person or otherwise, the judge finds that a guardian is no longer necessary, he shall order the remaining property of the ward to be restored to him, except a legal compensation to the guardian for his services.

GUARDIANS AD LITEM.

CHAP. 67.

SEC. 27. Nothing in this chapter shall affect the power of any court of common law, probate court, or justice of the peace, to appoint a guardian to defend the interests of any minor or other incapacitated person in any suit pending in such court, nor their power to allow or appoint any one, as next friend of such person, to commence, prosecute, or defend, any suit in his behalf.

Guardian ad litem may be appointed.
R.S., c. 67, § 24.

Next friend.

SEC. 28. Pending any proceedings in the probate court in which any married woman is interested, when, after personal notice and a hearing, the judge is satisfied that, by reason of age or mental infirmity, she is incompetent to manage her affairs or protect her rights, he may appoint her husband or other suitable person her guardian for the special purpose, with power to institute or defend proceedings in law or equity necessary for the interests of his ward, and no proceeding thus instituted shall be delayed or disposed of without the consent of such guardian.

Special guardians for married women in certain cases.
R.S., c. 67, § 25.

EMBEZZLEMENT OF THE WARD'S ESTATE.

SEC. 29. Upon complaint made to the judge of probate by any guardian, ward, creditor, or other person interested in the estate, or having claims thereto in expectancy as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the judge may cite and examine such suspected person, and proceed with him in the manner provided in relation to those suspected of embezzling the estates of deceased persons.

Persons suspected of embezzlement may be cited and examined.
R.S., c. 67, § 26.

SEC. 30. If any guardian, having the charge and custody of any property belonging to his ward, embezzles the same in violation of his trust, or fraudulently converts the same to his own use, he shall be punished by fine not exceeding five thousand dollars, or confinement to hard labor for a term not exceeding ten years, or both, according to the aggravation of the offence.

Penalty for embezzlement by guardian.
R.S., c. 67, § 27.

ADOPTION OF CHILDREN.

SEC. 31. Any inhabitant of this state not married, or any husband and wife jointly, may petition the judge of probate for their county, for leave to adopt a child not theirs by birth, and for a change of his name.

Who may adopt a child.
R.S., c. 67, § 28.

SEC. 32. Before such petition is granted, written consent to such adoption must be given by the child, if of the age of fourteen years, and by each of his living parents, if not hopelessly insane or intemperate; or, when a divorce from the bonds of matrimony or from bed and board has been decreed to either parent, written consent by the parent entitled to the custody of the child; or such consent by one parent, when, after such notice to the other parent

Whose consent is required.
R.S., c. 67, § 29.

CHAP. 67. as the judge deems proper and practicable, such other parent is considered by the judge unfit to have custody of the child. If there are no such parents, or if the parents have abandoned the child and ceased to provide for its support, consent may be given by the legal guardian; if no such guardian, then by the next of kin in this state; if no such kin, then by some person appointed by the judge to act in the proceedings as the next friend of such child.

Proceedings
to be had in
the probate
court.
R.S., c. 67, § 30.

SEC. 33. Thereupon, if the judge is satisfied of the identity and relations of the parties; of the ability of the petitioners to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child is the child of the petitioners, and that his name is thereby changed, without requiring public notice thereof.

Legal effect
of adoption
of child.
1880, c. 183.

SEC. 34. By such decree the natural parents shall be divested of all legal rights in respect to such child, and he shall be free from all legal obligations of obedience and maintenance in respect to them; and he shall be, for the custody of the person and all rights of inheritance, obedience and maintenance, to all intents and purposes, the child of his adopters, the same as if born to them in lawful wedlock, except that he shall not inherit property expressly limited to the heirs of the body of the adopters, nor property from their lineal or collateral kindred by right of representation, and *provided* that the right of inheritance shall only apply in adoptions made since February twenty-four, eighteen hundred and eighty, and where not otherwise expressly provided in the decree of adoption; and the adoption of a child, made in any other state before or since said date, according to the laws of that state, shall have the same force and effect in this state, as to inheritance and all other rights and duties, as it had in the state where made, in case the person adopting hereafter dies domiciled in this state.

Appeal to
the supreme
court of
probate.
R.S., c. 67, § 32.

SEC. 35. Any petitioner, or any such child by his next friend, may appeal to the supreme court of probate from such decree, in the same manner and with the same effect, as in other cases, but no bond to prosecute his appeal shall be required of such child or next friend, nor costs be awarded against either.

Allowance
to adopted
child from
estate of
adopters.
R.S., c. 67, § 33.

SEC. 36. The judge of probate, on the death of either of the adopters of such child, may make a reasonable allowance to such child from the personal estate of the deceased, if the circumstances of the case demand it.

Adoption,
any decree
of, may be

SEC. 37. Any judge of probate may, on petition of two or more inhabitants of his county, after notice and hearing, and for

good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted according to the provisions of this chapter.*

CHAP. 68.
annulled.
1874, c. 242.

CHANGE OF NAME.

SEC. 38. If any person desires to have his name changed, he may petition the judge of probate in the county where he resides, or if such person is a minor the person having his legal custody may petition in his behalf, and such judge after such notice, if any, as he deems expedient, may change the name of such person, and shall make and preserve a record thereof.

Name, how changed.
Minors must petition by guardian.
1876, c. 59.
1873, c. 97, § 2.

* [QUERY. Ought not authority to be given to the court also to annul the right of inheritance conferred in § 34, when an adopting parent has died before the decree of adoption has been reversed? The commissioner is indebted to Ex-Judge Waterman for this suggestion.]

CHAPTER 68.

TESTAMENTARY TRUSTEES.

- SEC. 1. Bonds of trustees. Conditions.
2. When bonds may not be required.
3. Trustee neglecting to give bond, considered as declining the trust.
4. Trustee may resign or be removed, after notice.
5. Judge may fill vacancies, after notice. New trustee to give bond.
6. Court may order proper conveyance to be made to him by former trustee, or his representatives, or by remaining trustees.
7. Powers of trustee thus appointed.
8. Such trustees to give bond.
9. Inventory returned by trustee.
10. Trustees may refer or compromise claims.
11. Courts may direct trust estates to be sold, and moneys to be invested.
12. Equity powers of courts as to trusts.
13. How bonds of trustees may be sued.
14. Executors becoming trustees by operation of law.

VOLUNTARY TRUSTS.

- SEC. 15. In case of voluntary trust, judge of probate may confirm appointment of trustee, and trustee may be required to give bond.
16. Trustee to account to judge like testamentary trustee.
17. Same remedies against trustee as in case of other probate bonds.

SEC. 1. Every testamentary trustee, except those hereinafter exempted, before entering on his duties, shall give bond to the judge of probate for the county where the will is proved, with sufficient surety or sureties, in such sum as the judge prescribes, with condition as follows:

Bonds of trustees.
Conditions.
R.S., c. 68, § 1.
17 Me., 140.
61 Me., 98.
62 Me., 450.

CHAP. 68. *First.*—That he will faithfully execute such trust according to the will of the testator, so far as consistent with law.

Second.—That he will make a true and perfect inventory of the real estate, goods and chattels, rights and credits of such estate, to be returned into the probate office at such time as the judge orders.

Third.—That he will render an account of the income and profits thereof, and of his payments and expenses, once in three years, and oftener if required by the judge.

Fourth.—That at the expiration of such trust he will settle his accounts with the judge; pay and deliver over all balances, sums of money, or other property, that are due, and give possession of the other estate, with which he is intrusted, to the persons entitled thereto.

When bonds
may not be
required.
R.S., c. 68, § 2.

SEC. 2. In the following cases bonds shall not be required of such trustees, unless, for special reasons, the judge determines it to be necessary; but when no bond is required, they shall settle their account with the judge of probate annually:

First.—When the testator has requested or directed, that a bond should not be required.

Second.—When all the parties interested in the trust fund, if of full age and legal capacity, in writing signify to the judge their request that a bond should not be required.

Third.—When the trustee, not before being required to give bond, had entered on the duties of his trust prior to August first, eighteen hundred and forty-one.*

Trustee neg-
lecting to
give bond.
R.S., c. 68, § 3.

SEC. 3. Every person appointed a testamentary trustee, who neglects to give bond within the time allowed therefor by the judge, shall be considered as declining the trust.

Trustee may
resign, or be
removed,
after notice.
R.S., c. 68, § 4.

SEC. 4. Such trustee at his own request may be allowed to resign his trust, when it seems proper to the judge of probate; no person succeeding to such trust as executor or administrator of a former trustee, is required to accept or retain it against his will; and when any trustee, appointed either by the testator or the judge of probate, becomes insane or otherwise evidently unsuitable to discharge his trust, the judge, upon notice to him and all others interested, may remove him and appoint another.

Vacancy in
trusts, how
filled.
1878, c. 8, § 1.

SEC. 5. When a trustee under a written instrument, declines, resigns, dies, or is removed, before the objects thereof are accomplished, if no adequate provision is made therein for supplying the vacancy, the probate court or supreme judicial court shall, after notice to all persons interested, appoint a new trustee to act alone or jointly with the others, as the case may be. Such new

New trustee

* [NOTE. May not item three be deemed obsolete?]

trustee, upon giving bonds and security required, shall have and exercise the same powers, rights and duties, whether as a sole or joint trustee, as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had or would have vested in the trustee in whose place he is substituted.

CHAP. 68.

shall give bonds.
—his powers, rights and duties.

SEC. 6. Upon the appointment of a trustee under the preceding section, the court may order such conveyance to be made by the former trustee, or by his representatives, or by the other remaining trustees, as may be proper or convenient to vest in such trustee, either alone or jointly with the others, the estate and effects to be held in trust.

Court may order conveyances to be made to him.
1878, c. 8, § 2.

SEC. 7. Every trustee, appointed by the judge of probate, shall have and exercise the same powers, rights, and duties, as a sole or joint trustee, as if he had been appointed by the testator, and the trust estate shall vest in him accordingly; and the judge may order such conveyances to be made by the former trustee or his representatives, or by the remaining trustees, as are proper to vest in the new trustee, solely or jointly, such estate and effects.

Power of a trustee thus appointed.
R.S., c. 68, § 6.
65 Me., 106.

SEC. 8. Every trustee, appointed by the judge of probate, before entering on his duties, shall give bond as aforesaid; but the judge may dispense with making and returning an inventory by any substituted trustee, when he thinks it unnecessary, and the condition of the bond shall be altered accordingly; but without such bond, accepted by the judge, no right or authority shall vest in such trustee.

Such trustee to give bond.
R.S., c. 68, § 7.

SEC. 9. When an inventory is required to be returned by any trustee, the estate and effects shall be appraised by three suitable persons, appointed and sworn, as in the case of the estates of deceased persons. Warrants for inventories may be revoked by the judge for cause, and new ones issued if deemed necessary.

Inventory returned by trustee.
R.S., c. 68, § 8.

SEC. 10. The judge may authorize any trustee to refer or compromise claims for or against the trust estate.

Trustee may refer or compromise.
R.S., c. 68, § 9.

SEC. 11. Any judge of probate, having jurisdiction of the trust, and the supreme judicial court in any county, on the application of the trustee, or of any person interested in the trust estate, after notice to all others interested, may authorize or require the trustee to sell any real or personal estate held by him in trust, and invest the proceeds thereof, and also any other trust moneys in his hands, in real estate, or in any other manner most for the interest of all concerned therein; and [may] give such further directions, as the case requires, for managing, investing, and disposing of the trust fund, according to the provisions of the will.

Courts may direct trust estates to be sold, and moneys to be invested.
R.S., c. 68, § 10.
33 Me., 553.
50 Me., 541.

SEC. 12. Either of said courts may hear and determine, in equity, all other matters relating to the trusts herein mentioned.

Equity power as to trusts.
R.S., c. 68, § 11.
50 Me., 541.

CHAP. 69.

How bonds
of trustees
may be sued.
R.S., c. 68, §12.

Executors
becoming
trustees by
operation
of law.
R.S., c. 68, §13.
37 Me., 275.
50 Me., 548.

Trustee, in
case of
voluntary
trusts,
appointment
of.

—bond.
1874, c. 206, §1.

—account-
able to judge
of probate.
1874, c. 206, §2.

Remedies if
trustee fails
to fulfill
bond.
1874, c. 206, §3.

SEC. 13. Any bond given by a trustee may be put in suit, by order of the judge of probate, for the benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted in the manner prescribed with respect to bonds of administrators.

SEC. 14. These provisions are applicable to executors, who, by the provisions of a will, become trustees by operation of law without any express appointment; but they are not required to return another inventory.

VOLUNTARY TRUSTS.

SEC. 15. Any person placing property for any purpose in the hands of a trustee, may, on petition to the judge of probate in the county where he resides, have the appointment of trustee confirmed by said judge; and said trustee shall file a bond, with sureties, to be approved by said judge, for the fulfillment of said trust, according to the terms and conditions of the trust deed or declaration.

SEC. 16. Such trustee shall be held to account to the judge of probate in the same manner as testamentary trustees, unless excused or released therefrom by the person creating the trust, or for whose benefit the trust was created; and at the termination of such trust, the money or property held by the trustee shall be paid or delivered to the person legally entitled thereto.

SEC. 17. If said trustee at any time fails to fulfill the conditions of the trust or of his bond, the parties interested shall have the same remedies, and like proceedings shall be had, as are provided in case of other probate bonds.

CHAPTER 69.

ESTATE OF DECEASED PARTNERS.

- SEC. 1. Partnership property, how appraised; how administered.
2. Bond to be given. Conditions.
3. Liability upon bond and account, as if administrator.
4. Who is to give bond and administer, if survivor does not.
5. Survivor to produce property for appraisal and administration.
Penalty for neglect.
6. Commissioners may be appointed on disputed claims. Partnership estates may be represented insolvent; proceedings.
7. In case of death of administrator on partnership estate, proceedings.

