

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.

ERRATA.

PAGE 65, section 27, line 18, after "not," read "to."

92,	46,	1, for "She," read "The."
119,	5,	3, after "fife," for "a," read "or."
138,	62,	6, for "offier," read "officer."
405,	13,	1, for "28," read "13."
414,	3,	3, for "couaty," read "county."
440,	31,	4, in a few copies, for "on," read "or."
453,	28,	2, _____ for "necessay," read "necessary."
500,	23,	2, of the margin, for "dease," read "cease."
619,	24,	2, for "administrator of any contractors," read "administrators of any contractor."

INDEX.

837, 2d column,	1, dele "MILITIA," so as to read OFFICERS of the state prison.
842, 2d	46, for "527," read "537."
851, 1st	62, for "610," read "616."
857, 2d	14, for "163," read "162."
867, 2d	49, for "568," read "508."
875, 1st	14, for "wrunq," read "rung."
880, 1st	54, for "775," read "475."

CHAPTER 108.

OF THE MODES OF DISTRIBUTING REAL AND PERSONAL ESTATE, AND LANDS, HELD IN MORTGAGE OR TAKEN ON EXECUTION.

- SECT. 1. Judge of probate may order partition of REAL ESTATE, in certain cases.
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SECTION 1. The court of probate, in which the estate of any deceased person is settled, or in a course of settlement, may make partition of all his real estate, lying within this state, among his heirs or devisees, and all holding under them, in the manner, and under the restrictions, mentioned in this chapter.

SECT. 2. Any reversion or remainder, vested in the heirs of any such deceased person, expectant upon the determination of the estate in dower of his widow, or other particular estate, under his will or otherwise, may be in like manner divided, either during the existence of such particular estate, or after the determination of the same.

SECT. 3. No partition shall be made by the probate court, when the shares or proportions of the respective parties are in dispute between them; or shall appear to the judge to be uncertain, depending upon the construction or effect of any devise, or other conveyance, or upon any other questions, that he shall think proper for the consideration of a jury, and a court of common law.

SECT. 4. The partition shall be made by three disinterested persons, to be appointed, as commissioners for that purpose by the judge of probate; and they shall, before proceeding to the exercise of their duties, be duly sworn before the said judge, or before any justice of the peace; and they shall make such partition, pursuant to the will of the deceased, or the laws regulating the descent and distribution of intestate estates, as the case may be, among all the

Judge of probate may order partition of real estate in certain cases.

1821, 51, § 31.

13 Mass. 413.

14 Mass. 403.

5 Pick. 210.

21 Pick. 101.

Including reversions or remainders.

1821, 51, § 38.

13 Pick. 533.

If the shares be not disputed, nor uncertain.

1821, 51, § 35.

16 Mass. 167.

Appointment of commissioners, and their duties.

1821, 51, § 31.

CHAP. 108. parties holding shares, whether they join in the petition for the same or not.

Proceedings, when estate lies in different counties. 1821, 51, § 31.

SECT. 5. If there be estate to be divided, lying in different counties, the judge of probate may, if he shall think fit, issue a separate warrant, and appoint different commissioners for any or either of said counties; and, in such case, the partition shall be made of the estate in each county in like manner, as if there were no other estate to be divided.

Where an equal division cannot be made. 1821, 51, § 31, 36.
1 Mass. 323.
12 Mass. 367.
15 Mass. 291.
16 Mass. 122.
7 Pick. 209.

SECT. 6. When the whole or any part of the premises, of which partition is to be made, being of greater value than either party's share, cannot be divided, without great inconvenience, the same may be set off to any one or more of the parties, who will accept it, and pay, to any one or more of the others, such sums of money, as the commissioners shall award, to make the partition just; but such partition shall not be established by the court, until all such sums shall be paid or secured, with interest, to the satisfaction of the party entitled to the same; nor if inconsistent with the condition of any devise, under which the parties claim.

Same subject. 1821, 51, § 31.
11 Mass. 507.
7 Pick. 239.

SECT. 7. In such assignment, as is provided in the preceding section, males shall be preferred to females; and among the children of the deceased, elder shall be preferred to younger children of the same sex.

Where persons, not heirs, nor devisees, are interested. 1821, 51, § 31.
17 Mass. 81.

SECT. 8. No conveyance, made or suffered by any heir or devisee, of his interest in the lands of any intestate or testator, by deed, levy of execution or otherwise, shall take from the judge of probate his jurisdiction to divide and assign such lands amongst the heirs or devisees, in manner aforesaid; but the same shall enure to the use of the equitable owner of the part so conveyed.

Same subject. 17 Mass. 81.

