

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAPTER 65.**DISTRIBUTION OF ESTATES REAL AND PERSONAL, AND OF LANDS HELD IN MORTGAGE AND TAKEN ON EXECUTION.****DISTRIBUTION OF REAL ESTATE.**

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CHAP. 65.

DISTRIBUTION OF REAL ESTATE.

In what cases judge may order partition of real estate.

35 Maine, 414.
R. S., c. 108,
§ 1, 2.

Including re-versions and remainders.

R. S., c. 108,
§ 2.

Appointment, oath, and duties of commissioners.

R. S., c. 108,
§ 4.

When estate is in different counties, &c.

R. S., c. 108,
§ 5.

When equal division cannot be made, &c.

R. S., c. 108,
§ 6, 7.

Proceedings when interest of an heir or devisee has been conveyed.

R. S., c. 108,
§ 8, 9.

Also when such interest is under attachment.

SEC. 1. The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all his real estate in this state, among his heirs, or devisees, and all holding under them, when the proportions of the respective parties are not in dispute between them, or do not appear to the judge to be uncertain, depending upon the construction of any devise or other conveyance, or upon other questions that he thinks proper for the consideration of a jury and a court of common law.

SEC. 2. Any reversion or remainder vested in his heirs, expectant on the determination of any particular estate under his will or otherwise, may be in like manner divided, either during the existence of such particular estate, or after its determination.

SEC. 3. The partition shall be made by three disinterested commissioners, appointed by said judge for that purpose; and before entering on their duties, they shall be duly sworn before the judge or a justice of the peace, and make such partition pursuant to the will of the deceased, or the laws regulating the descent of intestate estates, as the case may be, among all the parties owning shares, whether they joined in the petition therefor or not.

SEC. 4. If there is estate in different counties to be divided, the judge may appoint separate commissioners for each county and issue warrants accordingly; and in such case, the partition shall be made of the estate in each county, as if there were no other to be divided.

SEC. 5. When the whole or any part of the premises, of greater value than either party's share, cannot be divided without great inconvenience, the same may be assigned to any one or more of the parties, who will accept it and pay to the others such sums of money, as the commissioners award to make the partition just; but such partition shall not be established by the court, until all such sums are paid or secured, with interest, to the satisfaction of the parties entitled thereto; nor if inconsistent with the condition of the devise, under which they claim; but in such assignment males shall be preferred to females, and the elder to the younger children of the same sex.

SEC. 6. No conveyance of the interest of any heir or devisee, in the lands of the deceased, by deed, levy of execution, or otherwise, shall take from the judge of probate his jurisdiction to divide and assign such lands in manner aforesaid; but the same shall inure to the equitable owner of the part so conveyed; and in case of the unequal division provided for in section five, such owner may make written application to the judge, before he accepts such division, for the share of such heir or devisee, and after notice to such heir or devisee, the judge may decide in favor of such owner, and he shall be entitled to receive said share of the money, or so much thereof, as is proportional to his equitable interest.

SEC. 7. If the share of any such heir or devisee is under attachment, the judge, on like application from the plaintiff in the suit or the attaching officer, shall require the money, not ex-

ceeding the amount of the attachment, to be paid to the officer, who shall be answerable therefor in his official capacity, subject to the rights of the parties, as if originally attached.

SEC. 8. When such partition is made on the application of an heir or one holding under him, it shall be made among all the owners of all the ancestor's estate, which any interested party requires to have included; and when made on the application of a devisee or one holding under him, it shall be made of all the estate held by him jointly or in common with others holding under the testator, which any devisee requires to have included.

SEC. 9. 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 show 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, by publishing it in such newspaper or newspapers as the court orders, for three successive weeks at least before such hearing.

SEC. 10. If it appears to the court that any minor or insane person, who has no guardian in the state, is interested in the premises, the court shall assign him a guardian for the suit, to appear for him and defend his interest; and if any owner resides without the state, having no agent therein, the judge shall appoint an agent to act for him.

SEC. 11. When any of the real estate, of which partition or the assignment of dower is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition or assignment of dower to be given to the co-tenant, which shall contain a description of the premises to be divided, and of the proportion claimed as belonging to the estate of the deceased; specify the time and place of hearing the case, and be served by delivering to him, or leaving at the place of his abode an attested copy thereof, at least fourteen days before the time of hearing; but if the co-tenant does not reside in this state, such notice shall be given as the judge requires. At the time appointed in the notice, the judge shall hear the parties, determine their respective rights in such estate, and direct the commissioners first to divide and set off the estate of the deceased from that of such other persons, and then make the partition or assignment of dower prayed for.

