

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



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## CHAPTER 66.

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## DISPOSAL OF INSOLVENT ESTATES.

SEC. 1. An insolvent estate, after payment of the expenses of the funeral, and of administration, shall be appropriated:

- I.—To the allowance made to the widow or widower, and children.  
 II.—To the expenses of the last sickness.

Priority of claims and of payment. R.S., c. 66, § 1. 18 Me., 271. 19 Me., 264.

CHAP. 66. III.—To debts entitled to a preference under the laws of the United States.

## SEC. 1.

24 Me., 28.  
61 Me., 470.  
71 Me., 66.

When representation of insolvency need not be made.  
R. S., c. 66, § 2.  
24 Me., 28.  
62 Me., 167.

IV.—To public rates and taxes, and money due the State. (a)  
V.—To all other debts.

A creditor of one class is not to be paid, until creditors of preceding classes, of which the administrator had notice, are fully paid.

SEC. 2. When an estate is not sufficient to pay more than such expenses, and claims of the first four classes, the administrator is exonerated from payment of any claim of the fifth class, without making a representation of insolvency.

## COMMISSIONERS AND PROCEEDINGS.

When representation must be made.  
1876, c. 81.

—commissioners to be sworn; their report.

Meetings and notice.  
R. S., c. 66, § 4.  
48 Me., 407.

—time allowed to prove claims.

—proceedings in case of death of commissioner.  
1872, c. 38, § 1.

How claims must be presented and proved.  
R. S., c. 66, § 5.  
67 Me., 197.

Refusal or perjury by claimant.  
R. S., c. 66, § 6.  
67 Me., 197.

Value of claimant's security to be deducted.  
R. S., c. 66, § 7.  
24 Me., 38.

—appraisal.

SEC. 3. When it appears to the administrator that an estate may be insufficient to pay the debts of the fifth class, on his application to the judge of probate, the judge shall appoint two or more commissioners to receive and decide upon all unpreferred claims against the estate, except those of the administrator. They shall be first sworn, and shall make report to the court of all claims presented, and of their disposal, with the sum allowed on each claim. But the judge may, for sufficient cause, revoke such appointment and issue a new commission, or proceed otherwise as the case may require.

SEC. 4. The commissioners shall appoint convenient times and places for their meetings, and give notice thereof, as the judge directs. Six months after their appointment shall be allowed in the first instance for the presentation of claims. An additional time, not exceeding in the whole eighteen months, may be allowed therefor, or for any particular claim or claims specified in the judge's order. If one or more of the commissioners die, after the expiration of the eighteen months and before the commission is returned, the judge may appoint new commissioners and allow an additional time not exceeding three months for the presentation of claims.

SEC. 5. Claims must be presented in writing, supported by affidavit of the claimant, or of some person cognizant thereof, stating what security the claimant has, if any, and the amount of credit to be given, according to his best knowledge and belief. The commissioners may require a claimant to be sworn, and may examine him on all matters relating to his claim; and administer oaths to claimants and witnesses.

SEC. 6. If the claimant refuses to submit to such examination, his claim shall be rejected. If he or a witness knowingly answers or testifies falsely in relation to any claim, he is guilty of perjury.

SEC. 7. When a claimant holds security for his claim of less value than its amount, he shall be allowed only the difference between it and such value, estimated by the commissioners, who shall give him a certificate thereof. If either party is dissatisfied with that valuation, the judge, on application and after notice to the other party, may appoint three disinterested men to appraise on oath such security and make return thereof, by them signed, to the court; and their appraisal shall be substituted for the first, and the amount allowed varied accordingly.

(a) 64 Me., 407; 67 Me., 506.

If the claimant declines to take the property at such appraisal and relinquishes his claim thereon, its appraised value shall be added by the judge to the sum allowed on which he is to receive his dividend, and the property appraised shall be disposed of by the administrator.

SEC. 8. Interest shall be cast on claims allowed, from the death of the debtor to the time of the commissioners' first report, unless the contract otherwise provides. At the expiration of the time limited, the commissioners shall make their report to the judge, who, before ordering distribution, may recommit it for the correction of any error appearing to him to exist. Their fees shall be paid by the administrator. Any claim which he has against the estate, shall be examined and allowed by the judge and by him annexed to the list of claims, and a proportional dividend decreed to him.

SEC. 9. Commissioners of insolvency who neglect to render their report to the judge for three months after the expiration of the time allowed them for receiving claims, forfeit all compensation for their services, and may be cited by the judge to show cause for their negligence.

