

MAINE STATE LEGISLATURE

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REPORTS
OF
THE COMMISSIONER
AND
THE LEGISLATIVE COMMISSION
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TITLE SIX.

Powers and Duties of Courts of Probate.

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CHAPTER 67.

Courts of Probate.

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Courts of Record. Jurisdiction in Equity.

Sec. 1. Courts of record; seal; punishment for contempt. R. S. c. 65,
§ 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.

47 Me. 86; 63 Me. 248.

Restoration of probate records of Cumberland county, P. & S. L., 1909, c. 85, c. 299; 1911, c. 298.

Sec. 2. Jurisdiction in equity. 1915, c. 285. The courts of probate shall have jurisdiction in equity, concurrent with the supreme judicial court, of all cases and matters relating to the administration of the estates of deceased persons, to wills, and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon bill or petition according to the usual course of proceedings in equity.

Selection, Powers and Duties of Judges of Probate.

Sec. 3. Judges, how selected; terms commence, when. R. S. c. 65, § 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; 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.

See Const. Me. Art. vi, § 7; c. 7, § 53; c. 83, §§ 1-4.

Sec. 4. Officers shall execute processes and attend courts; witnesses to appear under penalty. R. S. c. 65, § 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.

47 Me. 86.

Sec. 5. Judges shall have fixed days and places for holding court. R. S. c. 65, § 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; 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 judge or vacancy in the office at the time of holding any court, the register may adjourn the same until the judge can attend, or some other probate judge can be notified and attend.

27 Me. 116; 109 Me. 423.

Sec. 6. Action in vacation. R. S. c. 65, § 4. 1915, c. 82. 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. Judges of probate may also approve bonds and issue commissions to take depositions, in vacation.

Sec. 7. Term of probate court at Fort Kent. R. S. c. 65, § 5. 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 by public notification as provided in section five.

Sec. 8. Probate judges may interchange duties. R. S. c. 65, § 6. 1905, c. 9. 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; the judges may interchange services or perform each others' duties when they find it necessary or convenient, 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

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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.

79 Me. 37.

Sec. 9. Jurisdiction. R. S. c. 65, § 7. 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.

32 Me. 103; 45 Me. 287; 63 Me. 249; 74 Me. 89; 81 Me. 32, 225; 100 Me. 149; 101 Me. 547; 105 Me. 245, 388.

Note. Jurisdiction is conferred upon judges of probate in the following cases:
 To determine questions relating to inheritance taxes, c. 69, § 5.
 To approve transfer of funds held for religious or benevolent purposes, c. 17, § 34.
 In cases of persons suffering from use of drugs, c. 19, § 123.
 In cases of neglected children, c. 64, § 53.
 Of proceedings for support of family, c. 66, § 9.
 To decree judicial separation of husband and wife, c. 66, § 10.
 In case of shipwrecked goods, c. 43, §§ 7, 12, 17.
 In cases involving custody of children, c. 64, §§ 45, 54.
 In sales of contingent remainders, c. 78, §§ 4-6.
 In cases of contribution under wills, c. 79, § 14.
 To issue writ of habeas corpus in case of insane persons under arrest or imprisoned, c. 104, § 38.
 To take depositions in perpetuum, c. 112, § 22.
 To take examination of poor debtor, c. 115, § 22.
 To take bond for safe-keeping of insane criminals, c. 139, § 3.
 To commit to state school for girls, c. 144, § 20.
 To commit to insane hospitals, c. 145, § 25; to home for feeble-minded, § 49.
 To release on habeas corpus from insane hospital, c. 145, § 38.

Sec. 10. Judge of probate may appoint stenographer; duties. R. S. c. 65, § 8. The judge of any court of probate or court of insolvency, may appoint a stenographer to report the proceedings at any hearing or examination 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 typewritten transcript of his notes 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.

Sec. 11. Transcript of testimony shall be read to person testifying, and signed when required by law; otherwise deemed correct without signing. R. S. c. 65, § 9. 1915, c. 282. In cases where the person testifying or submitting to examination is required by law to sign his testimony or examination, the transcript made as provided in the preceding section 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 accurate,

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. When the reading of a transcript is waived as provided by this section, such transcript shall be deemed correct. In all other cases the transcript need not be signed but shall be deemed to be complete and correct without signing and shall have the same effect as if signed.

Sec. 12. Certified copies of notes shall be taken as evidence. R. S. c. 65, § 10. 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 transcript of such testimony or examination, taken by such stenographer, is evidence to prove the same.

Sec. 13. Correction of mistakes in transcript. R. S. c. 65, § 11. 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. 14. When examination is before some person appointed by judge, he may also appoint a stenographer. R. S. c. 65, § 12. 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 ten, 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. 15. Transcripts deemed original papers. R. S. c. 65, § 13. All transcripts made and signed as herein provided, shall be deemed original papers.

Sec. 16. Court first commencing probate proceedings, to have jurisdiction. R. S. c. 65, § 14. 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 jurisdiction assumed in any case, except in cases of fraud, so far as

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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.

58 Me. 227; 63 Me. 249; 74 Me. 89; 77 Me. 250; 81 Me. 224.

Sec. 17. When judge or register is interested, proceedings shall be in adjoining county. R. S. c. 65, § 15. 1907, c. 38. 1915, c. 84. When a judge or register of probate is interested in his own right, 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 the person deceased, to an amount in either case of not less than one hundred dollars, or is named as executor, trustee, or guardian of minor children, in the will of any deceased resident of the county, 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 proceeding therein shall be transferred to the probate court in any adjoining county, and there remain till completed, as if such court had had original jurisdiction thereof, unless said disability is removed before that time. Whenever in any case within the provisions of this section, the disability of the judge or register is removed before the proceedings have been fully completed, the proceedings shall then be transferred to the probate court in the county of original jurisdiction or to the probate court which otherwise would have had jurisdiction; 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.

See § 30; c. 72, § 1; 79 Me. 36.

Sec. 18. Judge to certify unfinished acts of his predecessor. R. S. c. 65, § 16. Every judge, upon entering on the duties of his office, shall examine the records, decrees, 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.

104 Me. 462.

Sec. 19. Oaths required may be taken before certain officials within or without the state. R. S. c. 65, § 17. 1913, c. 52. 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 notary public, 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. When any person of whom such oath is required, including any person making an affidavit in support of a claim against an estate, resides temporarily or permanently without the state, the oath may be taken before a notary public without the state, a commissioner for the State of Maine, or a United States Consul.

Sec. 20. Judges shall not be counsel in cases incompatible; nor draft documents, which they are required to pass upon. R. S. c. 65, § 18. 1915, c. 312. 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; nor shall any judge of probate draft or aid in drafting any document or paper which he is by law required to pass upon.

Selection, Powers and Duties of Registers of Probate.

Sec. 21. Registers, how elected, bond, powers and duties. R. S. c. 65, § 19. 1915, c. 95, § 1. 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 eighty-three, 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 give bond to the treasurer of their county with sufficient sureties, in the sum of one thousand dollars; 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.

See c. 83, §§ 1-4; Const. Me. Art. vi, § 7; Art. ix, § 1.

Sec. 22. Condition of bond. R. S. c. 65, § 20. 1915, c. 95, § 2. The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer quarterly, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records, and to faithfully discharge all other duties of the office. 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 time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.

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Sec. 23. Duties; may act as auditors; records attested by volume; binding of original papers. R. S. c. 65, § 19. 1909, c. 46. 1913, c. 119. 1915, c. 95, § 1; c. 283. Registers of probate shall have the care and custody of all files, papers and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship granted, bonds approved, accounts allowed, all petitions for distribution and decrees thereon, and all petitions, decrees and licenses relating to the sale, exchange, lease or mortgage of real estate, all petitions and decrees relating to adoption and change of name, 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 will show the exact condition of each case. Any register may act as an auditor of accounts when requested so to do by the judge and his decision shall be final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume, and it shall be deemed to be a sufficient attestation of such records, when each volume thereof bears the attest with the written signature of the register or other person authorized by law to attest such records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective offices, and when so bound and indexed such inventories and accounts shall be deemed to be recorded in all cases where the law requires a record to be made, and no further record shall be required.

Note. Other records which registers are required to make:

Cases transferred to other counties, c. 67, § 17.

Foreign wills, c. 68, § 14.

Affidavit of notice, c. 68, § 43.

Appointment of agent, c. 68, § 44.

Judgment on partition, c. 70, § 13.

Allowance, c. 70, § 14.

Account of distribution, c. 70, § 21.

Appointment of agent by non-resident guardian, c. 72, § 13.

As to non-resident guardians, c. 72, § 28.

Of change of name, c. 72, § 42.

Appointment of agent by non-resident trustees, c. 73, § 4.

As to non-resident executors, etc., c. 76, § 13.

Affidavit of notice of sale of real estate, c. 76, § 24.

Decree as to will when right of widow is in doubt, c. 80, § 13.

Waivers and notices of intention to claim share, by widow or widower, c. 80, § 14.

Proceedings on commitment to insane hospitals, c. 145, § 26.

Duties of registers of probate as to inheritance taxes, c. 69, §§ 6, 7, 9.

Sec. 24. Register to certify copy of will to register of deeds if real estate is devised. R. S. c. 65, § 21. 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.

See c. 12, § 18.

Sec. 25. Beneficiaries to be notified of bequests; copy to be furnished on request. 1905, c. 89. Registers of probate shall, within the time specified in the preceding section, notify by mail all beneficiaries under any will, that bequests have been made to them, stating the name of the tes-

tator and executor, or administrator with the will annexed. Beneficiaries shall, upon application, be furnished with a copy of so much of the will as relates to them, upon payment of a fee of fifty cents, provided the copy does not exceed ten lines of legal cap paper of not less than ten words in each line, and five cents for each additional line of ten words.

Sec. 26. If register absent or dead, judge may appoint register pro tem. R. S. c. 65, § 23. 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.

Sec. 27. Judges of probate and of the supreme court to inspect register's conduct of his office. R. S. c. 65, § 24. Every judge of probate and the justices of the supreme court of probate, shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall put it in suit; and the money thus recovered shall be applied 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.

Sec. 28. Proceedings, if register is incapable or neglects his duties. R. S. c. 65, § 25. 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.

Sec. 29. Records, in case of vacancy. R. S. c. 65, § 26. When there is a vacancy in the office of register, and the records are incomplete, they may be completed and certified by the person appointed to act as register, or by the register's successor.

63 Me. 250.

Sec. 30. Register not to be counsel in probate cases; shall not draft or aid in drafting any paper which he is required to record. R. S. c. 65, § 27. No register shall be an 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 seventeen of this chapter, nor be in any manner interested in the fees and emoluments arising therefrom, in such capacity; nor 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. 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

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be recovered by any complainant in an action of debt for his benefit, or by indictment for the benefit of the county.

See c. 12, § 14; c. 84, § 15.

Supreme Court of Probate.

Sec. 31. Supreme court of probate; appellate jurisdiction thereof. R. S. c. 65, § 28. 1913, c. 49. 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, or any order or decree requiring any administrator, executor, guardian or trustee to give an additional or new official bond, or any order or decree under section thirty-eight of chapter sixty-eight, or any order or decree removing a guardian from office, 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.

As to appeal from proceedings under c. 66, § 9; see 103 Me. 210; 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; 97 Me. 279; 100 Me. 148; 106 Me. 114; 108 Me. 351; 113 Me. 233.

Sec. 32. Appellant to file bond and reasons of appeal; service on other parties; service on attorney of record of a non-resident sufficient. R. S. c. 65, § 29. 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, 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.

