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REPORT
OF
THE COMMISSIONER
ON THE
REVISION AND CONSOLIDATION
OF THE
PUBLIC LAWS
OF THE
STATE OF MAINE,
UNDER
Resolve of March 21, 1901.

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TITLE SIX.

Powers and Duties of Courts of Probate.

- CHAP. 63. Courts of probate.
64. Appointment, powers and duties of executors and administrators.
 65. Partition of real estate. Allowances. Distribution of personal estate.
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 67. Appointment, powers and duties of guardians. Adoption of children. Change of name.
 68. Testamentary trustees, and voluntary trusts.
 69. Estates of deceased partners.
 70. The insolvent law.
 71. Sales of real estate by license of court.
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CHAPTER 63.

COURTS OF PROBATE.

SEC. 1. Courts of probate are courts of record. Each shall have an official seal, of which the register has the custody. They may issue any process necessary for the discharge of their official duties, and punish for contempt of their authority like the supreme judicial court.

Courts of record; seal; punishment for contempt. R. S., c. 63, § 1. 47 Me., 86. 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 determined as is 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.

Judges, how selected; terms commence, when. R. S., c. 63, § 2. (See Constitution, art. vi, § 7.)

SEC. 3. Sheriffs and their deputies, coroners and constables, shall execute all legal processes directed to them by any such judge who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he 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.

Officers shall execute processes and attend courts; witnesses to appear under penalty. R. S., c. 63, § 3. 47 Me., 86.

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; (and all matters requiring public notice shall be made returnable thereto;) they may adjourn their courts to any time not beyond the next regular day, and appoint special courts when necessary; and in case of the absence of the

Judges shall have fixed days and places for holding court. R. S., c. 63, § 4. See note, § 5. 27 Me., 116.

—adjournments.

—petitions received and notice ordered in vacation.
1899, c. 29.

Terms of probate court for Androscoggin county.
1901, c. 182, § 1.

Term of probate court at Fort Kent.
1891, c. 2, § 1.

In case of sickness, absence, inability or death of judge, another probate judge may hold his court.
R. S., c. 63, § 5.
79 Me., 37.

Jurisdiction as to wills, and administration.
R. S., c. 63, § 6.
32 Me., 103.
45 Me., 287.
63 Me., 249.
74 Me., 89.
81 Me., 32, 225.

—adoption of children, change of names, and guardianship.

Judge of probate may appoint stenographer.
1891, c. 64, § 1.

—duties.

judge or vacancy in the office at the time of holding any court, the register may, by posting notice thereof at the probate office, adjourn the same until the judge can attend, or some other probate judge can be notified and attend. Any register of probate may receive and enter upon his docket in vacation, any and all petitions for probate proceedings of any kind, and the judge of probate may order notice thereon in vacation.

SEC. 5. The probate court within and for the county of Androscoggin shall be regularly held at such time and place as the judge thereof shall order; and the sessions of said court shall continue until final adjournment which shall be not later than the day preceding the first day of the next term. All matters requiring public notice shall be made returnable to the first day of the next term. Special courts may be held when necessary.

[The commissioner does not perceive the necessity for this section. The subject matter is entirely covered by § 4, except the sentence relating to the return day on public notices, which may well be a general provision. He therefore recommends the omission of § 5, and the amendment of § 4.]

SEC. 6. The judge of probate in and for the county of Aroostook shall hold a court of probate once in each year at Fort Kent in said county. The time for holding said court shall be appointed by said judge and made known *in the same manner that the time for holding such courts in other parts of said county is made known.* (by public notification as provided in section four.)

SEC. 7. During the sickness, absence from the state or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county; and in case of the death of a judge, all necessary terms of the probate court for the 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, have the same force and validity as if made by the judge of the county in which such terms are held.

SEC. 8. Each judge may take the probate of wills, and grant letters testamentary or of administration on the estates of all deceased persons, who, at the time of their death, 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 confined in the state prison under sentence of death or of imprisonment for life; and has 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 has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law. a

SEC. 9. The judge of any court of probate or court of insolvency, may appoint a stenographer to report the proceedings at any hearing or examination *where a contest is had* in his court, whenever such judge deems it necessary or advisable. Such stenographer shall be sworn to a faithful discharge of his duty, and, under the direction of the judge, shall take full notes of all oral testimony at such hearing or examination, and also such other proceedings at such hearing or examination as the judge directs, and when required by the judge shall furnish for the files of the court a correct and legible long hand or type-written transcript of his notes

a. Jurisdiction is conferred upon the judge of probate in the following cases:

To determine questions relating to collateral inheritance tax, c. 6, § 125.

In case of shipwrecked goods, c. 36, §§ 7, 12, 17.

In cases involving custody of children, c. 59, §§ 40, 46.

To approve the binding, as apprentices, of wards by guardians, c. 62, § 1.

In sales of contingent remainders, c. 73, §§ 4-6.

In cases of contribution under wills, c. 74, § 14.

To approve bond given to dissolve attachments of personal property, c. 81, § 79.

To issue writ of habeas corpus in case of insane persons under arrest or imprisoned, c. 99, § 38.

To take depositions in perpetuum, c. 107, § 22.

To take examination of poor debtor, c. 112, § 22.

To take bond for safe keeping of insane criminals, c. 136, § 3.

To commit to industrial school, c. 141, § 21.

To release on habeas corpus from insane hospital, c. 142, § 36.

of the oral testimony of any person testifying at such hearing or submitting to such examination, and in making said transcript the stenographer shall transcribe his said notes in full by questions and answers.

[It is considered that the words in italic should be omitted in order to make this section and the following sections relating to the employment of stenographers in courts of probate and insolvency, strictly applicable to examinations under c. 64, § 70, or under c. 70, §§ 6, 45, or 70.]

SEC. 10. When a transcript has been made as provided by the preceding section, it shall be read to the person whose testimony or examination it is, at a time and place to be appointed by the judge, unless such person or his counsel, in writing, waives such reading, and if it is found to be correct, or if it contains errors or mistakes, or alleged errors or mistakes, and such errors or mistakes are either corrected or the proceedings had in relation to the same as hereinafter provided, such transcript shall be signed by the person whose testimony or examination it is, in all cases where the person testifying or submitting to examination is required by law to sign his testimony or examination. When the reading of a transcript is waived as provided by this section, such transcript shall be deemed correct. But any person whose testimony or examination has been so taken, may, with the consent of the judge, waive, in writing, the signing of the transcript, and in such case, the stenographer shall read his notes to such person before the hearing or examination is closed, and if they are found to be correct, or if alleged errors or mistakes are either corrected, or proceedings are had in relation to the same, in like manner as provided in section twelve with reference to transcripts, the transcript of such testimony or examination shall be deemed to be complete and correct without signing, and shall have the same effect as if signed.

SEC. 11. Whenever it becomes necessary, in any court in the state, to prove the testimony or examination taken, as provided in the two preceding sections, the certified copy of the *notes* (transcript) of such testimony or examination, taken by such stenographer, is evidence to prove the same.

SEC. 12. Manifest errors or mistakes in any transcript, may be corrected, under the direction of the judge, according to the facts. But when an error or mistake is alleged by the party conducting the hearing or examination, or by his counsel, or by the person testifying or submitting to examination, or by his counsel, and said parties cannot agree whether or not there is such an error or mistake as alleged, or what correction should be made, the judge shall decide whether or not such an error or mistake exists, and may allow or disallow a correction according as he may find the fact, but in such case the judge shall annex to the transcript a certificate signed by him stating the alleged error or mistake, and by whom alleged, and the correction allowed or disallowed. In case the said parties mutually agree that there is an error or mistake in the transcript, and in like manner agree what the correction should be, the transcript may be corrected according to such agreement, but such correction shall be stated and made in the presence of the judge. No changes or alterations shall be made in any transcript except in the presence of the judge, or the person appointed by the judge to take the examination.

SEC. 13. When an examination is taken before some person appointed by the judge to take it, the judge may also appoint a stenographer to attend such examination for the purposes mentioned in section nine, and the duties of such stenographer shall be the same as in examinations before the judge. The powers and duties of any person appointed by the judge to take an examination shall be the same at such examination as those of the judge, and the same proceedings for the correction or alteration of transcripts may be had before such person as before the judge.

SEC. 14. All transcripts made and signed as herein provided, shall be deemed original papers.

SEC. 15. When a case is originally within the jurisdiction of the probate court in two or more counties, the one which first commences proceedings therein, retains the same exclusively throughout; and the juris-

—transcript.

Transcript of testimony shall be read to person testifying, and signed by such person, if correct.
1891, c. 64, § 2.
1895, c. 37, § 1.

—signing of transcript may be waived with consent of judge; if found correct, transcript shall have same effect as if signed.

Certified copies of notes shall be taken as evidence.
1895, c. 37, § 2.

Mistakes in transcript may be corrected under direction of judge.
1891, c. 64, § 3.

When examination is before some person appointed by judge, he may also appoint a stenographer.
1891, c. 64, § 4.

Transcripts deemed original papers.
1891, c. 64, § 5.
Court first commencing probate proceedings,

to have jurisdiction.
R. S., c. 63, § 7.

When judge or register is interested, jurisdiction shall be transferred to adjoining county.
R. S., c. 63, § 8.
1893, c. 163, § 1.
79 Me., 36.

See c. 67, § 1.

Probate districts.
R. S., c. 63, § 9.

Judge to certify unfinished acts of his predecessor.
R. S., c. 63, § 10.

Oaths required may be taken before judge, register, justice of the peace, etc.
R. S., c. 63, § 11.
1897, c. 275.

—how non-resident executors, etc., may make oath to accounts.

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.

diction assumed in any case, except in 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. (a)

SEC. 16. When a judge or register of probate is interested either in his own right, or trust, or in any other manner, or is within the degree of kindred, by which in law, he may, by possibility, be heir to any part of the estate of a 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 jurisdiction of such estate has been regularly assumed, or existed at the time of his appointment to office; and in all cases where an executor, administrator, guardian or trustee, whose trust is not fully executed, becomes judge or register 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 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.

SEC. 17. *Where parts of a county are designated by law for a separate probate district, it is deemed a county for all purposes of this and other applicable chapters; and appeals from the judge thereof are cognizable in the county where such district is situated.*

[This section is thought to be obsolete. See R. S., 1841, c. 105, § 37; P. L. 1835, c. 159; Const. of Me., Art. VI, § 7.]

SEC. 18. Every judge, upon entering on the duties of his office, shall examine the records, decrees, and certificates, and all proceedings connected therewith, which his predecessor left unsigned or unauthenticated, 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 such duty had been done by his predecessor while in office.

SEC. 19. All oaths required to be taken by executors, administrators, trustees or guardians, 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 a judicial or probate court, may be administered by the judge or register of probate, by any justice of the peace, or by any woman appointed by the governor, with the advice and consent of the council, to administer oaths in the state; and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded. When executors, administrators, guardians and trustees reside without the state, they may make oath to the truth of accounts, before a *justice of the peace*, a notary public, a commissioner for the state of Maine or a United States consul.

SEC. 20. *If a 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.*

[The subject matter of this section seems to be embraced in the preceding section, in its present form, and the commissioner recommends that § 20 be omitted.]

SEC. 21. No judge of probate shall have a voice in judging and determining, nor be attorney or counselor 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, and any process or proceeding commenced by him in the probate court for his county, in violation of this section is void, and he is liable to the party injured in damages.

—such process void.

—liability.

SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

SEC. 22. Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is 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 commences immediately. All registers, before acting, shall *be sworn, and* give bond to the treasurer of their county with sufficient sureties, in not less than one hundred, nor more than one thousand dollars, at the discretion of the judge, who shall certify his approval thereon; and every register, having executed such bond shall file it in the office of the clerk of the county commissioners of his county, to be presented to them at their next meeting for approval, and after the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county, within ten days after its approval, to be filed in his office; they 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. They shall keep a docket of all probate cases, and shall, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding, so that at all times the docket shall show the exact condition of each case.

Registers, how elected, oath, bond, powers and duties.
R. S., c. 63, § 14.
1899, c. 71.
See c. 78, §§ 1-5;
Const. Me.
Art. VI, § 7;
Art. IX, § 1.

—shall keep docket and make entries of each motion.
1893, c. 246.
See c. 70, § 7.

SEC. 23. 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 is thenceforth disqualified from holding said office, and neglect to complete his records for more than six months at any one time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.

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

SEC. 24. Within thirty days after a will has been proved and allowed in the probate court, or in the supreme court of probate, the register 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 thereof, so far as it can be furnished from said will, and the name of the testator and of the devisee; and the register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof as aforesaid, and record it in the same manner as a deed of real estate.

Register to certify copy of will to register of deeds within thirty days after proof, if real estate is devised.
R. S., c. 63, § 16.
See c. 7, § 17;
c. 64, § 45.

SEC. 25. For such service, the register of probate shall receive fifty cents for each copy so certified, and the register of deeds fifty cents for entering and recording the same, said sums to be paid by the executor or administrator when said will is proved, to the register of probate, who shall pay fifty cents to the register of deeds at the time said certified copy is furnished to him; and the executor or administrator shall charge said sums in his account.

Fees to be paid by executor or administrator.
R. S., c. 63, § 17.
See c. 7, § 17.

SEC. 26. In case of the death or absence of the register, the judge shall appoint a suitable person, of either sex, to act as register, until the register resumes his duties, or another is qualified in his stead; he shall be sworn, and if the judge requires it, give bond as in case of the register.

If register absent or dead, judge may appoint register pro tem.
R. S., c. 63, § 18.
1899, c. 61.
Judges of probate and of the supreme court

SEC. 27. 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

to inspect
register's
conduct, etc.
R. S., c. 63, § 19.

in suit; and the money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge, and the surplus, if any, shall inure to the county; but if it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in an action on the case.

Proceedings,
if register is
incapable or
neglects his
duties.
R. S., c. 63, § 20.

SEC. 28. When a register is unable to perform his duties or neglects them, the judge 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; such person shall be paid by the treasurer in proportion to the time that he has served, and the amount shall be deducted from the register's salary.

Records, in
case of
vacancy.
R. S., c. 63, § 21.
63 Me., 250.

SEC. 29. 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 his successor.

Register not
to be counsel
in probate
cases.
R. S., c. 63, § 22.
1893, c. 163, § 2.

SEC. 30. No register shall be attorney or counselor 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 administrator, guardian, commissioner of insolvency, appraiser or divider of any estate, in any case within the jurisdiction of said court, except as provided in section sixteen of this chapter, nor be in any manner interested in the fees and emoluments arising therefrom, in such capacity; nor *draw*, commence or conduct, either personally or by his agent or clerk any matter, petition, process or proceeding in the court of which he is register, in violation of this section, and for each and every violation of (the preceding provisions of) this section, such register shall be punished by imprisonment for not more than one year or by fine of not more than one thousand dollars, or both, in the discretion of the court. No register shall draft or aid in drafting any document or paper, which he is by law required to record in full or in part, under a penalty of not exceeding one hundred dollars, to be recovered by any complainant by action of debt for his benefit, or by indictment for the benefit of the county.

—penalty.

—shall not
draft or aid
in drafting
any paper
which he is
required to
record.
1893, c. 245.
See c. 7, § 14;
c. 79, § 15.

SUPREME COURT OF PROBATE.

Supreme court
of probate.
R. S., c. 63, § 23.

SEC. 31. 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 the 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 the appointment of such attorney. (a)

—appeal.

Appellant to
file bond and
reasons of
appeal; ser-
vice on other
parties.
R. S., c. 63, § 24.

SEC. 32. 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 to pay all intervening costs and damages, and such costs as the supreme court taxes against him, and he shall also file in the probate office the reasons of appeal; and, fourteen days at least before the sitting of the appellate court, he 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. When a non-resident party appears by an attorney residing in this state before the judge of probate in any case, and an appeal is taken,

—service on
attorney of
record of a
non-resident
sufficient.
1893, c. 243.
See c. 67, § 35.

(a) 19 Me., 260; 27 Me., 82; 30 Me., 538; 34 Me., 44; 39 Me., 394; 44 Me., 63; 51 Me., 424; 52 Me., 195; 53 Me., 186, 558; 54 Me., 342; 56 Me., 413; 58 Me., 227; 67 Me., 504; 68 Me., 413; 73 Me., 224; 75 Me., 581; 79 Me., 38; 80 Me., 22, 91; 83 Me., 28; 85 Me., 360; 86 Me., 101; 93 Me., 213, 214; 94 Me., 422.

the service of a copy of the reasons of appeal upon such attorney shall be sufficient. 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. (a)

SEC. 33. 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 requires 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; and said petition shall be heard at the next term after the filing thereof. (b)

SEC. 34. If the appellant fails to enter and prosecute his appeal, the supreme court, upon complaint of any person interested, may affirm the former sentence, assess reasonable costs for the complainant, and take such further order thereon, as law and justice require.

SEC. 35. After an appeal is claimed, and the bond and reasons of appeal are filed, all further proceedings, in pursuance of the matter appealed from, cease, until the determination of the supreme court thereon.

[The commissioner suggests the amendment of this section by adding:

"The register shall transmit to the appellate court all depositions, relating to the matter appealed from, filed in the probate court, and the same may be used in the appellate court."]

SEC. 36. 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, and said appellate court may reverse or affirm, in whole or in part, the sentence or act appealed from, pass such decree thereon as the judge of probate ought to have passed, remit the case to the probate court for further proceedings, or take any order therein, that law and justice require; and if, upon such hearing, any question of fact occurs proper for a trial by jury, an issue may be *formed* (framed) for that purpose under the direction of the court, and so tried. (c)

SEC. 37. Any person claiming under an heir at law has the same rights as the heir in all proceedings in probate courts, including rights of appeal.

COSTS AND FEES.

SEC. 38. In all contested cases in the original or appellate court of probate, 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. (d)

SEC. 39. 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 thereto, one copy of each will proved.

[The commissioner suggests the amendment of this section by adding after the word, "page:" "for authenticating the official signature of a magistrate, twenty-five cents; for each certificate, under seal of the court, of the appointment and qualification of an administrator, executor, guardian or trustee ~~—~~ cents;"]

SEC. 40. Executors, administrators, guardians, surviving partners and trustees, may be allowed one dollar for every ten miles travel to and from 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

Court may allow appeal accidentally omitted.
R. S., c. 63, § 25.

Proceedings when appeal is not prosecuted.
R. S., c. 63, § 26.

Proceedings in probate court cease after appeal.
R. S., c. 63, § 27.

Appeal to be heard at next term; proceedings.
R. S., c. 63, § 28.

Claimants under heir, have same rights as heir.
R. S., c. 63, § 29.
81 Me., 223.

Costs in contested cases.
R. S., c. 63, § 30.

Register's fees for copies.
R. S., c. 63, § 31.

Fees of executors, administrators, guardians, etc.

(a) 11 Me., 251; 44 Me., 63; 53 Me., 185; 82 Me., 211; 85 Me., 60, 360; 93 Me., 248; 94 Me., 423.

(b) 58 Me., 227; 79 Me., 33; 81 Me., 182; 85 Me., 60; 92 Me., 253, 361.

