

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.

SECT. 44. When any letters of administration shall be revoked, or when any executor or administrator shall be removed, all previous sales, whether of real or personal estate, made in a legal manner by the executor or administrator, and with good faith on the part of the purchaser, and all other acts, in due course of administration, done by such executor or administrator, in good faith, shall remain valid and effectual; he being accountable in the same manner as if he had not been removed.

CHAP. 106.

What previous acts are valid, on revocation of powers of executors, &c.

CHAPTER 107.

OF PUBLIC ADMINISTRATORS, SPECIAL ADMINISTRATORS, EXECUTORS IN THEIR OWN WRONG, ADMINISTRATORS ON ESTATES OF PERSONS DECEASED, OUT OF THE STATE, AND PROCEEDINGS OF SURVIVING PARTNERS.

- SECT. 1. PUBLIC ADMINISTRATORS, to remain in office.
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 3. When they shall render an account.
 4. Excess of money in their hands, to be deposited with the state treasurer.
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 - 22, 23, 24, 25. How distributed, in cases of insolvency.
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 27. To remain with surviving partner on his giving bond.
 28. Condition of such bond.
 29. Judge's authority. Remedies on the bond.
 30. If such partner neglect to give bond, duty of the executor, &c.
 31. Further bonds required of executor, &c.
 32. Duty of surviving partner, in such case.
 33. Compulsory process.

SECTION 1. All public administrators, now in office, shall continue to hold the same, according to the tenor of their commissions.

SECT. 2. Whenever a vacancy shall occur in said office, in any county, the governor and council shall appoint some suitable and discreet person, as public administrator in such county, who shall be entitled, and whose duty it shall be, to take out letters of administration, and faithfully administer upon the estate of any person, who may die intestate in such county, not known to have left any heir or kindred in this state, who by law can inherit such estate.

SECT. 3. Such public administrator shall account to the judge

Public administrators, to remain in office. Vacancies to be filled. 1828, 401, § 1.

Duty.

When they

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shall render an account.

1828, 401, § 1.
1835, 153, § 4.

Excess of money in their hands, to be deposited with the state treasurer.

1828, 401, § 1.

In case of neglect, bond to be put in suit by the state treasurer.

1835, 153, § 4.

After twenty years, such excess forfeited to the state.

1835, 153, § 4.

When the administration shall be revoked.

1835, 153, § 1.

Same subject.

1835, 153, § 1.

Form of their administration bond.

1828, 401, § 1.
1835, 153, § 1.

Sale of real estate, as in general cases.

1835, 153, § 2.

Also after three years, for the benefit of all concerned.

1835, 153, § 3.

of probate, like other administrators, as often, at least, as once a year, until he shall have closed his administration, and as much oftener as the judge shall require.

SECT. 4. Whenever there shall be, in the hands of such public administrator, an amount of money more than may be necessary for the payment of the deceased's debts, and other purposes of administration, he shall be required, by the judge of probate, to deposit the same with the treasurer of the state for the time being, who shall receive the same; and the state shall be responsible for the principal thereof, for the benefit of those who may lawfully claim the same, and the governor and council, on application duly proved, may order the treasurer to pay it over.

SECT. 5. In such case, the judge of probate shall give notice to the treasurer of the state, of such amount, and from what estate receivable; and, if the said administrator shall neglect, for the term of three months after the order of the judge therefor, to make such deposit, it shall be the duty of the treasurer to cause his probate bond to be put in suit, for the recovery of the same.

SECT. 6. If the heirs, widow, or next of kin to any such intestate, or other lawful claimant, shall not demand the sums, so deposited for their benefit, within twenty years from the time of such deposit, the same shall be forfeited to the use of the state.

SECT. 7. If, before the estate of such deceased shall have been fully settled by such public administrator, any last will and testament of the deceased shall be produced, and duly proved, or if any of the heirs or next of kin, or widow of the deceased, shall make application in writing to the judge of probate, having jurisdiction of the estate thus administered upon, and claim the right to administer on the same, or that some other suitable person should be appointed to that trust, it shall be the duty of the judge, to revoke the former administration, and grant letters testamentary, or a new administration, as the case may require.

SECT. 8. The public administrator shall be thereupon required to surrender his letters of administration on said estate, to the judge of probate, and settle his account, and pay over to his successor, all sums of money remaining in his hands, and all the goods, chattels, rights and credits of said deceased, not administered upon.

SECT. 9. Every public administrator, on taking out letters of administration on any estate, as provided in the second section of this chapter, shall give bonds to the judge of probate, with like condition as in cases of ordinary administration, and with the further condition, in substance, that he will comply with the provisions of the foregoing section.