See c. 72, § 39; 11 Me. 251; 44 Me. 63; 53 Me. 185; 82 Me. 211; 85 Me. 60, 360; 93 Me. 248; 94 Me. 423; 108 Me. 351; 111 Me. 188; 113 Me. 232.

Sec. 33. Court may allow appeal accidentally omitted. R. S. c. 65, § 30. 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.

58 Me. 227; 79 Me. 33; 81 Me. 182; 85 Me. 60; 92 Me. 253, 361; 98 Me. 203, 420; 103 Me. 360; 107 Me. 275; 108 Me. 351; 110 Me. 4; 111 Me. 188; 113 Me. 233.

Sec. 34. Proceedings when appeal is not prosecuted. R. S. c. 65, § 31. 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.

107 Me. 275; 108 Me. 351.

Sec. 35. Proceedings in probate court cease after appeal. R. S. c. 65, § 32. 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 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.

108 Me. 351.

Sec. 36. Appeal to be heard at next term; proceedings. R. S. c. 65, § 33. 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 framed for that purpose under the direction of the court, and so tried.

45 Me. 584; 53 Me. 186; 64 Me. 208; 73 Me. 138; 80 Me. 22, 57; 107 Me. 249; 108 Me. 351.

Sec. 37. Rights of claimants under heir. R. S. c. 65, § 34. 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.

81 Me. 223; 100 Me. 148; 108 Me. 351.

Costs and Fees.

Sec. 38. Costs in contested cases. R. S. c. 65, § 35. 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.

25 Me. 243; 78 Me. 299; 85 Me. 407; 88 Me. 167.

Sec. 39. Fees to be paid by executor or administrator. R. S. c. 65, § 22. For making and certifying to the register of deeds copies of devises of real estate, 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

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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.

See c. 12, § 18.

Sec. 40. Fees of registers. R. S. c. 65, § 36. The register shall receive for such copies as are taxable by law twelve cents a 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, twenty-five cents; 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.

Sec. 41. Fees of register in case of foreign estates. R. S. c. 65, § 40. 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.

Sec. 42. Account quarterly for fees. 1905, c. 151. Registers of probate shall account quarterly under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly on the first days of January, April, July and October of each year.

Sec. 43. Fees of executors, administrators, guardians, surviving partners and trustees. R. S. c. 65, § 37. 1911, c. 78. 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 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; and trustees may receive yearly such additional sum for the care and management of the trust property as the court having jurisdiction of said trust shall allow not exceeding, however, in any one year one per cent of the principal of said trust fund, said additional sum so allowed to be charged against principal or income, or both and if charged against both, to be charged in such proportions as the said court shall determine; 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.

32 Me. 160; 104 Me. 523; 111 Me. 383.

Sec. 44. Pay of appraisers and commissioners. R. S. c. 65, § 38. 1887, c. 40. Appraisers of estates, commissioners for examining claims against insolvent estates or determining disputed claims, and commissioners appointed to make division of estates, may be allowed a reasonable compen-

sation for the time actually employed, including travel and expenses. 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.

Fees of witnesses in probate courts; c. 118, § 9.

Sec. 45. Expenses of partition. R. S. c. 65, § 39. When a partition of real estate 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.

Sec. 46. Compensation of stenographers. R. S. c. 65, § 41. 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-two of chapter seventy-five.

Sec. 47. Stenographers shall furnish copies. R. S. c. 65, § 42. Such stenographers shall also furnish correct and legible longhand or typewritten 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.

Rules of Practice.

Sec. 48. Rules of practice and procedure; blanks; revision of rules and blanks; approval. R. S. c. 65, § 43. 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, and as thereafter revised and approved, 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, and as thereafter revised and approved, shall be used

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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.

106 Me. 388.

Sec. 49. Blanks and records. R. S. c. 65, § 44. 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.

Notices.

Sec. 50. Notice in probate proceedings, defined. R. S. c. 65, § 45. 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.

Sec. 51. Parties may select newspaper for notices. R. S. c. 65, § 46. 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.

CHAPTER 68.

Appointment, Powers and Duties of Executors and Administrators.

- Sections 1-2 Limitations.
 Sections 3-12 Wills and Executors.
 Sections 13-16 Wills made in other States and Countries.
 Section 17 Nuncupative Wills.
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 Sections 34-39 Special Administrators.
 Section 40 Executors in their own wrong.
 Sections 41-70 Provisions relating to both Executors and Administrators.
 Sections 71-73 Embezzlement of Property of Deceased Persons.

Limitations.

Sec. 1. Limitation as to minimum amount of property; as to period of time since death. R. S. c. 66, § 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.

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

Sec. 2. Administration on estate of an intestate may be taken in certain cases after twenty years from death. R. S. c. 66, § 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.

Sec. 3. Wills may be deposited in the registry of probate; proceedings after death of testator. R. S. c. 66, § 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. Duty of executors and others having custody of wills. R. S. c. 66, § 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 law; and he is also liable to any party for the damage which he has sustained by such neglect.

5 Me. 493; 6 Me. 276; 52 Me. 172; 80 Me. 57.

Sec. 5. Public notice of hearing on petitions for probate of wills. R. S. c. 66, § 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.

Sec. 6. Depositions may be taken. R. S. c. 66, § 6. When any of the witnesses of 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 twelve, or before a magistrate authorized by commission from the judge, shall be competent evidence in the absence of such witnesses.

46 Me. 247.

Sec. 7. If no objection to a will, one witness or one deposition only is required. R. S. c. 66, § 7. 1915, c. 289. 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, and the affidavit of such witness or witnesses taken before the register of probate may be received as evidence; or, in the cases described in the preceding section, upon the depositions of one or more of the subscribing witnesses, substantiating the facts.

See c. 79, § 15.

Sec. 8. When letters testamentary may be granted. R. S. c. 66, § 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.

See § 23; 46 Me. 237, 248; 101 Me. 75; 102 Me. 305; 105 Me. 246.

Sec. 9. Wills lost or carried out of the state, how to be proved; time during which will is lost, shall not be taken as part of statute limitation. R. S. c. 66, § 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, or is in the custody of any tribunal or magistrate in another state or in a foreign country, and cannot be produced in this state, 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.

73 Me. 603; 80 Me. 54; 93 Me. 296; 101 Me. 76.

Sec. 10. Will may prescribe what bond executor shall give. R. S. c. 66, § 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, or without sureties, when the will so provides; but when it appears necessary or proper, the judge may require him to give bond with sureties as in other cases.

See § 41; 84 Me. 482; 93 Me. 362, 374; 105 Me. 246.

Sec. 11. Bond of executor. R. S. c. 66, § 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, or with a surety company authorized to do business in the state, as surety, in such sum as the judge orders, payable to him or his successors, conditioned, in substance, as follows:

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

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credits of the testator, which are by law to be administered, and which come to his possession or knowledge.

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

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.

Corporate suretyship authorized, c. 53, § 156; see c. 52, § 63; c. 100, § 17; 46 Me. 248; 54 Me. 456; 56 Me. 301; 60 Me. 416; 77 Me. 157; 84 Me. 146.

Sec. 12. What executors may act; powers of majority. R. S. c. 66, § 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.

54 Me. 456; 84 Me. 146.

Wills Made in Other States or Countries.

Sec. 13. Wills made in other states or countries, proved and allowed here. R. S. c. 66, § 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.

84 Me. 146; 85 Me. 378; 105 Me. 245.

Sec. 14. Wills proved in other states or countries, allowed in this state. R. S. c. 66, § 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 instrument should be allowed in this state as the will of the deceased, he shall order the copy to be filed and recorded.

4 Me. 138; 85 Me. 378; 92 Me. 177; 101 Me. 547; 110 Me. 471.

Sec. 15. Validity of such wills, established. R. S. c. 66, § 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.

12 Me. 131; 85 Me. 378; 92 Me. 177; 101 Me. 547.

Sec. 16. Letters may be granted and the estate settled. R. S. c. 66, § 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. The provisions of section ten of this chapter, apply to such proceedings, or the court may, upon issuing letters testamentary, require such bond, with or without sureties, as may have been required by the court before which such will was originally approved and allowed.

85 Me. 378; 101 Me. 547; 105 Me. 245.

Nuncupative Wills.

Sec. 17. Nuncupative wills may be approved; notice. R. S. c. 66, § 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.

See c. 79, §§ 18-20.

Administrators.

Sec. 18. Grant of administration on the estates of persons deceased, intestate. R. S. c. 66, § 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 as he deems suitable.

22 Me. 553; 32 Me. 103; 102 Me. 305; see c. 95, § 8.

Sec. 19. Administration on estates of persons civilly dead. R. S. c. 66, § 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

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be administered upon and distributed, and his contracts and relations to persons and things are affected, in all respects, as if he were dead.

47 Me. 469; 74 Me. 238.

Sec. 20. Administration granted without bond, under certain conditions. 1915, c. 238, § 1. A judge of probate may in his discretion grant administration or administration with the will annexed, upon any estate, to the widow or next of kin, without requiring bond for the faithful discharge of the duties of the trust, whenever all persons interested in said estate who are of full age and legal capacity, other than creditors, assent in writing thereto; provided that public notice shall first be given upon the petition for such appointment. The judge of probate may, however, upon or after granting letters of administration or letters of administration with the will annexed, whenever it appears necessary or proper, require that a bond be given as in other cases.

Sec. 21. Appointment of administrators, if judge of probate refuses or delays. R. S. c. 66, § 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 judicial 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.

Sec. 22. Bonds of administrators. R. S. c. 66, § 21. Except when a bond is not required as provided in section twenty, every administrator, before entering on the execution of his trust, shall give bond with good and sufficient sureties resident within the state, or with a surety company authorized to do business in the state, as surety, in such sum as the judge orders, payable to him or his successors, conditioned, in substance, as follows:

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.

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

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.

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.

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.

See c. 100, § 17; c. 53, § 156; 62 Me. 308; 65 Me. 471; 93 Me. 296; 105 Me. 389.

Administrators with the Will Annexed, and De Bonis Non.

Sec. 23. Administrator with will annexed, when to be appointed. R. S. c. 66, § 22. 1909, c. 2. 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 any suitable person having regard to the best interests of the persons interested under such will; 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 at full age, when he may be admitted as joint executor with the former, upon giving bonds as before provided.

78 Me. 141; 102 Me. 305.

Sec. 24. Removal of executors or administrators; judge may commit administration to other persons. R. S. c. 66, § 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.

Sec. 25. Authority of administrators de bonis non. R. S. c. 66, § 24. An administrator de bonis non shall collect and receive from his predecessor or his heirs, executors or administrators, and from all other sources, all the property and assets of the estate of the deceased, including the proceeds from the sale of real estate, not already distributed, and shall account for and distribute the same as though he were the original administrator or executor; and all sums recovered on any probate bond shall be a part of the estate, but so much thereof as is recovered on any real estate bond shall be distributed as is provided for the distribution of the proceeds of the sale of real estate.

113 Me. 357.

Sec. 26. Marriage of executrix or administratrix. R. S. c. 66, § 25. When an unmarried woman, who is joint or sole executrix or administratrix, marries, her husband shall not exercise such trust in her right, nor is her authority thereby extinguished.

56 Me. 302; 63 Me. 432.

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Sec. 27. Death of executor. R. S. c. 66, § 26. 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.

64 Me. 422.

Sec. 28. Bond of administrator with the will annexed, and de bonis non. R. S. c. 66, § 27. Except when a bond is not required as provided in section twenty, 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.

78 Me. 141.

Public Administrators.

Sec. 29. Appointment, duty and bonds of public administrators. R. S. c. 66, § 28. When a vacancy occurs in any county, the governor, with the advice and consent of the 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 bond 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.