SEC. 12. The judge may set aside the return of the commissioners, and commit the case anew to the same or other commissioners, and the return, when accepted by the court, shall be recorded in the probate office, and in the registry of deeds for the county in which the lands lie, and be binding, to all intents and purposes, upon all persons interested, saving to them the right of appeal to the supreme court of probate.

DISTRIBUTION OF PERSONAL ESTATE.

SEC. 13. In the settlement of any intestate estate, or of any testate estate which is insolvent or in which no provision is made for the widow in the will of her husband, or she duly

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R. S., c. 108,
§ 10.

Partition of estate, &c.
12 Maine, 463.
R. S., c. 108,
§ 11.

Any owner may apply for partition, &c.
R. S., c. 108,
§ 12.

Judge to appoint a guardian or agent to act for minors, &c.
R. S., c. 108,
§ 13.

Where land lies in common, &c.
31 Maine, 107.
R. S., c. 108,
§ 15, 16.

Judge may set aside or re-commit return of commissioners, &c.
12 Maine, 198.
R. S., c. 108,
§ 17.

What allowance may be made to widow

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from personal estate, &c.

31 Maine, 65.

39 Maine, 15.

R. S., c. 108,

§ 18, 19.

1849, c. 92.

1850, c. 198.

When such allowance consists of a debt, &c.

1845, c. 141.

When allowance may be made to minor children, if no widow.

R. S., c. 108,

§ 20.

Husband of deceased wife entitled to allowance from her estate.

1857, c. 34.

Distribution of balance of personal estate.

R. S., c. 108,

§ 21.

When special distribution of personal effects may be made.

R. S., c. 108,

§ 22.

On what conditions, debts so assigned may be collected, &c.

R. S., c. 108,

§ 23.

When a bond may be required of heirs, &c.

R. S., c. 108,

§ 24.

waives the same, the widow shall be entitled to so much of the personal estate, besides her ornaments and wearing apparel, as the judge deems necessary, according to the degree and estate of her husband, and the state of the family under her care; and he may also allow her any one pew in a meeting-house, of which the deceased died seized, and such allowance, when recorded, shall vest the title in her; and when an estate, which, at the time of said allowance, was considered insolvent, ultimately appears to be solvent, the judge by a subsequent decree may make the widow a further reasonable allowance.

SEC. 14. When any allowance to a widow wholly or partly consists of a debt due the estate, secured by a mortgage of real or personal property, the executor or administrator, under the direction of the judge of probate, shall assign said mortgage and deliver the evidence of such debt to her.

SEC. 15. In all insolvent estates, if there is no widow, the judge may make a like allowance from the personal estate to the minor children of the deceased, who are under fourteen years of age, and to those between fourteen and twenty-one years of age, who from ill health are unable to labor.

SEC. 16. When a wife dies intestate, and her estate is solvent, her husband shall be entitled to an allowance from her personal estate, in the same manner as a widow is from the estate of her husband.

SEC. 17. When on the settlement of any account of an administrator or executor, there appears to remain in his hands any property not necessary for the payment of debts and expenses of administration, nor specifically bequeathed, the judge shall order the same to be distributed according to the will of the deceased, if any, so far as it directs, otherwise according to the provisions of chapter seventy-five; but no such order, determining who are heirs, and the share of each, shall be passed, until notice is given as provided in section five, chapter seventy-one; and alienage shall be no bar to any person, who in other respects is entitled to receive the same.

SEC. 18. When such surplus consists 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 he may appoint one or more appraisers to value and make such distribution under oath, and make report thereof to him for his acceptance.

SEC. 19. If any evidence of debt, or any account due to the deceased is thus assigned, the assignee is 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, as the judge orders; saving to all supposed debtors the right to set off any claim, which they have against the estate of the deceased.

SEC. 20. When an executor or administrator pays to a creditor, heir, or legatee, a sum exceeding thirty dollars on account of a debt, legacy, or decree of distribution, the judge of probate may authorize him to require of the payee a sufficient bond to refund so much of said sum, as it may exceed such

payee's equitable proportion on final settlement of the estate; unless such payment is made to a creditor under an order of distribution of an insolvent estate. CHAP. 65.

SEC. 21. Any legatee of a residuary or specific legacy under a will, may sue for and recover the same of the executor, in an action of debt at common law, or other appropriate action.

Legatee may sue for it.
30 Maine, 137.
R. S., c. 108,
§ 25.
1841, § 17.

DISTRIBUTION OF LANDS HELD IN MORTGAGE OR TAKEN ON EXECUTION.