(c) 45 Me., 584; 53 Me., 186; 64 Me., 208; 73 Me., 138; 80 Me., 22, 57.

(d) 25 Me., 243; 78 Me., 299; 85 Me., 407; 88 Me., 167.

R. S., c. 63, § 32.
1897, c. 290.
32 Me., 160.

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; *provided*, that if the surviving partner or partners succeed to the business of the late firm, the benefit accruing from such succession shall be taken into account by the judge in determining the amount of commission to be allowed.

Pay of appraisers, commissioners and witnesses.
R. S., c. 63, § 33.
1887, c. 40.

SEC. 41. 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 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 and fifty cents 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.

Expenses of partition.
R. S., c. 63, § 34.

SEC. 42. When a partition of real estate *or assignment of dower* is made by order of a 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 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, the judge may issue a warrant of distress against such delinquent for the amount due from him, and costs of process.

—process, if not paid.

Fees of register in case of foreign estates.
R. S., c. 63, § 35.

SEC. 43. When administration is granted on the estate of a person not a resident of the state, or the will of such person is proved, or administration is granted to a public administrator, or a guardian is appointed for a non-resident minor, the register shall have a reasonable compensation, to be fixed by the judge, for entering and filing the orders and decrees, and for making the necessary records, to be paid by the executor, administrator or guardian, and allowed to him in his account.

Fees of judge for taking disclosures.
R. S., c. 63, § 36.

SEC. 44. The judge 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 an estate, or person under guardianship, to be paid by the person requesting the examination.

[The commissioner does not think that this section has ever been abused; but the principle of permitting a judge to fix his own compensation for official services, to be paid by the person soliciting such services, is believed to be wrong; and the omission of section forty-four is recommended. By the employment of a stenographer the judge is relieved of the labor of reducing the examination to writing and the duty of presiding at such hearing cannot be irksome. The salary should be sufficient to compensate for all duties performed.]

Compensation of stenographers.
1891, c. 64, § 6.

SEC. 45. Stenographers appointed under the provisions of this chapter, shall be allowed five dollars a day for their services in court, or at an examination, and travel at the rate of twelve cents a mile from place of residence to the place of holding the court or examination, and ten cents for every hundred words of transcript furnished for the files of the court, to be paid by the county in which the court or examination is held, after the stenographer's bill has been allowed by the judge of the court in which the services were rendered. But if any stenographer so appointed, neglects or refuses to perform any part of the duty required of him he shall receive no pay for his services, and also may be punished for contempt of court. In probate matters, the executor, administrator or guardian shall, in each case out of the estate in his hands, pay to the register for the county, the amount of said stenographer's fees, and in insolvent matters, the assignee shall pay the same to the register for the county before any claims are paid, other than those named in paragraph one of section forty-three of chapter seventy.

—penalty for neglect.

—how fees shall be paid.

Stenographers shall furnish copies to any

SEC. 46. Such stenographers shall also furnish correct and legible long hand or type-written copies of their notes of the oral testimony taken at

any hearing or examination, to any person calling for the same, upon payment of ten cents for every hundred words of the copy furnished.

person calling
for them.
1891, c. 64, § 7.

RULES OF PRACTICE.

SEC. 47. The rules of practice and procedure in the courts of probate and insolvency, approved by a majority of the justices of the supreme judicial court September sixteen, eighteen hundred and ninety-five, are in force in all courts of probate and insolvency; and the blanks for use in said courts approved by the supreme judicial court November eight, eighteen hundred and ninety-five, shall be used in all courts of probate and insolvency, and no other blanks shall be used therein. The governor may at any time, upon the request in writing of a majority of the judges of the courts of probate and insolvency, appoint a commission composed of three judges and two registers of probate, who may make new rules and blanks, or amendments to existing rules and blanks, which new rules and blanks, or amended rules and blanks shall, when approved by the supreme judicial court or a majority of the justices thereof, take effect and be in force in all courts of probate and insolvency. The expenses of such commission or commissions shall be reported to the governor, and upon the approval of the same by the governor and council, they shall be allowed and paid in the same manner as other claims against the state.

Rules of prac-
tice and
procedure.
1895, c. 17.

—uniform
blanks.

—appointment
of commission
to revise
rules and
blanks.

—approval by
S. J. Court.

—expenses,
how paid.

SEC. 48. Each county shall provide all necessary printed blanks and record books for its probate courts, and courts of insolvency, and said record books may be printed to correspond with the printed blanks.

Blanks and
records.
R. S., c. 63, § 37.
1891, c. 10.

NOTICES.

SEC. 49. In laws relating to probate courts and proceedings, the words "public notice" denote notice published three weeks successively in a newspaper published in the county whose court has jurisdiction, or in which the deceased last dwelt, as ordered by the judge, 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, § 38.
1897, c. 179.

SEC. 50. Notices to be published in a newspaper, shall be published in such paper published in the county as the party required to publish it selects, unless the judge deems such paper unsuitable for want of circulation or other substantial reason.

Parties may
select news-
paper for
notices.
R. S., c. 63, § 39.

CHAPTER 64.

APPOINTMENT, POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS.
LIMITATIONS.

Administra-
tion shall not
be granted,
nor will
proved, un-
less property
amounts to
twenty
dollars.
R. S., c. 64, § 1.
1887, c. 46.

—nor after
twenty years;
exception.

Administra-
tion on estate
of an intestate
may be taken
in certain
cases, 20 years
after death.
1891, c. 30.

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 that value; and when no administration is granted for want of such estate, the personal property of the deceased becomes the property of the widow, or, if none, of the next of kin, who are not, in such case, chargeable as executors in their own wrong. After twenty years from the death of any person, no probate of his last will, or administration on his estate shall be originally granted (except as provided in the following section), unless it appears that there are moneys due to said estate from the State of Maine or the United States; but this does not apply to foreign wills previously proved and allowed in another state or country. (a)

SEC. 2. When administration has not been taken on the estate of an intestate within twenty years after the death of such intestate, and thereafter any property of at least twenty dollars in value, accrues to said estate, or belonging thereto, first comes to the knowledge of any person interested in said estate, original administration may be granted on such property, at any time within two years next after it so accrued or first became known, but such administration shall affect no other property and shall not revive debts due to or by said intestate.

WILLS AND EXECUTORS.

Wills may be
deposited in
the registry
of probate.
R. S., c. 64, § 2.

—how to be
indorsed, and
when and to
whom to be
delivered.

—after death
of testator,
proceedings.

Duty of
executors and
others having
custody of
wills.
R. S., c. 64, § 3.

—penalty for
neglect.

SEC. 3. 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 one dollar, shall receive and keep it, and give a certificate of the deposit thereof. Such will shall be enclosed 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 a written order signed by the testator and attested by one witness, and the register may require the person presenting the same to make oath that it is genuine. After the testator's death 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 thereafter, it may then be publicly opened and retained in the probate office until offered for probate; but, if the jurisdiction of the estate belongs in another court, it shall be delivered to the executors, or other persons entitled to its custody, to be presented for probate in such other court.

SEC. 4. Whoever has 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 executor, having such will in his custody, shall file it in such court. If such executor or other person, having been duly cited for that purpose, neglects so to do, without reasonable cause, for thirty days after notice of the testator's death, he may be committed to 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

(a) 22 Me., 553; 52 Me., 196; 63 Me., 379; 80 Me., 54; 81 Me., 32, 225.

law; and he is also liable to any party for the damage which he has sustained by such neglect. (a)

SEC. 5. Whenever a will is presented for probate, the judge of probate, having jurisdiction thereof, shall assign a time and place for a hearing, and cause public notice thereof to be given; and in addition thereto, said judge may, at his discretion, order personal notice upon such persons as he deems necessary.

Public notice of hearing on petitions for probate of wills. 1885, c. 317.

SEC. 6. 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 (as provided in chapter one hundred and seven, or) before a magistrate authorized by commission from the judge, shall be competent evidence in the absence of such witnesses.

Depositions may be taken. R. S., c. 64, § 4. 46 Me., 247.

SEC. 7. When it clearly appears to the judge by the written consent of the heirs at law or otherwise, that there is no objection thereto, he may decree the probate of any will 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.

If no objection to a will, one witness or one deposition only is required. R. S., c. 64, § 5. See c. 74, § 15.

SEC. 8. When a will is 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. See § 22. 46 Me., 237, 248.

SEC. 9. When the last will of any deceased person, who had his domicile in 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, its execution and contents may be proved by a copy, and by the testimony of the subscribing witnesses thereto, 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, unrevoked up to the time of the testator's death, letters testamentary shall be granted as on the last will of the deceased, the same as if the original had been produced and proved. And when such original will is produced for probate, the time during which it has been lost, suppressed, concealed or carried out of the state, shall not be taken as a part of the limitation provided in the first section of this chapter.

Wills lost or carried out of the state, how to be proved. R. S., c. 64, § 7. 1887, c. 108. 73 Me., 603. 80 Me., 54. 93 Me., 296.

—time during which will is lost, shall not be taken as part of statute limitation.

SEC. 10. Letters testamentary may issue, and all acts required by law or otherwise under the provisions of the will may be done and performed by the executor without 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 bonds as in other cases.

Will may prescribe what bond, if any, executor shall give. R. S., c. 64, § 8. 1899, c. 86, § 1. 84 Me., 482. 93 Me., 362, 374.

SEC. 11. 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 the state, in such sum as the judge orders, payable to him or his successors, conditioned, in substance, as follows: (b)

Bond of executor. R. S., c. 64, § 9.

I. 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.

—conditions.

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

(a) 5 Me., 493; 6 Me., 276; 52 Me., 172; 80 Me., 57.

(b) 46 Me., 248; 54 Me., 456; 56 Me., 301; 60 Me., 416; 77 Me., 157; 84 Me., 146.

III. 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.

IV. 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 such representation 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.

See c. 95, § 17.

What executors may act: powers of majority.
R. S., c. 64, § 11.
54 Me., 456.
84 Me., 146.

SEC. 12. When two or more persons are named executors in any will, and are not released thereby 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 therein, 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, proved and allowed here.
R. S., c. 64, § 12.
84 Me., 146.
85 Me., 378.

SEC. 13. 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 may be proved and allowed, and the estate of the testator settled, as in case of wills executed in this state.

Wills proved in other states or countries, allowed in this state.
R. S., c. 64, § 13.
1899, c. 65.
4 Me., 138.
85 Me., 378.
92 Me., 177.

SEC. 14. A 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, 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 for hearing, and cause public notice thereof to be given. After such hearing, if the judge considers that the instruments should be allowed in this state as the will of the deceased, he shall order the copy to be filed and recorded.

Validity of such wills, established.
R. S., c. 64, § 14.
12 Me., 131.
85 Me., 378.
92 Me., 177.

SEC. 15. Such will shall then 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 had, if originally proved and allowed in this state.

Letters may be granted and the estate settled.
R. S., c. 64, § 15.
85 Me., 378.

SEC. 16. 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 its laws 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 for more than twenty years from his decease.

NUNCUPATIVE WILLS.

Nuncupative wills may be approved; notice.
R. S., c. 64, § 16.
See c. 74, §§ 18-20.

SEC. 17. 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.

ADMINISTRATORS.

SEC. 18. Upon the death of any person intestate, the judge 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 applicants are more than twenty-one years old and are in other respects qualified for the trust, but if unsuitable, or being residents in the county, they after due notice neglect or refuse for thirty days from the death 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.
R. S., c. 64, § 17.
22 Me., 553.
32 Me., 103.

SEC. 19. When any person is under sentence of death or of imprisonment for life, and is confined in pursuance thereof, he is, from the time of such imprisonment, to all intents and purposes, civilly dead; and his estate shall be administered upon and distributed, and his contracts and relations to persons and things are affected, in all respects, as if he were dead.

Administration on estates of persons civilly dead.
R. S., c. 64, § 18.
47 Me., 469.
74 Me., 238.

SEC. 20. If any judge of probate shall refuse or unreasonably delay the appointment of an administrator upon the estate of any person deceased upon due application therefor, an application may be made to the supreme court sitting in the county where the person deceased had his residence at the time of his death, or to any judge thereof in vacation, for such appointment; and said court or such judge, shall have the same power to appoint an administrator as the probate court now has.

Judge of S. J. Court may appoint administrators, if judge of probate refuses or delays.
1885, c. 863.

SEC. 21. Every administrator, before entering on the execution of his trust, shall give bond with good and sufficient sureties resident within the state, in such sum as the judge orders, payable to him or his successors, conditioned, in substance, as follows:

Bonds of administrators.
R. S., c. 64, § 19.

I. 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.

—conditions.
65 Me., 471.

II. To administer according to law all the goods, chattels, rights and credits of the deceased.

65 Me., 471.

III. 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.

65 Me., 471.

IV. 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.

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

93 Me., 296.

VI. 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 such representation 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.

62 Me., 308.
65 Me., 471.

See c. 95, § 17.

ADMINISTRATORS WITH THE WILL ANNEXED, AND DE BONIS NON.

SEC. 22. If there is no person whom the judge can appoint executor of any will according to section eight; 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 might 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 his minority, 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

Administrator, with will annexed, when to be appointed.
R. S., c. 64, § 20.
78 Me., 141.

at full age, when he may be admitted as joint executor with the former, upon giving bonds as before provided.

Removal of
executors or
adminis-
trators.
R. S., c. 64, § 21.

SEC. 23. When an executor or administrator, residing out of the state, after being 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, said judge may remove him; and he may accept the resignation of any joint or sole executor or administrator, when he is satisfied, after public or personal notice to those interested, and a hearing, that there is reasonable cause therefor, and that it will not be detrimental to the estate or to those interested therein; and in either case, if there is no other executor or administrator to discharge the trust, the judge may commit administration of the estate not already administered, with the will annexed or otherwise, as the case requires, to such persons as he thinks fit, as if the one resigned or removed were dead; and such administrator shall have the same powers and be liable to the same obligations as other administrators or executors whom he succeeds.

—judge may
commit ad-
ministration
to other
persons.

Power of
executrix or
administra-
trix ceases on
marriage.
R. S., c. 64, § 22.
56 Me., 302.
63 Me., 432.

SEC. 24. When an unmarried woman, who is joint or sole executrix or administratrix, 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 were dead. If there is no other, administration with the will annexed or otherwise may be granted, as provided in the preceding section.

Death of
executor.
R. S., c. 64, § 23.
64 Me., 422.

SEC. 25. The executor of an executor has 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 thinks fit.

Bond of
administra-
tor with the
will annexed,
and de bonis
non.
R. S., c. 64, § 24.
78 Me., 141.

SEC. 26. Every person, appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give such bond to the judge as is required of an executor. Every administrator de bonis non shall give such bond as is required of an executor or administrator, as the case may demand.

PUBLIC ADMINISTRATORS.

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

SEC. 27. When a vacancy occurs in any county, the governor, with the advice and consent of council, shall appoint a public administrator therein, who shall take out letters of administration and administer on the estate of persons who die intestate in such county, not known to have in the state any heirs or kindred who can lawfully inherit such estate; and who shall account in like manner, and give bonds to the judge with like conditions, as in cases of ordinary administration, and with the further condition, in substance, that he will comply with the following section.

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

SEC. 28. 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 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 such judge, settle his account, and deliver to his successor all sums of money in his hands, and all 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, IX.

SEC. 29. The judge 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 person, except creditors, directly interested in such estate, can be found in the United States.

[The provisions of sec. 29 are repeated in c. 71, sec. 1, paragraphs I and IX. The commissioner suggests that the latter is the appropriate location and that sections 29 and 30 may well be omitted from this chapter.]

SEC. 30. In such cases, the judge and the administrator shall observe all the provisions of law as to bonds, notices and other requirements, as in the sale of real estate by other administrators.

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

SEC. 31. 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 for other purposes of administration, he shall be required by the judge to deposit it with the treasurer of state, who shall receive it; 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.

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

SEC. 32. In such case, the judge shall give notice to the treasurer of state of such amount, and from what estate it is 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.

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

SEC. 33. 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.

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

SPECIAL ADMINISTRATORS.

SEC. 34. When 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 for them under oath, and deliver them to the person 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 ad-
ministrator
may be
appointed.
R. S., c. 64, § 32.

—bond to
be given.
76 Me., 473.

SEC. 35. He shall collect all the goods, chattels, and debts of the deceased, control and cause to be improved all his real estate, 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, and 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.
76 Me., 473.

SEC. 36. The 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

His com-
pensation.
R. S., c. 64, § 34.
See c. 63, § 40.

—when his powers cease; proceedings.

Not to be sued by creditor without decree of judge.
R. S., c. 64, § 35.
See c. 87, § 13.

In certain cases, letters may be granted to executor, pending appeal: proceedings.
R. S., c. 64, § 36.

Special administrators may be appointed upon estate of original claimant to prosecute claims against the United States, arising out of French spoliation.
1885, c. 325.
95 Me., 274.

—bond of.
—appointment under general law, not prevented.

of administration, his powers 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.

SEC. 37. No special administrator is liable to an action by any creditor of the deceased, without an application by such creditor to the judge, and his decree authorizing it; and the limitation of all suits against the estate begins to run from the time of granting letters testamentary or of administration in the usual form, as if such special administration had not been granted.

SEC. 38. 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 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.

SEC. 39. In all cases of claims against the United States arising out of French spoliation, in those counties where the records of the probate court relating to the estate of any claimant have been lost or destroyed and have not been restored, the judge of probate having jurisdiction may, on petition and after public notice and hearing, appoint a special administrator upon the estate of any original claimant, deceased testator or intestate, who may prosecute such claim against the United States as aforesaid, for the benefit of such estate, and at any time after six months from the date of his giving notice of his appointment and after public notice and order of distribution, may distribute said estate to those determined by the court to be entitled thereto; but no such distribution shall be disturbed by reason of any debt or claim afterwards filed against said estate. Such special administrators shall give such a bond as the judge may determine. But nothing herein contained shall prevent the appointment of an administrator under the general law.

EXECUTORS IN THEIR OWN WRONG.

SEC. 40. Whoever sells or embezzles any of the goods or effects of a deceased person liable to administration, before taking out letters testamentary or of administration thereon and giving bond accordingly, is liable as an executor in his own wrong, to the actions of the creditors and other persons aggrieved, and also to the rightful executor or administrator, for the full value of the goods or effects of the deceased taken by him, and for all damages caused by his acts to said estate; and he shall not retain any part of the goods or effects, except for such funeral expenses, debts of the deceased or other charges actually paid by him, as the rightful executor or administrator would have had to pay.

PROVISIONS RELATING TO BOTH EXECUTORS AND ADMINISTRATORS.

SEC. 41. Every executor or administrator, within three months after giving bond for discharge of his trust, shall cause notice of his appointment to be posted in two or more public places, to be specified by the judge, in the town where the deceased last dwelt, if in the state, and shall give such further notice as the judge in writing directs.

SEC. 42. If the deceased was not an inhabitant of or resident in the state at the time of his death, public notice shall be given in some newspaper, or in such manner as the judge directs.

SEC. 43. 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,

Executors in their own wrong; liability.