SECT. 10. The judge of probate may grant license to the public administrator, to sell the real estate of any intestate, whose estate is under his administration, for the payment of debts and incidental charges, to the same extent, as he is authorized by law to grant to other administrators, in like cases.

SECT. 11. The judge of probate may also grant license, in like manner, to any public administrator, to sell, either at public or private sale, all or any of the real estate of his intestate, after the expiration of three years from the granting of administration,

although not necessary for the payment of debts; provided, it be made to appear, that it would be for the interest of all concerned, that said real estate should be sold, and that no heir, nor other person directly interested in said estate, other than creditors, can be found in the United States.

SECT. 12. In such cases, the judge of probate shall observe all the provisions of law required in the sale of real estate by other administrators; and such administrator shall give like bonds, so far as applicable, and like notice, and take the like oath, and proceed in other respects in like manner, as is required of other administrators: and the net proceeds of such sale shall be deposited with the treasurer of the state, agreeably to the provisions of sections, four, five and six, of this chapter, and to the same uses.

Proceedings, in such cases. 1835, 153, § 3.

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 nevertheless proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate.

When special administrators may be appointed. 22 Pick. 507.

SECT. 14. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the said judge, or his successor, with condition, 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 have or shall come to his possession, or knowledge; and that he will truly account, on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him, as such special administrator, whenever required by the judge of probate; and will deliver the same to the person, who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Bond.

SECT. 15. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall be thereafter appointed; and, for that purpose, may commence and maintain suits, as an administrator; and may also sell such perishable and other goods, as the judge of probate shall order to be sold, and shall pay to the widow of said testator, if any, and if there be none, to the guardian of the minor children under the age of fourteen years, such sum, as the judge of probate may order, to be paid, for her or their temporary assistance and support; having regard to the state and amount of the property, until the final decision on said will, and the issuing letters testamentary or the appointment of a permanent administrator; and such sum, so ordered and paid, shall be deducted from the share of said widow or children, on a final settlement, if said estate shall be solvent; but if insolvent, shall be taken into consideration by said judge, in the allowance which he shall make to said widow or children; and such special administrator shall be allowed such compensation for his services, as the judge of probate shall think reasonable, not exceeding the limits allowed to other administrators.

Duties and compensation. Allowance to widow, or children under fourteen years of age, provisional.

SECT. 16. Upon the granting of letters testamentary, or of

When their

CHAP. 107. administration, the power of the special administrator shall cease ; and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased, in his hands; and the executor or administrator may be admitted to prosecute any suit, commenced by the special administrator, in like manner as an administrator, de bonis non, is authorized to prosecute a suit, commenced by a former executor or administrator.

SECT. 17. Such special administrator shall not be liable to an action by any creditor of the deceased ; and the time of limitation, for all suits against the estate, shall begin to run, from the time of granting letters testamentary, or of administration, in the usual form, in like manner, as if such special administration had not been granted.

SECT. 18. If any person shall sell, or embezzle 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, as executor or administrator, he shall be liable to the actions of the creditors, and other persons aggrieved, as an executor in his own wrong.

SECT. 19. Every executor in his own wrong shall be liable 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 the estate of the deceased ; and he shall not be allowed to retain or deduct any part of the goods or effects, excepting for such funeral expenses or debts of the deceased, or other charges, actually paid by him, as the rightful executor or administrator might have been compelled to pay.

SECT. 20. When administration shall be taken, in this state, on the estate of any person, who, at the time of his decease, was an inhabitant of any other state or country, his estate found here, after payment of his debts, shall be disposed of according to his last will, if he left any, duly executed, according to the laws of this state ; and, if there should be no such will, his real estate shall descend, according to the laws of this state ; and his personal estate shall be distributed, and disposed of, according to the laws of the state or country, of which he was an inhabitant.

SECT. 21. Upon the settlement of such an estate, and after the payment of all debts, for which the same is liable, in this state, the residue of the personal estate, if any, may be distributed and disposed of, in manner aforesaid, by the probate court, in which the estate is settled ; or it may be transmitted to the executor or administrator, if there be any, in the state or country, where the deceased had his domicile, to be there disposed of according to the law of the place ; as the court, under the circumstances of the case, shall think best.

SECT. 22. If such deceased person died insolvent, his estate found in this state shall, as far as practicable, be so disposed of, that all his creditors here, or elsewhere, may receive an equal share, in proportion to their respective debts.

SECT. 23. To this end, his estate shall not be transmitted to the foreign executor or administrator, until all his creditors, who are citizens of this state, shall have received the just proportion, that

powers shall cease.

Not liable to suits of creditors of deceased. Limitation act suspended.

Of executors in their own wrong.
1821, 51, § 44.
4 Mass. 654.
15 Maine, 116.

Their liability.
15 Mass. 322.

