

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.

all concerned therein; they may also authorize the sale of real estate, held as aforesaid, and give such further directions, as the case may require, for managing, investing and disposing of the trust fund, subject to any provisions contained in the will, respecting such fund; and provided, this section shall not restrain the exercise of any powers, given by the terms of the will.

SECT. 13. The said courts, respectively, may hear and determine, in equity, all other matters relating to the trusts mentioned in this chapter.

SECT. 14. Any bond, given by a trustee, as provided in this chapter, may be put in suit by order of the judge of probate, for the use and benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted in the manner prescribed in chapter one hundred and thirteen, with respect to bonds given by administrators.

Chancery powers.

Bonds to be for the use of all parties interested.

CHAPTER 112.

OF SALES OF REAL ESTATE BY EXECUTORS, ADMINISTRATORS, GUARDIANS, AND OTHERS, UNDER SPECIAL LICENSE OF COURT.

- SECT. 1. When the judges of probate may license sales of real estate.
- 2. Sales to be by auction, unless otherwise ordered.
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- 10. Certificates of judge of probate necessary in certain cases, on application to the supreme judicial, or district court.
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- 12. When certificates of the overseers of the poor, necessary.
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- 16. Sales may be adjourned, not exceeding fourteen days.
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- 18. Limitation of action, or entry, to recover back lands sold under license, &c.

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- 21. Oath and bond in such cases.
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- 23. Jurisdiction of lands in one county, to embrace lands in other counties.
- 24. License to sell, at private sale, to authorize a sale by auction.
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- 26. May also bar her dower in his lands.
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- 29. Licenses, in certain cases, may express what, and in what order, lands may be sold.
- 30. Operation of the deed of a person, authorized by license.
- 31. What estate of deceased persons is subject to be sold by license.
- 32. Surplus proceeds of sale considered as real estate, for purposes of distribution.

- CHAP. 112.** **SECT. 33.** Presumptive heirs of wards, entitled to notice, as parties interested.
34. Of costs, when the granting of a license is objected to.
35. Requisites of a valid sale, against persons claiming under the deceased, &c.
- SECT. 36.** Against such as claim adversely to the title sold.
37. Remedy on bond, or otherwise, to party aggrieved by misconduct of the person licensed.
38. Certain interests in lands, included in the construction of this chapter.

When judges of probate may license sales of real estate.

1821, 51, § 68.

12 Mass. 503.

15 Mass. 58.

8 Greenl. 220.

15 Pick. 423.

1821, 52, § 2, 5,

6.

1821, 52, § 2.

1823, 224.

1830, 470, § 5.

1830, 470, § 4.

1821, 52, § 3.

1830, 470, § 4.

1821, 52, § 7.

1833, 62, § 1.

1837, 296.

1833, 76.

SECTON 1. Judges of probate, in their respective counties, shall have power to license the sale of real estate, and certain interests therein, in whatever county the same may be situated, in the following cases, on application:

First. Of executors, administrators, and guardians of minors and other incapacitated persons, to authorize them to sell so much of the real estate of their testators, intestates and wards, respectively, as is necessary for the payment of just debts and legacies, and incidental expenses of sale, and charges of administration or guardianship; and when there is not sufficient personal estate for the support of such wards;

Secondly. Of such executors, administrators and guardians, in like cases, to sell so much real estate, held in mortgage, and seizin and possession thereof being had for breach of the condition thereof, or which has been set off on execution to such executor, administrator or the ward of such guardian, as may be necessary for said objects, notwithstanding the right of redeeming the same may not have been foreclosed;

Thirdly. Of guardians of minors, and other incapacitated persons, so much as is necessary for the payment of debts and expenses of guardianship, and incidental charges, notwithstanding there may be a reserve of personal property of the wards; provided, that it appear more for the advantage of such wards, or their families;

Fourthly. Of guardians, in addition to the provisions of the preceding specifications, to sell so much of the real estate of their wards, as will raise not exceeding one hundred dollars more, in anticipation of accruing expenses;

Fifthly. Of executors, administrators and guardians, as aforesaid, when license might be granted for any of the foregoing purposes, and it should appear by the petition, and proof exhibited in support of the same, that, by a partial sale of any entire portion, the residue would be greatly depreciated, to authorize the sale of the whole, or such entire parts thereof, as will not injure the residue;