Partnership
property,

SEC. 1. The executor or administrator of a deceased member of a partnership, is to include in the inventory the property of the

partnership, appraised as in other cases, except that an amount is to be carried out equal only to the share of the deceased. This property is to be retained and administered, unless the surviving partner gives bond to the judge as provided in the following section. (a)

CHAP. 69.

how appraised;
how administered.
R.S., c. 69, § 1.

SEC. 2. The bond *is to* [shall] be for such sum and with such sureties as the judge approves, conditioned to use fidelity and due diligence in closing the affairs of the late partnership; to apply the property thereof towards payment of partnership debts; to render an account, on oath, when required, of all partnership affairs, including property owned, debts due to and from, the amount received and collected, and the amount paid; [and] to pay to the executor or administrator of the deceased his proportion of any balance remaining after settlement, within one year after date of the bond, unless a longer time is allowed by the judge.

Bond to be given.
—conditions.
R.S., c. 69, § 2.
55 Me., 236.
59 Me., 243.
65 Me., 163.
68 Me., 417.

SEC. 3. The judge has the same authority to cite the principal in such bond, and to adjudicate upon his accounts, and the parties interested have the like remedies on his bond, as if he were an administrator.

Liability as to bond and account, as if adm'r.
R.S., c. 69, § 3.

SEC. 4. If the survivor, on being cited, does not give the bond required, the executor or administrator of the deceased *is to* [shall] give such bond, with the necessary variations, as is required in section two, and take possession of the property. He may use the name of the survivor to collect the debts.

Who is to give bond and administer, if survivor does not.
R.S., c. 69, § 4.
59 Me., 243.

SEC. 5. [Every] Surviving partners *are to* [shall] exhibit to [the] executors or administrators of [a] deceased partners for appraisal, all partnership property existing at the time of *their* [his] decease; and if they administer, [thereon, he shall] deliver it to them, with all books, notes, documents, and papers pertaining thereto, and [shall] afford them all reasonable information and facilities for the execution of their trust. If *they* [he] neglect[s] to do so, the judge, after citing *them* [him] to show cause, may enforce obedience by committing *them* [him] to the county jail until *they comply* [he complies], or *are* [is] released by the executors or administrators, or by order of the supreme judicial court.*

Survivor to produce property for appraisal and administration.

—penalty.
R.S., c. 69, § 5.
36 Me., 243.
55 Me., 236.

SEC. 6. The person filing such bond may apply for commissioners on claims deemed exorbitant, unjust or illegal, 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 part-

Commissioners may be appointed on disputed claims.

—partnership estate may be represented insolvent;

(a) 36 Me., 343; 55 Me., 236; 56 Me., 229; 59 Me., 243; 61 Me., 17; 65 Me., 163.

* [NOTE. The commissioner's attention was called to the obscurity of this section by Henry C. Goodenow, Esq., of Bangor.]

CHAP. 70. proceedings.
R.S., c. 69, § 6.
See c. 64, § 53.
64 Me., 71. nership assets [may be] 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 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.

Decease of administrator on partnership estate, proceedings in case of.
1876, c. 116.

SEC. 7. When the person who has given bond to administer on a partnership estate where one of the partners is deceased, dies before completing the administration, the judge of probate may commit administration on the estate of the partnership not already administered, to such person as he thinks fit, who shall give the bond required by section two, with the necessary variations, and comply with all the provisions of this chapter applicable to such cases.

CHAPTER 70.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS: THE INSOLVENT LAW.

ASSIGNMENTS.

- SEC. 1.** *Assignment shall pass all estate of debtor, and provide for equal distribution.*
2. *Assignor to make oath; release may be inserted.*
3. *Assignee to give bond; take possession of assets; and file copies of assignment and inventory in the probate office. Conditions of bond.*
4. *Assignee to give notice; time allowed to creditors; how they may become parties.*
5. *Assignment not valid without oath, notice and bond.*
6. *Claims of creditors, how to be proved. Appeal. Remedy on bond.*
7. *Property assigned not to be attached; but excess may be, after eighteen months.*
8. *Assignor, making fraudulent transfer or concealing property, forfeits his release. Such conveyance void.*
9. *Authority of judge of probate over assignments.*
10. *Judge may remove assignee, and fill vacancies.*
11. *Judge may cite assignor before him for examination.*
12. *Judge may cite any one suspected of embezzling assignee's property.*
13. *Penalty for refusal to obey citation.*
14. *Purchaser of chose in action may sue in his own name.*
15. *Compensation of judge, register and assignee.*

THE INSOLVENT LAW.

- SEC. 16.** Courts of probate constituted courts of insolvency. Their officers and jurisdiction.
17. Terms. Adjournments.
18. What may be done in vacation.
19. Powers and duties of judge.
20. Records, how to be made and files kept. Papers admissible as evidence.

- SEC. 21. Judge may compel attendance of witnesses and take testimony to be used in another court. CHAP. 70.
22. Powers and duties of register.
 23. Assignments, warrants, &c., to be under seal. Authority. Service and return.
 24. Court room to be provided by county in shire town.
 25. Majority of the judges may make rules.
 26. Judges may interchange services. Provision in case of vacancy and when judge is interested.
 27. Appeal to supreme court, when heard and determined. Exceptions. Proceedings. Jury trial. Costs.
 28. Supreme court to have equity jurisdiction.
 29. Application of terms "assignee, messenger, sheriff, &c."
 30. Debtor may petition for proceedings.
 31. If debts amount to \$300, warrant to issue. Sheriff to act as messenger. Notice, how given and what it must state.
 32. When warrant of attachment may issue on application of creditors. Service and hearing. Payment of debts, and conveyances and contracts of debtor void during continuance of warrant. Additional warrant, on proof of allegations.
 33. Messenger, duty of, when warrant is issued, or revoked.
 34. On demand, debtor to deliver property to messenger, furnish schedule of creditors, statement of securities and description of estate.
 35. Sale of property may be ordered by judge.
 36. Messenger to deliver property to assignee, and return warrant.
 37. Death of debtor not to affect proceedings. Allowance to family.
 38. Secured creditor cannot vote for assignee.
 39. What debts and demands may be proved. Unliquidated damages and contingent liabilities. Rights of sureties, guarantees, &c. Rent dues. Form of creditor's oath. Proof of claim. Proceedings in case of objection. Appeal to supreme court.
 40. Time for proving claim.
 41. Secured creditors' rights.
 42. Proof of debt may be postponed until after election of assignee.
 43. Property accepted under preference to be surrendered. Assignee may recover back dividend paid on disallowed claim.
 44. Creditor may act by attorney.
 45. Choice of assignees by creditors with approval of judge. Judge may appoint additional assignees or in case of no choice, and may remove for cause.
 46. Assignee's bond.
 47. Judge to assign and convey property to assignee. Assignee to give notice of election. Attachments made within four months dissolved. Money paid on writ, judgment, &c., within two months, when recoverable back.
 48. Assignee may prosecute suit of creditor commenced within four months. Proceedings.
 49. Disposal of property.
 50. Sale of property in dispute.
 51. Assignee to deposit money and to account for interest.
 52. Dividends, when declared and paid. Contingent claims. Declared dividends not disturbed by debts subsequently proved. Proceedings.
 53. What claims are to be paid in full and their order.
 54. Assignee may resign. Vacancy, how filled.
 55. Debtor to be examined and to execute conveyances, &c., before receiving certificate.

- CHAP. 70.** SEC. 56. Second meeting of creditors. Form of debtor's oath.
57. Debtor may apply for discharge after four months. Proceedings. Specifications by opposing creditors. Proceedings. Jury trial. Exceptions.
58. Second discharge requires consent of majority of creditors. A third three quarters.
59. No discharge in case of perjury or concealment. If granted, void. The purchase of a creditor's assent avoids a discharge.
60. Fraud, embezzlement or defalcation not to be discharged, but dividends shall be paid.
61. Partners, joint contractors, &c., not released.
62. What liabilities are released by discharge. Certificate, conclusive evidence. Contesting creditor's proceedings. Appeal, jury trial and exceptions. Discharge may be annulled.
63. Claims purchased after commencement of proceedings not to be set off against claim due the estate.
64. Debtor not to be sued until after discharge is refused. Exemption from arrest.
65. Fraudulent conveyance or attachment, void. Actual loans fairly secured, not invalidated.
66. Allowance to debtor for services and support of family.
67. Fraudulent disposal of property, penalty for.
68. Aiding to defraud creditors.
69. Fraudulent disposal of property by messenger or assignee. Penalty.

PARTNERSHIP.

- SEC. 70. Application of chapter. Either partner may file notice. Notice to each partner. Schedule of creditors and of partners. Property of firm and of each partner to be returned to assignee. How creditors may prove debts.
71. Assignee of firm and of estate of each partner chosen by firm creditors. Proceedings.
72. Discharge granted or refused to each partner separately.
73. Allowance to each partner.

CORPORATIONS.

- SEC. 74. Corporations are within the provisions of this chapter. Exceptions. Proceedings. No discharge granted and stockholders' liability not affected.
75. Debtor's affidavit, form of. Agreement of majority, &c., of creditors, form of. Debtor must produce both, to satisfaction of judge. Discharge not valid in case of fraud. Debtor to pay expenses.
76. Assignments when indebtedness does not exceed \$300. Proceedings. Debtors arrested on mesne process or execution.
77. Fees established by supreme court, how paid.

ASSIGNMENTS.

- SEC. 1. *Every assignment, made by any debtor for the benefit of creditors, shall provide for a proportional distribution of all his real and personal estate, except what is by law exempt from attachment, among all his creditors becoming parties thereto; and, in whatever form made, or however expressed, [it] shall have the effect aforesaid, and [shall] be also constructed to pass all such estate, whether specified therein or not.*
- Assignment passes all estate of debtor, and provides for equal distribution.
R.S., c. 70, § 1.
66 Me., 247.
71 Me., 152,
524.

SEC. 2. *The assignor shall make oath to the truth of such assignment, and a certificate of the fact shall be made thereon by the magistrate administering it; and a release may be inserted therein, which shall forever discharge the assignor from the claims of such creditors as become parties thereto.*

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Assignor to make oath; release may be inserted. R.S., c. 70, § 2, 65 Me., 299.

SEC. 3. *The assignee named in such assignment shall give a bond to the judge of probate in such sum and with such sureties, living in the county, as shall be satisfactory to him, and shall immediately thereafter take possession of the property assigned; and within twenty days after the execution of the assignment shall file in the probate office an attested copy thereof, and an inventory under oath of all the real estate, goods, chattels, rights and credits of the assignor which have come to his possession or knowledge, whether contained in the assignment or not. Said bond shall be conditioned as follows:*

Assignee to give bond; take possession of assets; and file assignment and inventory in the probate office. Conditions of bond. 1876, c. 73.

First.—*To return into the probate office within ten days after the time allowed to creditors to become parties to the assignment, an inventory of any real or personal estate of the assignor not already returned, whether contained in the assignment or not, and the names of all the creditors who have become parties to the assignment, with a list of their respective claims.*

Second.—*To make proportional distribution of all the net proceeds of such estate, among such creditors as become parties to the assignment.*

Third.—*To render a true account of his doings, on oath, to the judge of probate within six months, and at any other time when cited by the judge.*

SEC. 4. *Within fourteen days after the execution of the assignment, the assignee shall give public notice of his appointment in some newspaper printed in the county where either assignor lives, or if none, in the state paper, such notice to be continued three weeks successively, and three months from the execution of such assignment shall be allowed for creditors to become parties thereto. If the assignment is made by indenture in two or more parts, creditors, in order to become parties, are to execute the part held by the assignee.*

Assignee to give notice; time allowed to creditors; how they may become parties. R.S., c. 70, § 4, 66 Me., 247.

SEC. 5. *No such assignment shall be valid against attaching creditors, unless sworn to and notice given as aforesaid, nor unless such bond is filed and approved by the judge of probate within ten days after the execution of the assignment.*

Assignment not valid without oath, notice and bond. R.S., c. 70, § 5.

SEC. 6. *Creditors becoming parties to the assignment, and presenting their claims to the assignee for allowance, shall offer the same proof thereof, and, if dissatisfied with his decision, have the same right of appeal, and the same remedy, that is provided in relation to claims presented to commissioners on*

Claims of creditors, how to be proved. Appeal. Remedy on bond.

CHAP. 70. *insolvent estates ; and shall also have the same remedy on the*
 R.S., c. 70, § 6. *assignee's bond that is provided in relation to an administrator's*
bond.

Property assigned not to be attached, but excess may, after 18 months.
 R.S., c. 70, § 7.
 65 Me., 300.

SEC. 7. *No property, assigned for the benefit of creditors, shall be liable to attachment for six months after the first publication of the notice herein required, nor shall the assignee during that time be liable to trustee process on account thereof ; but after the lapse of eighteen months from the assignment, or [the] two years, to which the probate court for satisfactory reasons may extend the time, any creditor, not a party to the assignment, may trustee the assignee for any excess of such estate remaining in his hands, after the payment of the debts of the parties thereto and lawful expenses ; and if such suit is instituted before the expiration of the terms herein invested, it may be continued till after their expiration, on such conditions as the court directs.*

Assignor making fraudulent transfer, or concealing property, forfeits his release.
 1876, c. 89, § 5.
 66 Me., 248.

SEC. 8. *If the assignor shall have fraudulently conveyed or transferred any of his property in contemplation of the assignment, or to [defeat, delay or] defraud his creditors, [or to give a preference to one over another,] or shall have fraudulently concealed, withheld or kept from his assignee any property which said assignee may be entitled to hold under the assignment, said assignor shall forfeit all rights under any release in said assignment. All property so fraudulently conveyed, transferred, [concealed, withheld or kept] shall pass to the assignee by the assignment, notwithstanding such transfer ; and the assignee may recover, collect and apply it for the benefit of the creditors.*

Such transfer void.
 R.S., c. 70, § 8.

Judge of probate, power over assignments.
 1876, c. 89, § 1.