SECT. 9. In case of unequal division, as provided in section, six, of this chapter, the grantee or execution creditor, representing the right of any such heir or devisee, shall, on the decree of the judge in his favor, after due notice to such heir or devisee, be entitled to receive the money, payable to such heir or devisee, or such part thereof, as shall be proportional to his equitable interest; provided that, previously to the acceptance of any such division by the judge, he shall have made application in writing to the judge, for the same.

Same subject.

SECT. 10. If the share of any such heir or devisee be under attachment, the judge, on the like application from the plaintiff in the suit, or of the attaching officer, shall require the money, not exceeding the amount of the attachment, to be paid over to the officer, who shall be answerable therefor in his official capacity; subject to the respective rights of the parties, as if originally attached.

Partition to embrace all or any part of the estate, if any owner require it. 1821, 51, § 33.
3 Fairf. 463.

SECT. 11. Every partition, when made by the judge of probate, on the application of an heir, shall be made amongst all the owners of all the estate, that descended from the ancestor, and which any party interested, whether the applicant or others, shall require to have included in the partition; and, when made on the application of a devisee, it shall be made of all the estate held by the applicant, jointly or in common with others holding under the testator, which he or any other devisee shall require to have included; and

the same rule shall apply, when the application is made by any person, holding under an heir or devisee. CHAP. 108.

SECT. 12. Such partition may be ordered, on the petition of any of the owners of any share, after due notice to all the others to appear and shew cause against it; which notice shall be served, fourteen days at least before the time appointed for the hearing, on the other owners personally, if they can be found within the state, and, if not, the notice shall be given by publishing it, in such newspaper or newspapers, as the court shall order, once in each week, for three weeks at least before such hearing.

Any owner may apply. What notice shall be given.
1821, 51, § 33.

SECT. 13. If it shall appear to the court, that any minor, or insane person, is interested in the premises, having no guardian within the state, the court shall assign him a guardian for the suit, to appear for him and defend his interest therein, as guardians are assigned in actions at common law; and, if any one resides without the state, having no agent therein, the judge shall appoint an agent for such owner, for the same purpose.

How minors, or persons insane, or out of the state, shall be represented.
1821, 51, § 33.

SECT. 14. Any widow, entitled to dower in any estate, of which her husband died seized, settled or in a course for settlement in any court of probate, may apply to the judge and have her dower assigned to her, on the principles stated in chapter, ninety five, unless her claim is disputed by some adverse party; and the judge, for that purpose, shall issue his warrant to three suitable persons, to assign the same, and the like notice shall be given, and the like proceedings, so far as applicable, shall be had by the court, and by the commissioners, as is provided in this chapter, for division of lands amongst heirs and devisees.

When the judge may assign dower to a widow.
9 Mass. 10.

SECT. 15. In all cases of partition or assignment of dower, pending before any judge of probate, when the real estate of the deceased, or any part of it, shall lie in common and undivided with that of any other person, the court may cause it to be divided and set off from the part held by such cotenant, before making partition thereof, among the heirs or others claiming under the deceased.

Proceedings, where land lies in common with other persons.
1821, 51, § 32.

SECT. 16. The court, in such case, shall order notice of the intended partition or assignment of dower, to be given to the cotenant; which notice shall contain a description of the premises to be divided, with a statement of the share or proportion claimed, as belonging to the estate of the deceased, and shall express the time and place appointed for hearing the case; and it shall be served on the cotenant, by delivering to him an attested copy thereof, or by leaving such copy at the place of his abode in this state, if any, fourteen days at least before the time appointed for the hearing. If such cotenant do not reside within the state, such public or special notice shall be given, as the judge may require.

What notice to be given to the cotenant.
1821, 51, § 32.

SECT. 17. The judge may, for any sufficient reason, set aside the return of the commissioners, and commit the case anew to the same or to other commissioners; and the return, when finally accepted and confirmed by the court, shall be recorded in the probate office, and also in the registry of deeds for the county, in which the lands lie; saving, to all parties interested, the right to appeal to the supreme court of probate, as provided in chapter, one hundred and five.

Proceedings on the commissioners' return. Appeal.
1821, 51, § 33, 35.
8 Mass. 132.
3 Fairf. 198.

CHAP. 108.

Allowance from personal estate to the widow. 1821, 51, § 39. 1835, 180. 15 Mass. 183. 10 Pick. 374. 17 Pick. 422.

When a further allowance may be made to her. 1821, 51, § 39.

Allowance to minor children, if no widow. 1821, 51, § 39.

Distribution of balance of personal estate. 1821, 33, § 19. 1821, 51, § 41. 1 Metc. 204.

When a specific distribution of effects may be made.

Of the collection of debts, so assigned.

When a bond to refund, may be required. 1821, 51, § 42. 1830, 470, § 9.

