

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

TITLE NINTH.

Of courts of probate, and the settlement of the estates of persons deceased.

- CHAPTER 105. Of the court of probate.
106. Of granting probate and administration, and the general obligations and powers of executors and administrators.
 107. Of public administrators, special administrators, executors in their own wrong, and administrators of persons deceased out of the state, and proceedings of surviving partners.
 108. Of the modes of distributing real and personal estate, and lands held in mortgage or taken on execution.
 109. Of insolvent estates.
 110. Of guardians.
 111. Of testamentary trustees.
 112. Of sales of real estate by executors, administrators, guardians and others, under special license of court.
 113. General provisions respecting probate bonds, and remedies on the same.

CHAPTER 105.

OF THE COURT OF PROBATE.

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CHAP. 105.

Present judges
to remain in
office.

Vacancies to
be supplied.
1821, 51, § 1.

Jurisdiction of
the court.
1821, 51, § 1.
1837, 292, § 3.
9 Mass. 543.
5 Pick. 63, 370,
519.

Same subject.
1821, 51, § 1.
5 Pick. 370, 519.

Judge may issue
processes,
and to have a
seal.

1821, 51, § 1.
Officers to obey
his precepts.
1821, 51, § 1.

Power to punish
for contempts.
1821, 51, § 1, 75.

Days and places
for holding
courts to be
fixed, and public
notice thereof
given.
1821, 51, § 5.

Appointment of
register of probate.
1821, 51, § 3.

His general duties.
1821, 51, § 3.

SECTION 1. All judges of probate, now in office, shall continue to hold their offices, according to the tenor of their commissions, where not inconsistent with the constitution.

SECT. 2. Whenever a vacancy in the office shall happen in any county, there shall be appointed, pursuant to the constitution of the state, some able and learned person, to be judge of probate for such county.

SECT. 3. The judge of probate for each county shall have power to take the probate of wills, and grant letters testamentary, or administration, on the estates of all persons deceased, who were, at the time of their decease, inhabitants of, or resident in the same county, and of all who shall die without the state, leaving any estate to be administered within such county, or whose estate may afterwards be found in said county; and also to appoint guardians to minors and others, in the cases prescribed by law. The said judge may also, on application, grant administration on the estate of any person, who shall, by due course of law, be under sentence of imprisonment for life in the state prison, either by commutation of a previous sentence, or otherwise.

SECT. 4. He shall have jurisdiction of all matters, relating to the settlement of such estates, and to such persons, under guardianship, and to whatever else, by the provisions of law may come under his cognizance and jurisdiction; and, when a case shall be originally within the jurisdiction of the probate court, in two or more counties, the court, which shall first take cognizance thereof by the commencement of proceedings, shall retain the same throughout, exclusively.

SECT. 5. He shall have authority to issue whatever processes may be necessary for the discharge of his official duties, and he shall have an official seal.

SECT. 6. Sheriffs and their deputies, coroners and constables shall serve and execute all legal warrants and processes, by him directed to them.

SECT. 7. Contempt of his authority, in any cause or hearing before him, may be punished, in like manner as such contempt may be punished in the district court. Any person, summoned to appear, as a witness, before him, and who shall refuse to appear and give evidence, shall be liable to the like penalty or damage, as for refusing to appear and give evidence before any district court.

SECT. 8. The judges of probate, in their respective counties, 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 standing laws; and such days shall be made known, by public notifications thereof in the several counties.

SECT. 9. Registers of probate shall continue to hold their offices according to the tenor of their commissions; and, as vacancies occur, there shall be appointed, in the manner provided by the constitution, a suitable person in each county, to be register of probate therein, to hold the office for the term prescribed by law; and who shall be duly sworn.

SECT. 10. The register shall have the care and custody of all files, papers and books, belonging to the probate office; and shall

duly record all wills; proved in said office, letters of administration, or guardianship, granted, accounts allowed, and all orders and decrees of the judge, and such other matters, as the judge may direct.

SECT. 11. Every register, before he enters upon the duties of his office, shall give bond to the treasurer of the county, to which the office pertains, in a sum, not less than one hundred, nor more than one thousand dollars, with one or more sufficient sureties, at the discretion of the judge of probate, who shall certify his approval thereon; and the bond shall be conditioned for the keeping up; seasonably and in good order, the records of the same court, and for making and keeping convenient and correct alphabets of the records in the custody of said register, and for the faithful discharge of all the other duties of the office.