R. S., c. 64, § 37.
15 Me., 117.
48 Me., 349.
54 Me., 482.
57 Me., 25.
68 Me., 435.
65 Me., 420.
70 Me., 341.
87 Me., 325.

Notice of appointment.
R. S., c. 64, § 38.
See c. 87, § 13.
84 Me., 145.

Notice when deceased lived out of state.
R. S., c. 64, § 39.
Proof of notice.

in the probate court, within one year after giving bond as aforesaid, and recorded, is evidence of the time, place and manner, in which the notice was given.

SEC. 44. 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 such agent or attorney, binds the principals and the estate in their care as if made on themselves.

SEC. 45. *Executors and administrators shall cause so much of wills as devises real estate to be recorded in the registry of deeds in the district where such real estate is situated.*

[This section is thought to be a needless repetition of c. 63, § 24. The latter provision is the later enactment.]

SEC. 46. 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.

SEC. 47. The real estate, goods and chattels, comprised in the inventory, shall be appraised by three disinterested persons appointed by the judge and 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 also be sworn.

SEC. 48. Any warrant for the appraisement of an estate, may be revoked by the judge for sufficient cause, and a new one issued, if necessary.

SEC. 49. Such of the credits of the deceased, and rights to personal property not in possession, as the appraisers judge to be available as assets, shall be enumerated 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 they shall 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.

SEC. 50. The judge may, at any time afterward, when any estate or effects, rights, or credits come to the knowledge or possession of any executor or administrator, require of him an additional inventory; appraisers in like manner shall be appointed and sworn; and return shall be made within the time directed by the judge in his warrant.

SEC. 51. The following articles shall be omitted in making the inventory, and shall not be administered upon as assets:

I. All the articles of apparel or ornament of the widow, according to the degree and estate of her husband, and the apparel and school books of minor children of the deceased.

II. The apparel of the deceased, not exceeding one hundred dollars in value, if he left a widow and minor children, or either, in which case she or they are entitled to such apparel.

III. 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.

IV. Any 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*, that such deceased left a widow or issue; but such money shall be disposed of as provided by section nineteen, of chapter seventy-five.

SEC. 52. If, after the return of an inventory, or in the progress of the settlement of an estate, the judge finds that the bonds given by an executor or administrator are too small in amount, or are insecure for want of responsible sureties, he may require additional or larger bonds, or other

R. S., c. 64, § 40.
84 Me., 145.

Non-residents must appoint agent or attorney in state.
R. S., c. 64, § 41.
84 Me., 145.

Devises of land, to be recorded.
R. S., c. 64, § 42.
See c. 63, § 24.

Inventory, when to be returned.
R. S., c. 64, § 43.
See c. 69, § 1.
61 Me., 471.
84 Me., 94.

Appointment of appraisers.
R. S., c. 64, § 44.
See c. 81, § 54.

Warrants may be revoked.
R. S., c. 64, § 45.

How choses in action shall be appraised.
R. S., c. 64, § 46.
See c. 81, § 54.

Additional inventories may be required.
R. S., c. 64, § 47.

What shall be omitted from inventory.
R. S., c. 64, § 48.
61 Me., 471.
79 Me., 234.

61 Me., 471.
84 Me., 523.

When additional bonds may be required.
R. S., c. 64, § 49.
See c. 72, § 2.

sureties, and if said executor or administrator does not furnish the same, his authority may be revoked and some other person appointed.

When sales of personal estate may be ordered.
R. S., c. 64, § 50.

—collection of demands sold.

For what executors and administrators shall account.
R. S., c. 64, § 51.
51 Me., 173.
71 Me., 450.

Reference or compromise.
R. S., c. 64, § 52.
26 Me., 538.
55 Me., 124.
Special commissioners may be appointed on disputed claims.
R. S., c. 64, § 53.
Sec c. 66, § 26;
c. 69, § 6; c. 82, § 157.
61 Me., 239.
67 Me., 116, 226, 459.
71 Me., 162.

—claimant has same rights as executor.

Executor or administrator neglecting to pay debts, guilty of waste.
R. S., c. 64, § 54.

Accounts, when rendered: notice and examination.
R. S., c. 64, § 55.

All property received, to be accounted for.
R. S., c. 64, § 56.

SEC. 53. The judge, 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 any of the goods and chattels, rights and credits, pews or interests in pews, 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 defense as if sued in the name of the executor or administrator. The legal rights of persons to whom specific legacies are bequeathed, are not affected by this section.

SEC. 54. Every executor or administrator shall 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 difference.

SEC. 55. The judge 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. 56. 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 a convenient time and place, and determine whether any and what amount shall be allowed on each claim, and report to him at such time as he may limit. The claimant may make similar application, and the same proceedings shall, after notice to the other party, be had thereon, if payment is refused, or is not made within thirty days after demand. Sections five, six, seven, eight, twelve, thirteen, fourteen, sixteen and seventeen of chapter sixty-six, 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. 57. Any executor or administrator who 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, is guilty of waste and unfaithful administration.

SEC. 58. Every executor or administrator shall render his accounts agreeably to the condition of his bond; and the judge may require him to account, when he deems it necessary. Reasonable notice shall be given before the allowance of any such account. On the examination thereof, the accountant may be interrogated under oath in relation to the same, and such record of his answers shall be made as the judge requires. (a)

SEC. 59. Every executor and administrator is 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

(a) See c. 66, §§ 21, 25; c. 65, § 20; 18 Me., 58; 27 Me., 83; 49 Me., 409, 562; 64 Me., 356; 65 Me., 448; 95 Me., 526.

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. 60. 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, 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 disinterested persons, appointed for that purpose by the judge, whose award, accepted by the judge, shall be final.

SEC. 61. An executor or administrator may insure, at the expense of the estate, any property of the deceased that becomes assets in his hands, or which he holds in trust by the provisions of a will.

SEC. 62. In the settlement of the accounts of executors and administrators, the judge may allow a reasonable sum for the purchase of a suitable burial lot and for the erection of monuments or grave stones; but in insolvent estates the sum shall be fixed by the judge of probate. And on petition of any person interested the judge of probate may also allow a reasonable sum for the erection of grave stones, for funeral expenses and expenses of last sickness of the widow of the deceased, *provided*, she dies before the final settlement of her husband's estate and her estate is insufficient for the above purposes.

SEC. 63. 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. 64. 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. 65. 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. 66. No private claim of an executor or administrator, against the estate under his charge, shall be allowed in his account, unless particularly stated in writing; 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. 67. When there is more than one executor or administrator, and either of them is removed, or his resignation is accepted by the judge, 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 his charge, and refuses either to account to the other, or to pay the debts, legacies, or other charges on such estate, or when the aggrieved executor is a residuary legatee.

SEC. 68. The supreme judicial court may hear and determine in equity all disputes and controversies between co-executors and 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 has the same power and may proceed in like manner, as in cases between co-partners.

39 Me., 18.
49 Me., 66.
62 Me., 308.

Also income of real estate used.
R. S., c. 64, § 57.
62 Me., 309.
63 Me., 355.
87 Me., 282.

May insure property.
R. S., c. 64, § 58.

Allowance for monuments or grave stones.
R. S., c. 64, § 59.
1895, c. 114.
—for grave stones and funeral expenses of widow.
—proviso.

What debts and expenses of deceased married women may be paid.
R. S., c. 64, § 60.

Mutual debts of husbands and wives to be paid.
R. S., c. 64, § 61.
Claims verified by affidavit, if required.
R. S., c. 64, § 62.
72 Me., 345.

Claims of executors or administrators, how to be adjusted.
R. S., c. 64, § 63.
74 Me., 486.

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

Chancery remedies between co-executors and co-administrators.
R. S., c. 64, § 65.
See c. 77, § 6, § VII.

Previous acts
of those
removed,
are valid.
R. S., c. 64, § 66.

SEC. 69. 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, remain valid and effectual, and he is accountable in the same manner as if he had not been removed.

EMBEZZLEMENT OF PROPERTY OF DECEASED PERSONS.

Embezzlement
of estate of
deceased
persons.
R. S., c. 64, § 67.
1889, c. 264.
See c. 63, § 9.
7 Me., 470.
47 Me., 85.
57 Me., 25.
72 Me., 232.
80 Me., 152.

SEC. 70. Upon complaint 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 or conveyed away any 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, the judge of probate may cite such suspected person or corporation to appear before him to be examined on oath in relation thereto, and he 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; such examination shall not extend over a period of time exceeding twenty years before the time said complaint is filed in the probate court.

Persons
entrusted
with estate
of deceased,
may be cited
to account.
R. S., c. 64, § 68.

SEC. 71. Upon complaint of any such party, that a person entrusted 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.

Penalties for
refusal to
appear and
answer when
cited.
R. S., c. 64, § 69.

SEC. 72. If a 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 jail, 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 is also liable to any injured party in an action on the case, for all the damages, expenses and charges arising from such refusal.

Note. Executors, administrators or other persons authorized to sell goods, chattels, or land, by order of any court or judge of probate, may do so without license from municipal officers, c. 34, § 8.

Savings bank, mortgage, loan, trust or banking company shall not act as administrator, c. 47, § 136.

Compensation of executors and administrators, c. 63, § 40.

Executors and administrators to pay amount of stenographer's fees, c. 63, § 45.

CHAPTER 65.

PARTITION OF REAL ESTATE. ALLOWANCES. DISTRIBUTION OF PERSONAL ESTATE.

PARTITION OF REAL ESTATE.

SEC. 1. The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all the real estate of such person in this state, among the widow or widower, and heirs, or devisees of such person, 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.

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

SEC. 2. Any reversion or remainder vested in his heirs, expectant on the determination of a 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.

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

SEC. 3. The partition shall be made by three disinterested commissioners, appointed by said judge, who shall first be sworn, and shall 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.

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

SEC. 4. 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.

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

SEC. 5. 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, 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 equal division cannot be made.
R. S., c. 65, § 12.
47 Me., 271.
62 Me., 114.

SEC. 6. No conveyance of the interest of a widow or widower, or 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 inure 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 widow or widower, heir or devisee, and after notice to such widow or widower, heir or devisee, the judge may decide in favor of such owner, and he shall receive said share of the money, or so much thereof, as is proportional to his equitable interest.

Proceedings, when interest of widow or widower, heir or devisee has been alienated.
R. S., c. 65, § 13.
81 Me., 207.

SEC. 7. If the share of any such widow or widower, heir or devisee, or any one claiming under such widow or widower, heir or devisee, is under attachment, the judge, on like application from the plaintiff in the

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

Note. The provisions of R. S., c. 65, relating to assignment of dower by the courts of probate have been omitted from this report, as obsolete. All rights and the remedies for their enforcement existing when P. L. 1895, c. 167, took effect have been preserved, c. 75, § 8; and actions of dower may be maintained under the provisions of chapter 103. The provisions of section five and amendments are incorporated in c. 75, § 13.

suit or from 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.

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

SEC. 8. When such partition is made on 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.

Any owner may apply for partition.—notice.
R. S., c. 65, § 16.
Warrant may be revoked.

SEC. 9. 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.

—proceedings.
R. S., c. 65, § 17.

SEC. 10. The judge may, for sufficient cause, revoke any warrant issued by him 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 require.

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

SEC. 11. 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.

Proceeding, when land is owned in common with other parties.
R. S., c. 65, § 19.
31 Me., 110.
69 Me., 546.
70 Me., 234.

SEC. 12. When any of the real estate, of which partition is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition 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; 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 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 to make the partition prayed for.

Return of commissioners may be set aside, or recommitted; record and effect when accepted.
R. S., c. 65, § 20.
1895, c. 108.
12 Me., 199.

SEC. 13. 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 the register of probate shall make out and certify a true copy thereof to the register of deeds for the county in which the lands lie, (who shall record the same) and such partition shall be binding, to all intents and purposes, upon all the persons interested, saving the right of appeal to the supreme court of probate.

ALLOWANCES TO WIDOWS AND OTHERS.

Allowances to widows from personal estate.
R. S., c. 65, § 21.
See c. 70, § 22.

SEC. 14. 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 when 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; he may also allow her any one pew in a meeting-house, of which the deceased died seized; and such allowance, when recorded, vests 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 therefrom. (a)

SEC. 15. When an 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 direction of the judge, shall assign said mortgage and deliver the evidence of such debt to her.

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

SEC. 16. 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 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.

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

SEC. 17. A widow shall have her reasonable sustenance out of the estate of her husband for ninety days after his death, and may remain in the house of her husband during said ninety days without being chargeable with rent therefor.

Widow's support and quarantine. R. S., c. 65, § 24. 1887, c. 89. 59 Me., 441.

SEC. 18. 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, 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. And in solvent estates, where there is no widow, the judge may, at his discretion, make an allowance from the personal estate, to minor children under twelve years of age, when the income from their distributive share will be insufficient for their support and education.

Allowance to minor children, if no widow. R. S., c. 65, § 25. 1889, c. 245. See c. 67, § 36. 85 Me., 109.

SEC. 19. Upon the death 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.

SEC. 20. When on the settlement of any account of an administrator or executor, there appears to remain in his hands property not necessary for the payment of debts and expenses of administration, nor specifically bequeathed, the judge upon petition of any party interested, after public notice and such other notice as he may order, shall determine who are entitled to the estate and their respective shares therein under the will or according to law, and order the same to be distributed accordingly; 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. If any sum of money directed by a decree of the probate court to be paid over, remains for six months unclaimed, the executor, administrator, guardian or trustee who was ordered to pay over the same, may deposit it in some savings bank or like institution, as the probate court directs, to accumulate for the benefit of the person entitled thereto. Such deposit shall be made in the name of the judge of probate for the time being, and shall be subject to the order of the judge and his successors in office, as hereinafter provided. The person making the deposit shall file in the probate court a statement thereof under oath, with the original evidence of such deposit, which shall be

Remainder of personal estate, how distributed. R. S., c. 65, § 27. 1891, c. 49. 50 Me., 191. 78 Me., 463. 82 Me., 296. 84 Me., 549. 88 Me., 19.

—proceedings, if order of distribution is not executed.

—unclaimed shares to be deposited in savings bank.

—in name of judge.

—return.

(a) 31 Me., 67; 39 Me., 18; 46 Me., 539; 50 Me., 238; 52 Me., 199; 53 Me., 185; 54 Me., 534; 68 Me., 124; 83 Me., 17; 84 Me., 71; 85 Me., 169; 86 Me., 206.

—withdrawal
of deposit.

allowed as a sufficient voucher for such payment. When the person entitled to the money deposited, satisfies the judge of his right to receive the same, the judge shall cause it to be paid over to him. When an executor, administrator, guardian or trustee has paid or delivered over to the persons entitled thereto the money or other property in his hands, as required by a decree of a probate court, he may perpetuate the evidence thereof by presenting to said court, without further notice, within one year after the decree is made, an account of such payments or of the delivery over of such property; which account being proved to the satisfaction of the court, and verified by the oath of the party, shall be allowed as his final discharge, and ordered to be recorded.

—first account
to be ren-
dered.

Distribution
of specific
articles.
R. S., c. 65, § 28.
89 Me., 103.

SEC. 21. 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.

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

SEC. 22. If any evidence of debt, or account due to the deceased is thus assigned, the assignee may use the name of the executor or administrator to collect the same, by suit or otherwise, on giving such indemnity against costs, as the judge orders; saving to all supposed debtors the right to set off any claim against the estate of the deceased.

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

SEC. 23. 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 thereof, as said sum 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.

SEC. 24. 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. (a)

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.
R. S., c. 65, § 32.

SEC. 25. 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 be 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 has the same rights and liabilities as the purchaser of personal property, sold by license of the probate court. All sales so made heretofore are valid. (b)

To be sold
by license for
payment of
debts, legacies
and charges.
R. S., c. 65, § 33.
61 Me., 315.
92 Me., 491.
In case of
death of ex-
ecutor or ad-
ministrator,
proceedings.
R. S., c. 65, § 34.

SEC. 26. Any such real estate may, for the payment of debts, legacies or charges of administration, be sold by a license of the probate court like personal estate. And the judge, if he deems it necessary, may require due notice to be given before granting such license, and an additional bond from the executor or administrator.

SEC. 27. When an executor or administrator has taken land on execution for a debt due the estate, and dies without disposing thereof, the judge may license his executor or administrator to sell and convey it, in order to carry into effect the trust whereby it is held, or for any other legal purpose.

Distribution,
if not sold or
redeemed.
R. S., c. 65, § 35.

SEC. 28. 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

(a) 30 Me., 142; 80 Me., 332; 82 Me., 209.

(b) 6 Me., 132; 52 Me., 569; 54 Me., 535; 59 Me., 164; 61 Me., 315; 79 Me., 301; 92 Me., 491.

judge of probate or supreme 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.

54 Me., 536.
79 Me., 299.
92 Me., 491.
See c. 71, § 1,
¶ VIII.

DISTRIBUTION OF THE ESTATES OF DECEASED NON-RESIDENTS.

SEC. 29. When administration is taken in this state on the estate of any person, who, at the time of his death, was not an inhabitant thereof, his estate found here, after payment of his debts, shall be disposed of according to his last will, 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 deceased had his domicile.

Estates of
deceased non-
residents,
how to be
disposed of.
R. S., c. 65, § 36.
85 Me., 378.
86 Me., 206.
91 Me., 542.

SEC. 30. If such person died insolvent, his estate found in this state, shall, so 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, 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, until all the resident creditors have received their proportions as herein provided.

Proceedings,
if such
person died
insolvent.
R. S., c. 65, § 37.

SEC. 31. 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 is none such, it shall, after 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.

Distribution
of residue.
R. S., c. 65, § 38.

SEC. 32. 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
disposed of.
R. S., c. 65, § 39.

CHAPTER 66.

INSOLVENT ESTATES.

DISPOSAL OF INSOLVENT ESTATES.

Priority of
claims and
of payment.
R. S., c. 66, § 1.
Sec. c. 63, § 45.
18 Me., 271.
19 Me., 264.
24 Me., 28.
61 Me., 470.
71 Me., 66.
77 Me., 501.
84 Me., 94.

When repre-
sentation of
insolvency
need not
be made.
R. S., c. 66, § 2.

SEC. 1. An insolvent estate, after payment of the expenses of the funeral, and of administration, shall be appropriated:

- I. To the allowance made to the widow or widower, and children.
- II. To the expenses of the last sickness.
- III. To debts entitled to a preference under the laws of the United States.
- IV. To public rates and taxes, and money due the State. (a)
- V. 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. (b)

COMMISSIONERS AND PROCEEDINGS.

When repre-
sentation
must be
made.
R. S., c. 66, § 3.

—commis-
sioners to be
sworn; their
report.
85 Me., 461.

Meetings and
notice.
R. S., c. 66, § 4.
48 Me., 407.

—time allowed
to prove
claims.

—proceedings
in case of
death of com-
missioner.

How claims
must be
presented
and proved.
R. S., c. 66, § 5.
67 Me., 197.

Refusal or
perjury by
claimant.
R. S., c. 66, § 6.
67 Me., 197.

Value of
claimant's
security to
be deducted.
R. S., c. 66, § 7.
24 Me., 38.
90 Me., 297.