Sixthly. Of the friends or guardians of minors and other incapacitated persons, that the guardians, or some other suitable persons, may be authorized to sell any real estate of the wards, including lands held in mortgage or levied upon by execution, when it fully appears, that it would be for the benefit of the wards, that the same should be disposed of, and the proceeds thereof put out at interest, though not requisite for other purposes;

Seventhly. Of friends or guardians of minors, and others under guardianship, who are owners of lands, on which any trees or timber shall be standing, and it shall be made to appear, that the interests of the wards would be promoted by having the trees or timber

sold, and the proceeds thereof put on interest, to authorize the guardian of any such minor, or other suitable person, to sell said trees and timber, or any part thereof, for the purpose aforesaid;

Eighthly. Of any husband, resident in the county of such judge, whose wife is insane, that he may be authorized, on such terms and conditions, as the judge may think proper to require, to make sale, for a valuable and sufficient consideration, of any real estate held by him in right of his wife;

Ninthly. Of public administrators in the case defined in section eleven, of chapter, one hundred and seven:

Provided, that the executor, administrator or guardian shall have received his appointment, as such, from the judge granting the license, or from his predecessor.

SECT. 2. Excepting where otherwise specially authorized, as hereinafter provided, all the sales under the provisions of the preceding section, shall be by public auction.

SECT. 3. An appeal shall be allowed from any order, decree, denial or decision of any judge of probate, respecting any petition for such license, in like manner as in other cases.

SECT. 4. The supreme judicial court in every county, and any district court in any county within its district, shall have original, concurrent jurisdiction with the court of probate in all cases, specified in the first section of this chapter; and the right and conditions of appeal may be exercised and applied from the district courts to the supreme judicial court, as may be from the probate court.

SECT. 5. Executors, administrators and guardians, in all cases of license obtained to sell real estate, shall, before proceeding to make such sale, give bond to the judge of probate of the county, in which they were originally appointed, respectively, in an amount and with sureties, to his satisfaction, with the following conditions:

First. That they shall observe all the provisions of law for the sale of real estate by executors, administrators and guardians, and use due diligence in executing the trust; and

Secondly. That the proceeds of the sale shall be truly applied and accounted for, according to law.

SECT. 6. Before fixing upon the time and place of sale, they shall make oath, that, in the execution of the trust, they will act faithfully and impartially, according to their best skill and judgment; which oath shall be taken before the judge of probate, in whose county they were originally appointed, or before some justice of the peace, whose certificate shall be returned to the said judge, and the same shall be filed and recorded by the register.

SECT. 7. No license shall be granted for the sale of any such real estate by any court, to any executor, administrator, guardian or other person, as aforesaid, until after at least fourteen days previous personal notice, or notice given three weeks successively in such newspaper, as the court shall order, to all persons interested in the property, of the time and place of hearing, that they may appear and object if they see cause. If any party interested reside without the state, such special notice may be given, as the court may direct.

SECT. 8. Such license shall not be granted to any executor, administrator, guardian or other person, as aforesaid, unless he has given a bond,

Sales to be by auction, unless otherwise ordered.

1821, 52, § 3.

Appeals allowed, on such applications.

1821, 51, § 68.

3 Greenl. 220.

Concurrent jurisdiction of supreme judicial, and district court.

1821, 52, § 3, 5, 6.

15 Mass. 58.

3 Greenl. 220.

Bonds required.

1821, 52, § 3, 7.

1830, 470, § 6.

1833, 62, § 1.

1833, 76.

1837, 296.

3 Greenl. 282.

Oath.

1821, 51, § 69.

7 Pick. 311.

Notice previous to granting license.

1821, 52, § 2.

CHAP. 112. administrator or guardian, if any of the parties interested in the estate of the person deceased or under guardianship, shall give bond to the said executor, administrator or guardian, in a sum and with sureties to be approved by the court, conditioned to pay all sums, for the payment of which license might otherwise be granted under the petition, so far as the goods and chattels, rights and credits of the person deceased, or under guardianship shall be insufficient therefor; provided, that such bond shall be no bar to any future application for the same purposes, if the obligors, on reasonable notice and demand, shall, at any time, fail to perform the condition thereof.