#### CONTINGENT CLAIMS.

SEC. 10. Contingent claims may be proved, and the amount allowed reported, stating their nature and distinguishing them from other claims. The judge, ordering distribution, shall leave in the hands of the administrator a sum sufficient to pay on them the percentage paid to others.

SEC. 11. If, within four years after administration was granted, such claims become absolute, there shall be paid upon them a percentage equal to that paid on other claims, if it can be done without disturbing prior dividends. If they do not become absolute within that time, or if payment of an equal percentage does not exhaust the sum reserved, the residue shall be distributed to all creditors, whose claims have been proved, or allowed by the judge.

#### APPEALS.

SEC. 12. The claimant, the administrator, an heir at law or any creditor, may appeal from the decision of the commissioners, by giving written notice thereof at the probate office within twenty days after their report is made. If the appellant is an heir at law or creditor other than the claimant, he shall file in the probate office with his notice of appeal a bond to the claimant with sureties, to the satisfaction of the judge, for the payment of all costs awarded against him. When the appeal is made by any party other than the claimant, he shall give notice to the creditor within thirty days, by service of a copy, attested by the register, on him, his agent, or attorney, personally, or by leaving it at his last and usual place of abode, if he has any within the state; otherwise, such notice shall be given as the judge directs.

SEC. 13. A person, whose claim has been disallowed in whole or in part, and who by accident or mistake has omitted to give notice at the probate office in season, or, after giving such notice, has, by accident or mistake, omitted further to prosecute his appeal, may, within two years

#### CHAP. 66.

Interest on claims.  
R.S., c. 66, § 8.  
19 Me., 264.  
48 Me., 483.  
74 Me., 486.

—report may be recommit-  
—fees.  
—claims of administrator.

Commissioners, forfeiture for neglect of duty.  
1873, c. 116, § 2.  
67 Me., 115,  
117.

Contingent claims, how to be treated.  
R.S., c. 66, § 9.  
32 Me., 463.  
57 Me., 564.

Proceedings, if absolute in four years, or if not.  
R.S., c. 66, § 10.  
57 Me., 564.

Appeal, how and when to be made by claimant, heir, creditor or administrator.  
R.S., c. 66, § 11.

—bond;  
notice.  
35 Me., 122.  
36 Me., 141.  
48 Me., 483.  
49 Me., 87.  
61 Me., 105,  
239, 242.  
65 Me., 422.  
68 Me., 413.  
73 Me., 36.

Failing to prosecute appeal seasonably, after disallowance of claim, ap-

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pellant may petition supreme court. R.S., c. 66, § 12. See c. 82, § 7. 68 Me., 413.

Such appeal, when and how prosecuted; such claim deemed contingent. R.S., c. 66, § 13.

If claim is allowed and appeal taken by administrator, heir or creditor, claimant may apply to supreme court. 1872, c. 36.

Proceedings in the suit, and judgment. R.S., c. 66, § 14. 68 Me., 414.

Appealed claim may be referred, and creditor examined. R.S., c. 66, § 15. 55 Me., 514. 67 Me., 197.

Judgment against administrator, to be added to claims allowed. R.S., c. 66, § 16. —costs.

Actions pending. 1881, c. 9.

after the report is made, petition the supreme judicial court, and, after notice to the administrator and hearing, leave may be given to commence a suit at the next term of the court in the county where administration was granted, for the recovery of his claim, but not after four years from granting administration. No decree of distribution can be disturbed by a judgment so recovered.

SEC. 14. When an appeal is so taken, or leave is so granted, the claim shall be determined in an action for money had and received, commenced within three months after the report was made, or at the next term after leave was granted. Such claim shall be deemed contingent, and provision shall be made for it as in sections ten and eleven. (a)

SEC. 15. A person whose claim against an insolvent estate has been allowed by commissioners and their decision has been appealed from by the administrator, heir at law, or any other creditor, and who by accident or mistake has omitted to commence an action for money had and received within the time prescribed by section fourteen, may petition the supreme judicial court, and after notice to the administrator and a hearing, the court may grant leave to commence an action for the recovery of his claim, at the next term of the court in the county where administration was granted, within four years from granting administration, but no decree of distribution can be disturbed by a judgment so recovered.

SEC. 16. The creditor, before service, must annex to his writ a schedule of his claims, stating the nature of them, or file it with the clerk of the court where the writ is returnable, fourteen days before its return day; or seven days before the return day, when the action is brought before a trial justice. At such time as the court directs, the administrator shall file an abstract of all demands of the deceased against the claimant, and judgment shall be rendered for either party for the balance ascertained at the trial.