Action of debt may be brought, for legacies. 1821, 51, § 43.

SECT. 18. In the settlement of any intestate estate, or of any insolvent estate, testate, or in which the widow shall have duly waived the provisions, made for her in the will of her husband, and claimed her dower, the widow, besides her apparel and ornaments, shall be entitled to so much of the personal estate, as the judge shall determine to be necessary, according to the degree and estate of her husband, regard being had to the state of the family under her care.

SECT. 19. When such allowance shall have been made from an estate, represented insolvent, which shall ultimately appear to be solvent, the judge, by a subsequent decree, may make such further allowance to the widow therefrom, as he shall deem reasonable.

SECT. 20. In all insolvent estates, whether testate or intestate, if there be no widow, the judge shall have like authority to make an allowance of personal estate, to the minor children of the deceased, if under the age of fourteen years, or, from ill health, unable to labor, exclusive of their wearing apparel and books.

SECT. 21. Whenever, on the settlement of any account of any administrator or executor, there shall appear to remain in his hands any goods and chattels, rights and credits, not necessary for the payment of debts and expenses of administration, the judge shall order the same, if not specifically bequeathed, to be distributed, according to the provisions of the will of the deceased, if any, so far as may be directed by the same, and otherwise, according to the provisions of chapter, ninety three; and alienage shall be no impediment to any person, who is entitled; in other respects, to receive the same.

SECT. 22. When the surplus, mentioned in the preceding section, shall consist 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, if found convenient, he may appoint one or more appraisers to value and make a specific distribution of the same, under oath, and make report thereof to the judge for his acceptance.

SECT. 23. If any evidence of debt, or any account due to the deceased, shall be thus assigned, the person receiving the same shall be authorized to use the name of the executor or administrator, to collect the same by suit or otherwise, on giving such indemnity against the costs and expenses, as the judge may order; saving to all supposed debtors the right to set off any claim, which they may have against the estate of the deceased.

SECT. 24. Whenever any executor or administrator, shall pay to any creditor, heir or legatee, any sum, exceeding thirty dollars, on account of any debt, legacy, or decree of distribution amongst the widow and kindred of the deceased, the judge of probate, at his discretion, may authorize him to require of the payee, a sufficient bond, to refund so much of the sum, so paid, as the same may exceed such payee's equitable proportion on final settlement of the estate; unless such payment be made to a creditor, under an order of distribution of an insolvent estate.

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.

SECT. 26. When an executor or administrator shall recover judgment for any debt due to the deceased, and shall levy the execution on real estate, or when the deceased held any real estate in mortgage, without having foreclosed the right of redemption, the executor or administrator of the deceased shall be seized of such real estate, in trust for the persons, who would have been entitled to the money, if the same had been paid; and the same shall be accounted for as personal assets in his hands, and, if redeemed, the money shall be received by him to the same uses, and he may release the estate.

SECT. 27. Any real estate, so levied upon, or held in mortgage, may be sold; though subject to the right of redemption, if not foreclosed; for the payment of debts or legacies, and the charges of administration, in the same manner as any real estate, of which the deceased person died seized; such sale to be made by the executor or administrator, on license to be obtained, as provided in chapter, one hundred and twelve.

SECT. 28. If the real estate, so levied upon, or held in mortgage, shall not be redeemed, nor necessary for the payment of debts, and disposed of agreeably to the preceding section, the same shall be distributed amongst those, who are entitled to the personal estate, but in the same manner, as is provided in this chapter, for the distribution of the real estate; or the judge of probate, if he find it more for the benefit of the parties in interest, may order the same to be sold by the executor or administrator, in the same manner as is provided in the preceding section, and the money realized from such sale, to be distributed, as in other cases of personal estate.

CHAP. 108.

Lands, taken by execution, or held in mortgage, personal assets.

1821, 39, § 9, 10.

1821, 52, § 16,

17.

3 Mass. 220,

262.

4 Mass. 593.

5 Mass. 240.

6 Greenl. 127.

8 Pick. 29.

May be sold, by

license of court.

1821, 39, § 9, 10

1821, 52, § 16.

Distribution of

the same, if

neither redeemed,

nor sold.

1821, 52, § 16.

CHAPTER 109.

OF INSOLVENT ESTATES.

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5. Notice of their meetings.

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7, 8. Claimant may be sworn to make true answers. Witnesses.

9. Allowance of interest.

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11. If either party be dissatisfied, judge may appoint appraisers. Proceedings.

12. Report of commissioners. Their fees.

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23. Claimant may be examined, upon oath.

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26. Settlement of administrator's private claim, by the judge.

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28. What actions may be brought, after representation of insolvency.

29. When claims, not presented to commissioners, are recoverable.

**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-