Sec. 30. When the judge may revoke his powers. R. S. c. 66, § 29. 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.

Sec. 31. Balance in his hands to be paid to treasurer of state. R. S. c. 66, § 30. 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.

Sec. 32. Notice to be given to treasurer. R. S. c. 66, § 31. 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.

Sec. 33. Balance, not claimed in twenty years, forfeited to state. R. S. c. 66, § 32. If the heirs, widow, or next of kin, to any such intestate, or other lawful claimants, do not demand such money within twenty years from the time of its deposit, it shall be forfeited to the state.

Special Administrators.

Sec. 34. Appointment of special administrator; bond. R. S. c. 66, § 33. 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.

76 Me. 473; 102 Me. 166.

Sec. 35. His powers and duties. R. S. c. 66, § 34. 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.

63 Me. 355; 76 Me. 473; 102 Me. 166.

Sec. 36. His compensation; when his powers cease; proceedings. R. S. c. 66, § 35. Such administrator shall be allowed such compensation for his services, as the judge thinks reasonable, not exceeding that allowed to other administrators; and on the granting of letters testamentary or of administration, his powers 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.

See c. 67, § 43; 111 Me. 320.

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Sec. 37. Not to be sued by creditor without decree of judge. R. S. c. 66, § 36. 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.

See c. 92, § 15.

Sec. 38. In certain cases, letters may be granted to executor, pending appeal; proceedings. R. S. c. 66, § 37. 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. Special administrators may be appointed to prosecute claims arising out of French spoliations. R. S. c. 66, § 38. In all cases of claims against the United States arising out of French spoliations, 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.

95 Me. 274.

Executors in Their Own Wrong.

Sec. 40. Executors in their own wrong; liability. R. S. c. 66, § 39. 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.

15 Me. 117; 48 Me. 349; 54 Me. 482; 57 Me. 25; 58 Me. 435; 65 Me. 420;
70 Me. 341; 87 Me. 325.

Provisions Relating to Both Executors and Administrators.

Sec. 41. Application that no bond be required, must be stated in petition and in public notice on petition. 1915, c. 238, § 2. Letters testamentary shall not issue under the provisions of section ten of this chapter, nor shall administration or administration with the will annexed be granted without bond under the provisions of section twenty of this chapter, unless the petition for probate of the will or for administration contains an application that no bond, or a bond without sureties, be required, and the fact of such application is stated in the public notice on such petition.

Sec. 42. Notice of appointment. R. S. c. 66, §§ 40, 41. 1909, c. 16, 1915, c. 56. Every executor or administrator, within three months after his appointment or within such further time, not exceeding three months, as the judge allows, shall cause public notice of his appointment to be published in some newspaper published in the county where the deceased last dwelt, if in the state, and shall give such further notice as the judge in writing directs. If the deceased last dwelt in an unorganized township, or 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.

See c. 92, § 14; 84 Me. 145.

Sec. 43. Proof of notice. R. S. c. 66, § 42. An affidavit of the executor or administrator or of the person employed by him to give such notice shall be filed with a copy of the notice in the registry of probate within one year after his appointment, and the register shall note thereon the time of filing, enter the same on his docket, and record said affidavit, and such record is evidence of the time, place and manner in which the notice was given. In case an appeal is taken from the appointment of an executor or administrator, then said affidavit shall be filed, noted, entered and recorded as above provided within four months after final decree. In case of a vacancy in the office of executor or administrator before affidavit has been filed as aforesaid, then said affidavit shall be filed as above provided within four months after the appointment of the administrator de bonis non or the administrator with the will annexed. Whenever an executor or administrator fails to give said notice or to file such affidavit as above provided he may be removed from his trust by the judge of probate, in his discretion, upon petition of any interested party.

84 Me. 145.

Sec. 44. Non-residents must appoint agent or attorney in state. R. S. c. 66, § 43. 1915, c. 42. 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. Such appointment shall be made by a writing filed and recorded in the registry of probate for the county in which the principal is appointed, and by such writing the subscriber shall agree that the service of any legal process against him as such executor or administrator, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such executor or administrator shall, if made on such agent, have like effect as

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

84 Me. 145.

Sec. 45. Inventory, when to be returned. R. S. c. 66, § 44. 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.

See c. 74, § 1; 61 Me. 471; 84 Me. 94.

Sec. 46. Appointment of appraisers. R. S. c. 66, § 45. 1915, c. 297. The real estate, goods and chattels, comprised in the inventory, shall be appraised by one or three disinterested persons appointed by the judge or register, and sworn; and when any part of such estate is in another county, the judge or register may appoint appraisers for such county to return an inventory thereof, who shall also be sworn. Only one appraiser may be appointed, if in the opinion of the judge or register the nature of the property makes it desirable so to do; otherwise three appraisers shall be appointed.

See c. 86, § 54.

Sec. 47. Warrants may be revoked. R. S. c. 66, § 46. 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. 48. How choses in action shall be appraised. R. S. c. 66, § 47. 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.

See c. 86, § 54.

Sec. 49. Additional inventories may be required. R. S. c. 66, § 48. 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 admin-

istrator, 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. 50. Articles to be omitted from inventory. R. S. c. 66, § 49. 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 schoolbooks 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 twenty-one of chapter eighty.

61 Me. 471; 79 Me. 234; 84 Me. 523.

Sec. 51. When additional bonds may be required. R. S. c. 66, § 50. 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 sureties, and if said executor or administrator does not furnish the same, his authority may be revoked and some other person appointed.

Sec. 52. When sales of personal estate may be ordered; collection of demands sold. R. S. c. 66, § 51. 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. 53. Liability of executors and administrators to account. R. S. c. 66, § 52. 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 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

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devisees, are shown to be of greater value than they were appraised at, he shall account for the difference.

51 Me. 173; 71 Me. 450.

Sec. 54. Reference or compromise of claims; authority to carry on business. R. S. c. 66, § 53. 1915, c. 28. 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. And whenever it is made to appear to the judge that it is clearly for the benefit of all parties interested, and will result in a material increase of the assets of the estate, the judge may authorize and direct that the business of the deceased, in whole or in part, shall, for a limited time, to be determined by him, be carried on by the executor or administrator, as a going business.

26 Me. 538; 55 Me. 124.

Sec. 55. Special commissioners may be appointed on disputed claims. R. S. c. 66, § 54. 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. Sections five, six, seven, eight, twelve, thirteen, fourteen, sixteen and seventeen of chapter seventy-one, 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.

See c. 71, § 26; c. 74, § 6; c. 87, § 166; 61 Me. 239; 67 Me. 116, 225, 459; 71 Me. 162; 109 Me. 66.

Sec. 56. Executor or administrator neglecting to pay debts, guilty of waste. R. S. c. 66, § 55. 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. 57. Accounts, when rendered; notice and examination. R. S. c. 66, § 56. 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.

See c. 71, §§ 21, 25; c. 70, § 21; 18 Me. 58; 27 Me. 83; 49 Me. 409, 562; 64 Me. 356; 65 Me. 448; 95 Me. 526; 105 Me. 389.

Sec. 58. All property received, to be accounted for. R. S. c. 66, § 57. 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 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.

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

Sec. 59. Also income of real estate used. R. S. c. 66, § 58. 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.

62 Me. 309; 63 Me. 355; 87 Me. 282.

Sec. 60. May insure property. R. S. c. 66, § 59. 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. 61. Allowance for monuments or gravestones; for gravestones and funeral expenses of widow. R. S. c. 66, § 60. 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 gravestones; 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 gravestones, 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. 62. Certain debts and expenses of deceased married women may be paid. R. S. c. 66, § 61. 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. 63. Mutual debts of husbands and wives to be paid. R. S. c. 66, § 62. 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. 64. Care of lots may be provided for by executors and administrators. R. S. c. 66, § 63. Executors and administrators may pay to cemetery corporations or to cities or towns having burial places therein, a reasonable sum of money for the perpetual care of the lot in which the body of their testate or intestate is buried, and the monuments thereon. The judge of probate shall determine, after notice to all parties in interest, to whom the same shall be paid and the amount thereof, and such sum shall be allowed in the accounts of such executors and administrators.

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Sec. 65. Claims verified by affidavit, if required. R. S. c. 66, § 64. 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.

72 Me. 345.

Sec. 66. Claims of executors or administrators, how to be adjusted. R. S. c. 66, § 65. 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.

74 Me. 486; 110 Me. 447; 112 Me. 156.

Sec. 67. When one of several executors or administrators is removed or resigns, proceedings. R. S. c. 66, § 66. 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. Chancery remedies between coexecutors and coadministrators. R. S. c. 66, § 67. The supreme judicial court may hear and determine in equity all disputes and controversies between coexecutors and coadministrators, 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 copartners.

See c. 82, § 6, ¶ vii.

Sec. 69. Previous acts of those removed are valid. R. S. c. 66, § 68. 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.

Sec. 70. Foreign executors, administrators, guardians, conservators or trustees may be licensed to collect and receive personal estate. R. S. c. 66, § 69. 1913, c. 28. Any executor, administrator, guardian, conservator of the property of any person living out of the state, or trustee duly appointed in another state or in a foreign country and duly qualified and acting, who may be entitled to any personal estate in this state, may file an authenti-

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

Embezzlement of Property of Deceased Persons.

Sec. 71. Embezzlement of estate of deceased persons. R. S. c. 66, § 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, embezzled 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 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.

See c. 67, § 10; 7 Me. 470; 47 Me. 85; 57 Me. 25; 72 Me. 232; 80 Me. 152; 104 Me. 495.

Sec. 72. Persons entrusted with estate of deceased, may be cited to account. R. S. c. 66, § 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.

Sec. 73. Penalties for refusal to appear and answer when cited. R. S. c. 66, § 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

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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. 41, § 8.

No trust or banking company shall act as administrator, c. 52, § 84.

Compensation of executors and administrators, c. 67, § 43.

Executors and administrators to pay amount of stenographer's fees, c. 67, § 46.

CHAPTER 69.**Succession Taxes.**

- Sections 1-13 Assessment and Collection.
- Sections 14-21 Duties of Executors and Administrators.
- Sections 22-26 Estates of Non-residents.
- Sections 27-29 General Provisions.

Assessment and Collection.

Sec. 1. Property subject to inheritance tax; exemption of personal property of non-residents. R. S. c. 8, § 69. 1909, c. 186. 1911, c. 163, § 1. 1913, c. 190, § 3. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, by allowance of a judge of probate to a widow or child, by deed, grant, sale or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, and except as herein otherwise provided, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the state as hereinafter provided. Property which shall so pass to or for the use of (Class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adoptive parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share, in excess of the exemption hereinafter provided, of one per cent if such value does not exceed fifty thousand dollars, one and one-half per cent if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child or adoptive parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (Class A) shall in each case be five hundred dollars. Property which shall so pass to or for the use of (Class B) a brother, sister, uncle, aunt, nephew, niece or cousin of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and

the tax of this class shall be four per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, four and one-half per cent if its value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars and five per cent if its value exceeds one hundred thousand dollars. Property which shall pass to or for the use of any others than members of Class A, Class B and the institutions excepted in the first sentence of this section, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be five per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, six per cent if its value exceeds fifty thousand and does not exceed one hundred thousand dollars and seven per cent if its value exceeds one hundred thousand dollars. Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid. All personal property or any interest therein belonging to any deceased resident of another state, shall be exempt from the payment of any inheritance tax under this section, provided said other state assesses no inheritance tax upon the personal property of decedents who were resident in this state.