Of the notice of sale.

1821, 52, § 2.
1 Mass. 247.
3 Mass. 399.
15 Mass. 326.
16 Mass. 129.

SECT. 9. Every person, licensed, as aforesaid, to sell the estate of any person deceased or under guardianship, shall, previous to such sale, give thirty days notice thereof by posting up notifications in some public place in the town, where the estate lies, and in two adjoining towns, and in the town, where the said deceased last dwelt, or where the person under guardianship resides, if within the state; or by causing an advertisement thereof to be published, three weeks successively, in such newspaper as the court, who may authorize the sale, shall order; the first publication being thirty days before the sale.

Certificate of judge of probate necessary in certain cases, on application to the supreme judicial, or district court.

1821, 52, § 4, 7.

SECT. 10. Every application for the sale of any estate, under the provisions of the fifth specification of the first section of this chapter, when made to the supreme judicial court, or to any district court, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried, showing the value of the real and personal estate of the person deceased or under guardianship, and the amount of his just debts, or legacies, if the case require it; and also the opinion of such judge of probate, whether it be necessary that the whole or a part of the estate should be sold, and, if part only, what part; and in all applications before said courts by guardians of minor children, under the sixth specification aforesaid, a certificate must likewise be produced from the judge of probate in the county where such minor's estate was inventoried, stating that, in his opinion, it would be for the interest of such minor, that the whole or a part of his said estate should be sold for the purpose specified, and if part only, what part.

Petitioner and others may be examined under oath.

1821, 52, § 4.

When certificate of the overseers of the poor, necessary.

1821, 52, § 5, 6.

SECT. 11. Any court, authorized to grant licenses under the provisions of this chapter, may examine under oath the petitioner or any other persons, whether interested or not, touching the truth of the facts set forth in any such petition.

SECT. 12. No license to sell the estate of any person under guardianship, not a minor or insane person, shall be granted, unless the guardian, or other person applying, shall produce to the court a certificate under the hands of the overseers of the poor of the town, where the ward resides, if within this state, giving their consent and approbation of the sale, and their opinion as to the amount proper to be raised by such sale, excluding debts contracted by gaming; and, if applicable to the case, whether it be necessary to sell a greater amount in value of land to prevent injury to the residue.

Proceedings for sale of estate of persons deceased.

SECT. 13. The supreme judicial court, and any district court, in any county within the limits of their respective jurisdictions, may

grant license to executors and administrators on the estates of persons deceased, who, at the time of their decease, resided out of the state, and also guardians of such minors and other persons under guardianship, not living within the state, producing evidence of their appointment as hereinafter provided, to sell and convey such real estate or interest therein, lying within the state, in the same way and manner, and under the same regulations, as are provided, in this chapter, for the sale of such estate by executors, administrators and guardians, appointed under authority of this state.

SECT. 14. All proceedings, necessary to be had before any judge of probate within this state, respecting such sale as is provided in the preceding section, shall be had before the judge of probate within and for the county, where such real estate lies, and the bond required of the person licensed shall be given to the same judge. No certificate in such case shall be required of the overseers of the poor in any place.

SECT. 15. Whenever any executor, administrator or guardian has been duly approved or appointed by any court, having probate jurisdiction in any other of the United States, a certified copy of such approval and appointment, submitted for examination to any judge of probate in this state, and by him allowed and ordered to be filed, and transcribed upon the records in the registry of probate for his county, shall be sufficient authority to entitle such executor, administrator or guardian to all the rights and powers of such appointment, so far as affected by the provisions of the thirteenth section of this chapter.

SECT. 16. Any sale, appointed and notified under the provisions of this chapter, may be adjourned for a time or times, not exceeding fourteen days in the whole, at the discretion of the person licensed, he giving such reasonable notice of such adjournment, as circumstances may permit.

SECT. 17. No license, granted under any of the provisions of this chapter, shall remain in force longer than one year from its date.

SECT. 18. No action for the recovery of any estate, sold under the provisions of this chapter by an executor, administrator or guardian, shall be maintained by any heir, or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale; and no action for any estate, sold in like manner by a guardian, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only, that persons out of the state, and minors and others, under any legal disability to sue at the time when the action shall first accrue, may commence such action, at any time within five years after the removal of the disability, or their return to the state; and no entry shall be made, unless by judgment of law, upon any lands, sold as aforesaid, with a view to avoid the sale, unless within the times of limitations before prescribed for the commencement of an action.