His bond, and the condition thereof.
1821, 108, § 1.

SECT. 12. If such register shall incur a forfeiture of his said bond, he shall thenceforth be disqualified from holding said office, or being reappointed; and, if he shall neglect to complete his records, for more than six months at any one time, sickness or any extraordinary casualty excepted, such neglect shall be adjudged a forfeiture of his said bond.

Of its forfeiture, and the effect.
1821, 108, § 2.

SECT. 13. In case of the death or absence of the register, the judge of probate shall appoint a suitable person to officiate as register, until the standing register shall be able to perform his duty, or until another shall be appointed by the governor and council.

Register pro tem.
1821, 51, § 3.

SECT. 14. Such temporary register shall be duly sworn, and, if the judge of probate shall require it, shall give bonds, as in case of a standing register.

His oath and bonds.

SECT. 15. Every judge of probate shall constantly inspect the conduct of the register, whether permanent or temporary, with respect to his records, and the duties of his office; and give information, in writing, of any breach of the bond of such register to the county treasurer, having the same in keeping; whose duty it shall be to put the same in suit, on receipt of such information.

Records to be examined.
1826, 343, § 6.

SECT. 16. The money, recovered on such bond, shall, in the first instance, be applied for the expenses of duly completing the records of such register, under the direction of the judge, in whose office such deficiency shall happen, and the overplus, if any, shall enure to the use of the county.

Appropriation of penalty of the register's bond.
1826, 343, § 6.

SECT. 17. If the whole penalty of such bond be not sufficient to defray the expenses of completing such records, the treasurer may recover the amount of such deficiency of the register, in a special action on the case.

Further liability of the register.

SECT. 18. Whenever any judge of probate shall be interested, as heir, legatee, creditor or debtor, or within the degree of kindred, by means of which, by law, he might, by any possibility, be heir to any part of the estate of any person deceased, such estate shall be settled in the probate court of the most ancient adjoining county; provided, that the amount of the interest of such judge shall not be less than one hundred dollars in such estate. If his interest commence at any time, after he shall regularly have assumed jurisdiction of such estate, further proceedings therein shall be transferred to the probate court, held in the most ancient adjoining county.

When judge is interested, jurisdiction transferred to another county.
1821, 51, § 2.
1822, 198.
5 Pick. 483.
21 Pick. 101.
22 Pick. 507.

SECT. 19. The will of any such deceased person may be there

Same subject.
1821, 51, § 2.

CHAP. 105. proved, or administration granted, as the case may require, and all subsequent proceedings be had thereon, in like manner, as if the deceased had died in that county.

Judge not to be attorney nor counselor, in matters incompatible.
1821, 51, § 4.

SECT. 20. 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 whatever, which may depend on, or relate to any sentence or decree, made by him in his office; nor be attorney or counselor in any civil action, for or against any executor, administrator, or trustee under any last will and testament, or guardian, as such, within his county.

Register also prohibited.
1821, 51, § 4.

SECT. 21. No register of probate shall be attorney or counselor, in or out of court, in any suit or matter, whatever, pending in the court of which he is register, nor in any appeal therefrom; nor shall he be executor, administrator, trustee, guardian, commissioner of insolvency, appraiser or divider, of or upon any estate, or in any case, that is within the jurisdiction of the court, of which he is register, nor be in any manner interested in the fees or emolument, arising from any of the said offices.

Assumed jurisdiction, in certain cases, voidable only on appeal.

SECT. 22. The jurisdiction assumed in any case by a judge of probate, except in cases of fraud, so far as it depends on the place of residence of any person, or the locality or amount of the property to be administered upon, shall not be contested in any suit or 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.

By whom probate oaths to be administered.
1833, 62, § 2.

SECT. 23. All oaths, required to be taken by executors, administrators, trustees or guardians, excepting to the truth of inventories or accounts by them rendered, and all oaths, required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons, in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by executors, administrators, guardians, or others, by license of any judicial court or court of probate, may, at any convenient time and place, be administered by the judge of probate, or by any justice of the peace, and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded.