Estates of persons deceased out of the state, how administered and distributed.
3 Mass. 514.
9 Mass. 337.
11 Mass. 256.
1 Pick. 80.
3 Pick. 128.

Same subject.
3 Mass. 514.
9 Mass. 337.
11 Mass. 256.

How distributed, in cases of insolvency.
3 Pick. 128.
6 Pick. 481.
8 Pick. 475.

Same subject.

would be due to them, if the whole estate of the deceased, where ever found, that is applicable to the payment of common creditors, were divided among all the said creditors, in proportion to their respective debts, without preferring any one species of debt to another.

SECT. 24. In such a case, no creditor, not being a citizen of this state, shall be paid out of the assets found here, until all those, who are citizens, shall have received their just proportion, as provided in the preceding section. Same subject.

SECT. 25. If there be any residue, after such payment to the citizens of this state, the same may be paid to any other creditors, who shall duly have proved their debts here, in proportion to the amount due to each of them, respectively; provided, that no one shall receive more than would be due to him, if the whole estate were divided ratably among all the creditors, as before provided; and the balance, if any, may be transmitted to the foreign executor or administrator, or, if there be none such, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all the creditors, both citizens and others, who shall have proved their debts in this state. Same subject.

SECT. 26. The executor or administrator, on the estate of any deceased member of a copartnership, shall include in the inventory, which he is by law required to return to the judge of probate, the whole of the partnership estate, goods and chattels, rights and credits, appraised at its true value, as in other cases; but the appraisers shall carry out into the footing an amount, equal only to the deceased's proportional part of the copartnership interest. Appraisal of partnership property. 1835, 191, § 1.

SECT. 27. The property thus appraised shall remain with, or be delivered over, as the case may be, to the surviving partner or partners or any of them, who may be disposed to undertake the management thereof agreeably to the conditions of a bond, which they shall be required to give to the judge of probate, in such sum and with such sureties as he may think reasonable, for the benefit of all persons interested in the estate, as provided in the next section. To remain with surviving partner on his giving bond. 1835, 191, § 1.

SECT. 28. The condition of such bond shall be in substance as follows: Condition of such bond. 1835, 191, § 1.

First. To use due diligence and fidelity, in closing the affairs of the late copartnership;

Secondly. To apply the property thereof towards the payment of the partnership debts;

Thirdly. To render an account upon oath to the judge, whenever by him thereunto required, of all the partnership affairs, including the property owned by the late firm, and the debts due thereto; as well as what may have been paid by the survivor or survivors, towards the partnership debts, and what may still be due and owing therefor; and,

Fourthly. To pay over, within twelve months, unless a longer time be allowed by a decree of the judge, to the executor, or administrator, the excess, if any there be, beyond satisfying the partnership debts.

SECT. 29. The judge shall have the same authority to cite such Judge's author-

CHAP. 107. survivor or survivors to account, and to adjudicate upon such account, as in the case of an ordinary administrator; and the parties interested shall have the like remedies, by means of such bond, for any misconduct or neglect of such survivor or survivors, as may be had against administrators.

If such partner neglect to give bond, duty of the executor, &c.
1835, 191, § 1.

SECT. 30. In case the surviving partner or partners, having been duly cited for that purpose, shall neglect or refuse to give the bond, required in the twenty seventh and twenty eighth sections, the executor or administrator on the estate of such deceased partner, in giving a bond, as provided in the following section, shall forthwith take the whole partnership estate, goods and chattels, rights and credits, into his own possession; and shall be authorized to use the name of the survivors or survivor, in collecting the debts due the late firm, if necessary; and shall, with the partnership property, pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner, or partners, his or their proportion of the excess, if any there be.

Further bonds required of executors, &c.
1835, 191, § 1.

SECT. 31. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the judge of probate, to give further bonds, to his satisfaction, conditioned, that he will faithfully execute that trust, and with no unnecessary waste or expense; which bond may be enforced like other administration bonds, for the benefit of all parties interested.

Duty of surviving partner, in such case.
1835, 191, § 2.

SECT. 32. Every surviving partner, on the demand of any administrator of a deceased copartner, shall exhibit to the appraisers the partnership property, belonging to the firm at the time of the death of such deceased partner, for appraisement; and, in case the administration thereof shall devolve upon such administrator, as provided in the two preceding sections, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information, and facilities, for the execution of his trust.

Compulsory process.
1835, 191, § 2.

SECT. 33. Every such surviving partner, who shall neglect or refuse to comply with the provisions of the preceding section, may be cited, for such neglect or refusal, before the judge of probate; and, unless he comply with such provision, or show sufficient excuse for his omission, the judge may commit him to the common jail of the county, there to remain, till he shall consent to comply, as aforesaid, or be released by the said executor or administrator, or by the judge of probate, or by order of some judge of the supreme judicial court.

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

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-