86 Me. 495; 88 Me. 587; 108 Me. 389.

Sec. 2. Taxation of life estates and remainders; when impossible to compute present value of interest, attorney-general may settle tax. R. S. c. 8, § 70. 1909, c. 186. 1913, c. 128. Whenever property shall descend by devise, descent, bequest or grant to a person for life or for a term of years and the remainder to another, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the value of the prior estate shall be determined by the Actuaries' Combined Experience Tables at four per cent compound interest and a tax imposed at the rate prescribed in the preceding section for the class to which the devisee, legatee or grantee of such estate belongs and a tax shall be imposed at the same time upon the remaining value of such property at the rate prescribed in said section for the class to which the devisee, legatee or grantee of such remainder belongs, subject to the exemptions provided in the preceding section.

In every case in which it is impossible to compute the present value of any interest, by reason of such interest being conditioned upon the happening of a contingency or dependent upon the exercise of a discretion or subject to a power of appointment or otherwise, the attorney-general may effect such settlement of the tax as he shall deem for the best interest of the state and payment of the sum so agreed upon shall be a full satisfaction of such tax.

Sec. 3. Excess of reasonable compensation to executors shall be taxed. R. S. c. 8, § 71. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed a reasonable compensation for their services, such excess shall be liable to such tax, and the court of probate having jurisdiction of their accounts shall determine the amount of such reasonable compensation.

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Sec. 4. Property of a deceased resident of this state subject to taxation in another state, not liable to taxation in this state. 1909, c. 187, § 7. 1913, c. 190, § 1. Property belonging to a deceased resident of this state which shall be distributed by order of the probate court subsequent to the second day of July, nineteen hundred and nine, and which is not therein at the time of his death, shall not be taxable under the provisions of this chapter if legally subject in another state or country to a tax of like character and amount to that imposed by section one, and if such tax be actually paid or guaranteed or secured in accordance with the law of such other state or country; if legally subject in another state or country to a tax of like character, but of less amount than that imposed by section one and such tax be actually paid, guaranteed or secured as aforesaid, such property shall be taxable under the provisions of section one to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such property would otherwise be liable under this chapter.

Sec. 5. Courts of probate shall have jurisdiction to determine all questions relating to tax. R. S. c. 8, § 83. 1909, c. 187, § 5. The court of probate, having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to the taxes imposed by this chapter that may arise hereunder affecting any devise, legacy or inheritance, subject to appeal as in other cases, and the attorney-general shall represent the interests of the state in any such proceedings. The judge of probate, having jurisdiction as aforesaid, shall fix the time and place for hearing and determining such questions and shall give public notice thereof and personal notice to the executor, administrator or trustee. Appeals in behalf of the estate shall be taken in the name of the executor, administrator or trustee and service upon the attorney-general shall be sufficient. When appeals are taken by the state, service shall be made upon the executor, administrator or trustee.

86 Me. 507.

Sec. 6. Registers of probate shall annually deliver to attorney-general list of estates appearing to be liable to inheritance tax; duties of attorney-general; costs. 1905, c. 124. 1909, c. 187, § 1. The registers of probate in the several counties shall deliver to the attorney-general, on or before the first day of June in each year, a list of all estates in which it appears from the record that some part of said estate may be liable to an inheritance tax, and in which a will has been offered for probate or administration granted for more than one year prior to the time of filing such list, and in which no inheritance tax has been assessed or paid. Said list shall contain the name of the deceased, the date of the administration granted, and the name and residence of the administrator or executor. The attorney-general shall promptly investigate all cases so reported, by notifying the executor, administrator, trustee, heir or devisee, and in such other manner as he may determine, and if it appears to him that in any such case an inheritance tax is due and has not been paid to the state, he shall, unless said tax is paid, within thirty days after notice from him to the executor, administrator, trustee, heir or devisee that the same is due, cite

the executor, administrator, trustee, heir or devisee, whose duty it is to pay said tax, before the proper probate court in such manner as is provided for the citation of trust officers in probate proceedings, and shall take all other action necessary to secure the payment of said tax. In such proceedings the attorney-general shall recover costs to be fixed and determined by the judge of probate in his discretion, which costs may be retained by said attorney-general for his own use and shall be additional to any salary allowed to him by law.

108 Me. 389.

Sec. 7. Copy of inventory of any estate subject to tax, shall be furnished attorney-general. R. S. c. 8, § 79. 1909, c. 187, § 3. A copy of the inventory of every estate, any part of which may be subject to a tax under the provisions of section one, or if the same can be conveniently separated, then a copy of such part of such inventory with the appraisal thereof, shall be sent by mail by the register of the court of probate in which such inventory is filed, to the attorney-general within ten days after the same is filed. The fees for such copy shall be paid by the executor, administrator or trustee, and allowed in his account.

Sec. 8. Valuation of property. R. S. c. 8, § 82. 1909, c. 187, § 4. The value of such property as may be subject to said tax shall be its actual market value as found by the judge of probate, after public notice or personal notice to the attorney-general and all persons interested in the succession to said property, or the attorney-general or any of said persons interested may apply to the judge of probate having jurisdiction of the estate and on such application the judge shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purposes of said tax, and shall make return thereof to said probate court, which return may be accepted by said court in the same manner as the original inventory of such estate is accepted, and if so accepted it shall be binding upon the person by whom such tax is to be paid, and upon the state. And the fees of the appraisers shall be fixed by the judge of probate and paid by the executor, administrator or trustee.

86 Me. 507.

Sec. 9. When and to whom taxes shall be paid; duty of personal representative of deceased; register of probate shall send copy of petition to attorney-general. R. S. c. 8, § 72. 1909, c. 187, § 2. 1911, c. 163, § 2. All taxes imposed by section one upon the estates of deceased residents of this state shall be payable to the treasurer of state, and all taxes imposed by said section one upon the estates of non-resident decedents, to the attorney-general, by the executors, administrators or trustees at the expiration of two years after the granting of letters testamentary or of administration; but if legacies or distributive shares are paid within two years, the tax thereon shall be payable at the same time; and if the same are not so paid, interest at the rate of six per cent a year shall be charged and collected from the time the same became payable; but no such tax upon estates of residents or inhabitants of this state shall be accepted except upon presentation of a certificate from a probate court showing the amount of such tax due. It shall be the duty of the personal representative of said de-

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ceased to petition the probate court having jurisdiction to assess such taxes before the payment of any such legacies or distributive shares, and before the expiration of two years after the granting of letters aforesaid. The register of probate shall send by mail, a copy of such petition to the attorney-general at least seven days before the hearing thereon unless the attorney-general in writing waives the same.

Sec. 10. Petition of attorney-general; lien on real estate. 1911, c. 163, § 2. If no such petition is filed within the time limited, the attorney-general may file a similar petition, of which, unless notice is waived, at least fourteen days' notice shall be given such personal representative or his agent. In either case the attorney-general may appear and be heard upon the assessment of such tax and an appeal may be had from the decree of the judge of probate by either party. Real estate of which the decedent died seized or possessed, subject to taxes as aforesaid, shall be charged with a lien for all such taxes and interest, which lien may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel thereof, or by an order or decree of the probate court discharging said lien, granted upon the deposit with said court of a sum of money or a bond, sufficient to secure to the state the payment of any tax due or to become due on said real estate. Orders or decrees discharging such lien may be recorded in the registry of deeds in the county where said real estate is located.

Sec. 11. Failure to pay tax renders administrator liable; action of debt may be maintained for tax. R. S. c. 8, § 73. After failure to pay such tax, as provided in section nine, such an administrator, executor or trustee is liable to the state on his administration bond for such tax and interest, and an action shall lie thereon without the authority of the judge of probate; or an action of debt may be maintained in the name of the state against any such administrator, executor or trustee, or any such grantee, for such tax and interest. But if such administrator, executor or trustee, after being duly cited therefor, refuses or neglects to return his inventory or to settle an account, by reason whereof the judge of probate cannot determine the amount of such tax, such administrator, executor or trustee shall be liable to the state on his administration bond for all damages occasioned thereby.

Sec. 12. Proceedings when estate liable to pay inheritance tax is not before court. 1905, c. 124. 1909, c. 187, § 1. If, upon the decease of a person leaving an estate liable to pay an inheritance tax, a will disposing of such estate is not offered for probate, or an application for administration made within six months after such decease, the proper probate court upon application by the attorney-general, shall appoint an administrator for such estate; whenever such a case is brought to the attention of the attorney-general, he shall petition for administration on such estate and the judge may appoint such attorney-general or other suitable person as such administrator; the attorney-general shall be entitled to costs as in other probate proceedings.

Sec. 13. Proceeding for recovery of taxes by attorney-general. 1911, c. 163, § 4. The attorney-general shall promptly commence proceedings for the recovery of any of said taxes within six months after the same become payable; and shall commence the same when the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the non-payment of said tax. The judge of the probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require. All moneys received by the attorney-general as taxes collected under the provisions of this chapter shall be by him forthwith paid to the treasurer of state.

Duties of Executors and Administrators.

Sec. 14. Property shall not be delivered to legatee until tax is paid. R. S. c. 8, § 74. Any administrator, executor or trustee, having in charge or trust any property subject to such tax, shall deduct the tax therefrom, or shall collect the tax thereon, and interest chargeable under section nine from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

Sec. 15. All taxes payable upon real estate shall remain a charge thereon until paid. R. S. c. 8, § 75. Whenever any legacies subject to said tax shall be charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as the payment of the legacy itself could be enforced.

Sec. 16. When legacy is for a limited period, executor shall retain tax on whole amount. R. S. c. 8, § 76. If any such legacy be given in money to any person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the judge of probate having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatee on account of said tax and for such further order as the case may require.

Sec. 17. Sale of real estate to pay tax. R. S. c. 8, § 77. Administrators, executors and trustees may sell so much of the estate of the deceased as will enable them to pay said tax in the same manner as they may be empowered to do for the payment of his debts.

See c. 76, § 1.

Sec. 18. Notice to attorney-general of descent of real estate. R. S. c. 8, § 80. Whenever any of the real estate of a decedent shall so pass to another person as to become subject to said tax, the executor, administrator or trustee of the decedent shall inform the attorney-general thereof within six months after he has assumed the duties of his trust, or if the fact is

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not known to him within that time, then within one month after it does become so known to him.

Sec. 19. Whenever any property shall be refunded by legatee, tax shall be paid back. R. S. c. 8, § 81. Whenever for any reason the devisee, legatee or heir who has paid any such tax shall refund any portion of the property on which it was paid, or it shall be judicially determined that the whole or any part of such tax ought not to have been paid, said tax, or the due proportional part of said tax, shall be paid back to him by the executor, administrator or trustee.

Sec. 20. Penalty for neglect or refusal to file inventory of estate. 1909, c. 187, § 7. 1911, c. 163, § 3. If any executor, administrator or trustee neglects or refuses to file an inventory of the estate under his charge within three months from the date of the warrant of appraisal, unless such time be extended by the judge of probate, he shall be cited to file such inventory by the judge of probate and if he neglects or refuses to file such inventory within sixty days thereafter, he shall be liable to a penalty of not more than five hundred dollars which shall be recovered in an action of debt by the attorney-general for the use of the state, and the register of probate shall notify the attorney-general of the failure of any executor, administrator or trustee to file an inventory as above provided.

Sec. 21. No final settlement of accounts shall be allowed, until all taxes have been paid. R. S. c. 8, § 78. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed by any judge of probate unless it shall show, on oath or affirmation of the accountant, and the judge of said court shall find, that all taxes, imposed by the provisions of section one, upon any property or interest therein belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment.

Estates of Non-Residents.