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 unpreferred claims against the estate, except those of the administrator. They shall be first sworn, and shall make report to the court of all claims presented, and of their 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.

SEC. 4. The commissioners shall appoint convenient times and places for their meetings, and 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 judge's order. If one or more of the commissioners die, after the expiration of the eighteen months and before the commission is returned, the judge may appoint new commissioners and allow an additional time not exceeding three months for the presentation of claims.

SEC. 5. Claims must be presented in writing, supported by affidavit of the claimant, or of some person cognizant thereof, stating 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 is guilty of perjury.

SEC. 7. When a claimant holds security for his claim of less value than its amount, he shall 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 dis-

(a) 64 Me., 407; 67 Me., 506.

(b) 24 Me., 28; 62 Me., 167; 79 Me., 225; 84 Me., 94; 90 Me., 412.

interested 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 shall be added by the judge to the sum allowed on which he is to receive his dividend, and the property appraised shall be disposed of by the administrator.

SEC. 8. Interest shall 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 shall 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 shall be paid by the administrator. Any claim which he has against the estate, shall 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 for three months after the expiration of the time allowed them for receiving claims, forfeit all compensation for their services, and may be cited by the judge to show cause for their negligence.

—appraisal.

Interest on claims.
R. S., c. 66, § 8.
19 Me., 261.
48 Me., 483.
74 Me., 486.
—report may be recommit-
—mitted.
—claims of adminis-
trator.

Commissioners, forfeiture for neglect of duty.
R. S., c. 66, § 9.
67 Me., 115, 117.

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, shall 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 shall 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 shall be distributed to all creditors, whose claims have been proved, or allowed by the judge.

Contingent claims, how to be treated.
R. S., c. 66, § 10.
32 Me., 463.
57 Me., 564.

Proceedings, if absolute in four years, or if not.
R. S., c. 66, § 11.
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 shall 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 he has any within the state; otherwise, such notice shall be given as the judge directs. (a)

Appeal, how and when to be made by claimant, heir, creditor or administrator.
R. S., c. 66, § 12.

—bond; notice.

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 his 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

Failing to prosecute appeal seasonably, after disallowance of claim, appellant may petition supreme court.
R. S., c. 66, § 13.
See c. 82, § 7.
68 Me., 413.
81 Me., 197.

(a) 35 Me., 122; 36 Me., 141; 48 Me., 483; 49 Me., 87; 61 Me., 105, 239, 242; 65 Me., 422; 68 Me., 413; 73 Me., 36.

granting administration. No decree of distribution can be disturbed by a judgment so recovered.

Proceedings
on appeal.
R. S., c. 66, § 14.

SEC. 14. When an appeal is so taken, or leave is so granted, the claim shall 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 shall be deemed contingent, and provision shall be made for it as in sections ten and eleven. (a)

If claim is
allowed and
appeal taken
by adminis-
trator, heir
or creditor,
claimant may
apply to su-
preme court.
R. S., c. 66, § 15.

SEC. 15. A person whose claim against an insolvent estate has been allowed by commissioners and their decision has been appealed from by the administrator, heir at law, or any other creditor, and who by accident or mistake 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 for the recovery of his claim, at the next term of the court in the county where administration was granted, within four years from granting administration, but no decree of distribution can be disturbed by a judgment so recovered.

Proceedings
in the suit,
and judgment.
R. S., c. 66, § 16.
68 Me., 414.

SEC. 16. The creditor, before service, 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 trial justice. At such time as the court directs, the administrator shall file an abstract of all demands of the deceased against the claimant, and judgment shall be rendered for either party for the balance ascertained at the trial.

Reference;
examination
of creditor.
R. S., c. 66, § 17.
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 like effect, if he refuses to be examined.

Judgment
against ad-
ministrator,
to be added
to claims
allowed.
R. S., c. 66, § 18.

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 shall 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. (b)

—costs.

SUITS PENDING AND COMMENCED.

Actions
pending.
R. S., c. 66, § 19.

—limitation.

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. (c)

Claims not
presented or
not allowed,
barred,
except in case
of further
assets.
R. S., c. 66, § 20.
67 Me., 458.

SEC. 20. Claims not presented, and claims disallowed without appeal, are forever barred from recovery by suit. Claims disallowed cannot be filed and proved in set-off, except to the amount of counter claims on behalf of the estate. But when, after distribution, further assets come into the hands of the administrator, claims not presented to the commissioners, on petition to the judge, and after due notice, if proved or not disputed, may be allowed and paid like contingent claims.

(a) 36 Me., 141; 55 Me., 514; 57 Me., 564; 61 Me., 242; 68 Me., 413; 71 Me., 375; 73 Me., 347; 74 Me., 194; 81 Me., 197.

(b) 55 Me., 525; 57 Me., 564; 60 Me., 355; 65 Me., 129; 68 Me., 431; 73 Me., 347; 85 Me., 460.

(c) 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; 73 Me., 239; 85 Me., 460.

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 is a breach of his bond. (a)

Penalty for delay in settling account.
R. S., c. 66, § 21.

SEC. 22. When an administrator commits waste or trespass, although an heir or devisee, or consents that another may do it, on real estate of his intestate insolvent, he shall account for treble the amount of the damage. He may, in an action of trespass, recover damages of a person committing the same, to be accounted for as assets, although such person is heir or devisee of the estate. (b)

Waste or trespass on real estate of insolvent.
R. S., c. 66, § 22.

SEC. 23. This chapter applies to estates under charge of executors; and of guardians of insane persons, and of spendthrifts, except as far as it is inapplicable, and an allowance for the support of their wards and their wards' families takes the place of an allowance to widows and children.

Insolvency of estate in hands of executors and guardians.
R. S., c. 66, § 23.
See c. 67, § 16.
68 Me., 432.

DECREE OF DISTRIBUTION.

SEC. 24. After thirty days from the time when the report on claims is made, the judge shall make a decree of distribution of the balance in the hands of the administrator among the creditors, according to this chapter. In case of further assets, he shall make another distribution on the same principles.

Decree of distribution, when and how made.
R. S., c. 66, § 25.
73 Me., 241.

SEC. 25. After 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 thereto.

Account of payments, allowed without notice.
R. S., c. 66, § 26.

SEC. 26. When commissioners appointed under section fifty-six of chapter sixty-four have reported on any claims submitted to them, and their report has been accepted without appeal, it is final, notwithstanding the estate afterwards proves insolvent, and commissioners of insolvency are appointed. The amount awarded by the first commissioners shall be entered by the judge on the list of debts entitled to dividends.

Report of commissioners on exorbitant claims, final, even if estate is insolvent.
R. S., c. 66, § 27.
See c. 68, § 6.

(a) 5 Me., 48; 6 Me., 270; 8 Me., 25; 11 Me., 51; 79 Me., 224.

(b) 59 Me., 355; 62 Me., 309; 77 Me., 246.

Note. Liability of heir or devisee for waste on real estate of insolvent estates, c. 95, § 16.

CHAPTER 67.

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

MINORS.

Guardians.
R. S., c. 67, § 1.
1889, c. 220.
33 Me., 210.
39 Me., 394.
53 Me., 403.
61 Me., 213.

—proceedings
when judge is
interested.
79 Me., 37.

Guardians,
how nomi-
nated and
appointed.
R. S., c. 67, § 2.
39 Me., 394.
53 Me., 403.
61 Me., 213.
76 Me., 304.
85 Me., 360.

Power over
minor's per-
son and
property.
R. S., c. 67, § 3.
1895, c. 41, § 1.
See c. 59, § 40.
31 Me., 197.
53 Me., 550.
61 Me., 214.
93 Me., 248.

SEC. 1. The judge of probate may appoint guardians to minors resident 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 or is nominated as such guardian in the will of which he is an executor; 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 any adjoining county, and the record of said appointment shall show why it was so made.

SEC. 2. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; but a guardian for such minor, named by the deceased father in his last will, (or, if the father has died without making such nomination, named by the deceased mother in her 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.

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 care of the person, and the education of the minor, shall be jointly with the father and mother, if competent, or if one has deceased, with the survivor, if competent; otherwise these duties 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, until his further order.

INSANE AND INCOMPETENT PERSONS, SPENDTHRIFTS, AND CONVICTS.

Guardians
for adults,
when to be
appointed.
R. S., c. 67, § 4.
31 Me., 553.
49 Me., 273, 361.

Insane or
incompetent.

Spendthrifts.
87 Me., 49.

Convicts.

Guardians for
insane per-
sons in the
hospital, and
incompetent

SEC. 4. The judge of probate may appoint guardians to the following persons belonging to his county, although 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:

I. Persons 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.

II. Persons, who, by excessive drinking, gambling, 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.

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

SEC. 5. Guardians may be appointed, on application as aforesaid, for persons certified by the municipal officers of any town to have been committed by them to the insane hospital, and there remaining, 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, (or may order such 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.

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 if there be no such municipal officers the judge shall name three reputable persons resident of the vicinity in which such person resides to make such inquisition, and they shall upon such evidence as they are able to obtain, decide whether such allegations are true; and as soon as may be report the result to the judge, and on such report after personal notice to the other party and a hearing thereon, he adjudges that such person is insane, a spendthrift, or incapable as aforesaid, he shall appoint a guardian.

[Several members of the bar have suggested the advisability of amending the statute so as to abolish the preliminary inquisition by municipal officers. Under the present law the respondent must have notice of two hearings (except in the cases mentioned in sec. 5) before the judge of probate can make a decree. The commissioner is of the opinion that one such hearing is enough and that the respondent's rights are fully protected by the hearing before the judge of probate and the right of appeal. He therefore recommends the amendment of sec. 5 as indicated above, and the substitution of the following for sec. 6:

SEC. 6. In all other cases, the judge shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving the person for whom a guardian is requested with a copy of the application and order of court, at least fourteen days before the day of hearing. If upon such hearing, he adjudges that such person is insane, a spendthrift, or incapable as aforesaid, he shall appoint a guardian.]

SEC. 7. When such application is made, and notice issued thereon by the judge, 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 such person after said filing and before the termination of the guardianship, are void; but this section does not add anything to the validity of any such act previous to said filing.

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 complaint.

SEC. 9. Such guardians 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 gambling, 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, 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.

POWERS AND DUTIES OF GUARDIANS.

SEC. 10. Every guardian, appointed for a minor or other person, shall give bond to the judge of probate in such sum and with such sureties, resident in the state, as the judge accepts, conditioned as follows: (a)

I. For the faithful discharge of his trust.

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

married women, how appointed.
R. S., c. 67, § 5.
See c. 142, § 29.
18 Me., 386.

—proceedings when municipal officers are applicants.

When inquisition shall be made by municipal officers or other persons.
R. S., c. 67, § 6.
1901, c. 243.
18 Me., 386.
80 Me., 141.
82 Me., 25.

—shall report to judge.

Contracts made after notice and filing copy of application, are void.
R. S., c. 67, § 7.

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

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

Bond of guardian.
R. S., c. 67, § 10.

—conditions.

(a) 31 Me., 254; 34 Me., 341; 38 Me., 51; 69 Me., 283.

69 Me., 283.

III. To render a just and true account of his guardianship when by law required.

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

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

SEC. 11. The judge shall appoint three disinterested persons to appraise the ward's estate; 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 within such further time as the judge allows. The warrant for an inventory may be revoked for cause, and a new one issued, if deemed necessary.

How guardians shall manage ward's estate.
R. S., c. 67, § 12.
1897, c. 272.
48 Me., 280.

SEC. 12. The guardian shall manage the estate of his ward frugally and without waste; apply the income and profits thereof, so far as are 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 an exigency occurs, the guardian may apply for a license to sell or mortgage the estate of his ward, and devote the proceeds to the purpose contemplated by his license; (before a license to mortgage the real estate of a ward is granted, notice shall be given as prescribed in section five of chapter seventy-one, relating to sales of real estate, and the guardian shall give bond to the judge, with sureties to his satisfaction, conditioned to truly apply and account for the proceeds of the mortgage according to the license;) but no mortgage shall be made except for such amount, time, and rate as the court shall determine in its decree granting license; such mortgage and the indebtedness secured thereby shall bind only the estate of the ward.

—when licensed to mortgage, shall give bond.

—amount, time and rate of interest determined by court.

[This amendment is suggested by the commissioner as a proper safeguard.]

He may apply property of minor children to their support, in certain cases.
R. S., c. 67, § 13.

SEC. 13. If a minor, having a father alive, has property sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of his father's family and to all the circumstances of the case, the expenses of his maintenance and education may be defrayed out of his own property, in whole or in part, and the charges therefor allowed accordingly in the settlement of the guardian's account.

He shall pay ward's debts, collect dues, appear for him in court, and insure his estate.
R. S., c. 67, § 14.

SEC. 14. 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 authorizes; appear for and represent his ward in all legal proceedings, unless another is appointed for that purpose as guardian or next friend; and may insure any estate of his ward at the expense of the estate, and do all necessary acts relating to such insurance. (a)

Power as to ward's real estate.
R. S., c. 67, § 15.
41 Me., 232.

SEC. 15. 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.

Adjustment of claims.
R. S., c. 67, § 16.
See c. 66, § 23.
68 Me., 431.

SEC. 16. The guardian of an 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; or may, if necessary, repre-

(a) 17 Me., 224; 26 Me., 78; 37 Me., 407; 48 Me., 281; 53 Me., 550; 68 Me., 432.

sent said estate insolvent, with like proceedings, rights and liabilities, as in case of estates of deceased persons.

SEC. 17. Guardians of minors, insane, and incompetent persons, spend-thrifts, and convicts, may, under agreement of parties, refer, by rule of court, any action pending in the supreme judicial or superior 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 justice of such court, or any person appointed by said justice, whose decision, when accepted by said court, is final.

May refer action to justice of supreme court, or his appointee.
R. S., c. 67, § 17.

SEC. 18. 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.

Adjustment by arbitration or compromise.
R. S., c. 67, § 18.
Sale of ward's stocks, chattels and pews.
R. S., c. 67, § 19.
9 Allen, 102.
66 Me., 205.

SEC. 19. On petition of the guardian or any party interested, the judge, with or without notice to other persons interested, as he 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, 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 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 real estate belonging to the ward.

—investment of funds.

SEC. 20. The judge may dismiss any guardian, when it appears necessary, or at his own request, and if the case requires it, may appoint another in his place; but previous to such removal, except at his own request, personal notice shall be given to the 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 ceases.

Dismissal or removal of guardian.
R. S., c. 67, § 21.

—marriage of female ward annuls guardianship.

SEC. 21. Every guardian shall settle his account with the judge at least once in three years, and as much oftener as the judge cites him for that purpose; and neglect or refusal to do so, is a breach of his bond; he may be removed therefor, although the ward may be indebted to him; and he forfeits all allowance for his personal services, unless it appears to the judge that such neglect arose from sickness, or other unavoidable accident. (a)

Settlement of guardian's accounts.
R. S., c. 67, § 22.

SEC. 22. Whenever a guardian settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond, and shall indorse thereon the fact that such examination has been made. If he then, or at any time, finds the bond insufficient in amount, or the sureties unsatisfactory, he shall require a new bond, in such amount and with such sureties as he may approve, and such guardian, failing to give such new bond, shall be removed.

Upon settlement of account, judge shall examine bond, and may require new bond.
R. S., c. 67, § 23.
1897, c. 174.
See c. 72, § 2.

SEC. 23. When an account is rendered by two or more joint guardians, the judge may allow it upon the oath of either.

Oath to the account.
R. S., c. 67, § 24.
Guardian of minor out of the state.
R. S., c. 67, § 25.

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

SEC. 25. If a guardian and his ward are both residents of any other state or territory of the United States, and such ward is entitled to property of any description in this state, and such guardian produces 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

When guardian and ward are both residents of other states, but entitled to property in this state, proceedings.
R. S., c. 67, § 26.

(a) 1 Me., 190; 29 Me., 507; 31 Me., 260; 34 Me., 340; 54 Me., 343; 64 Me., 210; 69 Me., 283.

—resident guardian to deliver estate to non-resident guardian.

—proviso.

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, to deliver the same to such non-resident guardian: *provided*, that all known debts of such estate have been paid.

DISABILITY OF ADULTS UNDER GUARDIANSHIP.

Adults under guardianship may make will; cannot dispose of estate, or make contracts.
R. S., c. 67, § 27.
56 Me., 310.
77 Me., 164.

SEC. 26. When a person over twenty-one years of age is under guardianship, he is 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.

Guardian ad litem.
R. S., c. 67, § 23.
8 Cush., 506.
155 Mass., 108.
33 Me., 122.
41 Me., 460.
91 Me., 361.
—next friend.

SEC. 27. Nothing in this chapter affects 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.

Special guardians for married women in certain cases.
R. S., c. 67, § 29.

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.

EMBEZZLEMENT OF THE WARD'S ESTATE.

Persons suspected of embezzlement, may be cited and examined.
R. S., c. 67, § 30.

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.

Penalty for embezzlement by guardian.
R. S., c. 67, § 31.
95 Me., 181.

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

ADOPTION OF CHILDREN.

SEC. 31. Any unmarried inhabitant of the state, 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, § 32.
81 Me., 554.

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 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 as the judge deems proper and practicable, such other parent is considered by the judge unfit to have the 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 the 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; if an illegitimate child, and under the age of fourteen years, such consent may be given by the mother of such child.

Whose consent is required.
R. S., c. 67, § 33.
1891, c. 3.

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.

Proceedings to be had in the probate court.
R. S., c. 67, § 34.
85 Me., 400.

SEC. 34. By such decree the natural parents are divested of all legal rights in respect to such child, and he is freed from all legal obligations of obedience and maintenance in respect to them; and, for the custody of the person and all rights of inheritance, obedience and maintenance, he becomes 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 only applies to 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 thereafter dies domiciled in this state. In case of the death of such adopted child before arriving at the age of twenty-one years, unmarried and without issue, all property which such child shall have received by virtue of such adoption, in whatever form it may then be, and not expended for his or her support, shall descend the same as if such child were the child by birth of his adopters.

Legal effect of adoption of child.
R. S., c. 67, § 35.
84 Me., 486.
87 Me., 213.

SEC. 35. Any petitioner, or any such child by his next friend, may appeal from such decree to the supreme court of probate, 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.

—descent of property of adopted minor child, dying without issue.
1891, c. 78.

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

Appeal to the supreme court of probate.
R. S., c. 67, § 36.
81 Me., 558.
94 Me., 422.

SEC. 37. Any judge of probate may, on petition of two or more persons, 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 under this chapter.

Allowance to adopted child.
R. S., c. 67, § 37.

Decree of adoption may be annulled.
R. S., c. 67, § 38.
1889, c. 230.

CHANGE OF NAME.

Name, how
changed.
R. S., c. 67, § 38.
1898, c. 262.

—minors may
petition by
guardian.

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

Note. Liability of guardian for injury by minor to schoolhouse and school furnishings, c. 11, § 117; for breach of pound, c. 23, § 20.

Savings bank, mortgage, loan, trust or banking company shall not act as guardian, c. 47, § 136.