SEC. 22. When the deceased held any real estate in mortgage without having foreclosed the right of redemption, or the executor or administrator has taken any in execution for a debt due the estate, such executor or administrator shall hold it in trust for the persons, who would be entitled to the money if it was paid; and it shall be accounted for as personal assets in his hands, and if redeemed, the money shall be received by him for the same trust, and he may release the estate.

Lands held in mortgage or taken on execution, &c.
6 Greenl. 127.
R. S., c. 108,
§ 26.

SEC. 23. Any such real estate, though the right of redemption has not expired, may be sold for the payment of debts, legacies, and the charges of administration, by a license from the probate court, in the same manner as real estate of which the deceased died seized.

Such lands may be sold by license, and for what purposes.
R. S., c. 108,
§ 27.

SEC. 24. If such real estate is not redeemed or sold as aforesaid, it shall be distributed among those who are entitled to the personal estate, but in the manner provided in this chapter for the distribution of real estate; or the judge of probate or supreme judicial court, if it would be more for the benefit of the parties in interest, may order the same to be sold by the executor or administrator, as provided in the preceding section, and the money realized from such sale, to be distributed as in other cases of personal estate.

Distribution, if not redeemed or sold, &c.
R. S., c. 108,
§ 28.
1846, c. 199,
§ 1, 2.

PERSONS UNDER SENTENCE OF DEATH OR OF STATE PRISON FOR LIFE.

SEC. 25. When any person, by due course of law, is under sentence of death or of imprisonment in the state prison for life, and confined in pursuance thereof, he shall be deemed in law from the time of such imprisonment, to all intents and purposes, as civilly dead; and his estate shall be administered upon and distributed, and his contracts and relations to persons and things affected, in all respects as if he was dead.

Persons under sentence of death or of state prison for life, deemed civilly dead, &c.
1848, c. 80.
1841, c. 1, § 28.

DISTRIBUTION OF THE ESTATES OF PERSONS DECEASED OUT OF THE STATE.

SEC. 26. When administration is taken in this state on the estate of any person, who, at the time of his decease, was not an inhabitant thereof, his estate found here, after payment of his debts, shall be disposed of according to his last will, duly executed according to the laws of this state, if he left any; but if not, his real estate shall descend according to the laws of this state; and his personal estate shall be distributed according to the laws of the state or country of which he was an inhabitant; and the judge of probate, as he thinks best, may distribute the

Estates of persons deceased out of state, how administered.
R. S., c. 107,
§ 20, 21.

CHAP. 65. residue of said personal estate as aforesaid, or transmit it to the foreign executor or administrator, if any, to be distributed according to the law of the place where the deceased had his domicile.

If such persons died insolvent, &c.
R. S., c. 107,
§ 22, 23, 24.

SEC. 27. If such person died insolvent, his estate found in this state, shall, as far as practicable, be so distributed that all his creditors here and elsewhere may share in proportion to their debts; and to this end his estate shall not be transmitted as aforesaid, until all his resident creditors have received the proportion that they would, if the whole estate applicable to the payment of creditors, wherever found, was divided among all said creditors in proportion to their debts without preferring any one kind of debt to another; and in such case, no foreign creditor shall be paid out of the assets found here, till all the resident creditors have received their proportion as herein provided.

If any residue, how distributed.
R. S., c. 107,
§ 25.

SEC. 28. If there is any residue, after such payment to the citizens of this state, it may be paid to any other creditors who have proved their debts here, in proportion to the amount, but 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 resident and foreign creditors who have proved their debts in this state.

CHAPTER 66.

INSOLVENT ESTATES.

DISPOSITION OF INSOLVENT ESTATES.

- SEC. 1. Priority of claims and order of payment.
2. When representation of insolvency need not be made.

COMMISSIONERS AND PROCEEDINGS.

3. When representation of insolvency is made; commissioners to be appointed; commissioners to be sworn; to make report to court.
4. Notice of meetings; time of presentation of claims.
5. Claims to be presented in writing, under oath, stating security and credits.
6. Claimants to be examined on oath; refusing, claim to be rejected. False swearing, perjury.
7. Value of security held by claimant, to be deducted; appeal from valuation.
8. Interest to be cast on claims allowed. Report, may be recommitted. Fees. Claim of administrator, allowed by judge.

CONTINGENT CLAIMS.

9. Contingent claims proved; sum reserved to pay them.
10. If become absolute in four years, to share, otherwise not.

APEALS.

11. Appeal from commissioners, how made, notice, how to be given.
12. Claimant failing, may petition supreme judicial court, effect of it.
13. Claim how prosecuted after appeal or leave granted.