

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:

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.....
1841.

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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Of priority of claims against insolvent estates. 1821, 51, § 25.

SECTION 1. Where any estate, under administration, is found to be insufficient to pay all the claims, existing against the same, the funds, for which the administrator is accountable, after payment of the expenses of the funeral and of administration, shall be applied in the following order :

First. To the allowance from the personal estate, made by the judge of probate to the widow or children of the deceased ;

Second. To the expenses of the last sickness of the deceased ;

Third. To debts entitled to a preference, under the laws of the United States ;

Fourth. Public rates and taxes, and moneys due the state ;

Fifth. All other debts.

8 Greenl. 167.

Same subject. 1821, 51, § 25.

SECT. 2. No payment shall be made to creditors of any one class, until all those of the preceding class or classes, of whose claims the administrator shall have had notice, shall be fully paid.

Representation of insolvency. Appointment of commissioners. 1821, 51, § 25. 11 Pick. 173.

SECT. 3. Whenever it shall appear to the judge of probate, from the representation of the administrator, that the estate of the deceased will probably be insufficient for the payment of his debts, the judge, except as provided in the following section, shall appoint two or more fit persons to be commissioners, to receive and examine all claims of creditors against the estate of the deceased, excepting any which the administrator may have, and to return to the probate court a list of all the claims, that shall have been laid before them, with the sum that they shall have allowed on each claim ; and the commissioners, before entering on the duties of their office, shall be duly sworn.

When commissioners may not be appointed. 1836, 322.

SECT. 4. But if the funds shall not be sufficient to extend beyond the payment of the expenses of the funeral and administrator, and the allowance to the widow and children, as aforesaid, it shall not be necessary to appoint commissioners ; and the administrator shall be exonerated from the payment of any claim of any subsequent class.

Notice of their meetings. 1821, 51, § 25.

SECT. 5. The commissioners of insolvency shall appoint convenient times and places, for their meetings to receive and examine the claims of creditors ; and shall give notice thereof, by causing an advertisement to be printed in such public newspaper or papers, or by such other notice, as the judge shall direct.

Times, within which claims must be made. 1821, 51, § 25. 5 Greenl. 45. 6 Pick. 458.

SECT. 6. The period of six months after the appointment of the commissioners shall be, in the first instance, allowed for the creditors to present and prove their claims ; and, if necessary, an additional time, not exceeding eighteen months in the whole, from the date of the commission, at the discretion of the judge, may be allowed for the reception and examination of claims generally, or of any particular claim or claims, to be specified in the order of the judge. All claims, presented to the commissioners, shall be in writing, supported by affidavit of the party or some person conusant

How they must be stated.

thereof; and it shall be specified, what security the claimant has, and the amount of credit to be given in set off, if any, to the best knowledge and belief of such claimant or person. CHAP. 109.

SECT. 7. The commissioners may, when they shall think it proper, require an oath to be administered by either of them to any claimant, to make true answers to all such questions, as shall be asked of him by them, relating to his claim, and they may thereupon examine him upon all matters relating thereto; they may also administer oaths to, and examine such witnesses, as may be produced before them.

Claimant may be sworn, to make true answers. Witnesses. 1821, 51, § 26.

SECT. 8. If any claimant refuse, when required, to submit to examination as aforesaid, his claim shall be rejected; and, if any such claimant, or any witness sworn as aforesaid, shall wilfully and corruptly make any false answer or declaration relating to any claim under examination, he shall be deemed guilty of perjury, and liable to the punishment, prescribed for that crime in chapter, one hundred and fifty eight.

Same subject. 1821, 51, § 27.

SECT. 9. The commissioners shall cast interest on all claims allowed by them, from the time of the death of the testator, or intestate to the time of making their report, whether the claims expressly bear interest or not, unless otherwise stipulated in the contract.

Allowance of interest. 13 Mass. 537.

SECT. 10. If any creditor hold, as collateral security for his claim, any mortgage or pledge of real or personal estate, or any note or other evidence of debt, being of less value than the amount due him, he shall be allowed only the difference between such amount and the value of the security taken, to be estimated by the commissioners, who may at either of their meetings give the creditor a certificate of such estimate.