Sec. 22. Property of non-resident decedent, how taxed; when there is more than one heir, proportion to be received by each; exemption. 1909, c. 187, § 7. 1913, c. 190, § 1. Property of a non-resident decedent which is within the jurisdiction of the state at the time of his death if subject to a tax by the law of the state or country of his residence, of like character with that imposed by this chapter, shall be subject only to such portion of the tax imposed hereunder, if any, as may be in excess of such tax imposed by the laws of such state or country. And where said non-resident decedent has more than one heir or his property is divided among more than one legatee, each heir, or in case of a will, each legatee shall be held to receive such proportion of the property within the jurisdiction of this state as the amount of all property received by him as such heir or legatee bears to all the property of which said decedent died possessed. The amount of property of the estate of a non-resident which shall be exempt from the payment of an inheritance tax under section one shall be only such proportion of the whole exempted amount which is provided therein for the estates of resident decedents, as the amount of the estate of the non-resident actually or constructively in this state bears to the total value of the non-resident decedent's estate wherever situated.

Sec. 23. When estate consists of interstate railroad, telegraph or telephone shares. 1911, c. 163, § 4. When the personal estate passing from any person, not an inhabitant or resident of this state, as provided in section one, shall consist in whole or in part of shares of any railroad, or street railroad company or telegraph or telephone company incorporated under the laws of this state and also of some other state or country, so much only of each share as is proportional to the part of such company's lines lying within this state shall be considered as property of such person within the jurisdiction of this state for the purposes of this chapter.

Sec. 24. When no tax shall be assessed upon stock, bonds and evidences of debt of Maine corporation; certificate of attorney-general filed with secretary of state. 1911, c. 163, § 4. When the personal estate passing from any deceased person not an inhabitant or resident of this state, as provided in section one, shall consist of the stocks, bonds or other debt or certificate of indebtedness of any corporation organized under the laws of this state, no inheritance tax shall be assessed upon the same, unless said corporation shall at the time of such decease have tangible property within the state exceeding one thousand dollars in value. The attorney-general, upon satisfactory evidence, shall file a certificate in the office of the secretary of state that any such corporation has not tangible property within the state exceeding one thousand dollars in value. Such certificate may at any time after notice and upon satisfactory evidence, be revoked. A copy of the certificate of revocation shall be sent to the clerk, and to any stock registrar or transfer agent whose name is on file with said secretary. Until the receipt of such certificate of revocation any such stock registrar or transfer agent may lawfully transfer the stock of said corporation and perform all other duties incident to his office.

Sec. 25. Transfer of bank stock, or of corporation stock of deceased non-residents subject to tax; when banks are liable for tax. 1911, c. 163, § 4. Subject to the provisions of the preceding section if a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state, owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the attorney-general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. Subject to the provisions of said section a bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the attorney-general.

Sec. 26. Transfer of securities or assets of estate of non-resident. 1911, c. 163, § 4. Subject to the provisions of section twenty-four no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a non-resident decedent to anyone unless authority to receive

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the same shall have been given by a probate court of this state, upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the attorney-general.

General Provisions.

Sec. 27. Duties of town and city clerks. 1911, c. 163, § 4. 1913, c. 190, § 2. Clerks of cities and towns shall report to the treasurer of state the names of all persons dying within their respective municipalities who in the judgment of said clerks leave estates the value whereof exceeds five hundred dollars, together with the names of husband, wife and next of kin so far as known to him; such report shall be mailed to the treasurer of state within ten days of the time when the certificate of death is filed with such clerk. The treasurer of state shall prepare and furnish blanks for such returns.

Sec. 28. Fees of judges and registers of probate. R. S. c. 8, § 84. The fees of judges or registers of probate for the duties required of them by this chapter shall be, for each order, appointment, decree, judgment, or approval of appraisal or report required hereunder, fifty cents, and for copies of records, the fees that are now allowed by law for the same. And the administrators, executors, trustees or other persons paying said tax shall be entitled to deduct the amount of all such fees paid to the judge or register of probate from the amount of said tax to be paid to the treasurer of state.

Sec. 29. Construction of words. R. S. c. 9, § 85. 1909, c. 187, § 6. In the foregoing sections relating to inheritances the word "person" shall be construed to include bodies corporate as well as natural persons; the word "property" shall be construed to include both real and personal estate, and any form of interest therein whatsoever, including annuities.

See c. 1, § 6, ¶ x, xiv.

CHAPTER 70.

Partition of Real Estate. Allowances. Distribution of Personal Estate.

- Sections 1-13 Partition of Real Estate.
Sections 14-19 Allowances to Widow and Others.
Sections 20-27 Distribution of Personal Estate.
Sections 28-31 Distribution of Lands held in Mortgage or taken on Execution.
Sections 32-35 Distribution of the Estate of Deceased Non-Residents.

Partition of Real Estate.

Sec. 1. Jurisdiction to make partition of real estate. R. S. c. 67, § 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.

35 Me. 421.

Sec. 2. Reversions or remainders may be divided. R. S. c. 67, § 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.

Sec. 3. Appointment, oath and duties of commissioners. R. S. c. 67, § 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.

Sec. 4. Partition of estate in different counties. R. S. c. 67, § 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.

Sec. 5. Proceedings, when equal division cannot be made. R. S. c. 67, § 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 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

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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.

47 Me. 271; 62 Me. 114.

Sec. 6. Proceedings, when interest of widow or widower, heir or devisee has been alienated. R. S. c. 67, § 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.

81 Me. 207.

Sec. 7. When such interest is under attachment. R. S. c. 67, § 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 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.

Sec. 8. Estate which shall be included in the partition. R. S. c. 67, § 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.

12 Me. 464.

Sec. 9. Any owner may apply for partition; notice. R. S. c. 67, § 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.

Sec. 10. Warrant may be revoked; proceedings. R. S. c. 67, § 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.

Sec. 11. Guardians appointed for minors, and agents for owners out of the state. R. S. c. 67, § 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.

Sec. 12. Proceeding, when land is owned in common with other parties. R. S. c. 67, § 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 cotenant, 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 cotenant 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.

31 Me. 110; 69 Me. 546; 70 Me. 234.

Sec. 13. Return of commissioners may be set aside, or recommitted; record and effect when accepted. R. S. c. 67, § 13. 1915, c. 287. 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 original return, or a true copy thereof attested by the register of probate, shall be recorded in the registry of deeds for the county or registry district in which the lands lie, 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.

12 Me. 199; duplicate plans shall be filed in the registry of deeds, c. 12, § 22.

Allowances to Widows and Others.

Sec. 14. Allowances to widows from personal estate. R. S. c. 67, § 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.

See c. 75, § 21; 31 Me. 67; 39 Me. 18; 46 Me. 539; 50 Me. 238; 52 Me. 199; 53 Me. 185; 54 Me. 534; 68 Me. 124; 83 Me. 17; 84 Me. 71; 85 Me. 169; 86 Me. 206; 107 Me. 248; 110 Me. 67.

Sec. 15. Mortgage debts allowed, may be assigned. R. S. c. 67, § 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

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administrator, under direction of the judge, shall assign said mortgage and deliver the evidence of such debt to her.

54 Me. 535.

Sec. 16. Temporary allowances during litigation. R. S. c. 67, § 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.

Sec. 17. Widow's support and quarantine. R. S. c. 67, § 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.

59 Me. 441.

Sec. 18. Allowance to minor children, if no widow. R. S. c. 66, § 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 shares will be insufficient for their support and education.

See c. 72, § 38; 85 Me. 169.

Sec. 19. Allowance to husband from his wife's estate. R. S. c. 67, § 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.

Distribution of Personal Estate.

Sec. 20. Lien for debt due to estate created on legacy or distributive share; validity and amount of debt, how determined. 1915, c. 172. A debt, whether matured or not, due to the estate of a deceased person from a legatee or distributee of such estate creates a lien on the legacy or distributive share, having priority of any attachment or transfer of such legacy or share, and shall be set off against, or deducted from, the legacy of such legatee, or from the distributive share of such distributee; and the probate court shall, after due notice, hear and determine the validity and amount of any such debt, and may make all necessary or proper decrees and orders to effect such set-off or deduction; but the provisions of this section shall not prejudice any remedy of an executor or administrator for the recovery of such debt, nor affect the liability of the legatee or distributee for the excess of indebtedness over the amount of his share in, or claim upon, the estate to which he is indebted.

See c. 80, § 7.

Sec. 21. Remainder of personal estate, how distributed; unclaimed shares to be paid to county treasurer; discharge after settlement. R. S. c. 67, § 20. 1911, c. 134. 1913, c. 170. 1915, c. 104. When on the settlement of any account of an administrator, executor, guardian or trustee there appears to remain in his hands property not necessary for the payment of debts and expenses of administration, or for the payment of pecuniary legacies of fixed amount, 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, administrator, guardian or trustee 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, administrator, guardian or trustee to render a new account. If any sum of money directed by a decree of the probate court to be paid over, in any solvent or insolvent estate, remains for six months unclaimed, the executor, administrator, guardian or trustee who was ordered to pay over the same, shall pay such sum of money to the treasurer of the county in which the probate court has jurisdiction, who shall give a receipt therefor, specifying the amount, name of estate and name of person entitled thereto, which said receipt shall be filed in the probate court and allowed as a sufficient voucher therefor. 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. If such account is presented after one year from the date of the decree, it may be allowed after public notice.

50 Me. 191; 78 Me. 463; 82 Me. 296; 84 Me. 549; 88 Me. 19; 100 Me. 149; 103 Me. 369; 105 Me. 390. Payments to minors under order of court, c. 64, § 48.

Sec. 22. Distribution of specific articles. R. S. c. 67, § 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.

89 Me. 103; 108 Me. 387.

Sec. 23. Debts may be assigned; conditions. R. S. c. 67, § 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.

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Sec. 24. Payment of deposit by county treasurer; list of depositors published annually; deposits shall escheat to county after twenty years. 1911, c. 134. 1913, c. 170. At any time within twenty years from the date when the deposit mentioned in section twenty is made with the county treasurer, the person entitled thereto or his executor, administrator or assigns, may present to the county commissioners evidence of his right to the same, and upon satisfactory proof that he or they are entitled thereto, the county commissioners shall by warrant, direct the county treasurer to pay over to such person or persons the amount of the original deposit, with interest at the rate of two per cent per annum from the date of deposit; provided, that all sums of money paid to the county treasurer by any savings bank shall draw interest at the same rate as was paid by said bank at the time of payment to the county treasurer. The county treasurer shall annually in the month of January publish in one or more newspapers, published and printed within the county, and in the state paper, a list of all persons entitled to such deposits. The county shall have the use and income of all such deposits and after twenty years from the date of each deposit, if not claimed and paid over to the person entitled thereto, his heirs, executors, administrators or assigns, the same shall escheat to the county; provided, however, that in the case of deposits assigned by the judges of probate to the several county treasurers, the said period of twenty years shall commence on the date of such assignments; but every person entitled to receive and be paid any such deposit made before the twenty-ninth day of March, nineteen hundred and eleven, shall be entitled to receive and be paid the amount of such original deposit with such interest thereon as is shown by the bank-book of such original deposit at the date of such payment to such person.

Sec. 25. Bond may be required in certain cases. R. S. c. 67, § 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.

Sec. 26. Legacies, when payable. 1915, c. 244. Legacies shall be payable in one year after final allowance of the will; but such payments shall not be affected by any claims presented to the executor, or administrator with the will annexed, or filed in the probate office, after the expiration of said one year and after such payment; nor shall the executor or administrator with the will annexed be responsible for the payments of said legacies on account of such claims, unless he has failed to give notice of his appointment as required by law and the judge of probate.

Sec. 27. Legatee may sue for legacy. R. S. c. 67, § 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.