SECT. 19. The affidavit of any person, duly licensed to make sale of any real estate, or of any person, employed by such licensed

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ed, or of wards
not resident
in the state.
1821, 52, § 8.
2 Fairf. 99.

Same subject.
1821, 52, § 8, 9.

Evidence of ap-
pointment of an
executor, ad-
ministrator or
guardian, in
another state.
1821, 52, § 10.

Sales may be
adjourned, not
exceeding four-
teen days.
1821, 52, § 11.
15 Mass. 175.

License, in
force, one year
only.
1821, 52, § 12.
15 Mass. 326.
9 Pick. 285.

Limitation of
action, or entry
to recover back
lands sold un-
der license, &c.
1821, 52, § 12.
14 Maine, 344.

Evidence of no-
tice of sale, how
perpetuated.
1821, 52, § 15.

CHAP. 112. person, taken within eighteen months next following the sale of such real estate, and filed in the probate court, and recorded with one of the original advertisements of the time, place and estate to be sold, or a copy of such advertisement, is hereby declared to be one mode of perpetuating the evidence, that such notice was given; and a copy of such affidavit, certified by the register of probate, shall be competent evidence thereof; or the affidavit may be taken, as provided in section, twenty three, of chapter one hundred and five.

Licenses to sell
real estate, at
private sale.
1826, § 42.
1830, 470, § 4.
5 Greenl. 240.

Oath and bond
in such cases.

License, in ref-
erence to a par-
ticular offer to
purchase.

Jurisdiction of
lands in one
county, to em-
brace lands in
other counties.
1826, § 42.

License to sell,
at private sale,
to authorize a
sale by auction.

Wife of a ward
insane, &c. may
join in a sale,
with his guard-
ian to convey
estate, held in
her right.
1828, 380, § 3.

May also bar

SECT. 20. In all cases, where the supreme judicial court, any district court, or any judge of probate, may, by the provisions of this chapter, license any person to sell any real estate by auction, the said courts, respectively, may authorize *them* [him] to make sales, from time to time, at private sale, if it shall appear for the interest of all concerned.

SECT. 21. Every person, thus licensed, shall be required to take the same oath, and execute and file with the judge of probate, like bonds, as is required of persons licensed to sell by auction; but the notice to be given of the time and place of sale, shall be such as the court, in their license, may direct, excepting as directed in the following section.

SECT. 22. Whenever, on such application to sell estate at private sale, it appears by the petition of any executor, administrator or guardian, and the evidence adduced, that an advantageous offer has been previously made to him, by any person, for such estate, or any part of the same, and that the interest of all persons concerned will be best promoted by an immediate acceptance of the same, the said courts, or the judge of probate having cognizance of such petition, may authorize a sale of the property on such terms as they see fit, to such individual, with or without public notice, at the discretion of the person licensed; the person licensed giving bonds and taking the oath, as in other cases.

SECT. 23. When the real estate, for the sale of which license may be necessary, lies in two or more counties, the judge of probate or other court, having authority to grant license to sell the estate in either of said counties, may also include in such license, the whole or any part of the estate in any of the other counties in the state, which might be liable to be sold for the same objects, if the court had regular jurisdiction of the same.

SECT. 24. Any person, duly authorized to sell real estate at private sale, may, notwithstanding, if he see cause, sell the premises by auction, at any time within the term of his license, he complying with all the requisitions of law for sales by auction, together with any particular conditions contained in his aforesaid license.

SECT. 25. Whenever the guardian of any insane or other person, not a minor, shall have obtained license, from any court empowered to grant the same, to sell the interest of his ward in any estate, held by him in right of his wife, it shall be lawful for her to join with such guardian in the sale and conveyance thereof; and any deed, executed by her with the said guardian, for a sufficient consideration, shall be as effectual, as if executed by her with her husband, when under no legal disability.

SECT. 26. Whenever any guardian as aforesaid shall have

obtained license to sell the real estate of his ward, and the wife of such ward shall release her contingent right of dower therein to the purchaser, either in the same deed with the guardian, or another deed duly acknowledged and recorded, she shall be forever barred from claiming any dower in the premises. C_HA_P. 112.
her dower in his lands.
1828, 380, § 4.