Value of collateral security to be deducted by commissioners. 16 Mass. 308. 16 Pick. 255.

SECT. 11. If such creditor or administrator be dissatisfied with said estimate, the judge, on his application, and production of the said certificate, and notice to the administrator, may appoint a committee of three disinterested and discreet men, who shall be under oath to examine and appraise the said mortgaged property, and make return of their appraisal under their hands to the probate court: and such appraisal shall be substituted for the first appraisal by the commissioners, and the difference added to, or deducted from, the balance of the claim as allowed by the commissioners. And if the creditor shall decline to take the property, at the appraisal of the committee, on his relinquishing his claim thereon, the judge of probate shall add the amount of such appraisal to his claim as allowed, and he shall be entitled to his dividend on the whole amount, and the property shall be disposed of by the administrator according to law.

If either party be dissatisfied, judge may appoint appraisers. Proceedings. 16 Mass. 308. 6 Pick. 481.

SECT. 12. At the expiration of the time limited, the commissioners shall make their report to the judge, who shall order the administrator to pay their legal fees.

Report of commissioners. Their fees. 1821, 51, § 25.

SECT. 13. Any person; liable as surety for the deceased, or having any other contingent claim, may exhibit the same, and, if proved, the commissioners may report the amount thereof; distinguishing it from the absolute claims allowed, and stating the nature of it.

Of contingent claims. 1835, 191, § 5.

CHAP. 109.

Same subject.

SECT. 14. The judge, in ordering a distribution, as hereinafter provided, shall leave in the hands of the administrator a sum sufficient to pay, to such contingent creditor, a proportion equal to what shall then be paid to the other creditors.

Same subject.

SECT. 15. If, at any time within four years after the date of the administration bond, such contingent debts shall appear, to the satisfaction of the judge, to have become absolute, the creditor shall be entitled to a dividend thereon, equal to what shall have been paid to the other creditors, so far as the same can be paid without disturbing any former dividend.

Same subject.

SECT. 16. If such claim be not established within said term of four years, or if it shall not be sufficient to exhaust the assets in the hands of the administrator, the residue of the assets shall remain for the benefit of the other creditors.

On dissatisfaction of either party, claim to be determined at common law.
1821, 51, § 25.
1 Mass. 23, 431.
6 Pick. 330.
14 Pick. 8, 274.
15 Pick. 335.
13 Pick. 256.

SECT. 17. Any person, whose claim shall be disallowed, in whole or in part, by the commissioners, and any administrator, who shall be dissatisfied with the allowance of any claim, may appeal from the decision of the commissioners, and the claim shall thereupon be determined at common law.

Course of proceeding.
1821, 51, § 25.

SECT. 18. Such appeal shall be claimed, and notice thereof shall be given, in writing, at the probate office, within twenty days after the return of commissioners; and in case of an appeal by an administrator, he shall also give notice to the creditor within thirty days, by serving a copy of the former notice, attested by the register, upon him, or his agent or attorney, personally, or by leaving such copy at his usual place of abode, if he, or such agent or attorney, reside within the state.

Same subject.

SECT. 19. Whenever such appeal shall have been claimed, the demand shall be deemed contingent, and, until the decision thereof, provision shall be made for the same, as is provided in the fourteenth and fifteenth sections of this chapter.

Same subject.
1821, 51, § 25.
15 Mass. 455.
4 Pick. 122.

SECT. 20. The creditor, within a reasonable time, in any case, not exceeding three months after the report of the commissioners shall have been returned, shall prosecute his claim against the administrator in an action for money had and received; in which action he may annex to his writ, before service, a schedule of all his claims, and the nature thereof, or he may file in the office of the clerk of the court, to which the action shall be brought, such schedule, fourteen days at least before the return day of the writ; or if such action be brought before a justice of the peace, the schedule may be filed with the justice, seven days at least, before such return day.

Same subject.
2 Mass. 498.
18 Pick. 403.