Minors may hold shares in loan and building associations, c. 47, § 140.

Guardian may settle and give release of damages for land of ward taken by railroad corporation, c. 51, § 30.

Care and custody of the person of minor children, c. 59, § 39.

Compensation of guardian, c. 63, § 40.

Guardians to pay stenographer's fees, c. 63, § 45.

CHAPTER 68.

TESTAMENTARY TRUSTEES AND VOLUNTARY TRUSTS.

TESTAMENTARY TRUSTEES.

Bonds of
trustees.
R. S., c. 68, § 1.
17 Me., 140.
37 Me., 275.
61 Me., 98.
62 Me., 460.
—conditions.

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 sureties, in such sum as the judge prescribes, conditioned as follows:

I. That he will faithfully execute such trust according to the will of the testator, so far as is consistent with law.

II. 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.

III. 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.

IV. 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 entrusted, to the persons entitled thereto.

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:

I. When the testator has requested or directed that a bond should not be required.

II. 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 shall not be required.

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

SEC. 3. Every person appointed a testamentary trustee who neglects to give bond within the time allowed therefor by the judge, shall be considered to decline the trust. And whenever any trustee settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond, and the same proceedings shall be had in relation thereto as are provided in section twenty-two of chapter sixty-seven relating to bonds of guardians.

When bonds
may not be
required.
R. S., c. 68, § 2.
34 Me., 48.

Trustee,
neglecting to
give bond.
R. S., c. 68, § 3.

—examination
of bond.
1897, c. 174.
See c. 72, § 2.

SEC. 4. Such trustee at his own request may be allowed to resign his trust, when it seems proper to the judge; 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, 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.

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

SEC. 5. Every trustee, appointed by the judge, shall have and exercise the same powers, rights, and duties, as sole or joint trustee, as if he had been appointed by the testator, and the trust estate vests 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, § 7.
65 Me., 106.
84 Me., 329.

SEC. 6. Every trustee, appointed by the judge, shall, before entering on his duties, give bond as aforesaid; but the judge may dispense with the 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 vests in such trustee.

Such trustee shall give bond.
R. S., c. 68, § 8.

SEC. 7. When a trustee is required to return an inventory, the estate and effects shall be appraised by three suitable persons, appointed and sworn, as in 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 shall be returned by trustee.
R. S., c. 68, § 9.

SEC. 8. The judge may authorize any trustee to refer or compromise claims by or against the trust estate.

May refer or compromise.
R. S., c. 68, § 10.

SEC. 9. Any judge of probate, having jurisdiction of the trust, and the supreme judicial court in any county, on application of the trustee, or of any person interested in the trust estate, after notice to all interested, may authorize or require him to sell any real or personal estate held by him in trust, and to invest the proceeds thereof, with 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 will.

Courts may direct trust estates to be sold, and moneys to be invested.
R. S., c. 68, § 11.
See c. 77, § 6,
¶ VIII.
53 Me., 553.
50 Me., 541.
84 Me., 555.

SEC. 10. 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, § 12.
50 Me., 541.
94 Me., 346.
How bonds of trustees may be sued.
R. S., c. 68, § 13.

SEC. 11. 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. 12. The foregoing provisions are applicable to executors, who, by the provisions of a will, become trustees by operation of law without express appointment; but they are not required to return another inventory.

Executors becoming trustees by operation of law.
R. S., c. 68, § 14.
37 Me., 275.
50 Me., 548.

VOLUNTARY TRUSTS.

SEC. 13. A 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 the judge; and said trustee shall file a bond, with sureties to be approved by the judge, for the fulfilment of said trust, according to the terms and conditions of the trust deed or declaration. The provisions of section seventeen are applicable to cases of voluntary trusts, arising under this section.

Trustee, in case of voluntary trusts, appointment of.
R. S., c. 68, § 15.
—bond.
—§ 17 applicable to such trust.
1897, c. 199.

SEC. 14. Such trustee shall account to the judge in the same manner as testamentary trustees, unless excused or released therefrom by the person creating the trust, or for whose benefit it 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.

Trustee, accountable to judge of probate.
R. S., c. 68, § 16.

Remedies, if trustee fails to fulfil his bond.
R. S., c. 68, § 17.

SEC. 15. If said trustee at any time fails to fulfil the conditions of the trust or of his bond, parties interested have the same remedies, and like proceedings shall be had, as in case of other probate bonds.

APPOINTMENT OF TRUSTEES TO FILL VACANCIES.

Supreme judicial court may fill vacancies of trustees when vacancy cannot be filled by surviving trustees.
1897, c. 245.
See c. 73, § 16.

—after notice and hearing.

—property shall vest in new trustee.

—decree to be recorded.

Vacancy in trusts, how filled.
R. S., c. 68, § 5.
See c. 73, § 16.
69 Me., 398.
85 Me., 88.
94 Me., 311.

—new trustee shall give bonds.

—his powers, rights and duties.

Court may order conveyances to be made to him.
R. S., c. 68, § 6.
69 Me., 399.
85 Me., 90.

SEC. 16. Whenever vacancies shall occur by the death or resignation of any or all of the trustees named in any deed of trust or mortgage, and from any cause such vacancy cannot be filled by appointment by the surviving trustee or trustees named therein, or such trustees neglect or refuse to make such appointment, the supreme judicial court, or any judge thereof, in term time or vacation, on the petition of any party interested in said trust, and upon such notice to all persons interested by publication or otherwise as the court shall order, and after hearing thereon, may appoint a trustee or trustees to fill such vacancy or vacancies, and upon and by virtue of said appointment the property described in said deed of trust or mortgage held by said trustees at the time of such decease or resignation, shall vest in said trustees so appointed without further conveyance thereof, whether said trustees have deceased before March twenty, eighteen hundred and ninety-seven, or otherwise, and they shall have the rights and powers and be subject to the duties relating to such trust to the same extent and for the same purposes as the same were held by the original trustees in said trust; the decree making such appointment shall confirm the transfer of title as hereinbefore provided and shall be recorded as the original trust deed was recorded. The heirs at law and personal representatives of any deceased trustee, shall not be necessary as parties to said petition nor any proceedings thereunder, but may appear and be heard in relation to the matters therein contained, and such notice of said petition and hearing shall be given them by publication or otherwise as the court may order.

SEC. 17. 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 trustee, upon giving the 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 vests in him in like manner as it had or would have vested in the trustee in whose place he is substituted.

SEC. 18. 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 is proper or convenient to vest in such trustee, either alone or jointly with the others, the estate and effects to be held in trust.

Note. City or town appointed trustee not required to give bond in certain cases, c. 15, § 14.

Compensation of trustees, c. 63, § 40.

Bondholders under mortgage given by a corporation may elect trustees to fill vacancies, c. 51, §§ 112, 136.

Probate court has jurisdiction of all matters relating to trusts for sale of contingent remainders, c. 73, § 6.

CHAPTER 69.

ESTATES OF DECEASED PARTNERS.

SEC. 1. The executor or administrator of a deceased member of a partnership, shall 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 shall be retained and administered, unless the surviving partner gives bond to the judge as provided in the following section. (a)

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

SEC. 2. The bond 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. (b)

Bond to be given; conditions. R. S., c. 69, § 2.

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 if administrator. R. S., c. 69, § 3. 79 Me., 159.

SEC. 4. If the survivor, on being cited, does not give the bond required, the executor or administrator of the deceased 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. (c)

Administrator to give bond if survivor does not. R. S., c. 69, § 4.

SEC. 5. Every surviving partner shall exhibit to the executors or administrators of a deceased partner for appraisal, all partnership property existing at the time of his decease; and if such executors or administrators administer upon the partnership property, 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 he neglects to do so, the judge, after citing him to show cause, may enforce obedience by committing him until he complies, or is released by the executors or administrators, or by order of the supreme judicial court.

Survivor to produce property for appraisal and administration. R. S., c. 69, § 5.

—penalty. 36 Me., 343. 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 partnership assets may be distributed to pay such claims 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 invalidates 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. Such proceedings already had, are valid.

Commissioners may be appointed on disputed claims.

—partnership estate may be represented insolvent; proceedings. R. S., c. 69, § 6. See c. 64, § 56; c. 82, § 157. 64 Me., 71.

SEC. 7. The executor or administrator of a deceased member of a co-partnership, or the surviving partner, who files a bond and is authorized to close the affairs of a partnership estate, may, on application to the

Sale of co-partnership real estate when a

(a) 36 Me., 343; 55 Me., 236; 56 Me., 229; 59 Me., 243; 61 Me., 17; 65 Me., 163; 74 Me., 339; 79 Me., 160; 81 Me., 228.

(b) 55 Me., 236; 59 Me., 243; 65 Me., 163; 68 Me., 417; 79 Me., 159; 92 Me., 83.

(c) 59 Me., 243; 74 Me., 339; 79 Me., 159.

partner
has died.
R. S., c. 69, § 7.
See c. 71, §§ 1-5.
74 Me., 339.

judge of probate of the county, be licensed to sell real estate, 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 remains in his hands, after closing the affairs of said partnership estate, to the persons entitled to the same, and on complying with all the requirements of the law authorizing a sale of real estate.

Death of ad-
ministrator
on partner-
ship estate,
proceedings
in case of.
R. S., c. 69, § 8.

SEC. 8. 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 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.

Note. Compensation of surviving partners, c. 63, § 40.

CHAPTER 70.

THE INSOLVENT LAW.

COURTS OF INSOLVENCY.

Courts of
insolvency,
officers and
jurisdiction.
R. S., c. 70, § 1.
70 Me., 154.
71 Me., 152.

SEC. 1. The courts of probate for each county are courts of insolvency, and the judges and registers of probate therein are judges and registers thereof. Said courts have original jurisdiction in their respective counties of all cases of insolvency arising under this chapter, except where it is otherwise specially provided.

Sessions.
R. S., c. 70, § 2.
—may be
adjourned
from time
to time.

SEC. 2. Each court shall be held at the established places for holding probate courts, at such times as the judge appoints, and may be held at such other places as best promote the convenience of the public within the respective *probate districts* (counties). The judge may adjourn any court or meeting from time to time as occasion requires.

Acts in
vacation.
R. S., c. 70, § 3.

SEC. 3. The judge may, in vacation, do such official acts as do not require notice to an adverse party, the same as in term time.

Powers and
duties of
judge.
R. S., c. 70, § 4.

SEC. 4. 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.
R. S., c. 70, § 5.
81 Me., 171.

SEC. 5. The proceedings in courts of insolvency are 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, are in all cases admissible as evidence, the same as originals.

—office copies
admissible as
evidence.

The judge
may compel
attendance of
witnesses,
and take
testimony, to
be used in
another
court.
R. S., c. 70, § 6.
See c. 63, § 9.

SEC. 6. The judge of any court of insolvency has 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 said court 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 where the proceedings in insolvency are pending.

SEC. 7. The register may administer all oaths required in the course of proceedings before the court, except the oath provided by section forty-six, and in the absence of the judge, may adjourn the court or meeting; he shall keep a docket with an alphabetical index of all cases, with docket entries of all papers filed and proceedings had in each case.

Powers and duties of register.
R. S., c. 70, § 7.

SEC. 8. All assignments, warrants, orders of notice and processes issuing from the court shall be under its seal, 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.

Warrants, assignments, and other processes to be under seal.
R. S., c. 70, § 8.
—service.

SEC. 9. *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.*

County to provide room in shire town.
R. S., c. 70, § 9.

[This seems to be an unnecessary section. See c. 78, § 11.]

SEC. 10. The judges may interchange services, or perform each others' duties, when they find it necessary or convenient, and if a judge is interested in any case arising in his county, wherein the amount of one hundred dollars is claimed, exclusive of interest, 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 any county, the duties shall be performed therein by the judge of any other county designated by the register, from time to time as necessity or convenience requires.

Judges may interchange services.
R. S., c. 70, § 11.
—when register may designate judge of another county to perform duty.

SEC. 11. 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 are pending, and shall be heard and determined by any justice thereof, either in term time or vacation. Upon the hearing of such appeal, there shall be exceptions 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 them shall be sent to the chief justice within ten days after they 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 such 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 said court in the county where the case is pending. If arguments by either party are not 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, not exceeding 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 so taken, notice thereof shall be given to the register to be entered with the record of proceedings within five days after 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 lies in any case arising under this chapter unless specially provided for herein. (a)

Appeal to supreme court.
R. S., c. 70, § 12.

—when heard and determined.

—exceptions, to be certified to chief justice.

—decision, to whom to be certified.

—when case may be determined without argument.

—final decision, to be certified to register.

—issues of fact may be tried by jury.

—notice of appeal to be given to register.

—when appellant waives appeal.

—costs.

—when no appeal.

SEC. 12. The supreme judicial court has full equity jurisdiction in all insolvency matters; 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

Supreme court has equity jurisdiction.
R. S., c. 70, § 13.

(a) 73 Me., 265; 75 Me., 581; 76 Me., 395; 85 Me., 341, 543; 93 Me., 251; 94 Me., 580.

the justice before whom a final hearing in any proceeding in equity is 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. (a)

Application of certain terms.
R. S., c. 70, § 14.
1897, c. 325, § 1.
See c. 1, § 6, ¶ II.

SEC. 13. In this chapter the words *assignee, creditor, and debtor* include the plural, also; the word "messenger" includes his assistants; the word "sheriff" includes deputy sheriffs; "required majority" shall mean a majority in number of creditors, each of whose debts exceeds fifty dollars, and of creditors holding three-fourths of all the indebtedness; and "commencement of proceedings" shall mean the date of the filing of the petition by or against the debtor.

PROCEEDINGS IN INSOLVENCY.

Petition by debtor.
R. S., c. 70, § 15.
1897, c. 325, § 2.
81 Me., 586.

SEC. 14. Any inhabitant of 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. He shall file with his petition a full schedule of all creditors, with their places of residence and the sum due to each, so far as the same is 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 owned by him, and the place where the same is situated.

If debts amount to \$300, judge shall issue warrant.—sheriff acts as messenger.
R. S., c. 70, § 16.
1897, c. 325, § 3.
70 Me., 513.
81 Me., 586.
—notice, how given, and contents.

SEC. 15. If it appears to the satisfaction of the judge that the unsecured 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, not exempt from attachment, and of all his deeds, books of account and papers relating to his property and estate, and safely keep the same until the election or appointment of an assignee; to publish notice in such newspaper as the warrant specifies, and give such other notice as the judge directs, to all creditors upon the schedule furnished him by the debtor, which notice shall state:

I. That a warrant has issued against the estate of the debtor.

II. That the payment of any debts, to or by said debtor, and the delivery and transfer of any property by him, are forbidden.

III. That a meeting of the creditors, to prove their debts, and, in case there are assets sufficient to authorize the same, to choose one or more assignees of his estate, will be held at a court of insolvency at a time and place designated in the warrant, not less than ten, nor more than fifty days after the issuing of the same.

Petition by creditors.

—the judge may issue warrant for attachment, forbidding payments, sales, transfers and contracts, by debtor or his representatives.
R. S., c. 70, § 17.
1891, c. 109.

SEC. 16. When one or more creditors of a debtor makes application under oath, by petition by them signed, to the judge of the county in which the debtor resides, or if a non-resident of the state, to the judge of the county in which said non-resident debtor may have personal property or real estate, or from which he has absconded or removed beyond the state, within six months before the filing of said petition, leaving property or estate in said county, setting forth that they believe that 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

(a) 69 Me., 598; 71 Me., 155, 301; 73 Me., 265; 74 Me., 586; 78 Me., 525; 81 Me., 587; 82 Me., 464; 83 Me., 354.

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, the judge 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 the state, and forbidding the payment to or by such debtor of any debt, demand or claim, 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 is 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; and 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 service of the copy of the application and warrant upon such debtor, or the giving of such other notice provided by this section, as the judge may order, and until the revocation of such warrant, any payment of a 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 him, or his agent or attorney, shall be null and void. If upon hearing or default, the judge finds the allegations of such application to be true and proved, and that said debtor is insolvent, he shall issue his additional warrant to said sheriff or either of his deputies, and cause such other proceedings to be had as are provided in the preceding section.

SEC. 17. 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, not exempt from attachment and seizure on execution, and of all his deeds, books of account, and papers relating thereto, the messenger shall forthwith demand and receive from the debtor, and other persons, all the estate of the debtor, with all deeds, books of account, and papers relating thereto. If such warrant is revoked, such estate, deeds, books and papers, shall be returned to the debtor or his legal representatives.

SEC. 18. Upon demand made by the messenger, the debtor shall forthwith deliver to him all his estate, and all deeds, books of account and papers relating to his property and estate, and shall within five days also furnish to him a full schedule of all creditors, with their places of residence and the sum due to each so far as the same is 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 owned by him, and the place where the same is situated.

SEC. 19. When it appears to the satisfaction of the judge of any court of insolvency that the debtor has withheld and not delivered to the messenger or assignee any part of his property or estate not exempted under this chapter, such judge may, upon application and after hearing, order delivery of such property or estate, and enforce the order or decree, as provided in section four.

SEC. 20. Upon application, in writing, of any party interested, and notice to the debtor, the judge may order the messenger to sell, for cash, in such manner as he directs, any part of the debtor's estate; and in his own name, as messenger, to 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.

70 Me., 513.
71 Me., 391.
86 Me., 110.
88 Me., 278, 291.

—register shall cause copy of warrant to be served upon debtor, and a hearing shall be had.

—payment of debts, conveyance of property, or contract of such debtor, after service or notice, and before revocation of warrant, void.

—additional warrant to issue, if allegations are proved.

When warrant is issued, messenger to demand and receive debtor's property.
R. S., c. 70, § 18.

—if warrant is revoked, property to be returned.

Debtor to deliver property to messenger.
R. S., c. 70, § 19.

—furnish schedule of creditors and list of assets.

When debtor withholds property, judge may enforce delivery.
R. S., c. 70, § 20.

Judge may order sale of property.
R. S., c. 70, § 21.
1886, c. 620.

Messenger
to deliver
property to
assignee.
R. S., c. 70, § 22.

—and return
warrant.

Debtor's
death not
to affect
proceedings.
R. S., c. 70, § 23.
—allowance
to widow
or minor
children.

Secured
creditor
cannot vote
for assignee.
R. S., c. 70, § 24.
72 Me., 268.

What debts
may be
proved.
R. S., c. 70, § 25.
1893, c. 312, § 1.

—what else
may be
proved.

71 Me., 438.
82 Me., 510.
83 Me., 343, 352.
84 Me., 236, 443.
89 Me., 544.
94 Me., 580.

—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.
84 Me., 236.

—persons so
liable, who
have not paid
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.

—debts not
specified,
disallowed.
—oath.

—form of
oath.

SEC. 21. Upon the election of an assignee, the messenger shall deliver to him all the property held by him, and cash received 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.

SEC. 22. If the debtor dies after commencement of proceedings, such proceedings shall be continued and concluded in like manner, and with like validity and effect as if he had lived. The judge may make such an allowance to the widow or minor children of the deceased out of such estate, as the judge of probate may, out of estates of deceased persons under his jurisdiction.