30 Me. 142; 80 Me. 332; 82 Me. 209; 91 Me. 238; 92 Me. 492; 112 Me. 159;
113 Me. 397.

Distribution of Lands Held in Mortgage or Taken on Execution.

Sec. 28. Lands held in mortgage or taken on execution, before foreclosure to be treated and sold as personal estate. R. S. c. 67, § 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.

See c. 95, § 13; 6 Me. 132; 52 Me. 569; 54 Me. 535; 59 Me. 164; 61 Me. 315; 79 Me. 301; 92 Me. 491; 103 Me. 413.

Sec. 29. To be sold by license for payment of debts, legacies and charges. R. S. c. 67, § 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.

61 Me. 315; 92 Me. 491; 103 Me. 413.

Sec. 30. In case of death of executor or administrator, proceedings. R. S. c. 67, § 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.

103 Me. 413.

Sec. 31. Distribution, if not sold or redeemed. R. S. c. 67, § 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 judge of probate or supreme judicial court, if it would be more for the benefit of the parties in interest, may order it sold by the executor or administrator, and the money distributed as in other cases of personal estate.

See c. 76, § 1, ¶ viii; 54 Me. 536; 79 Me. 299; 92 Me. 491; 103 Me. 413.

Distribution of the Estates of Deceased Non-Residents.

Sec. 32. Estates of deceased non-residents, how to be disposed of. R. S. c. 67, § 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 the 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.

85 Me. 378; 86 Me. 206; 91 Me. 542.

Sec. 33. Proceedings, if such person died insolvent. R. S. c. 67, § 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.

Sec. 34. Distribution of residue. R. S. c. 67, § 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 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.

Sec. 35. Proceeds of sale of land under a foreign will, how disposed of. R. S. c. 67, § 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.

CHAPTER 71.

Insolvent Estates.

Sections 1-2	Distribution of Insolvent Estates.
Sections 3-9	Commissioners and Proceedings.
Sections 10-11	Contingent Claims.
Sections 12-18	Appeals.
Sections 19-23	Miscellaneous Provisions.
Sections 24-26	Decree of Distribution.

Distribution of Insolvent Estates.

Sec. 1. Priority of claims and of payment. R. S. c. 68, § 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.
- 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.

See c. 67, § 46; 18 Me. 271; 19 Me. 264; 24 Me. 28; 61 Me. 470; 64 Me. 407; 67 Me. 506; 71 Me. 66; 77 Me. 501; 84 Me. 94; 97 Me. 389; 107 Me. 194.

Sec. 2. When representation of insolvency need not be made. R. S. c. 68, § 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.

24 Me. 28; 62 Me. 167; 79 Me. 225; 84 Me. 94; 90 Me. 412; 97 Me. 390, 391, 396; 113 Me. 560.

Commissioners and Proceedings.

Sec. 3. When representation must be made; commissioners to be sworn; their report. R. S. c. 68, § 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 first be 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.

85 Me. 461.

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Sec. 4. Meetings and notice thereof; time allowed to prove claims; proceedings in case of death of commissioner. R. S. c. 68, § 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.

48 Me. 407; 105 Me. 357.

Sec. 5. Presentation and proof of claims. R. S. c. 68, § 5. 1915, c. 3. 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. Any claim filed in the registry of probate supported by affidavit as provided in section fourteen of chapter ninety-two, shall be considered as if presented to said commissioners, provided the same is so filed before the expiration of the six months period named in the preceding section. Before making their report said commissioners shall adjudicate upon all claims so filed.

67 Me. 197; 96 Me. 453.

Sec. 6. Refusal or perjury by claimant. R. S. c. 68, § 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.

67 Me. 197.

Sec. 7. Value of claimant's security to be deducted; appraisal. R. S. c. 68, § 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 disinterested men to appraise on oath such security and make return thereof, by them signed, to the court; and their appraisal shall be substituted for the first, and the amount allowed varied accordingly. If the claimant declines to take the property at such appraisal and relinquishes his claim thereon, its appraised value 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.

24 Me. 38; 90 Me. 297.

Sec. 8. Interest on claims; report may be recommitted; claim of administrator. R. S. c. 68, § 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.

19 Me. 264; 48 Me. 483; 74 Me. 486.

Sec. 9. Commissioners forfeit compensation for neglect of duty. R. S. c. 68, § 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.

67 Me. 115, 117.

Contingent Claims.

Sec. 10. Proof of contingent claims. R. S. c. 68, § 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.

32 Me. 463; 57 Me. 564.

Sec. 11. Proceedings on such claims after four years. R. S. c. 68, § 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.

57 Me. 564.

Appeals.

Sec. 12. Appeals; bond; notice. R. S. c. 68, § 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.

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; 96 Me. 453.

Sec. 13. Petition for leave to bring suit, after failing to prosecute appeal. R. S. c. 68, § 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 court in season, or, after giving such notice, has, by accident or mistake, omitted further to prosecute his appeal, may, within two years

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after the report is made, petition the supreme judicial court, and, after notice to the administrator and hearing, leave may be given to commence a suit at the next term of the court in the county where administration was granted, for the recovery of his claim, but not after four years from granting administration. No decree of distribution can be disturbed by a judgment so recovered.

See c. 87, § 8; 68 Me. 413; 81 Me. 197.

Sec. 14. Proceedings on appeal. R. S. c. 68, § 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.

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; 96 Me. 454; 105 Me. 358.

Sec. 15. If claim is allowed and appeal taken by administrator, heir or creditor, claimant may apply to supreme court. R. S. c. 68, § 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.

96 Me. 454.

Sec. 16. Proceedings in the suit, and judgment. R. S. c. 68, § 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.

68 Me. 414; 96 Me. 454.

Sec. 17. Reference; examination of creditor. R. S. c. 68, § 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.

55 Me. 514; 67 Me. 197.

Sec. 18. Judgment against administrator, to be added to claims allowed. R. S. c. 68, § 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.

55 Me. 525; 57 Me. 564; 60 Me. 355; 65 Me. 129; 68 Me. 431; 73 Me. 347;
85 Me. 460; 96 Me. 382.

Suits Pending and Commenced.

Sec. 19. Actions pending. R. S. c. 68, § 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.

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; 109 Me. 67.

Sec. 20. Claims not presented or not allowed, barred, except in case of further assets. R. S. c. 68, § 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.

67 Me. 458.

Miscellaneous Provisions.

Sec. 21. Penalty for delay in settling account. R. S. c. 68, § 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.

5 Me. 48; 6 Me. 270; 8 Me. 25; 11 Me. 51; 79 Me. 224.

Sec. 22. Waste or trespass on real estate of insolvent. R. S. c. 68, § 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.

See c. 100, § 17; 59 Me. 355; 62 Me. 309; 77 Me. 246.

Sec. 23. Insolvency of estate in hands of executors and guardians. R. S. c. 68, § 23. This chapter applies to estates under charge of executors; and of guardians of insane persons, and of spendthrifts, except so 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.

See c. 72, § 19; 68 Me. 432; 111 Me. 550.

Decree of Distribution.

Sec. 24. Decree of distribution, when and how made. R. S. c. 68, § 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.

73 Me. 241.

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Sec. 25. Account of payments, allowed without notice. R. S. c. 68, § 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.

105 Me. 389.

Sec. 26. Report of commissioners on exorbitant claims, final, even if estate is insolvent. R. S. c. 68, § 26. When commissioners appointed under section fifty-five of chapter sixty-eight 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.

See c. 74, § 6.

Note. Liability of heir or devisee for waste on real estate of insolvent estates, c. 100, § 16.

CHAPTER 72.

**Appointment, Powers and Duties of Guardians. Adoption of Children.
Change of Name.**

- Sections 1-3 Appointment of Guardians for Minors.
- Sections 4-10 Appointment of Guardians for Adults.
- Sections 11-29 Powers and Duties of Guardians.
- Sections 30-32 Guardians ad litem.
- Sections 33-34 Embezzlement of the Ward's Estate.
- Sections 35-41 Adoption of Children.
- Section 42 Change of Name.

Appointment of Guardians for Minors.

Sec. 1. Appointment of guardians; proceedings when judge is interested. R. S. c. 69, § 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.

33 Me. 210; 39 Me. 394; 53 Me. 403; 61 Me. 213; 79 Me. 37.

Sec. 2. Guardians, how nominated and appointed. R. S. c. 69, § 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.

39 Me. 394; 53 Me. 403; 61 Me. 213; 76 Me. 304; 85 Me. 360.

Sec. 3. Power over minor's person and property. R. S. c. 69, § 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.

See c. 64, § 45; 31 Me. 197; 53 Me. 550; 61 Me. 214; 93 Me. 248.

Insane and Incompetent Persons, Spendthrifts and Convicts.

Sec. 4. Appointment of guardians for adults. R. S. c. 69, § 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.

31 Me. 553; 49 Me. 273, 361; 87 Me. 49; 107 Me. 339, 491; 110 Me. 233.

Sec. 5. Notice on application by municipal officers. R. S. c. 69, § 5. 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 notice, or may order such notice, if any, as he thinks reasonable.

18 Me. 386; 107 Me. 337.

Sec. 6. Hearing, time and place; adjudication. R. S. c. 69, § 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 the 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.

18 Me. 386; 97 Me. 134.

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Sec. 7. Contracts made after notice and filing copy of application, are void. R. S. c. 69, § 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.

107 Me. 492.

Sec. 8. Allowance to ward to defend himself. R. S. c. 69, § 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.

107 Me. 491.

Sec. 9. Notice of appointment, authority and duties. R. S. c. 69, § 9. 1915, c. 80. Such guardians shall give notice of their appointment and make return thereof to the registry of probate in the manner provided by law relating to notices of appointment by executors and administrators. They 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.

Sec. 10. Appointment of conservator. 1911, c. 42. 1915, c. 324. Whenever any person shall deem himself unfitted, by reason of infirmities of age or physical disability, to manage his estate with prudence and understanding, he may apply to the judge of probate for the county in which he resides, for the appointment of a conservator of his estate, and thereupon the judge of probate may upon hearing, after such notice as he may order, appoint some suitable person as conservator of his estate, and such appointment shall not disfranchise the person for whose estate such conservator is appointed. The person so appointed shall give bond to the judge of probate, in such sum and with such sureties, resident in the state, or with a surety company authorized to do business in the state, as surety, as the judge accepts, conditioned as provided in section twelve, and all provisions of law relating to giving notice of appointment and to the management of estates of adult persons under guardianship shall apply to such conservator.

Powers and Duties of Guardians.

Sec. 11. Married woman may act as guardian. 1907, c. 151. A married woman, who has attained the age of twenty-one years, may be appointed guardian and perform all the duties of such trust without any act or assent on the part of her husband; and when an unmarried woman who is guardian marries, her authority is not thereby extinguished, but she shall con-

tinue to perform all the duties of such trust without any act or assent on the part of her husband.

Sec. 12. Bond of guardian. R. S. c. 69, § 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, or with a surety company authorized to do business in the state, as surety, as the judge accepts, conditioned as follows:

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.

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.

Corporate suretyship authorized, c. 53, § 156; 31 Me. 254; 34 Me. 341; 38 Me. 51; 69 Me. 283; 112 Me. 120.

Sec. 13. Non-resident guardian shall appoint an agent in state. 1915, c. 220. Any guardian who is appointed in, but resides out of, this state shall not enter upon the duties of his trust until he shall, by a writing filed and recorded in the registry of probate for the county in which he is appointed, have appointed an agent residing in this state, and, by such writing, shall have agreed that the service of any legal process against him as such guardian, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such guardian shall, if made on said agent, have like effect as if made on himself personally within the state, and such service shall have such effect. The bond of a non-resident guardian shall not be approved until such appointment, with the acceptance in writing of the person appointed, is so filed. If any agent appointed under this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as above provided, and the powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. The name and address of such agent shall be indorsed by the agent upon every account of the guardian before the same is allowed. Neglect or refusal by a guardian to comply with any provision of this section shall be cause for removal.