SECT. 21. In every such case, the administrator, at such time as the court may direct, shall file an abstract of all the demands, which the deceased may have left against the supposed creditor, and judgment shall be rendered for either party, as the case may be, upon the balance to be ascertained at the trial.

Such claim may be submitted to referees.
1821, 51, § 25.

SECT. 22. Whenever an appeal from the decision of the commissioners shall be claimed, the parties may submit the matter to referees, to be agreed upon between them, and appointed by a rule of the probate court; and their award shall be final.

Claimant may

SECT. 23. On the trial of such appeal before any court or

referees, the creditor may be examined upon oath, as before the commissioners, and, if he refuse to take the oath, or to answer fully upon examination, his claim shall not be allowed. CHAP. 109.

SECT. 24. On final judgment in any action, upon appeal as aforesaid, whether at common law or before referees, no execution shall issue, if determined against the administrator, except for costs; but the sum, thus ascertained to be due to the claimant, shall be entered upon the list of debts, entitled to dividends from the estate, as is provided in regard to contingent claims, in section, fifteen, of this chapter.

SECT. 25. On all such appeals, costs may be allowed to the prevailing party; but, if awarded against the administrator, when appellee, the same may be charged by him against the estate; otherwise, where he shall be the appellant, unless the judge of probate shall be satisfied, that he had reasonable cause to appeal.

SECT. 26. Any private claim, which the administrator may have against the estate, may be examined and allowed by the judge, and annexed to the list of claims reported by the commissioners; and a proportional dividend thereon reserved to the administrator.

SECT. 27. After the expiration of thirty days from the return, made by the commissioners, the judge of probate may make such a decree for the distribution of the effects amongst the creditors, as the case shall require, according to the provisions of this chapter; and the judge shall have power, before ordering a distribution to be made thereon, to recommit the report to the commissioners for the purpose of correcting any error or mistake, satisfactorily appearing to him to exist. If, at any future time, there should be assets sufficient for other distributions, he may order the same to be made on the same principles.

SECT. 28. No action shall be brought against an administrator, after the estate is represented insolvent, unless it be for a demand, which is entitled to a preference, and would not be affected by the insolvency of the estate; or unless the assets should prove more than sufficient to pay all the debts allowed by the commissioners; and, if the estate is represented insolvent, whilst an action is pending against the administrator, for any demand, that is not entitled to such preference, the action may be discontinued without the payment of costs, or, if the demand is disputed, the action may be tried and determined, and judgment rendered thereon, in the same manner, and with the same effect, as is provided in the case of an appeal from the award of the commissioners: or the action may be continued, at the discretion of the court, without costs to either party, until it shall appear, whether the estate is insolvent; and, if it should prove not to be insolvent, the plaintiff may prosecute the action, as if no such representation had been made.

SECT. 29. Every creditor of an estate found to be actually insolvent, who shall not have presented his claim for allowance, in the manner prescribed in this chapter, shall be forever barred from recovering the same, unless further assets of the deceased shall come to the hands of the administrator, after the decree of distribution; in which case, his claim, if not disputed by the administrator, or if approved to the satisfaction of the judge, may be allowed and paid,

be examined, upon oath.
1821, 51, § 26.
Judgment added to the list of debts.
1821, 51, § 25.

Allowance of costs.
13 Mass. 537.

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

Decree of distribution. Re-commitment in case of mistake.
1821, 51, § 25.
1840, 21, § 2.

What actions may be brought, after representation of insolvency.
1821, 51, § 25.
1 Mass. 504.
4 Mass. 620.
10 Mass. 170.
15 Mass. 264.
2 Greenl. 8, 169.
7 Pick. 239.

When claims, not presented to commissioners, are recoverable.
1821, 51, § 25.
4 Mass. 620.
15 Mass. 140, 148.

CHAP. 109. in the manner and with the limitations, provided in this chapter for the case of contingent debts.

Account to be rendered within six months, or bond forfeited. 1821, 51, § 28. 1833, 62, § 3. 9 Mass. 114. 5 Greenl. 45. 6 Greenl. 268. 8 Greenl. 22. 2 Fairf. 50. 21 Pick. 58.