SECT. 27. It shall be competent for the guardian, with the consent of the judge of probate, to whom he is accountable, to make any agreement in writing with such wife, as to the investment or other disposal of such part of the proceeds of sale of the whole property for her séparée use, as may be equivalent to her interest in the same; and the said judge of probate, or the supreme judicial court, shall have power to enforce such agreement, as a subject of trust, upon principles of equity. Guardian may contract with her, to invest proceeds of her interest, with the judge's consent.
1828, 380, § 3.

SECT. 28. Judges of probate may authorize any executor or administrator of any deceased person, whose estate is subject to his jurisdiction, to execute deeds, in order to carry into effect bonds, agreements or covenants in writing, whether sealed or not, whenever it shall be made to appear to them, on petition of the person contracted with, as aforesaid, or his heirs or assigns, or personal representatives, that the deceased, in his life time, entered into any such contract to convey real estate to him, but was prevented by death; and that the petitioner has performed, or stands ready to perform, whatever condition was required of him by the terms of the contract. And, whenever any executor or administrator shall receive any such conveyance, he shall stand seized of such estate, to the same uses and for the same purposes, as he may be of real estate, set off to him on execution. Judge of probate to authorize deeds, under contract of a person deceased.
1839, 361.
1840, 21, § 1.
3 Greenl. 50.
14 Pick. 271.

SECT. 29. On granting license to any executor, administrator or guardian, for the payment of debts, legacies or expenses of administration, it shall be competent for the court granting the same, to prescribe in the license, what particular portions of the real estate shall be sold, and in what order, agreeably to the provisions of the last will of the testator, or on such principles of equity, as they may find applicable. Licenses, in certain cases, may express what, and in what order, lands may be sold.
6 Mass. 149.
8 Pick. 478.

SECT. 30. Any deed, made, executed and recorded in due form of law, for a fair and adequate consideration, in pursuance of any license under the provisions of this chapter, shall be effectual to pass to the purchaser all the estate, right, title and interest in and to the granted premises, which the testator or intestate, at the time of his death, or the person under guardianship, or other person on account of whom the license was granted, might convey by a like deed, if living and not incapacitated. Operation of the deed of a person, authorized by license.
1821, 52, § 2.
3 Greenl. 282.
4 Greenl. 1.
4 Pick. 312.

SECT. 31. Lands, of which the testator or intestate died seized in fee simple, or in fee tail, general or special, and also all such estate, as he had fraudulently conveyed, or of which he had been colorably disseized with intent to defraud his creditors, shall be liable to be sold under any license for the payment of his debts, under the provisions of this chapter. What estate of deceased persons is subject to be sold by license.
1821, 52, § 1.
14 Mass. 137.
15 Mass. 148.

SECT. 32. In all cases of sales by an executor, administrator, husband or guardian, of any part or the whole of the real estate of his testator, intestate, wife or ward, under a license granted by any court, by virtue of the provisions of this chapter, whether such Surplus proceeds of sale, considered as real estate, for purposes of distribution.

CHAP. 112. executor, administrator or guardian shall have been appointed in this state or elsewhere, and wherever the husband may reside, the surplus of the proceeds of the sale, remaining on the final settlement of the accounts of such proceeds, shall be considered, as real estate, and be disposed of amongst the same persons, and in the same proportions, as the real estate would have been, by the laws of this state, if it had been sold.

Presumptive heirs of wards, entitled to notice, as parties interested.
15 Maine, 207,
212.
9 Pick. 130.
3 Mass. 398.

Of costs, when the granting of a license is objected to.
1821, 52, § 14.

Requisites of a valid sale, against persons claiming under the deceased, &c.
7 Mass. 488.
7 Pick. 1.

Against such as claim adversely to the title sold.
2 Fairf. 174.
5 Pick. 519.

Remedy on bond, or otherwise, to party aggrieved by misconduct of the person licensed.
5 Pick. 519.

Certain interests in lands included in the construction of this chapter.

SECT. 33. All those, who are next of kin, and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear, as such, and answer to the petition of any guardian or other person for the sale of his estate; and, when personal notice is required to be given, they shall be notified, as such.