SEC. 23. 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 files with the register a discharge of his security, and proves his claim against the estate as an unsecured debt.

SEC. 24. 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 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 deems 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 orders, and he may prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise, for the insolvent, who has paid the debt, or any part thereof, in discharge of the whole, may prove such debt, or stand in the place of the creditor if the creditor has proved the same, although such payments were 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, 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, _____, swear that _____, 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 which 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 further swear that said claim was not procured by me for the purpose of influencing the proceedings in this case; and that I have not, nor has any other person

to my knowledge or belief, directly or indirectly entered into any bargain, expressed 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."

Such proof may be made, and such oath taken before the register of any court of insolvency, or at the creditor's own expense it 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 are pending. Such oath or affidavit is prima facie evidence of the facts therein stated. The assignee, or any other person interested, may within six months after the filing of the claim and at any time before final dividend, file objections in writing to the allowance of such claim, and thereupon the judge may, upon such notice to the claimant or his attorney as he directs, 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 does 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 such witness resides, and such examination shall be taken upon oral or written interrogatories. The notice given to such witness 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, without good cause neglects or refuses to appear and submit to such examination, the judge may reject such claim without further hearing thereon, and witnesses are entitled to the usual fees allowed in 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 the county where the proceedings in insolvency are pending, which appeal shall be taken, heard and determined, as provided in section eleven.

SEC. 25. Any creditor may prove his claim at any time before the final dividend.

SEC. 26. For the purpose of making the application provided by section sixty-seven, of effecting the composition therein provided, and of proving claims against the estate of an insolvent, a creditor, who holds security, shall be considered a creditor only for the amount of his debt above the value of his security.

I. 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 on said application, if any is had.

II. In case of composition, such value shall be determined by the judge, on application of either the creditor or debtor.

III. In case of proof of claims, such value may be determined by agreement between the creditor and assignee, or by the judge, on 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. 27. The judge may postpone the proof of any debt until after an assignee is elected or appointed.

SEC. 28. A person who has accepted any preference, knowing that 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 surrenders 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

—before whom, proof must be made and oath taken.

—interested person may file objections to allowance of claim.
80 Me., 265.

—proceedings.
85 Me., 342.

—notice.

—if claimant fails to appear, claim may be rejected.

—assignee, claimant, creditor, or other interested person may appeal.

—how taken and heard. Claim, when proved.
R. S., c. 70, § 26.

Secured creditors, how considered.
R. S., c. 70, § 27.
72 Me., 268.

Proof may be postponed.
R. S., c. 70, § 28.

Property accepted under preference, to be surrendered.
R. S., c. 70, § 29.
1897, c. 325, § 4.
80 Me., 584.
86 Me., 464.

—assignee may recover dividend, paid to creditors whose claim is disallowed.
 —creditor who has accepted preference, shall not take part in proceedings.

Creditor may act by att'y.
 R. S., c. 70, § 30.
 If no assets, assignee shall not be elected, unless a creditor claims under oath that he believes that there are undisclosed assets.
 R. S., c. 70, § 31.
 1897, c. 325, § 5.

—how creditors may choose assignees.

78 Me., 527.

Bond of assignee.
 R. S., c. 70, § 32.
 1880, c. 236, § 2.
 See c. 72, §§ 2, 19.
 82 Me., 330.

Judge shall assign and convey property to assignee.
 R. S., c. 70, § 33.

—assignee shall give notice of election.
 See c. 81, § 70.

—attachments, made within four months, dissolved.

—when money paid by debtor upon writ, judgment or execution within two months, may be recovered.

claim is disallowed in whole or in part, any dividend or proportional part thereof, paid to such creditor before such disallowance. And any creditor who has accepted a preference contrary to the provisions of this chapter shall not be permitted to vote for assignee, nor shall his claim or vote be considered in any petition, or other proceedings, except that he shall be allowed his percentage of any dividend paid upon filing with the register a discharge of his security and proving his claim against the estate as an unsecured debt.

SEC. 29. A creditor may act at all meetings by his authorized attorney, as if personally present.

SEC. 30. If there are no assets, no assignee shall be elected, unless a written motion for such election shall be filed by some creditor, which he may do at any time, and shall therein state upon oath that he has reason to believe and does believe that there are undisclosed assets, or, that the value of the assets, as stated by the debtor in his lists so furnished, are grossly undervalued, which property and interest shall be stated so far as possible by said creditor. If the assets not claimed as exempt do not exceed one hundred dollars, no assignee shall be elected, unless the judge so orders, but the debtor shall, at said first meeting, assign, convey and deliver to the register of the insolvent court all his real and personal estate, rights and credits, not exempt from attachment and seizure on execution, to be disposed of by said register as provided in section seventy of this chapter for the disposition of the estate of debtors whose debts do not amount to the sum of three hundred dollars. If the assets exceed the sum of one hundred dollars, or the judge so orders when the assets are one hundred dollars or less, the creditors in 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 shall be made at the first meeting unless the judge otherwise orders. Such election is 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 the time designated the judge shall appoint one or more assignees, and he may at any time, for good cause shown, remove an assignee and appoint another in his place. At this meeting the debtor shall attend and submit himself to examination.

SEC. 31. The judge shall require the assignee to give bond for the faithful performance of his duties, in such sum as he directs, and with such sureties as he approves. *The provisions of chapter seventy-two apply to such bonds, so far as applicable.*

SEC. 32. The judge shall, by an instrument under his hand, assign and convey to the assignee, all the estate, real and personal, of the debtor, not exempt from attachment and seizure on execution, together with all deeds, books of account, and papers relating thereto, which assignment shall be recorded forthwith in the registry of deeds for the county where such proceedings are pending, and in the registry of deeds in each county in which there is 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 vest the title to all the property and estate of the debtor not exempt 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 a 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 dissolves any such attachment made within four months, and any such mortgage not recorded at least three months preceding the commencement of such proceedings. Such assignee may sue for and recover, by action at law, or bill in equity, any sums of money paid by the debtor to any creditor upon any writ, judgment or execution, when such pay-

ment is made within two months prior to the commencement of said proceedings, and is received by the creditor as a preference, in violation of this chapter, and when the creditor knows, at the time such payments are made, that the debtor making the same is insolvent. (a)

SEC. 33. The judge may, at any time, direct the assignee to make and return upon oath into the court of insolvency, a true inventory of all the property of the debtor, real and personal, which the assignment vests in such assignee, and which has come to his possession or knowledge; and the estate comprised in such inventory, shall be appraised in the same manner that the estates of deceased persons are required by law to be appraised. Such inventory and appraisement shall be made and returned at such time as the judge may direct.

Inventory and appraisement of insolvent estates.
1885, c. 316.

SEC. 34. The judge of the court of insolvency having jurisdiction of the case, may, in his discretion, on sufficient cause shown, authorize the assignee of such insolvent estate to carry on the business of the insolvent or any part thereof, under the direction of the court, when such judge shall determine, after the notice and hearing provided in section thirty-six, that the interests of the estate and of the creditors require it.

Judge may authorize assignee to carry on business of the insolvent.
1889, c. 182, § 1.
1897, c. 325, § 17.

SEC. 35. Such judge may also, upon application of the assignee, and on sufficient cause shown, authorize him to expend money of the estate for the purpose of putting any of the property of the estate into a more salable condition.

May authorize him to expend money for benefit of estate.
1889, c. 182, § 2.

SEC. 36. Upon application for the authority specified in either of the two preceding sections, the judge shall appoint a time and place for a hearing thereon, and the register shall give such public notice thereof as the judge shall order, and he shall also send notice by mail of the application and of the time and place of the hearing thereon, to all creditors of the insolvent, who have proved their claims or whose names appear upon the schedule of creditors, such notice shall be prepaid and shall be deposited in the post office at least ten days before the day of the hearing. At such hearing any creditor of the insolvent may appear and be heard and show cause for or against the granting of the authority asked for.

May appoint time for hearing on application specified in preceding section.
1889, c. 182, § 3.

—notice, how given.

SEC. 37. Whenever any creditor of a debtor, by or against whom proceedings in insolvency shall be commenced, at any time within four months prior to the commencement of such proceedings, commences 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 are 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 may prove his debt or claim upon which such suit is brought, in the same manner as if a suit had not been commenced. If the assignee elects not to appear and prosecute such suit, and if it appears to the court that it was commenced in good faith for the benefit of all the creditors, it shall order said costs, and expenses incurred prior to the assignment of the estate to the assignee, to be paid out of the estate.

Assignee may prosecute to final judgment, suit commenced by creditor within four months prior to commencement of insolvency proceedings.
R. S., c. 70, § 34.
84 Me., 410.

—proceedings.

(a) 71 Me., 435; 74 Me., 335, 469; 75 Me., 66, 396; 77 Me., 180; 80 Me., 584; 81 Me., 316, 434, 448; 83 Me., 562; 84 Me., 410; 86 Me., 110; 88 Me., 279; 89 Me., 229; 94 Me., 78, 440.

Disposal of
property.
R. S., c. 70, § 35.
71 Me., 155.
82 Me., 330.

SEC. 38. 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 disposal of the insolvent estate as he deems proper, and any assignee may 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 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.

Sale of
property in
dispute, may
be ordered
by judge.
R. S., c. 70, § 36.
83 Me., 398.

SEC. 39. 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 he deems reasonable, order the sale thereof in such manner as he directs, 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. But this provision shall not prevent the recovery of the property from the possession of the assignee by an action of replevin commenced before the judge orders the sale.

Claimant of
property sold
and in dis-
pute, must
sue within
sixty days.
R. S., c. 70, § 37.
83 Me., 398.
Assignee
to deposit
money, and
account for
interest.
R. S., c. 70, § 38.
1897, c. 325, § 6.

SEC. 40. The claimant of property sold under section thirty-nine shall bring his suit against the assignee, to be served on him within sixty days after the judge orders such sale, to recover compensation for the value thereof, or be precluded thereafter from maintaining any action at law or in equity for its recovery.

—how he
shall dispose
of funds
uncalled for.

SEC. 41. The assignee shall deposit in his own name, as assignee, in such bank as the judge approves, all money coming to his hands belonging to the insolvent estate, and shall account for all interest received thereon. And funds remaining in his hands uncalled for when he settles his final account and the like funds in the hands of the register, may be paid into the county treasury, to be drawn therefrom and paid to the party entitled thereto only upon order of the judge of the insolvent court. The county treasurer's receipt, stating the amount and the case in which the same is deposited, shall be filed with the papers in the insolvent court and be allowed as a voucher by the judge.

Dividends,
when declared
and paid.
R. S., c. 70, § 39.
1897, c. 325, § 7.

SEC. 42. Whenever an assignee receives 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. In all cases, he shall file an account within six months from the date of his election, unless for cause shown the judge shall extend the time. No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts are entitled to dividends equal to those already received by 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 is 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 within one year from the date of his election, unless for cause shown the judge shall extend the time, and when the same is made the assignee shall exhibit an account of the full settlement and 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

—shall file
account
within six
months.
78 Me., 526.

—dividends
declared,
shall not be
disturbed by
debts subse-
quently
proved.

—proceedings,
in case of
contingent or
disputed
claims.

—dividends
not to be
paid, without
approval of
court.

from his trust. No dividend shall be paid or declared without the approval of the court, entered of record. The register shall give not less than five days' notice, to all creditors named in the schedule of debts, of all dividends about to be declared, and the same fee shall be charged as for other notices.

—notice by register.

SEC. 43. In making a dividend under the preceding section, the following claims shall first be paid in full in their order:

What claims paid in full.
R. S., c. 70, § 40.
1897, c. 325, § 8.
71 Me., 404.
See c. 63, § 45.

I. The debts contracted by the debtor to obtain, in whole or in part, the amount paid by him as fees to the insolvent court, and for reasonable attorneys' fees.

II. The fees, costs and expenses of suits and proceedings in insolvency.

79 Me., 594.
See c. 6, § 62.

III. All debts and taxes due to the state or to any county, city or town therein, and to the United States, except debts due to the state in behalf of the state prison.

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

82 Me., 510.

SEC. 44. An assignee may, with consent of the judge, resign his trust and be discharged therefrom, and from any personal liability, if 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 he directs; 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 directs, 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.

Assignee may resign.
R. S., c. 70, § 41.

—vacancies, how filled.

SEC. 45. 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, signed by the person examined, and placed upon the files of the court. The insolvent shall execute all such conveyances, powers of attorney, or other instruments, and do such acts as the assignee may require, under direction of the court, to enable the assignee to recover and receive the estate of the insolvent.

Debtor shall submit to examination before certificate is granted.
R. S., c. 70, § 42.
See c. 63, §§ 9, 13.
79 Me., 516.

—insolvent to execute conveyances, etc.

SEC. 46. The debtor, at any time before applying for his discharge, may appear before said judge and amend and correct his schedule of creditors, and shall take and subscribe an oath before the judge, in substance as follows:

Oath may be taken any time before discharge.
R. S., c. 70, § 43.
1897, c. 325, § 9.

—form of oath.

"I, —, 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 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 account, 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 the messenger or 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 come to my possession or knowledge; and I further swear that no part of my estate or effects is made over, concealed or disposed of in any manner for the future benefit of myself, my family, or any other person, or to defraud my creditors."

Whenever in any case the debtor fails to take said oath within six months of (after) the commencement of proceedings, the same may be dismissed upon motion of any party interested, after such notice as the judge shall order.

—proceedings may be dismissed, if oath is not taken within six months.

Oath may be taken any time within two years from commencement of proceedings. 1899, c. 23.
—if debtor fails to take oath, proceedings may be dismissed.

SEC. 47. *If for any cause a debtor shall fail to take and subscribe to the oath referred to in the preceding section, he may do so at any time within two years from the date of the commencement of proceedings, and not thereafterward except by leave of court, upon such notice, if any, as the court may order, with the same effect as if originally taken; whenever in any case the debtor fails to take said oath all proceedings in insolvency may be dismissed upon motion of any party interested, after such notice as the judge shall order.*

[It is thought that this section should be omitted as inconsistent with the last sentence of the preceding section, notwithstanding § 47 is the later enactment. The prior amendments of § 46 were necessarily repealed by P. L. 1897, c. 325, § 9, but the latter statute was apparently overlooked when P. L. 1899, c. 23, was passed.]

DISCHARGE.

Debtor may apply for discharge, after four months. R. S., c. 70, § 44. 1897, c. 325, § 10.

—notice to creditors.

—creditor opposing discharge, may file specifications.

—if insolvent has conformed to law, court shall grant discharge.

—if debtor fails to apply for discharge, creditor may petition for hearing.

—notice.

—appeal may be taken to supreme judicial court.

—question of discharge may be tried by jury.

—exceptions.

Second discharge, requires consent of majority of creditors. R. S., c. 70, § 45. 1897, c. 325, § 11.

—third, three-fourths.

—proceedings in the case of a debtor, a second or third time insolvent.

Discharge shall not be granted, or if granted,

SEC. 48. At any time after four months from the 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 such discharge should not be granted. 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 appears to the court that the insolvent has in all things conformed to his duty under this chapter, and that he is entitled thereto, 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. If the debtor fails to apply for a discharge, any creditor, at the expense of said debtor's estate, may, at any time after six months from the commencement of proceedings, file a petition that a hearing may be had upon the question whether a discharge shall be granted to the debtor. Upon said petition, the judge shall order due notice, and may grant or refuse the same, as upon the debtor's petition. When the judge grants or refuses a discharge under the provisions aforesaid, there shall be an appeal to the supreme judicial court, next to be held within the county where the proceedings in insolvency are pending, to be taken, heard and determined in the manner provided in section eleven. The party appealing shall, at the time of entering his appeal in the supreme judicial court, file 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 may be had as to matters of law, to be heard and decided as provided by said section. (a)

SEC. 49. 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 is first filed in the case, and 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 is first filed in the case, and verified in like manner. And in the case of a debtor a second or third time insolvent, a voluntary petition by him shall not be considered or acted upon by the court, unless said debtor shall file with his petition a copy certified by the register of insolvency, of his certificate of discharge under his previous proceedings, or in lieu thereof, the assent in writing of the required majority of all his known creditors. If he fails to do this, his discharge shall not be granted, or, if granted, be valid.

SEC. 50. A discharge shall not be granted, or, if granted, be valid, if the debtor has sworn falsely to any material fact, or if he has concealed any property, books or papers relating to his estate and business, or if having

(a) 75 Me., 305; 76 Me., 395, 499; 79 Me., 519; 80 Me., 395; 84 Me., 129; 88 Me., 605; 91 Me., 431.

reasonable cause to believe himself insolvent or being in contemplation of insolvency he has within four months of the filing of the petition by or against him, 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, unless the same was paid by him in the usual course of business, without any intent on his part to violate the provisions of this chapter, and he shall not be so entitled 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 has designedly in contemplation of insolvency contracted any debt out of the usual course of business by purchasing upon credit any goods, wares or merchandise, or if he has obtained the same on credit by any intentional false statement as to his property, earnings or ability to pay, or if he has wasted his means by gambling, 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 whose usual and customary business is the purchasing and selling of goods, wares and merchandise, he has not kept proper books of account. And the discharge is null and void if the debtor or any person in his behalf has procured the assent of any creditor thereto, by any pecuniary consideration or promise of future preference.

SEC. 51. 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, is discharged by proceedings in insolvency, but such debt may be proved and the dividend thereon shall be a payment on account of such debt. And no claim for necessities furnished the debtor, or to his family, within thirty days of the commencement of proceedings, is discharged by such proceedings, unless such claim shall have been proved against his estate.

SEC. 52. 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. 53. A discharge in insolvency duly granted shall, subject to the limitations in 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 thereof, which shall bar 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, and who desires to contest the validity of the discharge on the ground that it was fraudulently obtained, may 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, 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 seems proper. If, upon hearing the parties, any of the fraudulent acts set forth by the creditor against the insolvent are proved, and the creditor had no knowledge of the same until after the granting of the dis-

is not valid, in case of fraud.
R. S., c. 70, § 46.
1897, c. 325, § 12.
72 Me., 490.
76 Me., 499.
77 Me., 277.
79 Me., 194.
80 Me., 233.
83 Me., 353.
84 Me., 443.
85 Me., 154.
86 Me., 484.
90 Me., 128.

—null and void, if assent of creditor is purchased.

What debts are not discharged.
R. S., c. 70, § 47.
1897, c. 325, § 13.
79 Me., 594.
80 Me., 242.
81 Me., 171.

Partners, indorsers, etc., not released.
R. S., c. 70, § 48.
81 Me., 164.

Liabilities, from which insolvent is released.
R. S., c. 70, § 49.
1885, c. 359, § 13.

—certificate, conclusive evidence.

—creditor, contesting validity of discharge, may apply in writing to the court in two years.

—what the application shall set forth.

—what evidence is admissible.

—application amendable.

—notice.

—hearing and decision.

—on what grounds, discharge may be annulled.

—when judgment shall be rendered for insolvent.

—appeal to supreme court.

—at request of either party, trial by jury.
—right of exceptions.