SEC. 9. *The judge of probate within the county in which the assignor resides, shall have the same power and jurisdiction over the doings and accounts rendered of the assignee, that he has over the doings and accounts of executors and administrators.*

Judge may remove assignee, and fill vacancies.
 R.S., c. 70, § 9.

SEC. 10. *If any assignee dies, resigns, becomes insane, or otherwise unsuitable to perform the trust, refuses or neglects so to do, or mismanages the trust property, the judge of probate for the county after due notice, shall appoint another in his place, who shall have the same powers and be subject to the same liabilities as the original assignee.*

Judge of probate may cite assignor to appear before him for examination.
 1876, c. 89, § 2.

SEC. 11. *The judge of probate, upon application by the assignee or [by] any creditor who becomes a party to the assignment, may cite the assignor to appear before him, for an examination on oath, upon all matters relating to the disposal or condition of his property, to his dealings with others, to his accounts concerning the same, to his liabilities and the consideration therefor, and to all other matters pertaining to his property and estate, and may require him to produce for the inspection of the court and parties, all books, papers or other documents within his control relating to his business affairs.*

SEC. 12. *The judge of probate may in like manner cite before him for examination on oath, any person suspected of having concealed, withheld, embezzled or conveyed away any goods, effects or credits of the assignor, or which passed or ought to have passed by the assignment, or of aiding others in so doing, and may require such suspected person to produce for the inspection of the court and parties all books, papers or other documents within his control, relating to the matter under examination.*

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Judge may cite any person before him suspected of embezzling property of assignor.
1876, c. 89, § 3.

SEC. 13. *If any person duly cited, as aforesaid, refuses to appear and submit himself to such examination, or to answer all lawful interrogatories, or to produce such books, papers or documents, the judge shall commit him to the jail of the county, there to remain until he submits to the order of the court, or is discharged by the applicant or the supreme judicial court; and he [such delinquent] shall also be liable to any injured party, in an action on the case, for all the damages, expenses and charges arising from such refusal.*

Penalty if person duly cited refuses to appear.
1876, c. 89, § 4.

SEC. 14. *A purchaser of any chose in action, sold by an assignee at public or private sale, may sue therefor in his own name, subject to all legal and equitable defences.*

Purchaser of chose in action may sue for it.
R.S., c. 70, § 10.

SEC. 15. *The assignee, judge, and register of probate, shall be allowed a reasonable compensation for all their services under this chapter, to be determined by the judge, subject to the right of appeal to the supreme court of probate, as from his decisions in other cases, and to be paid out of the estate.**

Compensation of judge, register and assignee.
R.S., c. 70, § 11.

THE INSOLVENT LAW.

SEC. 16. *The courts of probate for each county in this state are hereby constituted courts of insolvency, and the judges and registers of probate in their respective counties shall be judges and registers thereof. And said courts shall have original jurisdiction in their respective counties of all cases of insolvency arising under the following provisions of this chapter, except where it is otherwise specially provided.*

Courts of probate constituted courts of insolvency.—officers.
1878, c. 74, § 1.
—jurisdiction.
70 Me., 154.
71 Me., 152-4.

SEC. 17. *Each court shall be held at the established places for holding probate courts, at such times as the judge shall appoint, and may be held at such other places as shall best promote the convenience of the public within the respective probate districts. The judge may adjourn any court or meeting from time to time as occasion requires.*

Court, when and where held.
1878, c. 74, § 2.

SEC. 18. *The judge may, in vacation, do such official acts as do not require notice to an adverse party, the same as in term time.*

—may adjourn from time to time.

What may be done in vacation.
1878, c. 74, § 3.

*[NOTE. "The assignment law, so far as it relates to insolvent persons is repealed by the act of 1878, c. 74" (being §§ 16 to 77 of this chapter); 71 Me., 155.]

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Powers and
duties of
judge.
1878, c. 74, § 4.

SEC. 19. The judge may keep order in his court, and punish any contempt of his authority, orders and decrees; administer oaths, issue commissions, take testimony and compel the attendance of witnesses, and the giving of testimony to the same extent as the supreme judicial court, and may appoint such officers to attend upon the court as are necessary for the transaction of its business and keeping order therein.

Records, how
to be made
and files
kept.
1878, c. 74, § 5.

SEC. 20. The proceedings in courts of insolvency shall be deemed matters of record, and the assignment and certificate of discharge shall be recorded in full. The other proceedings need not be recorded at large, but shall be carefully filed, numbered and kept in the office of the register. Copies of all parts of the records, and of records of prior proceedings in insolvency deposited in his office, duly certified by the register, shall in all cases be admissible as evidence, the same as *the originals would be*.

Office
copies ad-
missible as
evidence.

The judge
may compel
attendance
of witnesses
and take
testimony to
be used in
another
court.
1881, c. 26.

SEC. 21. The judge of any court of insolvency shall have the same power to compel the attendance and take the examination of witnesses residing in his county, on application made to him by any person interested, as the judge of the court of insolvency in the county where the proceedings are pending; and such witnesses shall attend and testify in relation to the insolvent estate and the dealings of the insolvent, and the testimony shall be reduced to writing and filed in the court of insolvency where the proceedings in insolvency are pending.

Powers and
duties of
register.
1878, c. 74, § 6.

SEC. 22. The register may administer all oaths required in the course of proceedings before the court, except the oath provided by section fifty-six, and in the absence of the judge, may adjourn the court or meeting, and shall keep a docket with an alphabetical index of all cases, with docket entries of all papers filed and proceedings had in each case.

Assign-
ments, war-
rants, &c.,
to be under
seal.
1878, c. 74, § 7.
—service.
—return.

SEC. 23. All assignments, warrants, orders of notice and processes issuing from the court shall be under the seal thereof, and shall be executed and obeyed throughout the state, and any officer to whom they are legally directed shall serve the same in any county. The return of such officer shall state the manner of such service, and shall be proof thereof.

County to
provide
room in
shire town.
1878, c. 74, § 8.
Majority of
judges may
make rules.
1879, c. 154, § 1.

SEC. 24. Each county shall provide suitable court rooms in the shire towns for all meetings, and the safe keeping of all books and records appertaining to the courts of insolvency.

SEC. 25. The judges, or a majority of them, may make rules, in writing, for regulating and conducting the business of the courts, and submit the same to the supreme judicial court for approval, amendment or alteration.

Judges may
interchange
services.

SEC. 26. The judges may interchange services, or perform each others' duties, when they find it necessary or convenient, and

if a judge is a party or interested to the amount claimed of one hundred dollars, exclusive of interest, in any case arising in his county, or is absent or unable to perform his duties, and no judge interchanges services or performs the duties of such interested judge, or if there is a vacancy in the office in any county, the duties shall be performed in the same county by the judge of any other county designated by the register, from time to time as necessity or convenience may require.

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1879, c. 154,
§ 25.

When register may designate judge of another county to perform duty.

SEC. 27. In all cases of appeal in insolvency, such appeal shall be taken to the supreme judicial court next to be held within and for the county where the proceedings in insolvency are pending, and shall be heard and determined by any justice of said court, either in term time or vacation. Upon the hearing of such appeal, exceptions shall be to the ruling of such justice in matters of law, which exceptions shall be certified to the chief justice of the supreme judicial court, and the argument, in writing, by the party filing such exceptions, shall be sent to the chief justice within ten days after such exceptions are allowed, and a copy thereof shall be served on the opposing party or his attorney, who shall in like manner forward his argument in reply within ten days after such service, and said exceptions shall be considered and decided by the justices of said court as soon as may be, and the decision shall be certified to the clerk of the said court in the county where the case is pending. In case arguments by either party shall not be furnished within the time prescribed herein, the case shall be determined without the argument of such party, unless the judge allowing the exceptions enlarges the time, which additional time shall in no case exceed ten days. Such clerk shall, without delay, certify all final decisions to the register of the court from which the appeal was originally taken. Upon application of either party the judge may direct the framing of issues of fact to be tried by the jury at the term to which such appeal is taken. When an appeal is taken as provided by this section, notice thereof shall be given to the register to be entered with the record of proceedings within five days after the rendition of the decision or judgment appealed from. But if the appellant, in writing, waives his appeal before the entry thereof, or fails to enter the same on the first day of the term to which such appeal is taken, proceedings may be had in the court of insolvency as if no appeal had been taken. The prevailing party shall recover the costs of appeal as in other cases, and execution may issue therefor from the court of insolvency. No appeal in insolvency shall lie in any case arising under this chapter unless specially provided for herein.

Appeal to S.

J. court—

1879, c. 154, §2.

When heard and determined.

—exceptions to be certified to chief justice.
1878, c. 74, §10.

1879, c. 154, §2.

—decision, to whom certified.

When case may be determined without argument. Final decision to be certified to register.

1879, c. 154, §2.

Issues of fact may be tried by jury.

Notice of appeal to be given to register.

Proceedings when appellant waives appeal.

Prevailing party to recover costs.
1879, c. 154, §2.

SEC. 28. The supreme judicial court shall have full equity S. J. court

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jurisdiction in all insolvency matters arising under this chapter ; the powers herein granted may be exercised by said court or any justice thereof in term time or vacation, upon bill, summary petition, or other proper process, and upon the request of either party the justice before whom a final hearing in any proceeding in equity shall be had, shall certify to the full court for decision, questions of law involved in such proceedings, to be heard and determined in the manner provided in the preceding section.

to have
equity juris-
diction.
1878, c. 74, § 11.
1879, c. 154, § 3.
69 Me., 598.
71 Me., 155,
391.
1879, c. 154, § 3.

Application
of certain
terms.
1878, c. 74, § 12.
Debtor may
petition for
proceedings.
1878, c. 74, § 13.

If debts
amount to
\$300, judge
shall issue
warrant.
1878, c. 74, § 14.
70 Me., 513.
Sheriff to
act as
messenger.
1879, c. 154, § 4.

Notice, how
given, and
what it shall
state.

1879, c. 154, § 4.

When credi-
tors make
application
setting
forth cer-
tain allega-
tions, the

SEC. 29. In this act the words "assignee," "creditor" and "debtor" shall include the plural also ; the word "messenger" shall include his assistants ; and the word "sheriff" shall include deputy sheriff.

SEC. 30. Any inhabitant of *this* [the] state, owing debts contracted while such inhabitant, may apply by petition to the judge for the county within which he resides, setting forth his inability to pay all his debts, and his willingness to assign all his estate and effects not exempt by law from attachment and seizure upon execution, for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in this chapter.

SEC. 31. If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than three hundred dollars, he shall forthwith issue a warrant under his hand, to the sheriff of the county or either of his deputies, directing him forthwith as messenger to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from attachment, and of all his deeds, books of account and papers relating to his property and estate, and keep the same safely until the election or appointment of an assignee ; to publish notice in such newspapers as the warrant specifies, and give such other notice as the judge shall direct, to all creditors upon the schedule furnished him by the debtor, which notice shall state :

First.—That a warrant has issued against the estate of the debtor.

Second.—That the payment of any debts, to or by said debtor [and] the delivery and transfer of any property by him, are forbidden by law.

Third.—That a meeting of the creditors of the debtor, to prove their debts and choose one or more assignees of his estate, will be held at a court of insolvency *to be held* at a time and place designated in the warrant, not less than ten nor more than thirty days after the issuing of the same.

SEC. 32. When one or more creditors of a debtor shall make application under oath, by petition by them signed, to the judge of the county in which the debtor resides, or from which he has absconded or removed beyond the limits of the state, within six months before the filing of said petition, leaving property or estate

in said county, setting forth that they believe their aggregate debts provable under this chapter, amount to more than one fourth part of the debts provable against such debtor, and that they further believe and have reason to believe, that said debtor is insolvent, and that it is for the best interests of all the creditors that the assets of such debtor should be divided as provided by this chapter, and it shall be satisfactorily made to appear to the judge that the allegations contained in such application are true, and that such debtor is insolvent, *it shall be the duty* of the judge to [shall] issue his warrant, under his hand, to the sheriff of the county or either of his deputies, directing him forthwith to attach the real and personal estate of the debtor not exempt by law from attachment and seizure on execution, wherever the same may be situated, within *this* [the] state, and forbidding the payment to or by such debtor of any debt, demand or claim whatsoever, and the sale, transfer, mortgage, pledge, conveyance, or removal by such debtor, his agents or attorneys, of any of his estate, property, rights or credits, and the making of any contracts for the sale or purchase thereof, or relating thereto, until such warrant shall be revoked by said judge. Upon the issuing of such warrant, the register shall cause an attested copy of such application and warrant to be served upon the debtor, or such other notice as the judge may order, to be given, *who* [the debtor] thereupon may appear, and a hearing shall be had upon such application by the judge, who may thereupon revoke such warrant, unless such allegations are proved. After *the* service of the copy of the application and warrant upon such debtor, or the giving of such other notice as the judge may order, provided by this section, and until the revocation of such warrant, any payment of any debt, demand or claim, to or by said debtor, and any sale, transfer, mortgage, pledge, conveyance, or contract, for the sale or purchase of any estate, property, rights or credits of such debtor, by such debtor, or his agent or attorney, shall be null and void. If upon hearing or default, the judge shall find the allegations of such application to be true and proved, and that said debtor is insolvent, he shall issue his additional warrant to the said sheriff or either of his deputies, and cause such other proceedings to be had as are provided in the preceding section.

SEC. 33. When the warrant is issued as provided by this chapter, commanding the messenger to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from attachment and seizure on execution, and of all his deeds, books of account, and papers relating thereto, *he* [the messenger] shall *proceed* forthwith *and* demand and receive from the debtor, and other persons, all the estate of the debtor, with all deeds, books of accounts, and papers relating thereto. In case

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judge may
issue war-
rant for at-
tachment of
property, etc.
1881, c. 14.
70 Me., 513.
71 Me., 391.

Register to
cause copy
of warrant
to be served
upon debtor,
and a hear-
ing shall be
had.

Payment of
debts, con-
veyance of
property, or
contract of
such debtor,
after service
or notice and
before revoca-
tion of
warrant,
void.

