

MAINE STATE LEGISLATURE

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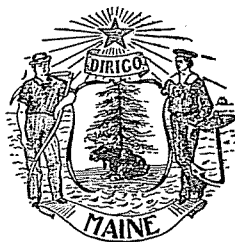
THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



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TITLE SIX.

Powers and Duties of Courts of Probate.

- CHAP. 65. Courts of probate.
66. Appointment, powers and duties of executors and administrators.
 67. Partition of real estate. Allowances. Distribution of personal estate.
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CHAPTER 65.

COURTS OF PROBATE.

SEC. 1. Courts of probate are courts of record. Each shall have an official seal, of which the register has the custody. They may issue any process necessary for the discharge of their official duties, and punish for contempt of their authority like the supreme judicial court.

Courts of record; seal; punishment for contempt. R. S., c. 63, § 1. 47 Me., 86. 63 Me., 248.

SELECTION, POWERS AND DUTIES OF JUDGES OF PROBATE.

SEC. 2. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners; 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.

Judges, how selected; terms commence, when. R. S., c. 63, § 2. See Constitution Art. vi, § 7; c. 6, § 59. c. 80, §§ 1-4.

SEC. 3. Sheriffs and their deputies, coroners and constables, shall execute all legal processes directed to them by any such judge who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he 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.

Officers shall execute processes and attend courts; witnesses to appear under penalty. R. S., c. 63, § 3. 47 Me., 86.

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; such days shall be made known by public notifications thereof in their respective counties; and

Judges shall have fixed days and places for holding court. R. S., c. 63, § 4. 27 Me., 116.

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--adjournments.

--petitions received and notice ordered in vacation. 1899, c. 29.

Term of probate court at Fort Kent. 1891, c. 2, § 1.

In case of sickness, absence, inability or death of judge, another probate judge may hold his court. R. S., c. 63, § 5. 79 Me., 37.

Jurisdiction as to wills, and administration. R. S., c. 63, § 6. 32 Me., 103. 45 Me., 287. 63 Me., 249. 74 Me., 89. 81 Me., 32, 225.

--adoption of children, change of names, and guardianship.

Judge of probate may appoint stenographer. 1891, c. 64, § 1.

--duties.

--transcript.

all matters requiring public notice shall be made returnable thereto; they may adjourn their courts to any time not beyond the next regular day, and appoint special courts when 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, by posting notice thereof at the probate office, adjourn the same until the judge can attend, or some other probate judge can be notified and attend. Any register of probate may receive and enter upon his docket in vacation, any and all petitions for probate proceedings of any kind, and the judge of probate may order notice thereon in vacation.

SEC. 5. The judge of probate in and for the county of Aroostook shall hold a court of probate once in each year at Fort Kent in said county. The time for holding said court shall be appointed by said judge and made known by public notification as provided in section four.

SEC. 6. During the sickness, absence from the state or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county; and in case of the death of a judge, all necessary terms of the probate court for the 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, have the same force and validity as if made by the judge of the county in which such terms are held.

SEC. 7. Each judge may take the probate of wills, and grant letters testamentary or of administration on the estates of all deceased persons, who, at the time of their death, were inhabitants or residents of his county, or who, not being residents of the state, died leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person confined in the state prison under sentence of death or of imprisonment for life; and has jurisdiction of all matters relating to the settlement of such estates. He may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law, and has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law. (a)

SEC. 8. The judge of any court of probate or court of insolvency, may appoint a stenographer to report the proceedings at any hearing or examination in his court, whenever such judge deems it necessary or advisable. Such stenographer shall be sworn to a faithful discharge of his duty, and, under the direction of the judge, shall take full notes of all oral testimony at such hearing or examination, and also such other proceedings at such hearing or examination, as the judge directs, and when required by the judge shall furnish for the files of the court a correct and legible long hand or type-written transcript of his notes of the oral testimony of any person testifying at such hearing or submitting to such examination, and in making said transcript the stenographer shall transcribe his said notes in full by questions and answers.