When there may be a subsequent commission of insolvency. 1830, 470, § 8.

What claims may be then allowed. 1830, 470, § 8.

When representation must be made. Prior claims not affected. 1830, 470, § 8.

Disposal of unavailable debts. 1835, 191, § 3.

Same subject. 1835, 191, § 3.

SECT. 30. Whenever the commissioners shall have duly reported to the judge a list of claims allowed, if the administrator shall neglect to exhibit and settle his account of administration with the judge, within six months after the report shall have been made, or within such further time as the judge shall think proper to allow therefor, such neglect shall be deemed a breach of the administration bond.

SECT. 31. Whenever it shall appear, that the assets in the hands of the administrator are more than sufficient for the payment of the full amount of all the claims allowed, and interest thereon, and the administrator shall apprehend, that there may not be assets sufficient to pay all such other claims as may be adduced, under the provisions of this chapter, together with the charges of administration, the administrator may make representation to the judge, whose duty it shall be to issue another commission of insolvency returnable in sixty days; and like proceedings shall be had as in other cases.

SECT. 32. After a distribution, ordered on any commission of insolvency, no claim shall be allowed on any such subsequent commission, unless demanded of the administrator within three years after he shall have accepted the trust; neither shall he be liable to any action to be commenced thereon after that time; provided, that within thirty days, or at the first regular probate court after the expiration of said three years, said claim having been duly presented, the administrator shall make further representation of insolvency, as provided in the preceding section.

SECT. 33. No such subsequent commission shall be issued, unless representation be made within the thirty days, or at the first probate court after the three years, mentioned in the preceding section; and no dividend shall be made thereon, so as to prevent the full payment of the claims before allowed or provided for, with interest.

SECT. 34. Whenever an administrator in his said capacity holds notes, accounts or other demands of the deceased, which, in the opinion of the judge, with due diligence, on the part of the administrator, are not available as assets, beyond the probable expenses of collection, on account of the poverty of the persons liable, or of the disputable nature of the demands, the judge may order the same to be assigned, as provided in the following section; reserving to such persons liable, their equitable right of set off; and the assignee giving to the administrator such indemnity against costs, as the judge may require.

SECT. 35. After due notice to all persons interested; such demands, or any of them, may be transferred to the following parties, with authority to collect the same in the name of the administrator, they, to be entitled to preference in the following order, if applied for by themselves, their attorney or guardian, viz:

First. To the largest creditor, who will take the same, at their nominal value, to be deducted from the amount of his claim before distribution of the assets;

Secondly. To the widow of the deceased, if any; and
Thirdly. To the minor children of the deceased in equal proportions.

SECT. 36. The word, "administrator," in the preceding sections of this chapter, shall be construed as including in its signification the word, "executor." Provisions extended to executors.

SECT. 37. If any executor or administrator of an insolvent estate shall commit such waste or trespass upon any real estate, as is described in the fifteenth section of chapter, one hundred and twenty nine, whether he be an heir or devisee thereof, or not, or if he shall consent to any such waste or trespass by any other person, he shall be liable to account for treble the amount of the damage done to the real estate, as aforesaid; and such administrator or executor shall have power to prosecute actions of trespass against any persons committing such waste, whether they be heirs or devisees, or not, and the damages so recovered shall also be accounted for, as assets. Waste on real estate of persons deceased, insolvent. 1835, 191, § 4.

SECT. 38. Any executor, who may have given bond as a residuary legatee, pursuant to the provisions of section, nine, of chapter, one hundred and six, if the estate under his care, from some unexpected event, prove insufficient for the payment of debts, may represent the same, insolvent; and like proceedings and distribution shall be had, as is provided in this chapter for other cases; and the said executor, or his surety, in any suit brought upon his bond, may avail himself of such insolvency and distribution, in bar of such action. Of insolvency, when executor has given bonds, as residuary legatee. 1830, 470, § 7.

CHAPTER 110.

OF GUARDIANS.

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