Additional
warrant to
issue, if al-
legations
are proved.

When war-
rant is issu-
ed, messen-
ger to de-
mand and
receive
debtor's
property.
1879, c. 154, §6.
If warrant is
revoked,
property to
be returned.

CHAP. 70. such warrant is revoked, such estate, deeds, books and papers, shall be returned to the debtor or his legal representatives.

Upon demand, debtor to deliver property to messenger.
1878, c. 74, § 17.
1879, c. 154, § 7.
—furnish schedule of creditors,
—statement of securities,
—and description of real estate.

SEC. 34. Upon demand made by the messenger, the debtor shall forthwith deliver to him all his estate, [and] all deeds, books of accounts and papers relating to his property and estate, and shall also furnish him within five days a full schedule of all creditors, with their places of residence and the sum due to each so far as the same shall be known to the debtor, together with the consideration of the indebtedness, and a statement of any existing mortgage, pledge, or other collateral security given to secure the same, and a full list of all his assets, with a brief description of all real estate or interest in real estate which he may own, and the place where the same is situated.

Judge may order sale of property.
1878, c. 74, § 18.

SEC. 35. Upon the application, in writing, of any party interested, the judge may order the messenger to sell, after due public notice and notice to the debtor, for cash, in such manner as he may direct, any part of the debtor's estate, and collect and receive debts due such insolvent; and such messenger shall keep a correct account of the names of the purchasers, the articles sold, and the prices received therefor, and of all debts collected by him.

Messenger to deliver property to assignee.
1878, c. 74, § 19.
—and return warrant.

SEC. 36. Upon the election of an assignee, the messenger shall deliver to him all the property held by him, and cash for goods sold by him, and received by him from the collection of debts, together with an account of the same, and shall return to the register his warrant, with a record of all his doings thereon.

Debtor's death not to affect proceedings.
1878, c. 74, § 20.
1879, c. 154, § 8.
Allowance to widow or minor children.

SEC. 37. If the debtor dies after commencement of proceeding[s], such proceedings shall be continued and concluded in like manner, and with like validity and effect as if he had lived. The judge of probate may make [such] an allowance to the widow or minor children of the deceased out of such estate, as is now provided by law.

Secured creditor, cannot vote for assignee.
1878, c. 74, § 21.
72 Me., 268.

SEC. 38. When a creditor has a mortgage or pledge of real or personal estate of the debtor, he cannot vote for assignee, except upon unsecured claims, unless he shall file with the register a discharge of his security, and shall prove his claim against the estate as an unsecured debt.

What debts may be proved.
1879, c. 154, § 9.

SEC. 39. All debts due and payable from the debtor at the time of the filing of the petition by or against him, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the insolvent. All demands against the insolvent for or on account of any goods or chattels wrongfully taken, converted, or withheld by him, may be proved and allowed as debts, to the amount of the value of the property so taken or withheld, with interest. When the insolvent

What else may be proved.

is liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted or withheld, the court may cause such damages to be assessed, in such mode as it may deem best, and the sum so assessed may be proved against the estate. In all cases of contingent debts and contingent liabilities, contracted by the insolvent, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed with the right to share in the dividends if the contingency happens before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise, for the insolvent, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor, if the creditor has proved the same, although such payments shall have been made after the proceedings in insolvency were commenced. And any person so liable for the insolvent, and who has not paid the whole of such debt, but is still liable for the same or any part thereof, may, if the creditor fails or omits upon request to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules of the court, as provided in section twenty-five, and subject to such regulations and limitations as may be established by such rules. Where the insolvent is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the insolvency as if the same fell due from day to day, and not at such fixed and stated periods. No debts other than those specified in this section, shall be proved or allowed against the estate. No debt shall be proved or allowed unless the creditor or his authorized attorney makes oath in substance as follows :

"I, ———, do swear that ———, of ———, by or against whom proceedings in insolvency have been instituted, was and still is justly and truly indebted to me in the sum of \$——, that the consideration for said indebtedness was and is ———, that the credit to be given upon said claim is \$——, that the only security I hold upon said claim is ———, and that I have not, nor has any other person for me to my knowledge or belief, received any other security or satisfaction whatever; and I do further swear that said claim was not procured by me for the purpose of influencing the proceedings in this case; and I do further swear that I have not, nor has any other person to my knowledge or belief, directly or indirectly entered into any bargain, expressed

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Unliquidated damages how disposed of.

Contingent debts and liabilities.

Persons liable as bail, surety, guarantor or otherwise who have paid the debt, may prove such debt or take place of creditor if he has proved it.

Persons so liable who have not paid the whole debt, proceedings.

If insolvent is liable to pay rent or other debt falling due at stated periods, creditor may prove for a proportionate part.

1878, c. 74, § 22.

Debts not specified, disallowed.

Creditor shall make oath.

—form.

CHAP. 70. or implied, whereby I am to receive any exclusive benefit hereafter, or whereby my vote for assignee, or my assent to the debtor's discharge is or shall be in any way affected or controlled."

Before whom, proof made and oath taken.

Interested person may file objection to allowance of claim.

—proceedings.

—notice.

If claimant fails to appear, claim may be rejected.

Assignee, claimant, creditor, or other interested person may appeal.

—how taken and heard.
1879, c. 154, §9.

Time to prove claim.
1878, c. 74, §23.
1879, c. 154, § 10.

Secured creditors, how considered.

Such proof may be made, and such oath may be taken before the register of any court of insolvency, or at the creditor's own expense may be proved in like manner before any justice of the peace or notary public, and such register, justice of the peace or notary public, shall forward such demand and proof to the register of the court of insolvency where the proceedings in insolvency are pending. Such oath or affidavit shall be taken as *prima facie* evidence of the facts therein stated. The assignee, or any other person interested, may at any time before final dividend, file objections in writing to the allowance of such claim, and thereupon the judge may upon such notice as he shall direct to the claimant or his attorney, order a hearing upon the same, and thereupon may admit the claim to be proved, or may disallow the same, in whole or in part, and at such hearing the judge may require the examination under oath of the claimant or other persons, touching said claims, and all matters connected therewith ; whenever the party to be so examined shall not reside in the county where such hearing is to be had, such examination may be had before the judge or register of the court of insolvency of the county where the witness to be examined resides, and such examination shall be taken upon oral or written interrogatories, as the case may be. The notice *to be* given to the person to be examined shall be at least one day for every twenty miles travel of the witness to the place of examination. If the claimant or person making the original proof of debt, after due notice, shall, without good cause, neglect or refuse to appear and submit to such examination, the judge may reject such claim without further hearing thereon, and witnesses shall be entitled to the usual fees as now allowed by law before the probate courts. The assignee, claimant, creditor or other person interested may appeal from the decision of the judge allowing or disallowing in whole or in part any debt, claim or demand against the debtor or his estate, to the supreme judicial court next to be held within and for the county where the proceedings in insolvency are pending, which appeal shall be taken, heard and determined, as provided in section twenty-seven.

SEC. 40. Any creditor may prove his claim at any time before the final dividend.

SEC. 41. For the purpose of making the application provided by section seventy-five, of effecting the composition provided by said section, and of proving claims against an estate of any insolvent under this chapter, a creditor, who holds security, shall be

considered a creditor only for the amount of his debt above the value of his security.

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1878, c. 74, §24.
72 Me., 268.

First.—In case of such application, such value shall be made to appear, in the first instance, by the creditor, to the satisfaction of the judge, and be formally determined by him upon the hearing upon said application, if any shall be had.

Second.—In case of composition, such value shall be determined by the judge, upon application of either the creditor or debtor.

Third.—In case of proof of claims, such value may be determined by agreement between the creditor and assignee, or by the judge, upon application of either the creditor or assignee, either by an adjudication thereof, or by decreeing a sale of such security, in such manner and upon such notice as he may order.

SEC. 42. The judge may postpone the proof of any debt until after an assignee is elected or appointed.

Proof of debt may be postponed.
1878, c. 74, §25.

SEC. 43. A person who has accepted any preference, knowing the debtor was insolvent or in contemplation of insolvency, shall not prove the debt on which the preference was given, nor receive any dividend thereon until he shall surrender to the assignee all property, money, benefit or advantage received by him under such preference. The assignee after demand, may recover back by action of assumpsit, from any creditor whose claim is disallowed in whole or in part, any dividend or proportional part thereof, paid to such creditor before the disallowance of such claim.

Property accepted under preference to be surrendered.
1878, c. 74, §26.

Assignee to recover back dividend paid to a creditor whose claim is disallowed.
1879, c. 154, § 11.

SEC. 44. Any creditor may act at all meetings by his authorized attorney, the same as though personally present.

Creditor may act by att'y.
1878, c. 74, §27.

SEC. 45. At the first meeting, the creditors in *the* presence of the judge shall choose one or more assignees of the estate of the debtor; such choice shall be made by the greater part in number and value of the creditors present in person or by attorney, who have proved their debts; and such election shall be subject to the approval of the judge, who may appoint additional assignees or order a new election. If no choice is made by the creditors at said meeting, the judge shall appoint one or more assignees, and the judge may at any time for good cause shown, remove any assignee and appoint another in his place.

Creditors to choose assignees, and how.
1879, c. 154, § 12.

Judge may confirm choice, appoint additional assignees or remove for cause.

SEC. 46. Upon the application, in writing, of one or more creditors, representing one fourth part of the amount of debts proved, the judge shall require the assignee to give a bond for the faithful performance of his duties, in such sum as he shall direct, and with such sureties as he shall approve.

Assignee may be required to give bond.
1878, c. 74, §29.

SEC. 47. The judge shall, by an instrument under his hand, assign and convey to the assignee, all the estate, real and personal, of the debtor, except such as is by law exempt from attachment and seizure on execution, together with all deeds, books of

Judge shall assign and convey property to assignee.
1880, c. 199, §2.

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71 Me., 435.

Assignee to
give notice
of election.

Attach-
ments made
within four
months, dis-
solved.

Money paid
by debtor
upon writ,
judgment or
execution,
within two
months, may
be recovered
in certain
cases.

Assignee
may prose-
cute to final
judgment,
suit com-
menced by
creditor
within four
months prior
to com-
mencement
of insolvency
proceedings.
1878, c. 74, § 31.

—proceed-
ings.

account, and papers relating thereto, which assignment shall be recorded forthwith in the registry of deeds for the county where such proceedings in insolvency are pending, and in the registry of deeds in each county in which there may be real estate of the debtor, and such assignee shall give such public notice of his election or appointment as the judge may order; such assignment shall relate back to the commencement of proceedings in insolvency, and by operation of law, shall vest the title to all the property and estate of the debtor not exempt by law from attachment and seizure on execution, in the assignee, although the same is then attached on mesne process as the property of the debtor, or is claimed under any mortgage given by the debtor to secure a debt to a prior existing creditor, which has not been recorded at least three months prior to commencement of insolvency proceedings, and such assignment shall dissolve any such attachment made within four months, and any such mortgage not recorded at least three months next preceding the commencement of proceedings in insolvency. Such assignee may sue for and recover, by an action at law, or by a bill in equity, any sums of money paid by the debtor to any creditor upon any writ, judgment or execution, when such payment is made within two months prior to the commencement of the proceedings in insolvency, and is received by the creditor as a preference, in violation of the provisions of this chapter, and [when] the creditor knows, at the time such payments are made, that the debtor making the same is insolvent.

SEC. 48. Whenever any creditor of a debtor, by or against whom proceedings in insolvency shall be commenced, shall at any time within four months prior to the commencement of such proceedings, commence against such debtor any suit at law or in equity, for the recovery of any debt or claim against such debtor, and upon such suit the goods, effects or estate of the debtor shall be seized or attached, the assignee of such debtor, when chosen or appointed, may be admitted to prosecute such suit to final judgment or decree, and may in his own name levy upon or sell the property, effects or estate so attached, in the same manner as the creditor might have done had no proceedings in insolvency been commenced; and such attachment and the proceeds of the property so attached shall be held for the benefit of the estate of such insolvent, and when such attachment is made in good faith, the creditor shall be paid out of the estate the costs and expenses arising from such suit and attachment, and the safe keeping or sale of the property so seized and attached, and the expenses of any levy made upon the same, incurred prior to the appearance of such assignee in such suit, and such creditor shall be allowed to prove his debt or claim upon which such suit is brought, in the same

manner as if a suit had not been commenced. In case the assignee shall elect not to appear and prosecute such suit, if it shall appear to the court that it was commenced in good faith for the benefit of all the creditors, he shall order the said costs, and expenses incurred prior to the assignment of the estate to the assignee, to be paid out of the estate.

SEC. 49. The assignee shall sell and dispose of all the property and estate coming to his hands, and upon petition the judge may make such order concerning the sale or *disposition* [disposal] of the insolvent estate as he may deem proper, and any assignee shall have power to maintain in his own name all suits at law and in equity, for the recovery and preservation of the insolvent estate, and for the recovery of all dues and claims belonging thereto, whether the same arose prior to the commencement of proceedings in insolvency, or [shall] arise under the provisions of this chapter, and [he] shall be admitted to prosecute and defend all suits relating to said estate, and may with the consent of the judge settle any demand or controversy by compromise or arbitration, and sell and assign all uncollected or disputed claims, and the purchaser may commence or prosecute a suit thereon in his own name, and the assignee shall not be liable for any costs thereon.

Disposal of property.
1878, c. 74,
§ 32.
71 Me., 155.

SEC. 50. Whenever upon petition of the assignee it appears that the title to any portion of the estate which has come to his possession is in dispute, the judge may, after such notice to the claimant, his agent, or attorney, as the judge shall deem reasonable, order the sale thereof in such manner as the judge shall direct, and the assignee shall hold the funds received therefor in place of the estate so sold, and the proceeds of the sale shall be considered the measure of the value of the property in any suit between the parties in any court. But this provision shall not prevent the recovery of the property from the possession of the assignee by an action of replevin commenced at any time before the judge orders the sale.

Sale of property in dispute.
1878, c. 74,
§ 33.

