

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

TITLE SIX.

Powers and Duties of Courts of Probate.

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They are courts of record, have a seal, and may punish for contempt. R. S. c. 63, § 1. 1869, c. 8, § 1.

SEC. 1. Courts of probate in this state are courts of record. Each court shall have an official seal, of which the register shall have the custody. Such courts have power to issue any process necessary for the discharge of their official duties, and to punish for contempt of their authority the same as the supreme judicial court may.

SELECTION, POWERS AND DUTIES OF JUDGES OF PROBATE.

Judges, how selected; terms commence, when. R. S. c. 63, § 1. Amdt. to const. of Me. art. 9.

SEC. 2. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as provided respecting county commissioners by chapter seventy-eight; and they enter upon the discharge of their duties on the first day of January following; but, when appointed to fill vacancies, their terms commence on their appointment.

Officers to execute processes and attend courts; witnesses to appear on penalty. R. S. c. 63, § 2. 1869, c. 8, § 3. 47 Me. 85.

SEC. 3. Sheriffs and their deputies, coroners and constables, shall execute all legal processes directed to them by any judge of probate, and such judge may, when he deems it necessary, require any such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which the officer shall be paid as in other courts for similar services; and any person summoned before the judge as a witness, refusing to appear and give evidence, is liable to the same penalties and damages, as for such refusal before the supreme judicial court.

SEC. 4. Judges of probate shall have certain fixed days and places for holding their courts, and making and publishing their orders and decrees, where no express provision is made by law; and such days shall be made known by public notifications thereof in their respective counties; they may adjourn their courts to any time not beyond the next regular day, and appoint special courts, when they deem it necessary; and in case of the absence of the judge or vacancy in the office at the time of holding any court, the register may adjourn the same, by posting notice thereof at the probate office, until the judge can attend, or some other judge can be notified and attend.

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Judges to have fixed days and places for holding courts.
Adjournments.
R. S. c. 63, § 3.
1870, c. 113, § 2.
27 Me. 114.

SEC. 5. During the sickness, absence from the state or inability of the judge of probate in any county to hold the regular terms of his court, such terms, at the request of said judge or of the register of the same county, may be held by the judge of any other county; and in case of the death of the judge of any county, all necessary terms of the probate court for that county, may, at the request of the register, be held by the judge of another county, until the vacancy is filled. The orders, decrees and decisions of the judge holding such terms, shall have the same force and validity as if made by the judge of the county in which such terms are held.

In case of sickness, absence, inability or death of judge, another judge may hold his courts.
1869, c. 8, § 2.
1870, c. 113, § 1.

SEC. 6. The judge for each county may take the probate of wills; grant letters testamentary or of administration on the estates of all deceased persons, who, at the time of their decease, were inhabitants or residents of his county, or who died without the state leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person, who is under sentence of death and confined in the state prison awaiting its execution, or of imprisonment for life in the state prison; and shall have jurisdiction of all matters relating to the settlement of such estates. He may appoint guardians for minors and others according to law, and have jurisdiction as to persons under guardianship, and to whatever else is conferred on him by law.

Jurisdiction as to wills, administration and guardianship.
R. S. c. 63, § 4.
32 Me. 102.
45 Me. 281.

SEC. 7. When a case is originally within the jurisdiction of the probate court in two or more counties, the one which first commences proceedings therein, shall retain the same exclusively throughout; and the jurisdiction assumed in any case, except cases of fraud, so far as it depends on the residence of any person, or the locality or amount of property, shall not be contested in any proceeding whatever, except on an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

Court first commencing proceedings to have jurisdiction.
R. S. c. 63, § 6.

SEC. 8. When any judge of probate is interested either in his own right, in trust, or in any other manner, or is within the degree of kindred, by which in law he may, by any possibility, be heir to any part of the estate of any person deceased, to an amount in either

When judge is interested, jurisdiction transferred to adjoining county.
R. S. c. 63, § 7.

CHAP. 63. case not less than one hundred dollars, such estate shall be settled in the probate court of any adjoining county, which shall have as full jurisdiction thereof, as if the deceased had died therein. If his interest arises after he has regularly assumed jurisdiction of such estate, or existed at the time of his appointment to office; and in all cases where an executor, administrator, or guardian, whose trust is not fully executed, becomes judge of probate for the county, in which his letters were granted, further proceedings therein shall be transferred to the probate court in any adjoining county, and there completed as if such court had had original jurisdiction thereof; and in all such cases the register of probate in such adjoining county, shall transmit copies of all records relating to such estate, to the probate office of the county where such estate belongs, to be there recorded.