Sec. 14. Inventory of ward's estate. R. S. c. 69, § 11. 1915, c. 297. The judge or register shall appoint one or 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. Only one appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable so to do; otherwise three appraisers shall be appointed. The warrant for an inventory may be revoked for cause, and a new one issued if deemed necessary.

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Sec. 15. Management of ward's estate; may be licensed to mortgage real estate of ward. R. S. c. 69, § 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 four of chapter seventy-six, 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.

48 Me. 280.

Sec. 16. Application of property of minor children to their support. R. S. c. 69, § 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.

Sec. 17. Guardian shall pay ward's debts, collect dues, appear for him in court, and insure his estate. R. S. c. 69, § 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.

17 Me. 224; 26 Me. 78; 37 Me. 407; 48 Me. 281; 53 Me. 550; 68 Me. 432.

Sec. 18. Power as to ward's real estate. R. S. c. 69, § 15. He may join in and assent to a partition of his ward's real estate on a petition or other legal process therefor; 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.

41 Me. 232.

Sec. 19. Adjustment of claims. R. S. c. 69, § 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, represent said estate insolvent, with like proceedings, rights and liabilities, as in case of estates of deceased persons.

See c. 71, § 23; 68 Me. 431.

Sec. 20. May refer action by rule of court. R. S. c. 69, § 17. Guardians of minors, insane and incompetent persons, spendthrifts 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.

Sec. 21. Adjustment by arbitration or compromise. R. S. c. 69, § 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.

Sec. 22. Sale of ward's stocks, chattels and pews; investment of funds. R. S. c. 69, § 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.

9 Allen, 102; 66 Me. 205.

Sec. 23. Dismissal or removal of guardian; marriage of female ward annuls guardianship. R. S. c. 69, § 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.

Sec. 24. Settlement of guardian's accounts. R. S. c. 69, § 21. 1915, c. 261. 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 if the judge is satisfied that such neglect or refusal is wilful or without reasonable cause, the guardian shall forfeit all allowance for his personal services.

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

Sec. 25. Upon settlement of account, judge shall examine bond, and may require new bond. R. S. c. 69, § 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

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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 and another appointed.

See c. 77, § 2; 112 Me. 120.

Sec. 26. Oath to the account. R. S. c. 69, § 23. When an account is rendered by two or more joint guardians, the judge may allow it upon the oath of either.

Sec. 27. Guardian of minor out of the state. R. S. c. 69, § 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. 28. Non-resident guardian and ward entitled to property in this state, proceedings. R. S. c. 69, § 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 personal 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 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 personal 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.

Sec. 29. Disability of adults under guardianship; dismissal of guardian. R. S. c. 69, § 26. 1905, c. 6. 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. 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.

56 Me. 310; 77 Me. 164; 102 Me. 101.

Guardians Ad Litem.

Sec. 30. Guardian ad litem; next friend. R. S. c. 69, § 27. Nothing in this chapter affects the power of any court of common law, probate court or trial justice 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.

8 Cush. 506; 155 Mass. 108; 33 Me. 122; 41 Me. 460; 91 Me. 361.

Sec. 31. Settlement of suit not valid unless approved by court; authority of court. R. S. c. 69, § 28. No settlement of any suit brought in behalf of an infant by next friend shall be valid unless approved by the court in which the action is pending, or to which the writ is returnable, or affirmed by an entry or judgment. The court may make all necessary orders for protecting the interests of the infant, and may require the guardian ad litem, or next friend, to give bond to truly account for all money received in behalf of the infant.

Sec. 32. Special guardians for married women in certain cases. R. S. c. 69, § 29. 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.

Sec. 33. Persons suspected of embezzlement, may be cited and examined. R. S. c. 69, § 30. 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.

Sec. 34. Penalty for embezzlement by guardian. R. S. c. 69, § 31. 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.

95 Me. 181.

Adoption of Children.

Sec. 35. Who may adopt a child. R. S. c. 69, § 32. 1915, c. 292. 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. Any unmarried inhabitant of another state, or any non-resident husband and wife jointly, may present such petition in the probate court of the county where such child lives.

81 Me. 554; 101 Me. 366.

Sec. 36. Consent is required. R. S. c. 69, § 33. 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

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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.

See c. 64, § 54; 101 Me. 366.

Sec. 37. Proceedings in the probate court. R. S. c. 69, § 34. 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.

85 Me. 400; 97 Me. 85, 580.

Sec. 38. Legal effect of adoption of child; descent of property. R. S. c. 69, § 35. 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.

84 Me. 486; 87 Me. 213; 97 Me. 580.

Sec. 39. Appeal to the supreme court of probate. R. S. c. 69, § 36. 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.

81 Me. 558; 94 Me. 422.

Sec. 40. Allowance to adopted child. R. S. c. 69, § 37. 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.

Sec. 41. Decree of adoption may be annulled. R. S. c. 69, § 38. 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.

Change of Name.

Sec. 42. Petition to judge of probate. R. S. c. 69, § 39. 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. 16, § 150.

No trust or banking company shall act as guardian, c. 52, § 84.

Minors may hold shares in loan and building associations, c. 52, § 101.

Guardian may settle and give release of damages for land of ward taken by railroad corporation, c. 56, § 31.

Care and custody of the person of minor children, c. 64, § 44.

Compensation of guardian, c. 67, § 43.

Payments by order of court may be made to minors in certain cases, c. 64, § 48.

Guardians to pay stenographer's fees, c. 67, § 46.

CHAPTER 73.

Testamentary Trustees and Voluntary Trusts.

Sections 1-13 Testamentary Trustees.

Sections 14-16 Voluntary Trusts.

Sections 17-19 Appointment of Trustees to fill Vacancies.

Testamentary Trustees.

Sec. 1. Bonds of trustees. R. S. c. 70, § 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, resident in the state, or with a surety company authorized to do business in the state, as surety, 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.

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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.

See c. 52, § 63; c. 53, § 156; 17 Me. 140; 37 Me. 275; 61 Me. 98; 62 Me. 450; 111 Me. 255.

Sec. 2. Bonds may not be required. R. S. c. 70, § 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, or that a bond without sureties be accepted.

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.

84 Me. 48.

Sec. 3. Trustee, neglecting to give bond; examination of bond. R. S. c. 70, § 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-five of chapter seventy-two relating to bonds of guardians.

See c. 77, § 2.

Sec. 4. Non-resident testamentary trustee shall appoint an agent in the state. 1915, c. 239. Any testamentary trustee, who is appointed in but resides out of this state, shall not enter upon the duties of his trust until he shall, by a writing filed and recorded in the registry of probate for the county in which he is appointed, have appointed an agent residing in this state, and, by such writing, shall have agreed that the service of any legal process against him as such testamentary trustee, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such testamentary trustee shall, if made on said agent, have like effect as if made on himself personally within the state, and such service shall have such effect. The bond of a non-resident testamentary trustee shall not be approved until such appointment, with the acceptance in writing of the person appointed, is so filed. If any agent appointed under this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as above provided, and the powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. The name and address of such agent shall be indorsed by the agent upon every account of the guardian before same is allowed. Neglect or refusal by a testamentary trustee to comply with any provision of this section shall be cause for removal.

Sec. 5. Trustee may resign, or be removed, after notice. R. S. c. 70, § 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.

Sec. 6. Power of a trustee thus appointed. R. S. c. 70, § 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.

65 Me. 106; 84 Me. 329; 111 Me. 523.

Sec. 7. Bond. R. S. c. 70, § 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 of 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.

Sec. 8. Inventory shall be returned by trustee. R. S. c. 70, § 7. 1915, c. 297. When a trustee is required to return an inventory, the estate and effects shall be appraised by disinterested appraisers, appointed and sworn, as in case of the estates of deceased persons. Only one appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable so to do; otherwise three appraisers shall be appointed. Warrants for inventories may be revoked by the judge for cause, and new ones issued, if deemed necessary.

Sec. 9. Reference or compromise. R. S. c. 70, § 8. The judge may authorize any trustee to refer or compromise claims by or against the trust estate.

Sec. 10. Courts may direct trust estates to be sold, and moneys to be invested. R. S. c. 70, § 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, as will best effect the objects of the trust.

See c. 82, § 6, ¶ x; 33 Me. 553; 50 Me. 541; 84 Me. 555.

Sec. 11. Equity power as to trusts. R. S. c. 70, § 10. Either of said courts may hear and determine, in equity, all other matters relating to the trusts herein mentioned.

See c. 67, § 2; 50 Me. 541; 94 Me. 346; 111 Me. 131.

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Sec. 12. Suits on bonds of trustees. R. S. c. 70, § 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. 13. Executors becoming trustees by operation of law. R. S. c. 70, § 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.

37 Me. 275; 50 Me. 548; 111 Me. 255.

Voluntary Trusts.

Sec. 14. Trustee, appointment in case of voluntary trusts; bond. R. S. c. 70, § 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 resident in the state, or with a surety company authorized to do business in the state, as surety, 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 eighteen are applicable to cases of voluntary trusts, arising under this section.

Sec. 15. Trustee, accountable to judge of probate. R. S. c. 70, § 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.

Sec. 16. Remedies, if trustee fails to fulfil his bond. R. S. c. 70, § 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.

Sec. 17. Vacancies under deed of trust or mortgage, how filled; property shall vest in new trustee; record of decree. R. S. c. 70, § 16. 1915, c. 285. 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 probate court or 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 con-

veyance thereof, whether said trustees have deceased before the twentieth day of March, 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.

See c. 78, § 19.

Sec. 18. Vacancy in trusts, how filled; bond. R. S. c. 70, § 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.

See c. 78, § 19; 69 Me. 398; 85 Me. 88; 94 Me. 311; 111 Me. 255, 523.

Sec. 19. Court may order conveyances to be made to him. R. S. c. 70, § 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.

69 Me. 399; 85 Me. 90.

Note. City or town appointed trustee not required to give bond in certain cases, c. 21, § 13.

Compensation of trustees, c. 67 § 43.

Bondholders under mortgage given by a corporation may elect trustees to fill vacancies, c. 67, §§ 30, 54.

Probate court has jurisdiction of all matters relating to trusts for sale of contingent remainders, c. 78, § 6.

CHAPTER 74.

Estates of Deceased Partners.

Sec. 1. Partnership property, how appraised and administered. R. S. c. 71, § 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.

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.

Sec. 2. Bond to be given; conditions. R. S. c. 71, § 2. The bond shall be for such sum and with such sureties resident in the state, or with a surety company authorized to do business in the state, as surety, 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.

Corporate suretyship authorized, c. 53, § 156; 55 Me. 236; 59 Me. 243; 65 Me. 163; 68 Me. 417; 79 Me. 159; 92 Me. 83.

Sec. 3. Liability, as if administrator. R. S. c. 71, § 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.

79 Me. 159; 103 Me. 380.

Sec. 4. Administrator to give bond if survivor does not. R. S. c. 71, § 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.

59 Me. 243; 74 Me. 339; 79 Me. 159.

Sec. 5. Survivor to produce property for appraisal and administration. R. S. c. 71, § 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.

36 Me. 343; 55 Me. 236.

Sec. 6. Commissioners may be appointed on disputed claims; partnership estate may be represented insolvent; proceedings. R. S. c. 71, § 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 seventy-one, 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.