SEC. 17. When notice of appeal is given or leave granted, the parties may agree upon referees authorized to act by a rule of the probate court, whose award is final. On trial before the court or referees, the creditor may be examined on oath, as before commissioners, and with like effect, if he refuses to be examined.

SEC. 18. If final judgment or award is made against an administrator, no execution can be issued, except for costs allowed to the prevailing party. The sum found due to the claimant shall be entered by the judge of probate, on the list of debts entitled to dividends. The administrator may charge costs awarded against him to the estate, but not when he appealed without reasonable cause shown for it. (b)

## SUITS PENDING AND COMMENCED.

SEC. 19. Actions pending on claims not preferred, when a decree of insolvency is made, may be discontinued without costs; or continued, tried and judgment rendered with the effect, and satisfied in the manner

(a) 36 Me., 141; 55 Me., 514; 57 Me., 564; 61 Me., 242; 68 Me., 413; 71 Me., 375; 73 Me., 347; 74 Me., 194.

(b) 55 Me., 525; 57 Me., 564; 60 Me., 355; 65 Me., 129; 68 Me., 431; 73 Me., 347.

provided in cases of appeal. No action can be commenced, except on a preferred claim, after such decree. (a)

SEC. 20. Claims not presented, and claims disallowed without appeal, are forever barred from recovery by suit. Claims disallowed cannot be filed and proved in set-off, except to the amount of counter claims on behalf of the estate. But when, after distribution, further assets come into the hands of the administrator, claims not presented to the commissioners, on petition to the judge, and after due notice, if proved or not disputed, may be allowed and paid like contingent claims.

CHAP. 66.  
—limitation.

Claims not presented or not allowed, barred, except in case of further assets.  
R.S., c. 66, § 18.  
67 Me., 458.

#### MISCELLANEOUS PROVISIONS.

SEC. 21. If an administrator neglects to settle his account within six months after the report on claims is made, or within such further time as the judge allows, it is a breach of his bond. (b)

Penalty for delay in settling account.  
R.S., c. 66, § 19.

SEC. 22. When an administrator commits waste or trespass, although an heir or devisee, or consents that another may do it, on real estate of his intestate insolvent, he shall account for treble the amount of the damage. He may, in an action of trespass, recover damages of a person committing the same, to be accounted for as assets, although such person is heir or devisee of the estate.

Waste or trespass on real estate of insolvent.  
R.S., c. 66, § 20.  
59 Me., 355.  
62 Me., 309.

SEC. 23. This chapter applies to estates under charge of executors; and of guardians of insane persons, and of spendthrifts, except so far as it is inapplicable, and an allowance for the support of their wards and their wards' families takes the place of an allowance to widows and children.

Insolvency of estate in hands of executors and guardians.  
R.S., c. 66, § 21.  
See c. 67, § 16.  
68 Me., 432.

SEC. 24. When an executor has given bond as a residuary legatee, and the estate is found insufficient to pay the debts, he may make a representation of insolvency; and proceedings thereon may take place as in other cases. Such proceedings and distribution are a bar to a suit on his bond for the recovery of a debt.

Executor, who is residuary legatee, may represent estate insolvent.  
R.S., c. 66, § 22.

#### DECREE OF DISTRIBUTION.

SEC. 25. After thirty days from the time when the report on claims is made, the judge shall make a decree of distribution of the balance in the hands of the administrator among the creditors, according to this chapter. In case of further assets, he shall make another distribution on the same principles.

Decree of distribution, when and how made.  
R.S., c. 66, § 23.  
73 Me., 241.

SEC. 26. After such decree of distribution, the judge may, without further notice, audit and allow the account of the executor, administrator or guardian for payments made pursuant thereto.

Account of payments, allowed without notice.  
R.S., c. 66, § 24.

SEC. 27. When commissioners appointed under section fifty-three of chapter sixty-four have reported on any claims submitted to them, and their report has been accepted without appeal, it is final, notwithstanding the estate afterwards proves insolvent, and commissioners of insolvency are appointed. The amount awarded by the first commissioners shall be entered by the judge on the list of debts entitled to dividends.

Report of special commissioners on exorbitant claims, when final, even if estate proves insolvent.  
1873, c. 116, § 1.  
See c. 69, § 6.

(a) 2 Me., 11, 112; 21 Me., 265; 36 Me., 141; 49 Me., 88; 54 Me., 348; 55 Me., 101; 57 Me., 564; 60 Me., 355; 64 Me., 407; 65 Me., 129; 68 Me., 431; 73 Me., 239.

(b) 5 Me., 48; 6 Me., 270; 8 Me., 25; 11 Me., 51.