Supreme court of probate.
1821, 51, § 6.

SECT. 24. The supreme judicial court shall be the supreme court of probate, and shall have appellate jurisdiction, in all matters determinable by the judges of probate in their respective counties.

Right of appeal.
1821, 51, § 64.
3 Pick. 443.
16 Pick. 264.
18 Pick. 1.
22 Pick. 507.

SECT. 25. Any person, aggrieved by any order, sentence, decree or denial of a judge of probate may appeal therefrom to the said supreme court of probate, to be held within and for the same county, provided the appeal be claimed, before the expiration of thirty days from the date of the proceeding appealed from.

How to be exercised.
1821, 51, § 64.
1 Mass. 513.
4 Pick. 465.

SECT. 26. Within ten days after claiming his appeal, the appellant shall make his bond to the adverse party, for such sum and with such sureties, as the judge shall approve, conditioned for the prosecution of his appeal with effect, at the next term of the supreme court of probate, where the same may be entered, and to pay all

intervening costs and damages, and such costs as the said supreme court shall tax against him; and shall file said bond in the probate office for the use of the adverse party; provided, that in case of any controversy between a supposed insane person or other person under guardianship, with his guardian, the supreme court of probate may, at their discretion, sustain an appeal on the part of the ward, although no bond may have been executed, or filed, as aforesaid.

SECT. 27. Such appeal shall be cognizable at the next term of the supreme court, which shall be holden after the expiration of thirty four days after such appeal shall be made: and the appellant shall file the reasons of appeal with the register of the court appealed from, within ten days after the bond is filed; and shall serve all the other parties, who have appeared before the judge of probate, in the case, with a copy of such reasons, attested by such register, fourteen days, at least, before the sitting of the court, to which the appeal is made.

Same subject.
1821, 51, § 64.
2 Mass. 150.
4 Pick. 167.

SECT. 28. If the appellant in any case shall fail to enter and prosecute his appeal, the supreme court may, upon the complaint of any person interested in the case, affirm the former sentence, assess reasonable costs for the complainant, and take such further order thereon, as law and justice shall require.

When appeal is not entered, &c. remedy of the appellee.
1821, 51, § 64.

SECT. 29. Any person beyond sea, or out of the United States, having no sufficient attorney within the state, at the time of any such proceeding, for which he might claim an appeal, shall have thirty days, after his return or constitution of such attorney, to claim and prosecute his appeal, as aforesaid.

When the aggrieved party is out of the United States.
1821, 51, § 64.

SECT. 30. If any person, aggrieved by any act of the judge of probate, shall, from any accident, mistake, defect of notice, or otherwise, without default on his part, have omitted to claim or to prosecute his appeal according to the foregoing provisions, the supreme court, if it shall appear to them, that justice requires a revision of the case, may, upon the petition of the party aggrieved, and upon such terms as they shall think reasonable, allow an appeal to be entered and prosecuted with the same effect, as if it had been done seasonably.

Of accidental omissions to claim, or prosecute appeals.
1821, 51, § 65.

SECT. 31. No such appeal shall be allowed, without due notice to the party adversely interested, nor unless the petition therefor be filed with the clerk of the supreme court of probate, within one year after the decision, from which the appeal is sought, to be heard, at the term next succeeding the filing thereof.

Notice to adverse party. Limitation.
1821, 51, § 65.

SECT. 32. After an appeal is claimed, the bond filed, and the notice thereof given at the probate office, with the reasons of the appeal, all further proceedings, in pursuance of the order, sentence, decree or denial appealed from, shall cease, until the determination of the supreme court of probate shall be had thereon.

After bond given, further proceedings to cease.
1821, 51, § 66.

SECT. 33. The supreme court of probate may reverse or affirm, in whole or in part, the sentence or act appealed from, and may pass such decree thereon as the judge of probate ought to have passed; and may remit the case to the probate court for further proceedings, or may take any order therein, as law and justice shall require.

Proceedings in the supreme court of probate.

SECT. 34. If, upon the hearing of an appeal in the supreme

Questions of

CHAP. 105. court, any question of fact shall occur, that is proper for a trial by jury, the court may cause it to be so tried, upon an issue to be formed for the purpose, under the direction of the court.

fact may be tried by a jury. 1821, 51, § 64.
Of the recovery of costs. 1821, 51, § 67.