See c. 68, § 55; c. 87, § 166; 64 Me. 71.

Sec. 7. Sale of copartnership real estate when a partner has died. R. S. c. 71, § 7. The executor or administrator of a deceased member of a copartnership, or the surviving partner, who files a bond and is authorized to close the affairs of a partnership estate, may, on application to the 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.

See c. 76, §§ 1-5; 74 Me. 339.

Sec. 8. Death of administrator on partnership estate, proceedings. R. S. c. 71, § 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. 67, § 43.

CHAPTER 75.

The Insolvent Law.

In accordance with the legislative resolve for the revision and consolidation of the public laws of the State, approved March 25, 1915 (chapter 237), chapter seventy-two of the Revised Statutes of 1903 entitled "The Insolvent Law," is not printed in this revision.

The chapter, however, is not repealed and may be cited either as R. S. 1903, chap. 72, or R. S. 1916, chap. 75.

There have been no amendments to the chapter since the last revision and the numbering of the sections remains unchanged.

CHAPTER 76.

Sales of Real Estate by License of Court.

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| Section | 1 | Granting of the License. |
| Sections | 2-8 | Sales at Auction. |
| Section | 9 | Private Sales, and Sales on Advantageous Offer. |
| Sections | 10-11 | Sales by Guardians and Wives of Incapacitated Persons. |
| Sections | 12-13 | Sales of Estates of Non-Resident Owners. |
| Sections | 14-15 | Licenses to carry into effect Contracts of Deceased Persons. |
| Sections | 16-26 | General Provisions. |
| Sections | 27-29 | Actions to try Title of Lands Sold by License. |

Granting of the License.

Sec. 1. Sale, lease or exchange of real estate, when to be licensed. R. S. c. 73, § 1. 1905, c. 5. 1913, c. 90. Judges of probate, in the counties where the applicants hereinafter 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:

To pay inheritance taxes, c. 69, § 17; 8 Me. 222; 20 Me. 395; 44 Me. 47; 52 Me. 195; 62 Me. 543; 96 Me. 573.

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.

See c. 69, § 17; c. 74, § 7; 96 Me. 573.

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 and education of their wards, and to provide a reasonable sum in antici-

pation 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.

See c. 78, § 10.

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.

63 Me. 250; 96 Me. 573.

IV. Of a husband or guardian of an incapacitated 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 interest by descent in any real estate owned by him; and of the guardian of an incapacitated husband, resident in the county, to sell in like manner, the right and interest by descent, of such ward, in any real estate owned by his wife.

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.

See c. 56, § 31.

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.

See c. 70, § 31; c. 95, § 13.

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, or countries, 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, or countries, the owners of which

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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 as determined by the judge of probate; 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.

Sales at Auction.

Sec. 2. Sales to be at auction; appeal; jurisdiction of supreme judicial court. R. S. c. 73, § 2. All sales aforesaid shall be at public auction, except as hereinafter 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.

8 Me. 222.

Sec. 3. Bond. R. S. c. 73, § 3. 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-eight, shall give bond to the judge for a sum, and with sureties, or with a surety company authorized to do business in the state, as surety, 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.

39 Me. 18; 50 Me. 75; 93 Me. 372; 94 Me. 562; 107 Me. 159.

Sec. 4. Notice, previous to granting license. R. S. c. 73, § 4. 1915, c. 294. 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, to appear and object if they see cause. If any party interested resides without the state, or the real estate is situated in a county other than the county in which the proceedings are pending, such special notice may be given as the court directs.

Sec. 5. No license shall issue, if parties give bond. R. S. c. 73, § 5. 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, or with a surety company authorized to do business in the state, as surety, 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. 6. Notice of sale. R. S. c. 73, § 6. Every person licensed as aforesaid, previous to such sale, shall give thirty days' notice thereof, by post-

ing 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. 7. Judge shall certify to supreme judicial court in certain cases. R. S. c. 73, § 7. 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. 8. Parties may be examined under oath. R. S. c. 73, § 8. 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.

Private Sales, and Sales on Offer.

Sec. 9. Licenses to sell at private sale, and on offer; proceedings. R. S. c. 73, § 10. In all cases where the courts may license a person to sell real estate at auction, they may license him to sell from time to time at private sale, or to accept any advantageous offer for such estate or any part of it, and to convey the same accordingly, if it appears to be for the interest of all concerned; but when so licensed, he may sell at auction, by complying with all the 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.

96 Me. 575.

Sales by Guardians and Wives of Incapacitated Wards.

Sec. 10. Wife of incapacitated ward may join in deed with guardian. R. S. c. 73, § 11. 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 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 such interest in the premises.

See c. 80, § 9.

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Sec. 11. Guardian may invest proceeds of her interest; trust to be enforced. R. S. c. 73, § 12. 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.

Sec. 12. Sale of estate of deceased non-residents or of minors out of the state. R. S. c. 73, § 13. 1907, c. 37, § 1. 1913, c. 25, § 1. 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 or in a foreign country, guardians of wards living out of the state or in a foreign country, conservators of the property of persons 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 or persons lived in the state, and such executors, administrators, conservators 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.

11 Me. 101.

Sec. 13. Proof of appointment. R. S. c. 73, § 14. 1907, c. 37, § 2. 1913, c. 25, § 2. A duly authenticated copy of the appointment of such executor, administrator, conservator or guardian, by any court of probate having jurisdiction in any other of the United States or in a foreign country, 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.

Sec. 14. Judge of probate may authorize conveyance on contract made by deceased. R. S. c. 73, § 15. 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.

3 Me. 51; 51 Me. 424; 97 Me. 400, 401.

Sec. 15. Notice shall be given, and bond required. R. S. c. 73, § 16. 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, except executors exempted therefrom by the provisions of section ten of chapter sixty-eight, to give bond with sufficient sureties to account for whatever he receives therefor.

General Provisions.

Sec. 16. Licenses, limited to one year; renewable. R. S. c. 73, § 17. 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.

19 Me. 151; 22 Me. 329; 36 Me. 576; 105 Me. 493; 107 Me. 159.

Sec. 17. Sales may be adjourned. R. S. c. 73, § 18. 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.

63 Me. 251.

Sec. 18. Licenses may include lands in other counties. R. S. c. 73, § 19. 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.

Sec. 19. License may prescribe the land to be sold. R. S. c. 73, § 20. 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.

84 Me. 95.

Sec. 20. What estate of deceased is liable to sale; effect of deed. R. S. c. 73, § 21. 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.

3 Me. 286; 4 Me. 8; 22 Me. 330; 61 Me. 294; 71 Me. 67; 80 Me. 487; 81 Me. 228.

Sec. 21. Surplus proceeds to be distributed as real estate. R. S. c. 73, § 22. 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

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real estate, and distributed among the same persons and in the same proportions as real estate would be.

Sec. 22. Who must be notified; who may appear. R. S. c. 73, § 23. 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.

39 Me. 396; 86 Me. 101.

Sec. 23. Costs, when license is contested. R. S. c. 73, § 24. 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.

Sec. 24. Proof of notice of sale, certificate and record. R. S. c. 73, § 25. 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.

63 Me. 251.

Sec. 25. Proof by parol, when certificate is not returned. R. S. c. 73, § 26. When a person, licensed as aforesaid, has taken the oath formerly required by law, but no certificate thereof has been 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.

63 Me. 251.

Sec. 26. Remedy for neglect or misconduct of person licensed. R. S. c. 73, § 27. 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.

Sec. 27. Limitation of action to recover lands sold by license. R. S. c. 73, § 28. 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.

14 Me. 346; 58 Me. 558; 85 Me. 139; 88 Me. 314.

Sec. 28. Requisites for valid sale as against persons claiming under deceased or ward. R. S. c. 73, § 29. In an action brought to contest the

validity of any such sale, by the heir or others claiming under the deceased; by 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.

Sec. 29. As against such as claim adversely to the title sold. R. S. c. 73, § 30. 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.

53 Me. 204.

Note. Sales of settlers' lots purchased of the state, for payment of debts, c. 8, § 12. Sales of real estate, subject to contingent remainder, executory devise or power of appointment, c. 78, § 4.

CHAPTER 77.

Probate Bonds and Remedies Thereon.

Sections 1-5	Sufficiency of Probate Bonds.
Sections 6-10	Actions on Bonds.
Sections 11-16	Actions without Authority of Judge.
Sections 17-19	Actions by Authority of Judge.
Section 20	Remedies on other Probate Bonds.

Sufficiency of Probate Bonds.

Sec. 1. Approval by judge. R. S. c. 74, § 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.

Sec. 2. Insufficient, new required. R. S. c. 74, § 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.

See c. 68, § 51; c. 72, § 25; c. 73, § 3; c. 75, § 30.

Sec. 3. Surety on bond may be discharged. R. S. c. 74, § 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.

100 Me. 104; 103 Me. 382.

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Sec. 4. Principal, to give new bond, or be removed. R. S. c. 74, § 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.

Sec. 5. Court may reduce penal sum of bond signed by surety company. 1915, c. 37. If a surety company becomes surety on a bond given to a judge of probate, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond.

Actions on Bonds.

Sec. 6. Suits on bonds shall be in name of judge. R. S. c. 74, § 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.

69 Me. 284.

Sec. 7. In suit against surety, principal may be made a party. R. S. c. 74, § 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.

Sec. 8. Proceedings and judgment. R. S. c. 74, § 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.

34 Me. 372.

Sec. 9. Action on administrator's or executor's bond, limitation. R. S. c. 74, § 8. Every action against sureties on an administrator's or an 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.

Sec. 10. Judgment for plaintiff. R. S. c. 74, § 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.

Actions by Interested Parties Without Authority of the Judge.

Sec. 11. Commencement of suit on bond. R. S. c. 74, § 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.

^{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; 97 Me. 94; 103 Me. 380; 106 Me. 425.}

Sec. 12. Judgment, if suit fails. R. S. c. 74, § 11. If such suit is not sustained, judgment shall be rendered and execution issued for costs against the person originating it as aforesaid.

^{69 Me. 284.}

Sec. 13. Suit on bond, by creditor of insolvent estate. R. S. c. 74, § 12. Every creditor entitled to a dividend from an insolvent estate, originating any action mentioned in section eleven, before he can recover, must produce an official copy of the decree 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. 14. Suit by creditor or legatee of solvent estate. R. S. c. 74, § 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 to show personal estate of deceased for that purpose.

^{62 Me. 167; 63 Me. 432, 445; 103 Me. 380.}

Sec. 15. Suit by widow, next of kin, or residuary legatee. R. S. c. 74, § 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. 16. Judgment and execution in such suits. R. S. c. 74, § 15. When judgment in any action mentioned in section eleven 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.

^{78 Me. 142.}

Actions by Authority of the Judge.

Sec. 17. Judge may authorize suits; execution, in case of failure to account. R. S. c. 74, § 16. The judge of probate may expressly authorize or instruct an administrator or administrator de bonis non, on the petition of himself or 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.

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; 97 Me. 94; 106 Me. 425.

Sec. 18. Execution against administrator when no inventory, and for neglect. R. S. c. 74, § 17. When an administrator has received personal estate, and has not returned, on oath, a particular inventory thereof, and in all other cases of neglect or mismanagement, execution shall be awarded against him for so much of the penalty of his bond as is adjudged on trial to be just.

4 Me. 157; 10 Me. 64; 11 Me. 168.

Sec. 19. Judgment shall be in trust for all interested. R. S. c. 74, § 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.

79 Me. 155.

Other Probate Bonds.

Sec. 20. Like proceedings on other bonds. R. S. c. 74, § 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.

See c. 43, § 7; c. 139, § 3.