SECT. 34. If any person interested shall appear and object to the granting of any license, prayed for under the provisions of this chapter, and if it shall appear to the court, that either the petition, or the objection thereto, is unreasonable, they may, in their discretion, award costs to the party prevailing.

SECT. 35. In case of an action, relating to any estate sold under the provisions of this chapter, in which an heir, or other person claiming under the deceased, or the wife or her heirs, in case of a sale of her estate by her husband, or the ward or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided, it shall appear:

First. That the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded;

Secondly. That the person licensed gave whatever bond was required in his case;

Thirdly. That he took the oath prescribed in section six, of this chapter, if also required;

Fourthly. That he gave notice of the time and place of sale, as prescribed in this chapter;

Fifthly. That the premises were sold in such manner, and within such term, as the license authorized, and are held by one, who purchased them in good faith.

SECT. 36. If the validity of any such sale shall be drawn in question, by any person claiming adversely to the title of the deceased testator or intestate, ward, or wife aforesaid, or by a title, not derived through him or her, the sale shall not be held void on account of any irregularity in the proceedings; provided, it shall appear that the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded,

SECT. 37. If, in relation to such sale, there shall be any neglect or misconduct in the proceedings of any executor, administrator or guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor, in a suit on the probate bond, or otherwise, as the case may authorize or require.

SECT. 38. Whenever executors, administrators or guardians, may be authorized to sell property held in mortgage, or levied upon, by execution, as in the second specification in the first section of this chapter, or to sell trees and timber, standing on any land of

any minor, as in the seventh specification in said section, all the provisions in this chapter, respecting the sale of real estate after license obtained, which may be applicable to the case, shall be construed, as including the same. CHAP. 112.

CHAPTER 113.

GENERAL PROVISIONS, RESPECTING PROBATE BONDS, AND REMEDIES ON THE SAME.

- SECT. 1. When sureties are insufficient, judge to require new bonds.
- 2, 3. Of applications by sureties to be discharged, after six years.
 4. Suits to be brought in name of the judge, &c. in the supreme judicial court for same county. Survivorship, &c.
 5. As of right, by any persons interested.
 6. Manner of inserting their names in the writ.
 7. Of costs in such cases.
 8. Principal obligor may be made a defendant, on motion of surety, if omitted.
 9. How he may be summoned, and the effect thereof.
 10. What evidence a creditor of an insolvent estate must produce.

- SECT. 11. A creditor of a solvent estate, &c. or a legatee.
12. Evidence required of widows, next of kin, and residuary legatees.
 - 13, 14, 15. Of judgment, and proceedings thereon.
 16. How execution to be awarded, for not rendering an account.
 17. For not returning inventory, or other neglect or mismanagement.
 18. Of suits by the judge, for all concerned, and the incidents thereof.
 19. Provisions of this chapter to be applied to other probate bonds, as well as of administrators.
 20. Sureties discharged from future liabilities on bonds, on request of the principal, stating that their testimony is required in a case, wherein he is a party in his official capacity.

SECTION 1. Whenever the sureties in any bond, given to the judge of probate, shall be insufficient, the judge of probate, on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with such sureties as he shall judge sufficient.

When sureties
are insufficient,
judge to require
new bonds.
1821, 51, § 63.

SECT. 2. Any surety, in a bond given to the judge of probate, may, at any time, after the expiration of six years from the date of the bond, on his application, be discharged from all responsibility, for any subsequent breach of the condition of such bond, but for no prior breach; if the judge, on due notice to all persons interested, shall think proper to discharge him: and the principal shall thereupon give a new bond, with such sureties, as the judge shall approve.

Of applications
by sureties to
be discharged,
after six years.
1821, 51, § 63.

SECT. 3. In the cases specified in the preceding sections, if the principal shall not give such new bond, within such time, as the judge shall order, he shall be removed from his trust, and some other person shall be appointed in his place.

Same subject.
1821, 51, § 63.

SECT. 4. All suits, brought upon a probate bond of any kind, payable to any judge of probate, shall be originally commenced in the supreme judicial court, held within and for the county, in which the said judge of probate shall belong, in the name of said judge,

Suits to be
brought in name
of the judge,
&c. in supreme
judicial court
for same coun-