Probate districts deemed counties for certain purposes.
R. S. c. 63, § 8.

SEC. 9. Where parts of a county are designated by law for a separate probate district, it shall be deemed a county for all purposes of this and other applicable chapters; and appeals from the judge of probate thereof shall be cognizable in the county where such district is situated.

Judge to certify unfinished acts of his predecessor.
R. S. c. 63, § 9.

SEC. 10. Every judge of probate, upon first entering on the duties of his office, shall examine the records, decrees, and certificates, and the proceedings connected therewith, which his predecessor left without being signed and authenticated, and if he finds them correct, he shall sign and authenticate them, and they shall then be as valid to all intents and purposes, as if it had been done by his predecessor while in office.

Oaths required may be taken before judge, register or justice of the peace.
R. S. c. 63, § 10.
1861, c. 36,
§§ 1, 3.
1869, c. 8, § 4.

SEC. 11. All oaths, required to be taken by executors, administrators, trustees, or guardians, except to the truth of accounts by them rendered, and all oaths required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by license of any judicial or probate court, may be administered by the judge or register of probate or by any justice of the peace; and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded.

When judge may appoint commissioner to administer oath.
R. S. c. 63, § 11.
1861, c. 36,
§§ 1, 3.

SEC. 12. If any person, required to make oath to any account to be settled by the judge of probate, is unable to attend by reason of infirmity or otherwise, or resides more than thirty miles from the place where the court of probate is held, the judge, by a commission issued for the purpose, may authorize any disinterested magistrate to administer such oath, who shall return a certificate thereof to the judge; with such commission and account annexed, and the vouchers to prove the same.

SEC. 13. No judge of probate shall have a voice in judging and determining, nor be attorney or counselor in or out of court in any civil action or matter, which depends on or relates to any sentence or decree made by him in his office; nor in any civil action for or against any executor, administrator, guardian, or trustee under any last will and testament, as such, within his county.

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Judge not to be counsel in cases incompatible.
R. S. c. 63, § 12.

SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

SEC. 14. Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as provided respecting county commissioners by chapter seventy-eight, and they enter upon the discharge of their duties on the first day of January following; but the term of those appointed to fill vacancies shall commence immediately. All registers, before acting, shall be duly sworn, and give bond to the treasurer of their county with sufficient sureties, in the sum of not less than one hundred, nor more than one thousand dollars, at the discretion of the judge of probate, who shall certify his approval thereon; and they shall have the care and custody of all files, papers, and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship granted, bonds approved, accounts allowed, and such orders and decrees of the judge, and other matters, as he directs.

Registers, how selected; oath, bond, powers and duties.
R. S. c. 63, § 14.
1869, c. 8, § 5.
[Amdt. to Const. of Me. Art. 9.]

SEC. 15. The condition of such bond shall be for keeping up, seasonably, and in good order, the records of the court; making and keeping correct and convenient alphabets of the records, and for the faithful discharge of all other duties of office; and if such register forfeits his bond, he shall thenceforth be forever disqualified from holding said office, and if he neglects to complete his records for more than six months at any one time, sickness or any extraordinary casualty excepted, such neglect shall be adjudged a forfeiture.

Conditions of bond; penalty for breach.
R. S. c. 63, § 15.

SEC. 16. In case of the death or absence of the register, the judge of probate shall appoint a suitable person to act as register, until the register resumes his duties, or another is qualified in his stead; and he shall be duly sworn, and, if the judge require it, give bond as in case of the register.

If absent or dead, judge may appoint register pro tem.
R. S. c. 63, § 16.

SEC. 17. Every judge of probate and the justices of the supreme court of probate, shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall put it in suit; and the money thus recovered shall be applied for the expenses of duly completing the records of such register under the direction of said judge, and the surplus, if any, shall enure to the county; but if it is not sufficient for that purpose, the treasurer may recover the deficiency of the register in an action on the case.

Judges of probate and of the supreme court to inspect register's conduct, &c.
R. S. c. 63, § 17.

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Proceedings if register is unable, or neglects his duties.

R. S. c. 115, § 4.

Records may be completed and certified in case of vacancy.