(a) Jurisdiction is conferred upon judges of probate in the following cases:
 To determine questions relating to collateral inheritance tax, c. 8, § 83.
 In case of shipwrecked goods, c. 38, §§ 7, 12, 17.
 In cases involving custody of children, c. 61, §§ 40, 46.
 To approve the binding, as apprentices, of wards by guardians, c. 64, § 1.
 In sales of contingent remainders, c. 75, §§ 4-6.
 In cases of contribution under wills, c. 76, § 14.
 To issue writ of habeas corpus in case of insane persons under arrest or imprisoned, c. 101, § 38.
 To take depositions in perpetuum, c. 109, § 22.
 To take examination of poor debtor, c. 114, § 22.
 To take bond for safe keeping of insane criminals, c. 138, § 8.
 To commit to industrial school, c. 143, § 22.
 To release on habeas corpus from insane hospital, c. 144, § 33.

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SEC. 9. When a transcript has been made as provided by the preceding section, it shall be read to the person whose testimony or examination it is, at a time and place to be appointed by the judge, unless such person or his counsel, in writing, waives such reading, and if it is found to be correct, or if it contains errors or mistakes, or alleged errors or mistakes, and such errors or mistakes are either corrected or the proceedings had in relation to the same as hereinafter provided, such transcript shall be signed by the person whose testimony or examination it is, in all cases where the person testifying or submitting to examination is required by law to sign his testimony or examination. When the reading of a transcript is waived as provided by this section, such transcript shall be deemed correct. But any person whose testimony or examination has been so taken, may, with the consent of the judge, waive, in writing, the signing of the transcript, and in such case, the stenographer shall read his notes to such person before the hearing or examination is closed, and if they are found to be correct, or if alleged errors or mistakes are either corrected, or proceedings are had in relation to the same, in like manner as provided in section eleven with reference to transcripts, the transcript of such testimony or examination shall be deemed to be complete and correct without signing, and shall have the same effect as if signed.

Transcript of testimony shall be read to person testifying, and signed by such person, if correct.
1891, c. 64, § 2.
1895, c. 37, § 1.

—signing of transcript may be waived with consent of judge; if found correct, transcript shall have same effect as if signed.

SEC. 10. Whenever it becomes necessary, in any court in the state, to prove the testimony or examination taken, as provided in the two preceding sections, the certified copy of the transcript of such testimony or examination, taken by such stenographer, is evidence to prove the same.

Certified copies of notes shall be taken as evidence.
1895, c. 37, § 2.

SEC. 11. Manifest errors or mistakes in any transcript, may be corrected, under the direction of the judge, according to the facts. But when an error or mistake is alleged by the party conducting the hearing or examination, or by his counsel, or by the person testifying or submitting to examination, or by his counsel, and said parties cannot agree whether or not there is such an error or mistake as alleged, or what correction should be made, the judge shall decide whether or not such an error or mistake exists, and may allow or disallow a correction according as he may find the fact, but in such case the judge shall annex to the transcript a certificate signed by him stating the alleged error or mistake, and by whom alleged, and the correction allowed or disallowed. In case the said parties mutually agree that there is an error or mistake in the transcript, and in like manner agree what the correction should be, the transcript may be corrected according to such agreement, but such correction shall be stated and made in the presence of the judge. No changes or alterations shall be made in any transcript except in the presence of the judge, or the person appointed by the judge to take the examination.

Mistakes in transcript may be corrected under direction of judge.
1891, c. 64, § 3.

SEC. 12. When an examination is taken before some person appointed by the judge to take it, the judge may also appoint a stenographer to attend such examination for the purposes mentioned in section eight, and the duties of such stenographer shall be the same as in examinations before the judge. The powers and duties of any person appointed by the judge to take an examination shall be the same at such examination as those of the judge, and the same proceedings for the correction or alteration of transcripts may be had before such person as before the judge.