SEC. 51. The assignee shall deposit in his name, as assignee, in such bank as the judge shall approve, all money coming to his hands belonging to the insolvent estate, and shall account for all interest received thereon.

Assignee to deposit money, and account for interest.
1878, c. 74, § 34.

SEC. 52. Whenever an assignee shall receive from the estate assets available to pay a dividend equal to twenty-five per cent. of the debts proved, exclusive of expenses, he shall declare and pay such dividend, and render an account thereof to the judge. No dividend already declared, shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by

Dividends, when declared and paid.
1878, c. 74, § 35.

Contingent claims.

Dividends already declared not disturbed by

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debts subse-
quently
proved.
1879, c. 154,
§ 14.
Proceedings.

the other creditors, before any further payment is made to the latter. In all cases of contingent or disputed claims the assignee may reserve an amount equal to the dividend which would be due upon such claim if finally allowed, unless otherwise ordered by the judge; if such disputed or contingent claim shall be finally allowed, such reserved amount shall be paid to the owner of such claim, otherwise it shall be accounted for when the final distribution of the estate is made. And for each twenty-five per cent. of assets received a like dividend shall be made. A final dividend shall be made at such time as the judge shall direct, and when the same is made, the assignee shall exhibit an account of the full settlement and *disposition* [disposal] of the estate coming to his hands, and of the fees and expenses arising therefrom, which shall be examined by the judge, and if found correct, shall be by him approved, and thereupon the assignee shall be discharged from his trust.

Claims to be
paid in full.
1878, c. 74, § 36.
71 Me., 404.
—order.

SEC. 53. In making a dividend under the preceding section, the following claims shall first be paid in full in their order.

First.—The fees, costs and expenses of suits and proceedings in insolvency under this chapter.

1879, c. 154,
§ 15.

Second.—All debts and taxes due to the state or any county, city or town therein, and the United States.

1879, c. 154,
§ 15.

Third.—Wages due to any operative, clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the filing of the petition.

Assignee
may resign.
1878, c. 74, § 37.
—vacancies,
how filled.

SEC. 54. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom, and from any personal liability, provided he has acted in good faith. Vacancies, caused by death or otherwise, in the office of assignee, may be filled by appointment of the judge, or, at his discretion, by an election at a meeting called for the purpose, by such notice to all known creditors, as the judge shall direct; and such assignee shall receive a certificate of his election or appointment, under the hand of the judge, and shall give such notice thereof as the judge shall direct, and he shall succeed to all the rights of property, powers and duties of the assignee in whose place he is so elected or appointed.

Debtor shall
submit to
examination
before certi-
ficate is
granted.
1878, c. 74, § 38.

SEC. 55. The debtor shall at all times before the granting of his certificate, upon reasonable notice, attend and submit to an examination, on oath, before the judge or some person appointed by him to take such examination, upon all matters relating to his insolvency, and upon application of any party interested, the judge may in like manner order the examination of any other person upon any matters concerning the insolvent estate, which examination shall be reduced to writing, and signed by the person examined, and placed upon the files of the court. The insolvent

Insolvent to

shall execute all such conveyances, powers of attorney, or other instruments, and do such acts as the assignee may require, under the direction of the court, to enable the assignee to recover and receive the estate of the insolvent.

CHAP. 70.
execute con-
veyances, &c.
1879, c. 154,
§ 16.

SEC. 56. The assignee with the approval of the judge shall appoint a second meeting of the creditors, to be held at such place as he may designate, not more than three months after the date of the warrant, [and] the debtor may then amend and correct his schedule of creditors, and shall take and subscribe an oath before the judge in substance as follows :

Second meet-
ing of
creditors.
1879, c. 154,
§ 17.
1878, c. 74, § 39.
Debtor's
oath:

"I, ———, do swear that the account of my creditors contained in the schedule made and signed by me is true, according to my best knowledge and belief; and I do further swear that I have delivered to ———, the messenger, all my estate except such as was by law exempt from attachment and seizure on execution, and all my books of accounts, and papers relating to said estate that were within my possession or power when the same were demanded of me by the messenger; that I have delivered to my assignee all such of my estate, books and papers as have since come to my possession, and will deliver any other estate, books, and papers which ought to be assigned and delivered to my assignee which shall come to my possession or knowledge; and I do further swear that there is not any part of my estate or effects made over, concealed or disposed of in any manner for the future benefit of myself, my family, or any other individual, or in order to defraud my creditors."

Form.

SEC. 57. At any time after the expiration of four months from the time of commencement of proceedings, the debtor may apply in writing to the judge for a discharge from his debts. The judge shall order notice to be given to the creditors by mail or otherwise, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the debtor. Any creditor opposing the discharge may file a specification in writing of the grounds of his opposition, and a hearing shall be had thereon at such time as the judge appoints. If it shall appear to the court that the insolvent has in all things conformed to his duty under this chapter, and that he is entitled under the provisions thereof to receive a discharge, the court shall grant him a discharge from all his debts, except as hereinafter provided, and shall give him a certificate thereof under the seal of the court. In all cases when the judge shall grant or refuse to grant a discharge under the provisions aforesaid, there shall be an appeal to the supreme judicial court, next to be held within and for the county where the proceedings in insolvency are pending, to be taken, heard and deter-

Debtor may
apply for
discharge,
after four
months.
1878, c. 74, § 40.
1880, c. 199, § 1.
Notice to
creditors.
—creditor
opposing
discharge,
may file
specifica-
tions.
If insolvent
has con-
formed to
provisions
of law, court
shall grant
discharge.
1880, c. 199, § 1.
—exception.

Appeal may
be taken to
S. J. C.

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—proceedings.

Question of discharge to be tried by jury.

—exceptions.

Second discharge not granted unless majority of creditors consent. 1878, c. 74, §41. —third, unless three fourths consent.

Discharge not to be granted, or if granted, not valid in cases of fraud. 1878, c. 74, §42.

—null and void if assent of creditor is purchased.

What debts are not discharged. 1878, c. 74, §43. 1879, c. 154, § 19.

mined in the manner provided in section twenty-seven. The party appealing shall file, at the time of entering his appeal in the supreme judicial court, a copy of the specifications of the grounds of opposition to the discharge, certified by the register. At the request of the debtor or opposing creditor, the presiding judge shall order the question of discharge to be tried by the jury at the first or any subsequent term of said court. Exceptions shall be had as to matters of law, to be heard and decided as provided by said section.

SEC. 58. A discharge shall not be granted to a debtor a second time insolvent, unless the assent in writing of a majority in number and in value of his known creditors shall first be filed in the case, to be verified by proof satisfactory to the judge. And a discharge shall not be granted to a debtor a third time insolvent, unless the assent in writing of three fourths of all his creditors in number and in value shall first be filed in the case, to be verified in like manner.

SEC. 59. A discharge shall not be granted, or if granted be valid, if the debtor has sworn falsely, or if he has concealed any property, books or papers relating to his estate and business, or if having reasonable cause to believe himself insolvent, or being in contemplation of insolvency he has within four months of the issuing of the warrant paid or secured, directly or indirectly, in whole or in part, any borrowed money or pre-existing debt, or any liability of his or for him, or if he has caused his effects to be attached, or if he has destroyed, altered, mutilated or falsified any of his books, documents, papers, writings or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or to give a preference contrary to the provisions of this chapter, or has removed, or allowed to be removed, any property with a like intent, or has made any fraudulent payment, gift, transfer, conveyance or assignment of any part of his property, or if having knowledge that any person has proved a false debt against his estate he has not disclosed the same to the assignee within thirty days after such knowledge, or if being a merchant or trader he has not since March twenty-three, eighteen hundred and seventy-eight, kept a cash book and other proper books of account. And the discharge shall be null and void if the debtor or any person in his behalf shall have procured the assent of any creditor thereto by any pecuniary consideration or promise of future preference.

SEC. 60. No debt created by the fraud or embezzlement of the insolvent, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged by proceedings in insolvency under this chapter, but such debt may be proved and the dividend thereon shall be a payment on account of such debt.

SEC. 61. No discharge shall release, discharge or affect any person liable for the same debt for or with the insolvent, either as partner, joint contractor, indorser, surety or otherwise.

SEC. 62. A discharge in insolvency duly granted shall, subject to the limitations in and by the two preceding sections, within this state, release the insolvent from *all** debts, claims, liabilities and demands, which were or might have been proved against his estate in insolvency; it may be pleaded by a simple averment that on the day of its date such discharge was granted to the insolvent, setting forth a copy of such discharge, which shall operate as a full and complete bar to all suits brought on any such debts, claims, or liabilities as were or might have been proved as aforesaid; the certificate shall be conclusive evidence in favor of such insolvent, of the fact and regularity of such discharge. Any creditor of an insolvent whose debt was proved or provable against the estate in insolvency, who desires to contest the validity of the discharge on the ground that it was fraudulently obtained, may at any time within two years after the date thereof apply to the court which granted it, to annul the same. The application shall be in writing, and shall specify which in particular of the several acts mentioned in section fifty-nine it is intended to prove against the insolvent, and [shall] set forth the grounds of avoidance; and no evidence shall be admitted as to any other of such acts, but the application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of the application to be given to the insolvent, and order him to appear and answer the same, within such time as to the court shall seem proper. If upon hearing the parties the court finds [that] the fraudulent acts, or any of them, set forth by the creditor against the insolvent are proved, and that the creditor had no knowledge of the same until after the granting of the discharge, judgment shall be given in favor of the creditor, and the discharge of the bankrupt shall be annulled; but if the court finds that the fraudulent acts, and all of them so set forth, are not proved, or that they were known to the creditor before the granting of the discharge, judgment shall be rendered in favor of the insolvent, and the validity of his discharge shall not be affected by the proceedings. In all cases arising under this section, there shall be an appeal to the supreme judicial court next to be held within and for the county where the proceedings in insolvency are pending, to be taken, heard and determined, in the manner provided in section twenty-seven. The party appealing shall file at the time of

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Partners, indorsers, &c., not released. 1878, c. 74, § 44. Liabilities from which insolvent is released. 1878, c. 74, § 45. 70 Me., 410. 1879, c. 154, § 20.

Certificate, conclusive evidence.

1879, c. 154, § 20.

Creditor, contesting validity of discharge may apply in writing to the court within two years.

What application shall set forth.

What evidence is admissible.

Application amendable.

Notice.

Hearing and decision.

On what grounds discharge annulled.

When judgment shall be rendered for insolvent.

Appeal to S. J. C.

What appeal shall file.

* [NOTE. So far as this section undertakes to release debts existing prior to March 23, 1878, it is in conflict with article I, § 10, clause 1, of the U. S. constitution, and therefore void. *Schwartz v. Drinkwater*. 70 Me., 410.]

CHAP. 70. entering his appeal in the supreme judicial court, a copy of the application to have the discharge annulled, certified by the register. At the request of either party, the presiding judge shall order issues of fact to be tried by the jury at the first or any subsequent term of said court. Exceptions shall be had as to matters of law, to be heard and decided as provided by said section.

At request
of either
party trial
by jury.
Exceptions.

Set-off of
claims.
1879, c. 154,
§ 21.
1878, c. 74, § 46.

Creditor
cannot bring
suit against
debtor, till
discharge is
refused.
1878, c. 74, § 47.
70 Me., 409.

—liability
to arrest.

Fraudulent
attachment
or convey-
ance of
property,
void.
1879, c. 154,
§ 22.
1878, c. 74, § 48.

Loans of ac-
tual value
secured in
good faith,
not in-
validated.

Allowance
to debtor.
1878, c. 74, § 49.

SEC. 63. No claim purchased after commencement of proceedings in insolvency, shall be set off against a claim due the estate prior to such purchase.

SEC. 64. No creditor shall commence or maintain any suit against the insolvent debtor, upon any claim or demand which he has proved against such debtor in insolvency, until after a discharge has been refused such debtor, provided such debtor shall proceed with reasonable diligence to obtain such discharge, and no debtor against whom a warrant in insolvency has been issued shall be liable to arrest on mesne process or execution, where the claim was provable in insolvency during the pendency of the insolvency proceedings, unless the same shall be unreasonably protracted by the fault or neglect of such debtor.

SEC. 65. If any person being insolvent or in contemplation of insolvency within four months before the filing of the petition by or against a debtor, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures or suffers any part of his property to be attached, sequestered or seized on execution, or makes any payment, pledge, assignment, transfer or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent or in contemplation of insolvency, and that such payment, pledge, assignment or conveyance is made in fraud of the laws relating to insolvency, the same shall be void, and the assignee may recover the property or the value of it from the person so receiving it or so to be benefited, and if such sale, assignment, transfer or conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be prima facie evidence that such sale, assignment, transfer or conveyance was intended as such preference, in violation of the provisions of this chapter; but nothing in this section or chapter shall be construed to invalidate any loan of actual value or the security therefor made in good faith, upon a security taken in good faith on the occasion of making such loan.

SEC. 66. The debtor shall be allowed out of his estate for his services, attendance, and for the necessary support of himself and

his family, such sum not exceeding one dollar a day for himself, and three dollars a week for each member of his family, and for such time not exceeding three months, as the judge may order.

CHAP. 70.

SEC. 67. If a debtor, after notice of the filing of a petition by or against him, sells, removes, secretes or conceals any property, money or effects belonging to his estate, or any books, papers, documents or writings relating thereto, or in any manner whatever disposes of any part of his estate, with a view to defraud his creditors, or to prevent the same from coming to the hands of his assignee, except such as may reasonably be expended for the support of himself and family, not exceeding the amount specified in the preceding section, he shall, *upon conviction thereof*, be punished by imprisonment *in the county jail not more* [less] than one year, or by fine of not more than five hundred dollars.*

Penalty for disposal of property to defraud creditors.
1878, c. 74, § 50.