1870, c. 113, § 3.

Register not to be counsel in case incompatible.

R. S. c. 63, § 18.

Supreme judicial court to be supreme court of probate.

Appeal.

R. S. c. 63, § 19.

1869, c. 8, § 6.

19 Me. 260.

27 Me. 78.

30 Me. 538.

34 Me. 41.

44 Me. 57.

51 Me. 423.

52 Me. 192.

53 Me. 184, 555.

54 Me. 332.

56 Me. 411.

Appellant to file bond and reasons of appeal; service on other parties.

R. S. c. 63, § 20.

1866, c. 8.

1869, c. 8, § 7.

53 Me. 184.

Court may allow appeal accidentally omitted.

R. S. c. 63, § 21.

SEC. 18. When a register is unable to perform his duties or neglects them, the judge of probate shall certify such inability or neglect to the county treasurer; the time of its commencement and termination, and what person has performed the duties for the time; and such person shall be paid by the treasurer in proportion to the time he has served, and the amount deducted from the register's salary.

SEC. 19. When there is a vacancy in the office of register, and the records are incomplete, they may be completed and certified by the person appointed to act as register, or by the succeeding register.

SEC. 20. No register of probate shall be attorney or counselor in or out of court in any suit or matter pending in the court, of which he is register, nor in any appeal therefrom; nor be executor, administrator, trustee, guardian, commissioner of insolvency, appraiser or divider of any estate in any case, that is within the jurisdiction of said court, nor be in any manner interested in the fees or emoluments arising therefrom.

SUPREME COURT OF PROBATE.

SEC. 21. The supreme judicial court is the supreme court of probate, and has appellate jurisdiction in all matters determinable by the several judges of probate; and any person aggrieved by any order, sentence, decree, or denial of such judges, except the appointment of a special administrator, may appeal therefrom to the supreme court to be held within and for the same county, if he claims his appeal within twenty days from the date of the proceeding appealed from; or if, at that time, he was beyond sea, or out of the United States, and had no sufficient attorney within the state, within twenty days after his return or appointment of such attorney.

SEC. 22. Within the time limited for claiming an appeal, the appellant shall file, in the probate office, his bond to the adverse party, or to the judge of probate for the benefit of the adverse party, for such sum and with such sureties, as the judge approves; conditioned to prosecute his appeal with effect, and pay all intervening costs and damages, and such costs as the supreme court taxes against him, and also file in the probate office the reasons of appeal; and, fourteen days at least before the sitting of the appellate court, shall serve all the other parties, who appeared before the judge of probate in the case, with a copy of such reasons, attested by the register of probate; but in case of controversy between a person under guardianship and his guardian, the supreme court may sustain an appeal on the part of the ward without such bond.

SEC. 23. If any such person from accident, mistake, defect of notice, or otherwise without fault on his part, omits to claim or prosecute his appeal as aforesaid, the supreme court, if justice seems to require a revision, may, upon reasonable terms, allow an appeal to be

entered and prosecuted with the same effect, as if it had been seasonably done; but not without due notice to the party adversely interested, nor unless the petition therefor is filed with the clerk of said court within one year after the decision complained of was made, said petition to be heard at the term next after the filing thereof.

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SEC. 24. If the appellant fails to enter and prosecute his appeal, the supreme court, upon the complaint of any person interested in the case, may affirm the former sentence, assess reasonable costs for the complainant, and take such further order thereon, as law and justice require.

Proceedings when appeal is not prosecuted.
R. S. c. 63, § 22.

SEC. 25. After an appeal is claimed, and the bond and reasons of appeal filed, all further proceedings, in pursuance of the matter appealed from, shall cease, until the determination of the supreme court thereon.

Proceedings in probate court to cease after appeal.
R. S. c. 63, § 23.

SEC. 26. Such appeal shall be cognizable at the next term of the supreme court, held after the expiration of thirty-four days from the date of the proceeding appealed from; and said court may reverse or affirm, in whole or in part, the sentence or act appealed from, pass such decree thereon as the judge of probate ought to have passed, remit the case to the probate court for further proceedings, or take any order therein, that law and justice require; and if, upon such hearing, any question of fact occurs proper for a trial by jury, an issue may be formed for that purpose under the direction of the court and so tried.