Actions shall not be maintained for debts that would have been discharged, if proved against insolvent.
1893, c. 278.
88 Me., 605.
91 Me., 437.

Set-off of claims.
R. S., c. 70, § 50.

Creditor can not bring suit against debtor until discharge is refused.
R. S., c. 70, § 51.
1895, c. 93.
70 Me., 409.
77 Me., 20.
80 Me., 508.

—liability to arrest.

Fraudulent attachment, or conveyance of property, is void.
R. S., c. 70, § 52.
1897, c. 325, § 14.
74 Me., 189.
75 Me., 66, 397, 484.
80 Me., 109.
83 Me., 562.
84 Me., 412.
86 Me., 475.
89 Me., 230, 440, 524.
93 Me., 512.

charge, judgment shall be given in favor of the creditor, and the discharge of the insolvent annulled; but if none of the fraudulent acts, so set forth, are proved, or if the fraudulent acts proved, 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 the county where the proceedings in insolvency are pending, to be taken, heard and determined, as provided in section eleven. The party appealing shall, at the time of entering his appeal in the supreme judicial court, file 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 may be had as to matters of law, to be heard and decided as provided by said section. (a)

SEC. 54. *No action shall be maintained in any court in this state, against any inhabitant of this state who has obtained a discharge from his debts under this chapter, upon any claim or demand of any name, kind or nature, that would have been discharged by said insolvency proceedings if proved against said estate.*

[In view of the decision in 88 Me., 599, and the provisions of § 53, this section may be omitted.]

MISCELLANEOUS PROVISIONS.

SEC. 55. No claim purchased after commencement of proceedings in insolvency, shall be set off against a claim due the estate prior to such purchase.

SEC. 56. No creditor shall commence or maintain any suit against the insolvent debtor, upon a claim or demand which he has proved against such debtor in insolvency, until after a discharge has been refused such debtor, *provided*, that such debtor proceeds with reasonable diligence to obtain such discharge; and no debtor against whom a warrant in insolvency has been issued is liable to arrest on mesne process or execution, where the claim was provable in insolvency during the pendency of the proceedings, unless the same is unreasonably protracted by the fault or neglect of such debtor. No debtor who has received a discharge in insolvency proceedings, shall ever be arrested on mesne process or any judgment recovered on any claim or demand which was proved or might have been proved against his estate, *provided*, such claim or demand was not created by fraud or embezzlement of said debtor, or by his defalcation as a public officer, or while acting in a fiduciary character.

SEC. 57. If any person, being insolvent or in contemplation of insolvency, within four months before the filing of the petition by or against him, 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 that 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 course of business

(a) 70 Me., 410; 74 Me., 160; 75 Me., 305; 76 Me., 395; 78 Me., 312; 79 Me., 519, 558, 594; 80 Me., 469; 81 Me., 164; 83 Me., 157; 84 Me., 129, 138, 443; 86 Me., 107; 88 Me., 605; 91 Me., 431; 93 Me., 251; 95 Me., 520.

of the debtor, that fact is prima facie evidence that such sale, assignment, transfer or conveyance was intended as such preference, in violation of this chapter; but nothing in this chapter shall 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. And if any person, being insolvent, or acting in contemplation of insolvency, within six months before the filing of the petition, by or against him, makes any payment, sale, assignment, transfer, conveyance or other disposition of his property, to any person who then has reasonable cause to believe him insolvent, or acting in contemplation of insolvency, and that such payment, sale, assignment, transfer or other conveyance, is made with a view to prevent his property from coming to his assignee, or to prevent the same from being distributed under this chapter, or to defeat the object of, or in any way impair, hinder, impede or delay the operation and effect of any of the provisions of this chapter, and such person received the same in order to assist the debtor in such purpose, the sale, assignment, transfer or conveyance, shall be void, and the assignee may recover the property or the value thereof, as assets of the insolvent. And the foregoing provisions shall apply to mortgages or other securities given to obtain money to make the deposit in the insolvent court, or to pay the attorney for future services therein. Any contract, covenant or security, made or given by an insolvent, or any other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for, or with intent to induce a creditor to forbear opposing the application for discharge of the insolvent, shall be void; and if any creditor shall obtain any sum of money or other goods, chattels, or security from any person, as an inducement for forbearing to oppose or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the insolvent, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained, to be recovered by the assignee for the benefit of the estate.

SEC. 58. 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.

SEC. 59. If a debtor, after the filing of a petition, by or against him, or within four months before, 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 disposes of any part of his estate, with a view to defraud his creditors, and evade the provisions of the insolvent law, 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 be punished by imprisonment in jail not more than one year, or by fine of not more than five hundred dollars.

SEC. 60. Whoever knowingly and wilfully aids the debtor after the commencement of proceedings against him under this chapter, in concealing any property, books or papers relating or belonging to such debtor's estate, with intent to prevent the same from coming to the hands of the assignee of such debtor, or to defraud the creditors of such debtor, or by himself, his agent or attorney, makes any fraudulent purchase or fraudulent agreement to purchase of the messenger or assignee having possession thereof, any property or estate of such debtor, at a less price than its fair market value, shall be punished by imprisonment in jail not more than one year, or by fine of not more than five hundred dollars.

SEC. 61. If any messenger or assignee having possession of the debtor's estate under a warrant as provided by this chapter, knowingly and wilfully suffers any property belonging to such estate to be destroyed or wasted, or fraudulently sells or causes to be sold or disposed of, any property

—loans of actual value secured in good faith, not invalidated.

—fraudulent conveyances made within six months are null and void.

—provision applies to mortgages or securities, given for money to make deposit or pay attorney's fees.

—contract made to purchase forbearance of a creditor, void.

—penalty for forbearing, for a consideration, to oppose discharge.

Allowance to debtor.
R. S., c. 70, § 53.

Penalty for disposal of property to defraud creditors.
R. S., c. 70, § 54.
1885, c. 298.

Penalty, for aiding to defraud creditors.
R. S., c. 70, § 55.

Penalty, for fraudulent disposal of property by messenger or assignee.
R. S., c. 70, § 56.

belonging to the estate of the debtor at less than its fair market value, he shall be punished by imprisonment in jail not more than one year, or by fine of not more than five hundred dollars.

PARTNERSHIP.

Partnership.

—scope of this chapter.
R. S., c. 70, § 57.
70 Me., 378.
82 Me., 120.
92 Me., 466.

—either 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 partner, to be returned to assignee.

—how creditors may prove debts.

Assignee, how chosen.

—shall be assignee of firm, and of estate of each partner, and keep separate accounts.
R. S., c. 70, § 58.
70 Me., 366.
73 Me., 266.
92 Me., 466.

—net proceeds, how appropriated.

—net balance of estate of partner, how disposed of.

—net balance of estate of firm, how disposed of.

Certificate of discharge, how granted or refused.
R. S., c. 70, § 59.

Allowance to partners.
R. S., c. 70, § 60.

This chapter applies to corporations.
R. S., c. 70, § 61.
See c. 49, § 73.
—exceptions.

SEC. 62. This chapter applies to all cases where two or more persons are doing business within the state as partners, and where either of such persons resides in the state, and in such cases the notice required shall be given to all the known partners residing within the state. Either partner may file his petition as herein provided, which shall aver 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 this chapter, but no warrant shall issue until such notice as the judge directs has been given to the remaining partners, and upon hearing, it appears to the satisfaction of the judge that the allegations in the petition are true. The schedule shall contain the names of all creditors of the firm, and their residences, so far as known, the amount due to each with the consideration therefor, 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 member of the firm. Upon issuing the warrant, all the property and estate of the partnership, and all the separate estate of each partner, not 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 herein provided.

SEC. 63. The assignee shall be chosen by the creditors of the partnership, and shall also be assignee of the estate of each separate member thereof, 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 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 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. Any balance of the partnership assets remaining after payment of the partnership debts, 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 if anything remains it shall be divided among the several partners, according to their respective interests.

SEC. 64. The certificate of discharge shall be granted or refused to each partner as it would or ought to have been if proceedings had been against him alone. In other respects the proceedings against partners shall be conducted in the same manner as against a single person.

SEC. 65. In proceedings against partners, each is entitled to the same allowance, as that provided in section fifty-eight, to continue for such time as the judge directs, not exceeding two months.

CORPORATIONS.

SEC. 66. This chapter applies to all corporations created by the law of the state, carrying on manufacturing, trading, mining, building, *insurance* or other private business, but does not apply to corporations engaged in business involving public duties and obligations, among which are rail-

roads, banks, corporations engaged in supplying cities and towns with gas or water, and other corporations of like character; and upon petition of any officer authorized by legal vote of such corporation, passed at a legal meeting called for that purpose, or upon 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 orders, a hearing shall be had upon such petition, and if it appears 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 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, apply to said corporation and the disposal of its effects and estate, but no discharge shall be granted to such corporation, and nothing in this chapter affects the liability of any stockholder in such corporation as is now provided by law.

82 Me., 470.
88 Me., 612.

—proceedings.

—no discharge to be granted, and liability of stockholder not affected.

GENERAL PROVISIONS.

SEC. 67. In all cases of insolvency where the liabilities exceed three hundred dollars, if the debtor or debtors at any meeting of the creditors produce an affidavit by him or them signed and sworn to before the judge or register, of the tenor following:

"I, ———, of ———, in the county of ———, solemnly swear that I have not removed, concealed or secreted any money, papers, securities, effects, or property, real or personal, with 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 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 preferring any of my creditors; and that I have not, directly or indirectly, given to 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."

And at the same time also produces an agreement signed by a majority in number of his creditors, each of whose debts exceeds fifty dollars, and by creditors holding three-fourths of all his indebtedness, in the form following:

"We, the undersigned, creditors of ———, of ———, in the county of ———, 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 thereof. We have not, directly or indirectly, received any compensation or promise of future payment beyond the per cent herein named."

And if the judge is satisfied that such agreement is signed by said proportion of the creditors of such debtor, and that he has either paid or secured to all the creditors whose names appear in the schedules annexed to his affidavit, the percentage named in such composition agreement and according to the terms thereof, he shall give to 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 insolvency proceedings, and named in the schedule annexed to said affidavit. Such discharge is not valid if the signature of any creditor has been obtained by fraud, or if any material statement contained in 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; and any creditor of said insolvent estate who knowingly

Debtor shall produce affidavit in cases of composition. R. S., c. 70, § 62. 1889, c. 162. See § 26. 71 Me., 435. —form of affidavit. 76 Me., 395. 79 Me., 350, 516. 81 Me., 169. 83 Me., 347, 352. 84 Me., 184. 88 Me., 426.

—creditors' agreement.

—form of agreement.

—if agreement is satisfactory, judge shall give debtor discharge.

—not valid, in case of fraud or falsehood.

—penalty if any creditor fraudulently consents to discharge of debtor.

—debtor to pay expenses.

1887, c. 32.

When debtor is ignorant of holder of note or bill, he shall describe debt.
R. S., c. 70, § 63.
—creditor not found or refusing to accept percentage, amount to be deposited in court

—claim not proved and percentage accepted in six months, to be repaid to insolvent.

—no discharge granted unless percentage paid.

Any inhabitant owing debts contracted while inhabitant of the state, may petition and make assignment.
1897, c. 325, § 16.
93 Me., 313.
95 Me., 394, 396.

—shall file list of creditors and assets.

—notice and hearing thereon.

—if debtors act in good faith, shall be discharged.

—fees.

receives, directly or indirectly, from a debtor in insolvency, or from his estate, as an inducement to consent to said debtor's discharge, or to assign his claim to a third person who will so consent, a larger percentage on his debt than shall be offered and distributed to other creditors of the same class, shall forfeit to any other creditor of such estate first suing therefor, a sum equal to the whole amount received by him on account of said claim, including dividends legally declared, with interest from the time such sums were so received, which sum may be recovered in an action on the case, brought by the creditor discovering such overpayment, in any county in which either party to such suit resides, within one year after such discovery. If the proceedings are by or against a co-partnership, 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 is granted, the debtor shall pay all the expenses incurred during the proceedings; (and said certificate shall not issue, until all the priorities provided in section forty-three are paid or secured to the satisfaction of the court.)

[This amendment (P. L. 1887, c. 32) was not referred to in the enactment of P. L. 1889, c. 162; the commissioner thinks that the omission may have been unintentional.]

SEC. 68. In proceedings for composition, where a debt arises on a bill of exchange or promissory note, if the debtor does not know who is the holder thereof, he shall state its amount, the date on which it falls due, the names of the acceptor and payee, and all other particulars within his knowledge respecting the same; which shall be a sufficient description by the debtor in respect to such debt. If any creditor named in the debtor's schedule of debts cannot be found, or refuses to accept the percentage due him under such proceedings, the debtor may deposit in court the amount of such percentage in money, which shall be a security for said debt. If any such creditor, at the end of six months after said deposit, fails to prove his claim and accept said percentage, the court may order the same to be repaid to said insolvent, or, after notice to him, make such distribution thereof as justice requires. No discharge shall be granted to a debtor under such proceedings, unless the judge is satisfied that the debtor has either paid or secured the percentage, named in his composition agreement, to all the creditors whose names appear in the schedule annexed to his affidavit.

SEC. 69. Any inhabitant of 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 stating therein that by a written assignment executed by and between him and the required majority of his creditors he has assigned to some suitable person specified in said agreement, all his estate and effects not exempt by law from attachment and seizure on execution, for the benefit of his creditors, and praying that due proceedings may be had as hereinafter provided. He shall file with said petition a full schedule of his creditors and list of his assets, as specified in section fourteen of this chapter, together with said written agreement executed by him and his said creditors. Thereupon the judge shall order notice as provided in section fifteen of this chapter so far as applicable to be given by the register to all creditors named in said schedule who have not signed the articles of agreement, and a hearing shall be had as to whether the same have been executed by the required majority and whether the allegations of said petition are true. If upon hearing it is so determined and that the same have been executed in good faith by said debtor and his said creditors, the judge may approve the same, and may require the assignee to give bond and settle his account, the same as in insolvency proceedings; and the judge shall give the debtor a discharge as in section sixty-seven of this chapter, from all debts named in the debtor's said schedules. The same fees shall be taxed for these proceedings as for similar services under this chapter.

SEC. 70. Any person whose debts do not amount to three hundred dollars, may at any time assign, convey and deliver to the register of the court of insolvency in and for the county within which he resides, all his real and personal estate, rights and credits, not exempt from attachment and seizure on execution, together with a schedule of the same, signed by such debtor, and a list of all his creditors, with their places of residence, so far as known by him, and at the same time may apply by petition to the judge of said court, setting forth his inability to pay all his debts in full, and that he has assigned, conveyed and delivered to the register of said court, all his real and personal estate, rights and credits, not exempt from attachment and seizure on execution, together with a schedule of the same, signed by him, and a list of all his creditors, with their places of residence, so far as known by him, and that he wishes to be examined as provided by this section, and to have the oath provided by this section administered to him. Thereupon the judge shall appoint a time and place for the examination of the debtor, which examination may be before the judge, or *such person as he appoints to take the same* (register), and the register shall give such notice to the creditors of the debtor of the time and place of such examination as the judge orders, and any creditor may appear at such examination and be heard, and may examine the debtor, under oath, concerning his business, property and effects, and the disposal thereof. Such examination shall be confined within such limits as the judge (or register) directs, and in no case shall it extend to any matters arising prior to the time of the contracting of the debts owed by such debtor, at the time of his examination. The examination herein provided for shall be in writing, signed by the debtor, and filed in the office of the register. If upon such hearing, it appears to the judge that the debtor has assigned, conveyed and delivered to the register all his said real and personal estate, rights and credits, not exempt from attachment and seizure on execution, together with a schedule of the same, signed by him, and that he has disclosed the names and places of residence of all creditors so far as known to him, he shall administer to the debtor the following oath: "I, _____, 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 further swear, that I have delivered to _____, the register of the court of insolvency, all my estate, rights and credits, except such as are exempt from attachment and seizure on execution; and I further swear that no part of my estate, rights or credits, has been made over, concealed, or disposed of in any manner, for the future benefit of myself, my family, or any other person, or to defraud my creditors:" unless the judge has discovered, by such examination, such facts as render it inconsistent for the debtor to take such oath, or finds that any of the statements made by the debtor in or upon said examination are not true. When the debtor has taken and subscribed said oath, the judge shall give him a certificate thereof under his hand and the seal of the court, and thereupon he shall be thenceforth released and discharged from arrest upon mesne process or execution arising from any debt contracted prior to taking such oath, and owing to any creditor named in said schedule, and he shall not be required to submit himself to examination under provisions of sections twenty to forty-four inclusive, of chapter one hundred and twelve as to any matters arising prior to the time of taking such oath. Nor shall the amount due him as wages for his personal labor for a time not exceeding one month next preceding the service of the process, and not exceeding twenty dollars, be liable to attachment on any trustee process in a suit brought against him upon any debt contracted prior to said time. This section also applies to any person arrested or committed to jail upon mesne process or execution, and such debtor shall be taken by the jailor, or officer having him in charge, before the court for the purposes herein specified. After the assignment and conveyance herein provided, the register shall dispose of said debtor's property and effects to the best advantage, deposit-

Any person whose debts do not amount to \$300, may make assignment.
R. S., c. 70, § 64.
1897, c. 325, § 15.

—proceedings.
71 Me., 435.
74 Me., 169.

—judge shall appoint hearing for examination of debtor.

—examination shall be in writing
See c. 63, § 9.

—If it appears debtor has assigned and delivered all his estate, judge shall administer the oath.

—form of oath.

—debtor may then be discharged.

—wages not exceeding \$20, shall be exempt.

—this section applies to persons arrested or committed to jail.

—property of debtor shall be sold and proceeds divided, pro rata, among the creditors.

—fees of judge and register.

—compensation of person, making examination.
See c. 63, §§ 13, 45.

—how payment of fees shall be secured.

Fees shall be established by supreme judicial court.
R. S., c. 70, § 65.
1899, c. 43.

—how paid.

When estate is insufficient to pay fees, petitioner may be ordered to deposit a sum of money with the register, for payment of expenses.
1891, c. 113.

Judges shall report annually to secretary of state, all cases of insolvency, with particulars.
R. S., c. 70, § 66.

ing in his own name, as register in such bank as the judge approves, all the money coming into his hands belonging to said estate, and keeping and rendering to the judge a strict account of its disposal, and the net proceeds thereof, after deducting the expenses of the proceedings, shall be divided by the register, pro rata, among the creditors of the debtor named in his original schedules, or schedules as amended by order of the judge, and such other creditors as shall have proved their claims before such distribution, in part satisfaction of their respective debts. The judge and register shall be allowed the same fees for their services under this section as they are allowed for similar services in other insolvency proceedings, *and when any person is appointed by the judge to take the examination hereinbefore provided, the judge shall allow him a reasonable compensation therefor*, and said fees and compensation shall be paid out of the debtor's assets if they are sufficient; otherwise such fees and compensation, or such part thereof as remains unsatisfied, shall be paid by the debtor before he shall be entitled to take the oath heretofore provided. And in all cases arising under this section the judge may require a reasonable sum of money to be by him specified, to be deposited with the register by the debtor at the time the assignment and petition is filed, as security for the payment of said fees and compensation. *When any person is appointed by the judge to take the examination hereinbefore provided, such person has the same powers as the judge to exclude immaterial or irrelevant questions to the debtor.*

[The commissioner thinks that the examination under section seventy should be before the judge or register in all cases.]