SEC. 68. If any person knowingly and willfully aids the debtor after the commencement of proceedings against him under this chapter, in concealing any property, books or papers relating to or belonging to such debtor's estate, with *the* intent to prevent the same coming to the hands of the assignee of such debtor, or to defraud the creditors of such debtor, or shall by himself, his agent or attorney, make any fraudulent purchase or fraudulent agreement to purchase of the messenger or assignee having *the* possession of the debtor's estate, any of the property or estate of such debtor, at a less price than its fair market value, he shall, *upon conviction thereof*, be punished by imprisonment *in the county jail not more* [less] than one year, or by fine of not more than five hundred dollars.*

Penalty for aiding to defraud creditors.
1879, c. 154, § 23.
1878, c. 74, § 51.

SEC. 69. If any messenger or assignee having possession of the debtor's estate under a warrant, as provided by this chapter, shall knowingly and willfully suffer any of the property belonging to such estate to be destroyed or wasted, or shall fraudulently sell or cause to be sold or disposed of, any of the property belonging to the estate of the debtor at less than its fair market value, he shall, *upon conviction thereof*, be punished by imprisonment *in the county jail not more* [less] than one year, or by fine of not more than five hundred dollars.*

Penalty for fraudulent disposal of property by messenger or assignee.
1878, c. 74, § 52.

PARTNERSHIP.

SEC. 70. The provisions of this chapter shall apply to all cases where two or more persons are doing business within *this* [the] state as partners, and where either of such persons reside[s] in *this* [the] state, and in such cases the notice required by this chapter shall be given to all the known partners residing within the state. Either partner may file his petition as herein provided, which shall

Partnership.
—scope of this chapter.
1878, c. 74, § 53.

—either

* [NOTE. A change of one day in the maximum sentence would bring §§ 67, 68 and 69 within the general law of jail sentences, found in chapter 135, § 2.]

CHAP. 70.

partner may
file notice.

—notice to
be given to
each partner.

—schedule
to contain
names of
creditors of
firm and
of each
member.

—property
of firm and
of each part-
ner to be
returned to
assignee.

—creditors
may prove
debts.

Assignee,
how chosen.

—shall be
assignee of
firm and of
estate of
each partner
and keep
separate
account.
1878, c. 74, § 54.

—net pro-
ceeds, how
appro-
priated.

—net bal-
ance of es-
tate of part-
ner, how
disposed of.

—net bal-
ance of
estate of
firm, how
disposed of.

Certificate
of discharge,
how granted
or refused.

contain the averment that the partnership of which he is a member is insolvent, and unable to pay its debts, and that it is for the best interest of such partnership and its creditors that its property and estate should be distributed according to the provisions of this chapter, but no warrant shall issue until such notice as the judge directs shall be given to the remaining partners, and upon hearing, it shall appear to the satisfaction of the judge that the allegations contained in the petition are true. The schedule required by this chapter shall contain the names of all creditors of the firm, and the residences of the same, so far as *they shall be known*, the amount due to each with the consideration thereof [-for], and a statement of any existing mortgage, pledge, or other collateral security given to secure the same, and also a like list of the creditors of each individual member of the firm. Upon issuing the warrant, all the property and estate of the partnership, and *also* all the separate estate of each individual partner, except such as may be by law exempt from attachment, shall come into the hands and possession of the messenger, [and] shall be returned to the assignee, and [be] otherwise disposed of as hereinbefore provided, and all creditors of the partnership, and the separate creditors of each partner may prove their debts in the manner provided by this chapter.

SEC. 71. The assignee shall be chosen by the creditors of the partnership, and shall also be assignee of the estate of each separate member of such partnership, and shall keep separate accounts of the funds of the estate of the partnership and of the estate of each member thereof, and after deducting *out of* [from] the whole amount received by him the total expenses and disbursements, the net proceeds of the partnership property shall be appropriated to pay the creditors of such partnership; and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is any balance of the separate estate of a partner after the payment of his separate debts, it shall be added to the avails of the partnership property, so far as necessary for the payment of the partnership debts. *If there is a* [Any] balance of the partnership assets remaining after *the* payment of the partnership debts, *it* shall be divided among the separate estates of the several partners, according to their respective rights and interests therein, as it would have been had the partnership been dissolved without insolvency, and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts, and in case anything remains it shall be divided among the several partners, according to their respective interests.

SEC. 72. The certificate of discharge shall be granted or refused to each partner as it would or ought to be if the proceedings had been against him alone. In all other respects the pro-

ceedings against partners shall be conducted in the same manner as against a single person. CHAP. 70.
1878, c. 74, § 55.

SEC. 73. In all proceedings against partners, each shall be entitled to the same allowance as that provided in section sixty-six, to continue for such time as the judge may direct, not exceeding two months. Other proceedings.
Allowance to partners.
1878, c. 74, § 56.

CORPORATIONS.

SEC. 74. The provisions of this chapter shall apply to all corporations created by the authority of the laws of *this* [the] state, carrying on manufacturing, trading, mining, building, insurance or other private business, but [shall] not [apply] to *include* corporations engaged in a business involving public duties and obligations, among which are railroads, banks, corporations engaged in supplying cities and towns with gas or water, and other corporations of like character ; and upon the petition of any officer duly authorized by a legal vote of such corporation, passed at a legal meeting called for that purpose, or upon a petition of any creditor or creditors of such corporation, made and presented as in this chapter is provided in the case of an individual debtor, and upon such notice as the judge shall order, a hearing shall be had upon such petition, and if it shall appear that such corporation is insolvent, and that such facts exist as would authorize the judge to issue a warrant against the estate of an individual debtor, such corporation shall be adjudged to be insolvent, and a warrant shall issue against its property and effects, as hereinbefore provided ; and all the provisions of this chapter relating to proceedings subsequent to the issuing of a warrant against the estate of an individual debtor, shall apply to said corporation and the *disposition* [disposal] of its effects and estate, but no discharge shall be granted to such corporation, and nothing in this chapter shall affect the liability of any stockholder in such corporation as is now provided by law. Chapter to apply to corporations.
1878, c. 74, § 57.

Exceptions.

Proceedings.

No discharge to be granted and liability of stockholder not affected.

GENERAL PROVISIONS.

SEC. 75. In all cases of insolvency where the debtor or debtors' liability exceeds the sum of three hundred dollars, if the debtor or debtors at any meeting of the creditors shall produce an affidavit by him or them signed and sworn to before the judge or register of the court of insolvency, of the tenor following :— Debtor shall produce affidavit.
1879, c. 154, § 24.
1878, c. 74, § 58.
71 Me., 435.

“I, —, of —, in the county of —, *do* solemnly swear that I have not removed, concealed or secreted any money, papers, securities, effects, or property, real or personal, with the intent, purpose or expectation of receiving, directly or indirectly, any benefit or advantage to myself, and that I have not changed or falsified any of my books of account, deeds or papers relating to my estate, and that I have not sold, pledged, conveyed or —form.

CHAP. 70. transferred any of my property or estate in anticipation of insolvency, or made any conveyance, mortgage, pledge, transfer or payment to any creditor, or caused or procured any attachment of my property for the purpose of preferring any of my creditors; and that I have not, directly or indirectly, given any creditor or other person any compensation or promise of reward, except reasonable counsel fees for services or influence in effecting a compromise with my creditors, and that my assets and liabilities are correctly stated in the schedule hereunto annexed and signed by me.”

Creditors’ agreement. —and at the same time shall also produce an agreement signed by a majority in number of his creditors, whose debts shall each exceed the sum of fifty dollars, and by creditors holding three fourths of all his indebtedness, in the form following:—

—form. “We, the undersigned, creditors of — — —, of — — —, in the county of — — —, do hereby agree to accept — — — per cent. of our actual net claims against him, the amounts of which are correctly stated against our respective names, in full discharge of the same. And we further agree* that we have not, directly or indirectly, received any compensation or promise of future payment beyond the per cent. herein named.”

If agreement is satisfactory, judge shall give debtor discharge. —and if the judge shall be satisfied that such agreement is signed by said proportion of the creditors of such debtor, and that such debtor has either paid or secured the percentage named in such agreement and according to the terms thereof, he shall give such debtor, under his hand and the seal of the court, a full discharge of all his debts and liabilities contracted prior to the commencement of the proceedings in insolvency, and named in the schedule annexed to said affidavit. Such discharge shall not be valid if the signature of any creditor has been obtained by fraud, or if any material statement contained in any such affidavit or schedule is false, to the knowledge of the debtor making the same, and any creditor may within two years, sue for and recover the balance of his claim or debt against such debtor. In case the proceedings in insolvency are by or against a copartnership, the affidavit, agreement and certificate shall be varied accordingly, and shall contain both the names of the firm and the names of the members thereof. Before such certificate shall be granted, the debtor shall pay all expenses incurred during the proceedings.

—not valid, in case of fraud or falsehood.

1879, c. 154, § 24.

Debtor to pay expenses.

Any person whose debts do not exceed \$300, may make assignment. 1878, c. 74, § 59.

SEC. 76. Any person whose debt or debts do not exceed the sum of three hundred dollars, may at any time assign, convey and deliver to the register of the probate court of the county within which he resides, all of his real and personal estate, rights and credits not exempt by law from attachment and seizure on execution, together with a schedule of the same, signed by such debtor,

* [QUERY. Does the word “agree” convey the precise idea intended?]

and a list of all his creditors, with their places of residence, so far as the same are known to him, and thereupon the register shall, with the approval of the judge, appoint the time for a hearing thereon, before the judge, or such a person as he may appoint to take such examination, and shall give such notice to the creditors, of the time and place of such hearing as the judge may order, and any creditor may appear at such hearing and examine the debtor, under oath, concerning his business, property and effects, and the *disposition* [disposal] of the same. Such examination shall be confined within such limits as the judge shall direct, and in no case shall such examination be extended to any matters arising prior to the time of the contracting of the debts owed by such debtor at the time of the examination. If it shall appear to the judge, or the person appointed by him to take such examination, that the debtor has assigned, conveyed and delivered to the register all his said real and personal estate, rights and credits, and that he has disclosed to the register the names and places of residence of all creditors known to him, he shall administer to such debtor the following oath :—

“I, ———, *do* swear that the account of my creditors contained in the schedule made and signed by me is true, according to my best knowledge and belief; and I *do* further swear that I have delivered to ———, the register of probate, all my estate, rights and credits, except such as is by law exempt from attachment and seizure on execution; and I do further swear that there is not any part of my estate, rights or credits, made over, concealed, or disposed of in any manner, for the future benefit of myself, my family, or any other individual, or in order to defraud my creditors.”

CHAP. 70.
—proceed-
ings.

Form of
oath.

—unless he shall have discovered, by such examination, such facts as shall render it inconsistent for the debtor to take such oath, or finds that any of the statements made by such debtor upon said examination are not true. When such debtor has taken and subscribed said oath, the judge shall give him a certificate thereof under his hand, and thereupon he shall be thereafter released and discharged from arrest upon mesne process or execution arising from any debt or debts contracted prior to the taking such oath, and owing to any creditor named in said schedule. *The provisions of this section shall also apply to any person who has been arrested or committed to jail upon mesne process or execution, and such debtor shall be taken by the jailer, or officer having him in charge, before the court for the purposes [herein-] specified in this section. After the assignment and conveyance [herein-] provided by this section, the register, or some person appointed by the judge, shall dispose of said debtor's property and effects to the best advantage,*

Judge to
give certi-
ficate of
release.

Chapter ap-
plies to per-
son commit-
ted to jail
on mesne
process or
execution.

Disposal of
debtor's
property.

CHAP. 71. keeping and rendering to the judge a strict account of its *disposition*, [disposal] and the net proceeds thereof, after reserving such percentage as the judge shall decide to be reasonable, to be paid by the register into the county treasury, shall be divided pro rata among the creditors named in the schedule of said debtor in part satisfaction of their respective debts. The examination herein provided for shall be in writing, and shall be signed by the debtor and filed in the office of the register, and in case the judge shall appoint any person to take such examination he may allow him reasonable compensation therefor, to be paid out of the debtor's assets if they shall be sufficient, otherwise such compensation, or such part thereof, as shall remain unsatisfied out of the debtor's estate, shall be paid out of the county treasury.

Examina-
tion to be in
writing.

Expenses to
be paid by
debtor.

Fees to be
established
by S. J. C.
1878, c. 74, §60.

—how paid.

SEC. 77. The fees of all officers, the compensation of assignees, and of the judges and registers of probate, under the provisions of this chapter, shall be established by the supreme judicial court, and shall be paid out of the estates. And in all voluntary proceedings under the provisions of this chapter, the fees and costs shall be paid by the petitioners.

CHAPTER 71.

SALES OF REAL ESTATE BY LICENSE OF COURT.

LICENSES TO SELL RESIDENT ESTATES.

- SEC. 1. When license may be granted to sell, lease or exchange real estate.
2. Judge of probate, on application, with written consent of widow, may license sale of real estate, with right of dower and reversion. Proceeds, how divided.

SALES AT AUCTION.

- SEC. 3. Sales to be at auction, exceptions. Appeal. Jurisdiction of supreme court.
4. Bond to be filed. Conditions.
5. Oath first to be taken.
6. Notice previous to granting license.
7. No license to issue if parties give bond, and fulfill it.
8. Notice of sale, how given.
9. Judge to certify to S. J. Court in certain cases.
10. Parties may be examined under oath.
11. Overseers of the poor to certify in certain cases.

PRIVATE SALES, AND SALES ON OFFER.

- SEC. 12. Licenses to sell at private sale, and on offer; proceedings.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

- SEC. 13. Wife of incapacitated ward may join in deed with guardian, or release dower.

SEC. 14. Guardian may invest her interest; trust to be enforced.

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SALES OF NON-RESIDENT ESTATES.

SEC. 15. Sale of estate of deceased persons or minors out of the state.

16. Proof of the appointment of executor, &c., in another state.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

SEC. 17. Administrators and others may be licensed to carry into effect contract of deceased.

18. Notice to be given, and bond required.

GENERAL PROVISIONS.

SEC. 19. Licenses limited to one year; may be renewed.