SECT. 35. In all cases that are contested, either at a probate court of original, or appellate jurisdiction, the said courts, respectively, may, at their discretion, award costs to either party, to be paid by the other, or to either, or both parties, to be paid out of the estate, which is the subject of the controversy, as justice and equity shall require; and may issue executions for the same, in like manner as is practised in the courts of common law.

Approval of bonds by the judge, to be certified thereon. 1821, 51, § 9. 16 Pick. 202.

SECT. 36. No bond, required by law to be given to the judge of probate, or to be filed in the probate office, shall be deemed sufficient, unless it shall have been examined and approved by the judge, and his approval thereof, under his official signature, written thereon.

Probate districts, parts of counties. 1835, 159, § 1, 2.

SECT. 37. Where local districts, parts of a county, may be hereafter designated by law, for the purpose of having a judge and register of probate, for their separate accommodation, such districts shall be considered counties for the purposes of this chapter, and in other chapters where applicable; and appeals from the judge of probate thereof shall be cognizable by the justices of the supreme court, in the county, where such district is situate.

When oaths may be administered, under special commissions. 1821, 51, § 57.

SECT. 38. If any person, required to make oath to any inventory or any account, which is to be settled by the judge of probate, shall be unable to attend; by reason of infirmity or otherwise, or shall reside more than thirty miles from the place, where the court of probate is holden, it shall be lawful for said judge, by a commission issued for the purpose, to authorize any disinterested magistrate to administer such oath; who shall return a certificate thereof to the judge, together with such commission and inventory, or account annexed, and the vouchers to prove the same.

Cases, in which no probate, nor administration, shall be granted. 1821, 51, § 20. 2 Mass. 120. 1 Pick. 114. 2 Pick. 361.

SECT. 39. No probate of any last will, nor administration on the estate of any person deceased, shall be originally granted after the expiration of twenty years from his decease; nor shall any administration be granted at any time, unless it satisfactorily appear to the judge, that there is personal estate of the deceased, amounting to at least twenty dollars, or that the debts due from him amount to that sum; and, in the latter case, that he left that amount, in value, of real estate.

How the deceased's property shall vest in such cases.

SECT. 40. In the cases, where no administration is granted, for the reasons, described in the preceding section, the personal estate, left by any person deceased, shall become the property of his widow, if any; otherwise, of the next of kin, who may appropriate the same, without being chargeable, as executors, in his or her own wrong.

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

may appeal therefrom to the next supreme judicial court to be held for the same county.

The same chapter shall be further amended in the fourteenth section, by inserting, at the close thereof, the following words :

If there shall not be, in the opinion of the court, a reasonable time for the party appealing to produce the sureties required, during the term of the court, the court may designate some justice of the peace, to take such recognizance, within ten days after the adjournment of the court, and the court shall order a stay of execution accordingly; and the recognizance, if so taken, and filed with the clerk, shall be as valid, as if taken in court.

Recognizance on an appeal may be taken by a justice of the peace in certain cases. 1831, 505, § 2, 3.

SECTION 13. The ninety ninth chapter shall be amended in the twenty first section, by striking out the words "or scire facias"; so that the section, as amended, shall be as follows:

R. S. ch. 99.

SECT. 21. The party, for whose benefit any judgment shall have been rendered by the commissioners of any county, shall have like remedy for the same and interest, by an action of debt upon such judgment, before any court of competent jurisdiction, as is provided for judgments recovered before the judicial courts.

Action of debt on a judgment of a court of county commissioners.

SECTION 14. The one hundred and fourth chapter shall be amended, in the twelfth section, by striking out, after the words "official bond," the following words: "for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted," and inserting the last mentioned words at the close of the section; so that the section, as amended, shall be as follows:

R. S. ch. 104.

SECT. 12. Whenever any surety upon the official bond of any sheriff or coroner, or the heirs, executors or administrators of such surety, shall petition the county commissioners, in the county of such sheriff or coroner, to be discharged from such bond, the court shall cause such sheriff or coroner to be served with an attested copy of the petition, and may require him to give a new bond to their satisfaction; and, upon such new security being given, such surety or his legal representatives shall be free from any further responsibility on such bond, for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted.