Appeal to be heard at next term; proceedings to cease after appeal.
R. S. c. 63, § 24.
1869, c. 8, § 8.
44 Me. 57.
45 Me. 571.
53 Me. 184.

* COSTS AND FEES.

SEC. 27. In all contested cases in the original or appellate court of probate, legal costs may be allowed to either party, to be paid by the other, or to either or both parties, to be paid out of the estate in controversy, as justice requires; and executions may be issued therefor as in courts of common law.

Costs may be allowed in contested cases.
R. S. c. 6, § 25.

SEC. 28. The register shall receive for such copies as are taxable by law twelve cents a page; but he shall have no fee for taking from the files of his office, or transporting to the place where the probate court is held, papers necessary for the settlement of any estate or account in said court, nor for furnishing to those entitled to it, one copy of each will proved.

Register's fees for copies.
R. S. c. 116, § 16.
R. S. c. 115, § 4.
1870, c. 113, § 22.

SEC. 29. Executors, administrators, guardians and trustees, may be allowed one dollar for every ten miles travel to and from the court, and one dollar for each day's attendance; and also, at the discretion of the judge, having regarded to the nature, liability and difficulty attending their trusts, a commission not exceeding five per cent. on the amount of personal assets that come into their hands, and, in cases where legal counsel is necessary, a reasonable sum for professional aid.

Fees of executors, administrators, guardians and trustees.
R. S. c. 116, § 16.

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Fees of appraisers, commissioners and witnesses, how paid.
R. S. c. 116 § 16.

SEC. 30. Appraisers of estates, commissioners for examining claims against insolvent estates or determining disputed claims, and commissioners appointed to make division of estates, and for assigning a widow's dower, may be allowed not exceeding two dollars a day for the time actually employed, including travel and expenses. Witnesses to the execution of wills, or in any issue before the probate court, one dollar a day, and six cents a mile going and returning. The fees of witnesses to wills, appraisers, and commissioners on insolvent estates or disputed claims, shall be paid by the executors, administrators, trustees, or guardians, and allowed in the settlement of their accounts.

Expenses of partition and assignment of dower. Process if not paid.
R. S. c. 116, § 17.

SEC. 31. When a partition of real estate or assignment of dower is made by order of any judge of probate, the expenses thereof shall be paid by the parties interested in proportion to their interests; but when such expenses accrue prior to the closing of the final account of any executor or administrator of the deceased owner of such real estate, having in his hands sufficient personal assets for the purpose, the judge of probate may order him to pay such expenses, and allow the same in his account, after due notice and hearing thereon. In case of neglect or refusal of any person liable to pay such expenses of partition and assignment of dower, the judge of probate may issue a warrant of distress against such delinquent for the amount due from him, and the costs of the process.

Fees of register in case of foreign estates.
1859, c. 84.

SEC. 32. When administration is granted on the estate of any person not a resident of this state, or the will of any such person is proved, or administration is granted to any public administrator, or a guardian is appointed for a minor not a resident of this state, the register of probate shall have a reasonable compensation, to be fixed by the judge, for entering and filing the orders and decrees, and making the necessary records relating thereto, to be paid by the executor, administrator or guardian, and allowed to him in his account.

Fees of judge for taking disclosures.
1862, c. 110.

SEC. 33. The judge of probate shall have a reasonable compensation for hearing and reducing to writing questions and answers of any party accused of concealing or embezzling property belonging to any estate or person under guardianship, to be paid by the person requesting the examination.

County to furnish blanks and record books.
R. S. c. 115, § 4.

SEC. 34. Each county shall provide necessary printed blanks and record books for the probate courts.

NOTICES.

Notice in Probate proceedings defined.
1870, c. 92.

SEC. 35. In all laws relating to probate courts and proceedings, the words "public notice" denote notice published three weeks successively in a newspaper printed in the county, or, if none, in the state paper; the words "personal notice" denote service by a copy given in hand or left at the place of last and usual abode, seven days at least before the time of hearing; and the words "due notice" denote public or personal notice, at the discretion of the judge.

SEC. 36. Any notice to be published in a newspaper, shall be published in such paper printed in the county as the party required to publish it selects, unless the judge deems such paper unsuitable from want of circulation or other substantial reason.

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Parties may select newspaper for notices.
R. S. c. 64, § 36.

CHAPTER 64.

APPOINTMENT, POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS.

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WILLS AND EXECUTORS.

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