20. Sales may be adjourned.

21. Licenses may include lands in other counties.

22. Licenses may prescribe the land to be sold.

23. What estate of deceased is liable to sale. Effect of deed.

24. Surplus proceeds of sale to be distributed as real estate.

25. What parties are to be notified, and may appear.

26. Costs when license is contested.

27. Proof of notice of sale, certificate and record.

28. Proof by parol when certificate is not returned.

29. Remedy for neglect or misconduct of person licensed.

ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

SEC. 30. Process to recover back land sold by license, limited to five years.

31. Requisites for valid sale, as against persons claiming under deceased or ward.

32. Requisites as against persons claiming adversely to the title sold.

LICENSES TO SELL RESIDENT ESTATES.

SEC. 1. Judges of probate, in the counties where the applicants hereinafter named were appointed, may license the sale, leasing or exchange of real estate and any interests therein in whatever county situated, in the following cases, on application: (a)

Sale, lease, or exchange of real estate, licensed. R.S., c. 71, § 1.

First.—Of executors or administrators, for power to sell so much of such estate of the deceased as is necessary to pay debts, legacies, and expenses of sale and of administration.

—on application of ex'rs and adm'rs to pay debts, &c.

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

—of friends or guardians of minors.

CHAP. 71. 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.

—for sale of whole property by executors, &c. 1875, c. 51. 63 Me., 250.

Third.—Of executors, administrators, or guardians, when it appears by the petition and proof exhibited, that the residue would be greatly depreciated by a sale of any portion under the foregoing authority, to sell the whole, or such parts thereof as will not injure the residue.

—by husband or guardian of insane wife. R.S., c. 71, § 1.

Fourth.—Of a husband or guardian of an insane wife resident in the county, to sell, on such terms and conditions as the judge thinks proper, for a sufficient consideration, any real estate held by him in right of his wife, or any of her rights of dower.

—for sale of wood and timber.

Fifth.—Of executors or administrators to sell wood and timber standing on the real estate of their testator or intestate, for the payment of debts, when it clearly appears to the judge to be for the advantage of those interested in the estate.

—of land warrants.

Sixth.—Of executors or administrators, to sell as real estate the interest which their testator or intestate had in a land warrant issued by virtue of any act of congress, when not disposed of by will, and to distribute the net proceeds thereof among those entitled by law to such interest.

—release of damages by highway, railroad or canal.

Seventh.—Of guardians, when a highway, railroad or canal is authorized to be constructed through the lands of any ward, or a dam is constructed by which such lands are liable to be flowed, to give, for a reasonable compensation, a full release of such ward's claim for damages, which shall be binding on the ward and his heirs forever.

—mortgages, executions, &c. See c. 65, § 35.

Eighth.—Of executors or administrators, to sell real estate held in mortgage, or taken on execution, and the right of redemption foreclosed, when it appears to be for the benefit of the parties in interest, and to distribute the proceeds as in other cases of personal estate.

—for sale by public administrators. See c. 64, § 27.

Ninth.—Of public administrators, after three years from the granting of administration, to sell any or all of the real estate of the deceased, when it appears to be for the interest of all concerned, and that no heir or other person interested therein, except creditors, can be found in the United States.

—heirs or devisees in different states. R.S., c. 71, § 1, item 10. 1871, c. 212.

Tenth.—Of a part or all the heirs or devisees living in different states, of a person deceased, who left real estate in this state undivided, or real estate devised in undivided shares to different persons, where the devisees reside in different states, 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 or devisees, according to their respective rights therein ; unless, after public notice, the first publication to be thirty days prior to the hearing, or longer if the judge deems it necessary, any owner objects to such sale ; and if so sold, the share of any absent owner shall be placed on interest until called for by him or his legal representatives. CHAP. 71.

Eleventh.—Of the executor or administrator of a deceased member of a copartnership, or the surviving partner, who files a bond and is authorized to close the affairs of a partnership estate, to sell real estate which is assets of the late partnership, in the same manner as any other executor or administrator is licensed to sell real estate, on petition and notice, and on giving bond, with sufficient sureties, to appropriate the proceeds to the payment of the partnership debts; and to pay over any balance that may remain in his hands, after closing the affairs of said partnership estate, to the person or persons entitled to the same, and on taking the oath and complying with all the requirements of the law authorizing a sale of real estate.

Sale of copartnership property when a partner has deceased. 1871, c. 225.

SEC. 2. Whenever application is made for the sale of real estate and any interests therein, under the provisions of the first, second and third clauses of the preceding section, the judge of probate may, with the written consent of the widow, who may have any rights of dower in the estate for the sale of which such application is made, grant a license to sell such real estate, or any interest therein, including the widow's dower and the reversion thereof. In such case the widow shall be entitled to her share of the proceeds of the sale under such license, equal to the present value of her dower in the real estate sold, to be estimated by the judge of probate, according to her age; and the residue thereof, after paying debts and expenses of administration, shall be distributed to the heirs at law, as real estate would [be] by law if there had been no widow, or to the devisees named in the will of the deceased according to the terms of such will.

A judge of probate may, on application, with written consent of widow, license sale of real estate, with dower and reversion. 1881, c. 54. Proceeds of sale, how divided.

SALES AT AUCTION.

SEC. 3. All the sales aforesaid shall be at public auction, except as hereinafter provided, and the decision of the judge of probate on such applications may be appealed from, as in other cases ; and the supreme judicial court shall have original and concurrent jurisdiction with the probate court in all the cases aforesaid.

Sales to be at auction. Exceptions. Appeal. Jurisdiction of S. J. C. R.S., c. 71, § 2. 8 Me., 222.

SEC. 4. All persons licensed as aforesaid, before proceeding to make such sales, leases or exchanges, shall give bond to the judge of probate for a sum, with sureties to his satisfaction, with the following conditions :

Bond. Conditions. R.S., c. 71, § 3. 39 Me., 18. 50 Me., 75.

CHAP. 71. *First.*—That they will observe all the provisions of law for the sale, leasing or exchange of such real estate or interests therein, and use due diligence in executing the trust.

Second.—That they will truly apply and account for the proceeds of sale or lease according to law.

Oath first to
be taken.
R.S., c. 71, § 4.
26 Me., 224.
63 Me., 250.

SEC. 5. Before fixing upon the time and place of sale, leasing or exchange, they shall be duly sworn before the judge of probate, or before some justice of the peace, whose certificate shall be returned to the judge, and filed and recorded by the register.

Notice prev-
ious to
granting
license.
R.S., c. 71, § 5.

SEC. 6. No license shall be granted for the sale of any such real estate, of the value of more than fifty dollars, unless by the written consent of all persons interested therein, until after public or personal notice of the time and place of hearing, to all persons interested in the property, to appear and object if they see cause. If any party interested resides without the state, such special notice may be given as the court directs.*

No license
to issue, if
parties give
bond and
fulfill it.
R.S., c. 71, § 6.

SEC. 7. Nor shall such license be granted, if any of the parties, interested in such estate, gives bond to the executor, administrator, or guardian, in a sum and with sureties approved by the court, to pay all sums, for the payment of which license is asked, so far as the goods and chattels, rights and credits of the deceased or ward are insufficient therefor; but such bond shall not bar any future application for the same purposes, if the obligors, on reasonable notice and demand fail to perform its condition.

Notice of
sale, how
given.
R.S., c. 71, § 7.

SEC. 8. Every person licensed as aforesaid, previous to such sale, shall give thirty days' notice thereof, by posting up notifications in some public place in the town where the estate lies, and in two adjoining towns, and in the town where the said deceased last dwelt, or where the ward resides, if within the state; or by causing an advertisement thereof to be published three weeks successively in such newspaper as the court, authorizing the sale, orders; the first publication to be thirty days before the sale.

Judge to
certify to
S. J. C. in
certain cases.
R.S., c. 71, § 8.

SEC. 9. Every application for the sale of any estate, under the provisions of the third specification of the first section, made to the supreme judicial court, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried, showing the value of the real and personal estate of the deceased or ward, and the amount of his just debts or legacies, if the case require[s] it; and also the opinion of such judge of probate, whether it is necessary that the whole or a part of the estate should be sold, and if part only, what part; and in all applications before said court, by guardians of minors under the second specification aforesaid, a certificate must likewise be pro-

* [QUERY SUGGESTED BY JUDGE PEABODY. Ought not public notice to be required in all applications for license by guardians?]

duced from the judge of probate in the county where such minor's estate was inventoried, stating that in his opinion it would be for the interest of such minor, that the whole or a part of said estate should be sold for the purpose specified, and if part only, what part.

CHAP. 71.

SEC. 10. Any court, hereby authorized to grant licenses, may examine, under oath, the petitioner or any other person, whether interested or not, touching the truth of the facts set forth in the petition.

Parties may be examined under oath.
R.S., c. 71, § 9.

SEC. 11. No license to sell the estate of any ward, not a minor or insane, shall be granted, unless the applicant produces to the court a certificate under the hands of the overseers of the poor of the town where the ward resides, if in *this* [the] state, giving their consent to the sale, and their opinion as to the amount proper to be raised thereby, excluding debts contracted by gaming; and if applicable to the case, whether it is necessary to sell a greater amount in value of land to prevent injury to the residue.

Overseers of the poor to certify in certain cases.
R.S., c. 71, § 10.

PRIVATE SALES AND SALES ON OFFER.

SEC. 12. In all cases where the courts may license a person to sell real estate at auction, they may license him to sell from time to time at private sale, or to accept any advantageous offer for such estate or any part of it, and [to] convey the same accordingly, if it appears to be for the interest of all concerned; but when so licensed, he may sell at auction, by complying with all the *requisitions* [requirements] of law for sales at auction, and with any particular conditions of his license; and he shall be sworn and give bond as if he was licensed to sell at auction; and the court shall decide what notice, if any, shall be given of such sale, and if any is required, it shall be inserted in the license and given accordingly.

Licenses to sell at private sale, and on offer; proceedings.
R.S., c. 71, § 11.
5 Me., 240.
20 Me., 395.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

SEC. 13. When the guardian of an incapacitated person is duly licensed to sell the interest of his ward in any estate held by him in right of his wife, she may, for a sufficient consideration, join with the guardian in the deed thereof, and it shall be as effectual as if made with her husband when under no disability; and when licensed to sell the real estate of his ward, she may release her right of dower therein to the purchaser, by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of dower in the premises.

Wife of incapacitated ward may join in deed with guardian, or may release dower.
R.S., c. 71, § 12.

SEC. 14. The guardian, with the consent of the judge of probate to whom he accounts, may agree in writing with such wife how to invest or otherwise dispose of a part of the proceeds of the

Guardian may invest proceeds of her interest;

CHAP. 71. sale of the whole estate for her sole use, equivalent to her interest therein ; and the supreme judicial court may enforce such agreement in equity, as a trust.

trust to be enforced.
R.S., c. 71, § 13.

SALES OF NON-RESIDENT ESTATES.

Sale of estate of deceased persons or minors out of the state.
R.S., c. 71, § 14.
11 Me., 101.

SEC. 15. The supreme judicial court and the probate courts may grant licenses to continue in force for three years, to executors and administrators of persons deceased out of the state, guardians of wards living out of the state, or some other suitable person on their petition, to sell and convey real estate or interest therein in *this* [the] state, as if such deceased persons had died, and such wards lived in *this* [the] state, and such executors, administrators, or guardians, had been here appointed ; and all proceedings in such cases, before any probate court, shall be had before the judge of probate for the county where the real estate or any part thereof lies, and the bond required shall be given to him.

Proof of appointment of executor, &c. in another state.
R.S., c. 71, § 15.

SEC. 16. A certified copy of the appointment of such executor, administrator, or guardian, by any court of probate having jurisdiction in any other of the United States, examined and allowed by any judge of probate in this state, and filed and recorded in his county, shall be sufficient proof of appointment to entitle him to the benefit of the preceding section.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

Judge of probate may authorize executor or administrator to convey estate on contract made by persons before decease.
1876, c. 104.
3 Me., 51.
51 Me., 424.

SEC. 17. When it appears to the judge of probate having jurisdiction, that any deceased person in his lifetime made a legal contract to convey real estate and was prevented by death from so doing, or that such deceased person, in his lifetime made such a contract to convey an estate upon [a] condition, which in its nature could not be fully performed before the decease of such person, and that in either case the person contracted with or petitioner has performed or is ready to perform the conditions required of him by the terms thereof, he may on the petition of such person, his heirs, assigns or legal representatives, authorize the executor or administrator, or special administrator of the deceased, or when there is no executor or administrator, the guardian of the heirs of the deceased, to execute deeds to carry said contract into effect ; and when such conveyance is made to an executor or administrator, he shall stand seized of such estate to the same uses as in case of real estate set off to him on execution.

Conveyance, when made, to executor or administrator.

Notice to be given, and bond required.

SEC. 18. Before granting such authority, the judge shall cause due notice to be given to the heirs and all other parties interested, and require the person authorized to make conveyance, to give

bond with sufficient sureties to account for whatever he receives therefor. CHAP. 71.
R.S., c. 71, §17.

GENERAL PROVISIONS.

SEC. 19. No license granted under this chapter, except when otherwise provided, shall remain in force more than one year from its date; but when that time has expired, a new license may be granted, with or without new notice, at the discretion of the judge, for the sale of all or part of the same real estate [up-]on filing a new bond. Licenses limited to one year; may be renewed.
R.S., c. 71, §18.
19 Me., 151.
22 Me., 329.
36 Me., 576.

SEC. 20. Any sale, duly appointed and notified, may be adjourned for a time or times within the *time* [period] prescribed by the license, not exceeding fourteen days in all, at the discretion of the person licensed, by giving such reasonable notice thereof as circumstances will permit. Sales may be adjourned.
R.S., c. 71, §19.
63 Me., 251.

SEC. 21. When the real estate, for the sale of which license is necessary, lies in two or more counties, the supreme judicial or probate court, in either of said counties, may grant licenses for the sale of the whole, or any part thereof, in any other county in the state. Licenses may include lands in other counties.
R.S., c. 71, §20.