SEC. 71. The fees of all officers, the compensation of assignees, and of judges and registers of probate, under this chapter, shall be established by the supreme judicial court, and shall be paid out of the estates if there are sufficient assets; if there are not sufficient assets for the payment of the fees, costs, and expenses of the insolvency proceedings, the person upon whose petition the warrant is issued shall pay the same, and the court of insolvency, after thirty days' notice in writing, by the court, to him, or his attorney of record, may issue an execution against him to compel payment to the register. Said executions shall be under the seal of the court issuing the same, bear the teste of the judge, be signed by the register, issued in the name of the assignee, and shall be for the full amount of all unpaid fees, costs, and expenses, in the proceedings, due the officers, assignee, judge and register, and shall run against the body.

SEC. 72. In all cases wherein the *insolvent* estate is insufficient to pay the fees and expense of the court and its officers, the judge in his discretion may order the petitioner at any time during the pendency of the proceedings, upon petition of any party interested, to deposit a specified sum of money with the register to be used in payment of the expense of the insolvent proceedings; and, upon the failure of the insolvent to comply with the order of court, the judge may order the proceedings dismissed.

SEC. 73. The judges of the courts of insolvency shall prepare and file in the office of the secretary of state annually on the first Monday of January, a report of all the cases in insolvency within their respective counties, showing the names of the insolvents, the date of the filing of the petition, the date of the discharge, the amount and average rate of dividends declared, inclusive of composition cases, and the amount of fees received or earned by them and the registers of said court.

Note. Appointment of stenographers and their duties in courts of probate and insolvency, c. 62, § 9.

Assignees to pay amount of stenographer's fees, c. 63, § 45.

Rules and uniform blanks, c. 63, § 47.

Commissioner's note. The commissioner thinks that the present system of compensation for the officers of the insolvency courts is wrong. While he believes that the judges of probate and insolvency are, without exception, men of too high character to abuse their office, the principle of compensating the judges by fees which may be exacted from a petitioner by means of an execution running against the body, is in his opinion, indefensible. The salaries of the judges should

CHAPTER 71.

SALES OF REAL ESTATE BY LICENSE OF COURT.

LICENSES TO SELL ESTATES OF RESIDENT OWNERS.

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

I. Of executors or administrators, (including public 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.

II. 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 trees or timber standing thereon, for payment of debts, expenses of sale and of guardianship, and for 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 deems proper to reserve for the use of said wards; or to sell the same and place the proceeds at interest; or to sell it for two or more of these purposes; or to lease such real estate for any term of years, or exchange it for other real estate, when it clearly appears that such sale, lease or exchange would be for the benefit of the wards. But when sold in order to place the proceeds at interest, any part thereof may be used for support of the wards if it becomes necessary.

III. Of executors, administrators, or guardians, when it appears by the petition and proof, 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.

Sale, lease, or exchange of real estate, when to be licensed.
R. S., c. 71, § 1.
By executors and administrators.
See c. 6, § 119;
c. 69, § 7.

On application of friends or guardians of minors.
See c. 73, § 7.

For sale of whole property, by such representatives.
63 Me., 250.

be sufficient to amply compensate them for all services required in their official positions. As to the fees of the officers, it is within the personal knowledge of the commissioner that the present system has in some instances resulted in hardship to the petitioner. He therefore recommends the substitution of the following section in place of sections seventy-one and seventy-two, and the omission of the words "them and" in the last line of section seventy-three:

Sec. 71. The compensation of the register for all services in each case shall be ten dollars, to be deposited with him when the petition is filed. He may also require the petitioner to advance, when a petition for allowance or discharge is filed, the actual expense of publishing notice of hearing upon such petition, and necessary postage upon notices by mail of such hearing.

The compensation of the assignee shall be five dollars, to be deposited with the register when the petition is filed, payable when the bond of the assignee is filed and approved by the judge. If no assignee is elected and no assignment of the petitioner's estate made to the register, said sum shall be returned to the petitioner, when proceedings in the case are closed. The assignee shall also be entitled to receive from the estate the sum of fifty cents for each petition presented by him to the court, compensation for travel and attendance at court, and commissions, as allowed to administrators in the settlement of estates in probate court, and reasonable charges for services of an attorney, when such services are necessary.

The messenger shall receive from the estate for the service of each warrant the same fees as for similar services of writs, and the actual expense of publishing notice of the first meeting, and necessary postage upon notices by mail of said meeting, payable when the warrant is returned. The petitioner shall deposit the sum of five dollars with the register when the petition is filed, as security for the fees of the messenger and expense of publishing notice, and postage as aforesaid. In cases of involuntary insolvency, all deposits made by petitioning creditors, shall be refunded from the estate, as part of the expenses of the proceedings. The messenger shall also receive from the estate like fees for service of every summons, notice or other paper, service of which is ordered by the judge.

If the foregoing suggestion is accepted section seventy should be amended by striking out the second and third sentences from the end of the section, and substituting in place thereof, the following:

"The register shall receive for his services under such assignment and conveyance, the same fees as assignees receive for similar services in other insolvency proceedings."

By husband
or guardian of
insane wife.
1899, c. 4.

For sale of
wood and
timber.

Of land
warrants.

Release of
damages by
highway,
railroad or
canal.
See c. 51, § 30.

Mortgages;
executions.
See c. 65, § 28.

For sales by
public ad-
ministrators.
See c. 64, § 29.

Heirs or
devisees, in
different
states.

A judge of
probate may,
on applica-
tion, with
written con-
sent of widow,
license sale
of real estate,
including
dower and
reversion.
R. S., c. 71, § 2.
—proceeds of
sale, how
divided.

IV. 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 right and title by descent in any real estate owned by him.

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

VI. 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 an act of congress, when not disposed of by will, and to distribute the net proceeds thereof among those entitled by law to such interest.

VII. 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.

VIII. 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.

IX. 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.

X. Of a part or all of 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, among such heirs or devisees, according to their respective rights therein; unless, after public notice, the first publication being 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.

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 with the written consent of the widow, having a right of dower in the estate for the sale of which such application is made, may 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 is 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, 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 is where there is no widow, or to the devisees named in the will of the deceased according to the terms thereof.*

[This section is considered obsolete. Cases of administration upon estates of persons dying prior to the time when P. L. 1895, c. 157 took effect, will probably not be frequent hereafter.]

SALES AT AUCTION.

SEC. 3. All sales aforesaid shall be at public auction, except as herein after provided, and the decision of the judge 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 cases aforesaid.

Sales to be
at auction;
appeal.
—jurisdiction
of supreme
court.
R. S., c. 71, § 3.
8 Me., 222.

SEC. 4. Persons licensed as aforesaid, before proceeding to make such sales, leases or exchanges, except executors exempted therefrom by the provisions of section ten of chapter sixty-four, shall give bond to the judge for a sum, and with sureties to his satisfaction, with the following conditions:

I. That they will observe all provisions of law for the sale, leasing or exchange of such real estate or interests therein, and use due diligence in executing the trust.

II. That they will truly apply and account for the proceeds of sale or lease according to law.

SEC. 5. No license shall be granted for the sale of any such real estate, of the value of more than fifty dollars, unless by written consent of all persons interested therein, until after public or personal notice of the time and place of hearing, to all such persons, and 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.

SEC. 6. 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.

SEC. 7. Every person licensed as aforesaid, previous to such sale, shall give thirty days' notice thereof, by posting notifications in some public place in the town where the estate lies, and in two adjoining towns, and in the town where 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 being thirty days before the sale.

SEC. 8. Every application for the sale of any estate, made to the supreme judicial court, under the third specification of section one, 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 requires it; also the opinion of such judge, 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 of section one, a certificate must likewise be produced 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.

SEC. 9. Any court 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.

SEC. 10. 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 the state, giving their consent to the sale, and their opinion as to the amount proper to be raised thereby, excluding debts contracted by gambling; 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.

Bond.
R. S., c. 71, § 4.
1899, c. 86, § 2.
39 Me., 18.
50 Me., 75.
93 Me., 372.
94 Me., 562.

—conditions.

Notice,
previous to
granting
license.
R. S., c. 71, § 6.

No license
shall issue, if
parties give
bond and
fulfil it.
R. S., c. 71, § 7.

Notice of
sale, how to
be given.
R. S., c. 71, § 8.

Judge shall
certify to
supreme
court in
certain cases.
R. S., c. 71, § 9.

Parties may
be examined
under oath.
R. S., c. 71, § 10.

Overseers of
the poor
shall consent
in certain
cases.
R. S., c. 71, § 11.

PRIVATE SALES, AND SALES ON OFFER.

SEC. 11. 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,

Licenses to
sell at private
sale, and on
offer.

R. S., c. 71, § 12.
1895, c. 77.

—proceedings.

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 requirements of law for sales at auction, and with the particular conditions of his license, and he shall give bond as if he were 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.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

Wife of incapacitated ward may join in deed with guardian, or may release interest by descent.
R. S., c. 71, § 13.
See c. 75, § 9.

SEC. 12. 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* (and interest by descent) therein to the purchaser, by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of *dower* (such interest) in the premises.

Guardian may invest proceeds of her interest; trust to be enforced.
R. S., c. 71, § 14.

SEC. 13. The guardian, with consent of the judge 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 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.

SALES OF ESTATES OF NON-RESIDENT OWNERS.

Sale of estate of deceased persons or of minors out of the state.
R. S., c. 71, § 15.
11 Me., 101.

SEC. 14. The supreme judicial and probate courts may grant licenses to continue in force for three years, to executors and administrators of persons dying 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 any interest therein in the state, as if such deceased persons had died, and such wards lived in 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 in another state.
R. S., c. 71, § 16.

SEC. 15. 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, is 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 conveyance on contract made by deceased.
R. S., c. 71, § 17.
3 Me., 51.
51 Me., 424.

SEC. 16. When it appears to the judge of probate having jurisdiction, that any deceased person had made a legal contract to convey real estate and was prevented by death from so doing, or that such deceased person, had made such a contract to convey an estate upon a condition, which in its nature could not be fully performed before his decease, 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 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.

—when conveyance is made to executor or administrator.

SEC. 17. 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.

Notice shall be given, and bond required.
R. S., c. 71, § 18.

GENERAL PROVISIONS.

SEC. 18. No license granted under this chapter, except when otherwise provided, remains in force for 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 upon filing a new bond.

Licenses, limited to one year; renewable.
R. S., c. 71, § 19.
19 Me., 151.
22 Me., 329.
36 Me., 576.

SEC. 19. Any sale, duly appointed and notified, may be adjourned within the 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 permit.

Sales may be adjourned.
R. S., c. 71, § 20.
63 Me., 251.

SEC. 20. 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.

Licenses may include lands in other counties.
R. S., c. 71, § 21.

SEC. 21. 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, § 22.
84 Me., 95.

SEC. 22. 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 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 such license, is 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, § 23.
3 Me., 236.
4 Me., 8.
22 Me., 330.
61 Me., 294.
71 Me., 67.
80 Me., 487.
81 Me., 228.

SEC. 23. In all sales of real estate, or any part, or interest therein, by virtue of licenses granted under this chapter, the surplus proceeds of sale, remaining on final settlement of the accounts of such proceeds, shall be considered real estate, and distributed among the same persons and in the same proportions as real estate would be.

Surplus proceeds to be distributed as real estate.
R. S., c. 71, § 24.

SEC. 24. All heirs apparent or presumptive of the ward, shall be considered interested in the estate, and may appear and answer to the petition of any guardian or other person for the sale of his estate; and when personal notice is required, they shall be notified.

Who must be notified; who may appear.
R. S., c. 71, § 25.
39 Me., 393.
36 Me., 101.

SEC. 25. When the granting of a license is contested, if the petition or objection to it appears unreasonable, the court may award costs to the prevailing party.

Costs, when license is contested.
R. S., c. 71, § 26.

SEC. 26. 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, or such an affidavit made afterwards by any person, and filed and recorded with such copy by permission of the court, upon satisfactory evidence that the notice was given as ordered, is sufficient proof that such notice was given, and a copy of such affidavit certified by the register, is competent evidence thereof.

Proof of notice of sale, certificate and record.
R. S., c. 71, § 27.
1889, c. 262.
63 Me., 251.

SEC. 27. When a person, licensed as aforesaid, has taken the oath (formerly) required by law, but no certificate thereof has been *retained as provided in the preceding sections* (returned to the judge of probate), 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 has the same effect as if a certificate thereof had been returned, filed and recorded.

Proof by parol, when certificate is not returned.
R. S., c. 71, § 28.
63 Me., 251.
See § 30.

Remedy for neglect or misconduct of person licensed.
R. S., c. 71, § 29.

SEC. 28. If a person, interested in any estate sold as aforesaid, suffers damage by neglect or misconduct of the executor, administrator, or guardian, in such proceedings, he may recover 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 land sold by license, limited to five years.
R. S., c. 71, § 30.
14 Me., 346.
58 Me., 558.
85 Me., 139.
88 Me., 314.

Requisites for valid sale, as against persons claiming under deceased or ward.
R. S., c. 71, § 31.
1893, c. 143, § 2.

As against such as claim adversely to the title sold.
R. S., c. 71, § 32.
53 Me., 204.

SEC. 29. No action shall be brought to recover an estate sold under this chapter, nor entry be 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 legal disability at said times, are limited to five years after their return to the state, or the removal of the disability.

SEC. 30. In an 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 by the ward or person claiming under him, no such sale shall be avoided on account of any irregularity in the proceedings, if it appears;

I. That the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded.

II. That the person licensed gave the bond and notice of the time and place of sale required by law.

III. 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.

[It may be contended with much force that the provisions of § 30 cannot apply to actions brought to contest the validity of a sale made prior to the date when P. L. 1893, c. 143 went into effect. The commissioner has therefore retained § 27 to meet such cases.]

SEC. 31. 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 is not 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.

Note. Sales of settlers' lots purchased of the state, for payment of debts, c. 5, § 40.

Sales of real estate, subject to contingent remainder, executory devise or power of appointment, c. 73, § 4.

CHAPTER 72.

PROBATE BONDS AND REMEDIES THEREON.

WHAT BONDS ARE SUFFICIENT.

SEC. 1. No bond required to be given to the judge of probate, or to be filed in the probate office, is sufficient, until it has been examined by the judge, and his approval written thereon.

No bond is sufficient, unless approved by the judge.
R. S., c. 72, § 1.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

SEC. 2. When the sureties in any such bond are insufficient, on petition of any person interested, and notice to the principal, the judge may require a new bond, with sureties approved by him.

Insufficient, new required.
R. S., c. 72, § 2.
See c. 64, § 52;
c. 67, § 22; c. 68,
§ 3; c. 70, § 31.
Surety on bond may be discharged by judge of probate.
R. S., c. 72, § 3.
1899, c. 85.

SEC. 3. On application of any surety or principal in such bond, the judge, on due notice to all parties interested may, in his discretion, discharge the surety or sureties 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.

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.

Principal, to give new bond, or be removed.
R. S., c. 72, § 4.

ACTIONS ON BONDS.

SEC. 5. 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.

Suits on bonds, shall be in the name of judge.
R. S., c. 72, § 5.
69 Me., 284.

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.

In suit against surety, principal may be made a party.
R. S., c. 72, § 6.

SEC. 7. Such surety may thereupon take out a writ, in the 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, is liable to respond to the judgment, as if made or taken in the original suit.

How he shall be summoned; proceedings and judgment.
R. S., c. 72, § 7.
34 Me., 372.

SEC. 8. Every action against sureties on an administrator's or executor's bond, must be commenced within six years after such administrator or executor has been cited to appear to settle his account in the probate court where administration is granted on the estate, or if not so cited, within six years from the time of the breach of his 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.
R. S., c. 72, § 8.

—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 shall be for the penalty.
R. S., c. 72, § 9.

ACTIONS BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

When and
how party
interested
may bring
suit on bond.
R. S., c. 72, § 10.

—form of
writ.

Judgment, if
suit fails.
R. S., c. 72, § 11.
69 Me., 284.

Suit on bond,
by creditor of
insolvent
estate.
R. S., c. 72, § 12.

Suit by cred-
itor or lega-
tee of solvent
estate.
R. S., c. 72, § 13.
62 Me., 167.
63 Me., 432, 445.

Suit by
widow, next
of kin, or
residuary
legatee.
R. S., c. 72, § 14.

Judgment and
execution in
such suits.
R. S., c. 72, § 15.
78 Me., 142.

Judge may
authorize
suits;
execution, in
case of
failure to
account.
R. S., c. 72, § 16.

Execution
against
administrator

SEC. 10. Any person interested personally, or in any official capacity, in a probate bond, or in a 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. (a)

SEC. 11. If such suit is not sustained, judgment shall be rendered and execution issued for costs against the person originating it as aforesaid.

SEC. 12. Every creditor entitled to a dividend from an insolvent estate, originating any action mentioned in section ten, 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.

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 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.

SEC. 14. A widow entitled to an allowance made by the judge; a widow or next of kin entitled to a distributive share in the personal estate; or a residuary legatee of the deceased, before recovering in any action on such bond, must produce a decree of the judge specifying the amount due, and prove demand and refusal as aforesaid.

SEC. 15. When judgment in any action mentioned in section ten 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 execution in the same form for the share of each, and the costs shall be apportioned under direction of the court; and such persons are creditors to all intents, and may levy their executions in their own names, on real estate or otherwise.

SUITS BY AUTHORITY OF THE JUDGE.

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 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 for charges of administration or debts paid. (b)

SEC. 17. When an administrator has received personal estate, and has not returned, on oath, a particular inventory thereof, and in all other

(a) 12 Me., 56; 18 Me., 58; 27 Me., 74; 34 Me., 99, 372; 62 Me., 167; 63 Me., 432, 445; 69 Me., 284; 78 Me., 27, 142; 83 Me., 196.

(b) 1 Me., 145; 7 Me., 311; 27 Me., 74; 36 Me., 246; 54 Me., 151; 56 Me., 55; 65 Me., 477; 67 Me., 124; 69 Me., 284; 78 Me., 28; 79 Me., 154, 226.

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. (a)

when no inventory, and for neglect.
R. S., c. 72, § 17.

SEC. 18. Every such judgment and execution shall be recovered by the judge 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 to be accounted for and distributed, or otherwise disposed of as assets.

Judgment shall be in trust for all interested.
R. S., c. 72, § 18.
79 Me., 155.

OTHER PROBATE BONDS.

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 by executors, special administrators, guardians, testamentary trustees, surviving partners, assignees of insolvent debtors, and others, as are provided in this chapter in reference to bonds of administrators.

Like proceedings shall be had on other bonds.
R. S., c. 72, § 19.
1889, c. 236, § 2.
See c. 36, § 7;
c. 126, § 3.

(a) 4 Me., 157; 10 Me., 64; 11 Me., 168.