New bond may be required of a sheriff or coroner on application of his sureties.

The same chapter shall be amended in the twenty seventh section, by inserting, after the word "deputy," the words "coroner or constable"; so that the section, as amended, shall be as follows:

SECT. 27. Any sheriff or his deputy, coroner or constable, who shall unreasonably refuse or neglect to pay to any person moneys, received by him upon execution, to the use of such person, upon demand made therefor, shall pay five times the lawful interest of such money, so long as he shall unreasonably detain it.

Liability, if coroner or constable detain money collected, after demand.

SECTION 15. The one hundred and fifth chapter shall be amended in the eighteenth section, by striking out the words "as heir, legatee, creditor or debtor, or," and inserting, instead thereof, the words "either in his own right, or in trust, or in any other manner, or be"; and by inserting, after the words "jurisdiction of such estate," the following words: "or if he be interested at the time of his appointment to office"; and by inserting, at the end of said section, the following words: "and in all cases, where, by reason of the interest of the judge, or for any other cause, an estate shall be settled in an adjoining county, the register of probate of such adjoining county shall transmit to the probate office of the county where such estate should otherwise have been settled, copies of all records relating to said estate, to be recorded on the records of the county where such estate belongs"; so that the said eighteenth section, as amended, will be as follows:

R. S. ch. 105.

When a judge is interested, estate to be settled in the most ancient adjoining county. Transcript of proceedings to be recorded in the county where the estate belongs.

SECT. 18. Whenever any judge of probate shall be interested, either in his own right, or in trust, or in any other manner, or be within the degree of kindred, by means of which, by law, he might, by any possibility, be heir to any part of the estate of any person deceased, such estate shall be settled in the probate court of the most ancient adjoining county; provided, that the amount of the interest of such judge shall not be less than one hundred dollars, in such estate. If his interest commence at any time, after he shall regularly have assumed jurisdiction of such estate, or if he be interested at the time of his appointment to office, further proceedings therein shall be transferred to the probate court held in the most ancient adjoining county. And, in all cases, where, by reason of the interest of the judge, or for any other cause, an estate shall be settled in an adjoining county, the register of probate of such adjoining county shall transmit to the probate office of the county, where such estate should otherwise have been settled, copies of all records relating to said estate, to be recorded on the records of the county, where such estate belongs.

R. S. ch. 107.

SECTION 16. The one hundred and seventh chapter shall be amended in the thirteenth section, by striking out the word "nevertheless," and inserting the words "notwithstanding there may be an appeal"; so that the section, as amended, shall be as follows:

Special administrator to proceed in his duties, though there may be an appeal.

SECT. 13. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may, in his discretion, appoint a special administrator, who shall, notwithstanding there may be an appeal, proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate.

R. S. ch. 108.

SECTION 17. The one hundred and eighth chapter shall be amended in the twenty fifth section, by adding at the close the following words: "or other appropriate action"; so that the section, as amended, shall be as follows:

Legatee may bring an appropriate action against executor, for a legacy.

SECT. 25. Any residuary legatee, or any person having a particular legacy given him, under any last will, may sue for and recover the same of the executor, in an action of debt at common law, or other appropriate action.

R. S. ch. 114.

SECTION 18. The one hundred and fourteenth chapter shall be amended, in section fifteenth, after the word "officer," by inserting the following words: "if there be but one defendant, such action shall be commenced in the county where he resides;" so that said fifteenth section, as amended, will be as follows:

Actions within the jurisdiction of justices, where to be commenced.

SECT. 15. Any action, commenced against two or more defendants, residing in different counties, and to be tried before a municipal or police court, or a justice of the peace, may be brought in the county where either of the defendants lives; and the writ, in such case, shall be executed in such counties accordingly, by the proper officer. If there be but one defendant, such action shall be commenced in the county where he resides; and any action, commenced before either of said courts, shall be brought in the town where the plaintiff, or some defendant or trustee, or the attorney, commencing the action, lives.

R. S. ch. 115.

SECTION 19. The one hundred and fifteenth chapter shall be amended, in section two, by striking out the words, "except as hereinafter provided," and inserting, instead thereof, the following words: "and the charge in the dec-