SEC. 22. Any court, granting license to sell real estate for the payment of debts, legacies, or expenses of administration, may prescribe therein what particular portions thereof shall be sold, and in what order, according to the last will of the testator or the principles of equity. License may prescribe the land to be sold.
R.S., c. 71, §21.

SEC. 23. Lands, of which the deceased died seized in fee simple or fee tail, general or special, and all that he had fraudulently conveyed, or of which he was colorably disseized to defraud creditors, are liable to sale for the payment of debts, under any license granted under this chapter; and any deed, executed and recorded in due form of law, for adequate consideration, in pursuance of any such license, shall be effectual to pass to the purchaser all the estate, right, title, and interest in the granted premises, which the deceased, the ward, or other person on whose account the license was granted, might convey by a like deed if living and not incapacitated. What estate of deceased is liable to sale.
Effect of deed.
R.S., c. 71, §22.
3 Me., 286.
4 Me., 18.
61 Me., 294.
71 Me., 67.
19 Me., 151.
22 Me., 330.

SEC. 24. In all cases of the sale of real estate, or any part, or interest therein, by virtue of licenses granted under any of the provisions of this chapter, the surplus proceeds of sale, remaining on the final settlement of the accounts of such proceeds, shall be considered as real estate, and distributed among the same persons and in the same proportions as the real estate would be by law. Surplus proceeds of sale to be distributed as real estate.
R.S., c. 71, §23.

SEC. 25. All who are heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear and answer to the petition of any guardian or other person What parties are to be notified, and may appear.
R.S., c. 71, §24.

CHAP. 71. for the sale of his estate; and, when personal notice is required to be given, they shall be notified.

Costs where
license is
contested.
R.S., c. 71, §25.

SEC. 26. When the granting of any license is contested, if it appears that the petition or objection to it is unreasonable, the court may award costs to the prevailing party.

Proof of no-
tice of sale,
certificate
and record.
R.S., c. 71, §26,
63 Me., 251.

SEC. 27. The affidavit of any person licensed as aforesaid, or of any person employed by him, made within eighteen months after the sale, and filed in the probate office, with one of the original advertisements of the time, place, and estate to be sold, or with a copy of such advertisement, and recorded, shall be sufficient proof that such notice was given; and a copy of such affidavit, certified by the register of probate, shall be competent evidence thereof.

Proof by
parol when
certificate
is not
returned.
R.S., c. 71, §27.

SEC. 28. When any person, licensed as aforesaid, has duly taken the oath required by law, but no certificate thereof has been retained as provided in the preceding sections, parol evidence may be received that such oath was administered, in the trial of any action respecting the estate so sold; and if proved, it shall have the same effect as if a certificate thereof had been returned, filed and recorded.

Remedy for
neglect or
misconduct
of person
licensed.
R.S., c. 71, §28.

SEC. 29. If any person, interested in any estate sold as aforesaid, suffers damage by the neglect or misconduct of the executor, administrator, or guardian, in such proceedings, he may recover a compensation therefor in a suit on the probate bond or otherwise, as the case may require.

ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

Process to
recover back
land sold by
license,
limited to
five years.
R.S., c. 71, §29,
14 Me., 344,
58 Me., 558.

SEC. 30. No action shall be brought to recover any estate sold under this chapter, nor entry made thereon, except by judgment of law, with a view to avoid the sale by persons claiming under the deceased, or by the ward or persons claiming under him, unless it is done within five years after the sale, or the termination of the guardianship, except that persons out of the state, or under any legal disability at said times, are limited to five years after their return to the state, or the removal of the disability.

Requisites
for valid
sale, as
against per-
sons claim-
ing under
deceased or
ward.
R.S., c. 71, §30.

SEC. 31. In any action brought to contest the validity of any such sale, by the heir or others claiming under the deceased; the wife or her heirs, in case of a sale of her estate by her husband; or the ward or persons claiming under him, no such sale shall be avoided on account of any irregularity in the proceedings, if it appears:

First.—That the license was granted by a court of competent jurisdiction, and [that] the deed [was] duly executed and recorded.

Second.—That the person licensed took the oath, and gave the bond and notice of the time and place of sale required by law.

Third.—That the premises were sold in such manner, and within such time as the license authorized, and are held by one who purchased them in good faith. CHAP. 72.

SEC. 32. If the validity of such sale is contested by one claiming adversely to the title of the wife, ward, or deceased aforesaid, or by a title not derived through either, the sale shall not be held void on account of any irregularity in the proceedings, if it appears that the license was granted by a court of competent jurisdiction, and the deed duly executed and recorded.

As against such as claim adversely to the title sold. R.S., c. 71, § 31. 53 Me., 204.

CHAPTER 72.

PROBATE BONDS AND REMEDIES THEREON.

WHAT BONDS ARE SUFFICIENT.

SEC. 1. No bond sufficient unless approved by the judge of probate.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

SEC. 2. When bond is insufficient, a new one may be required.

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4. Principal to give new bond, or be removed.

ACTIONS ON BONDS.

SEC. 5. Suits on bonds to be in the name of the judge. Costs.

6. In suits against sureties, principal may be made a party.

7. How he shall be summoned; proceedings and judgment.

8. Action on executor's or administrator's bond limited to six years, except in case of fraudulent concealment.

9. Judgment for plaintiff to be for penalty.

ACTIONS BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

SEC. 10. When and how party interested may bring suit on bond.

11. Judgment in suit not sustained.

12. Suit on bond by creditor of insolvent estate.

13. Suit by creditor or legatee of solvent estate.

14. Suit by widow, next of kin or residuary legatee.

15. Judgment and execution in such suits.

SUITS BY AUTHORITY OF THE JUDGE.

SEC. 16. Judge may authorize suits. Execution in case of failure to account.

17. Execution in case of returning no inventory, or of neglect or mismanagement.

18. Judgment to be in trust for all interested.

OTHER PROBATE BONDS.

SEC. 19. Like proceedings to be had on other bonds.

CHAP. 72.

WHAT BONDS ARE SUFFICIENT.

No bond sufficient unless approved by the judge.
R.S., c. 72, § 1.

SEC. 1. No bond required by law to be given to the judge of probate, or to be filed in the probate office, shall be deemed sufficient, unless examined by the judge, and his approval written thereon.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS
REQUIRED.

When bond is insufficient, a new one may be required.
R.S., c. 72, § 2.

SEC. 2. When the sureties in any bond given to the judge of probate are insufficient, on the petition of any person interested, and notice to the principal, the judge may require a new bond to be given, with sureties approved by him.

Surety on bond may be discharged by judge of probate.
1881, c. 69.

SEC. 3. On the application of any surety in such bond, the judge of probate, on due notice to all parties interested may, in the exercise of a just discretion, discharge him from all liability for any subsequent, but not for any prior breaches thereof, and [may] require a new bond of the principal, with sureties approved by him.

Principal to give new bond, or be removed.
R.S., c. 72, § 4.

SEC. 4. In either case, if the principal does not give the new bond within the time ordered by the judge, he shall be removed, and another appointed in his place.

ACTIONS ON BONDS.

Suits on bonds to be in the name of judge.
R.S., c. 72, § 5.
69 Me., 284.

SEC. 5. All suits on probate bonds of any kind payable to the judge, shall be originally commenced in the supreme judicial court for the county where said judge belongs, and in his name or that of his successor at the time; and they shall not abate by the death of the plaintiff, his resignation, or the expiration of his term of office, but the process may be amended and prosecuted, without notice, in the name of his successor; but no costs shall be awarded against the judge therein.

In suit against surety, principal may be made a party.
R.S., c. 72, § 6.

SEC. 6. If the principal in any such bond resides in the state, when an action is brought thereon, and is not made a party thereto; or if, at the trial thereof, or on scire facias on a judgment against the sureties only, he is in the state, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring him into court.

How he shall be summoned; proceedings and judgment.
R.S., c. 72, § 7.

SEC. 7. Such surety may thereupon take out a writ, in form prescribed by the court, to arrest the principal, if liable to arrest, or to attach his estate and summon him to appear and answer as a defendant in the action; and if, after fourteen days previous service of such process, he fails thus to appear at the time appointed, and judgment is rendered for the plaintiff, it shall be against him and the other defendants as if he had been originally a party, and any attachment made, or bail taken on such process, shall be liable

to respond [to] the judgment, as if made or taken in the original suit. CHAP. 72.

SEC. 8. No action shall hereafter be commenced or maintained against any surety or sureties on any administrator's or executor's bond, unless the same shall have been commenced within six years after said administrator or executor shall have been cited to appear to settle his account in the probate court where administration is granted on said estate, or if not so cited, within six years from the time of the breach of the bond, unless such breach is fraudulently concealed by the administrator or executor, from the heirs, legatees, or persons pecuniarily interested, who are parties to the suit, and in such case within three years from the time such breach is discovered.

Action on administrator's or executor's bond limited to six years. 1881, c. 52. 47 Me., 86. 57 Me., 25. 72 Me., 232. —except in case of fraudulent concealment.

SEC. 9. When judgment is for the plaintiff by verdict, default, or otherwise, in any suit on a probate bond, it shall be entered for the penalty in common form, and the subsequent proceedings shall be had by the court as hereinafter provided.

Judgment for plaintiff to be for penalty. R.S., c. 72, § 8.

ACTIONS BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

SEC. 10. Any person interested personally or in any official capacity in any probate bond, or in any judgment rendered thereon, whose interest has been specifically ascertained by a decree of the judge of probate, or by judgment of law, as hereinafter provided, may originate a suit on such bond, or scire facias on such judgment, without applying to the judge whose name was used in the bond or judgment, or to his successor; and two or more such persons may unite in the prosecution of the action, but the original writ shall allege the name and addition of such person, and that the same is sued out by him, "in the name of the [Honorable] ———, judge of probate for the county of ———;" otherwise it shall abate.

When and how party interested may bring suit on bond. R.S., c. 72, § 9. 12 Me., 56. 18 Me., 58. 27 Me., 74. 34 Me., 99, 372. 62 Me., 167. 63 Me., 432, 434, 445. 69 Me., 284.

Form of writ.

SEC. 11. If such suit is not sustained, judgment shall be rendered and execution issued for costs against the person originating it as aforesaid.

Judgment if suit fails. R.S., c. 72, § 10. 69 Me., 284.

SEC. 12. Every creditor entitled to a dividend from an insolvent estate, originating any action mentioned in section nine, before he can recover, must produce an official copy of the order of distribution among the creditors of said estate, particularly specifying all the claims allowed the several creditors, and [must] prove a demand on the administrator for his particular dividend.

Suit on bond by creditor of insolvent estate. R.S., c. 72, § 11.

SEC. 13. If the estate is not insolvent, or the claim is one not affected by insolvency, such creditor, or any person, not a residuary legatee, claiming a legacy under the will of the deceased, must first have the amount due ascertained by judgment of law against

Suit by creditor or legatee of solvent estate. R.S., c. 72, § 12. 62 Me., 167.

CHAP. 72. the administrator, and prove a demand therefor on him, and his neglect or refusal to satisfy the same, or [must] show personal estate of deceased for that purpose.

Suit by widow, next of kin, or residuary legatee.
R.S., c. 72, § 13.

SEC. 14. Any widow entitled to an allowance made by the judge of probate; any widow or next of kin entitled to a distributive share in the personal estate; or any residuary legatee of the deceased, before *he can* recover[-ing] in any action on such bond, must produce a decree of the judge of probate specifying the amount due, and prove demand and refusal as aforesaid.

Judgment and execution in such suits.
R.S., c. 72, § 14.

SEC. 15. When judgment in any action mentioned in section nine is rendered in favor of the judge of probate whose name is therein used, the court shall order an execution to issue in his name for so much of the penalty of the bond as appears to be due, with interest and costs, to the person for whose use the action was brought; and when it was brought for the use of several, there shall be [a] separate executions in the same form for the share of each, and the costs shall be apportioned under the direction of the court; and such persons shall be deemed creditors to all intents, and may levy their executions in their own names, on real estate or otherwise.

SUITS BY AUTHORITY OF THE JUDGE.

Judge may authorize suits; execution in case of failure to account.
R.S., c. 72, § 15.

SEC. 16. The judge of probate may expressly authorize any party interested, to commence a suit on a probate bond for the benefit of the estate, and such authority shall be alleged in the process; and when it appears, in any such suit against an administrator, that he has been cited by the judge of probate to account, upon oath, for such personal property of the deceased as he has received, and has not done so, execution shall be awarded against him for the full value thereof, without any allowance *whatever* for charges of administration or debts paid. (a)

Execution, when no inventory, &c.
R.S., c. 72, § 16.
4 Me., 157.
10 Me., 64.
11 Me., 168.

SEC. 17. When an administrator has received personal estate, and has not returned, on oath, a particular inventory thereof, and in all other cases of neglect or mismanagement, execution shall be awarded against him for so much of the penalty of his bond as is adjudged on trial to be just.

Judgment to be in trust for all interested.
R.S., c. 72, § 17.

SEC. 18. Every such judgment and execution shall be recovered by the judge of probate in trust for all parties interested in the penalty of the bond; and he shall require the delinquent administrator to account for the amount of the same, if still in office, but if not, he shall assign it to the rightful administrator to be collected, and the avails thereof accounted for and distributed, or otherwise disposed of as assets.

(a) 1 Me., 145; 7 Me., 311; 27 Me., 74; 36 Me., 246; 54 Me., 151; 56 Me., 55; 67 Me., 124; 69 Me., 234.

OTHER PROBATE BONDS.

CHAP. 72.

SEC. 19. When not otherwise expressly provided by law, like proceedings, judgment, and execution, so far as applicable, shall be had on the bonds given to any judge of probate by executors, special administrators, guardians, testamentary trustees, surviving partners, and others, as are provided in this chapter in reference to bonds of administrators.

Like proceedings to be had on other bonds.
R.S., c. 72, § 18.