When examination is before some person appointed by judge, he may also appoint a stenographer.
1891, c. 64, § 4.

SEC. 13. All transcripts made and signed as herein provided, shall be deemed original papers.

Transcripts deemed original papers.
1891, c. 64, § 5.

SEC. 14. When a case is originally within the jurisdiction of the probate court in two or more counties, the one which first commences proceedings therein, retains the same exclusively throughout; and the juris-

Court first commencing probate proceedings,

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to have jurisdiction.
R. S., c. 63, § 7.

When judge or register is interested, jurisdiction shall be transferred to adjoining county.
R. S., c. 63, § 8.
1893, c. 163, § 1.
79 Me., 36.

See c. 69, § 1.

Judge to certify unfinished acts of his predecessor.
R. S., c. 63, § 10.

Oaths required may be taken before judge, register, justice of the peace, etc.
R. S., c. 63, § 11.
1897, c. 275.

—how non-resident executors, etc., may make oath to accounts.

Judge not to be counsel in cases incompatible.
R. S., c. 63, § 13.

—such process void.

—liability.

diction assumed in any case, except in 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. (a)

SEC. 15. When a judge or register of probate is interested either in his own right, trust, or in any other manner, or is within the degree of kindred, by which in law, he may, by possibility, be heir to any part of the estate of a person deceased, to an amount in either 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 jurisdiction of such estate has been regularly assumed, or existed at the time of his appointment to office; and in all cases where an executor, administrator, guardian or trustee, whose trust was not fully executed, becomes judge or register 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 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.

SEC. 16. Every judge, upon entering on the duties of his office, shall examine the records, decrees, certificates and all proceedings connected therewith, which his predecessor left unsigned or unauthenticated, 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 such duty had been done by his predecessor while in office.

SEC. 17. All oaths required to be taken by executors, administrators, trustees or guardians, 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 a judicial or probate court, may be administered by the judge or register of probate, by any justice of the peace, or by any woman appointed by the governor, with the advice and consent of the council, to administer oaths in the state; and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded. When executors, administrators, guardians and trustees reside without the state, they may make oath to the truth of accounts, before a notary public, a commissioner for the State of Maine or a United States consul.

SEC. 18. 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, and any process or proceeding commenced by him in the probate court for his county, in violation of this section is void, and he is liable to the party injured in damages.

(a) 58 Me., 227; 63 Me., 249; 74 Me., 89; 77 Me., 250; 81 Me., 224.

SELECTION, POWERS AND DUTIES OF REGISTERS OF PROBATE.

SEC. 19. Registers of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners by chapter eighty, 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 commences immediately. All registers, before acting, shall give bond to the treasurer of their county with sufficient sureties, in not less than one hundred, nor more than one thousand dollars, at the discretion of the judge, who shall certify his approval thereon; and every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of his county, to be presented to them at their next meeting for approval, and after the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county, within ten days after its approval, to be filed in his office; they 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. They shall keep a docket of all probate cases, and shall, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding, so that at all times the docket shall show the exact condition of each case.

Registers, how elected, bond, powers and duties. R. S., c. 63, § 14. 1899, c. 71. See c. 80, §§ 1-4; Const. Me., Art. vi., § 7; Art. ix., § 1.

—shall keep docket and make entries of each motion. 1893, c. 246. See c. 72, § 7.

SEC. 20. 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 the office; and, if such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than six months at any one time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.

Conditions of bond; penalty for breach. R. S., c. 63, § 15. 69 Me., 368.

SEC. 21. Within thirty days after a will has been proved and allowed in the probate court, or in the supreme court of probate, the register shall make out and certify to the register of deeds in the county where the real estate is situated, a true copy of so much of said will as devises real estate, with the description thereof, so far as it can be furnished from said will, and the name of the testator and of the devisee; and the register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof as aforesaid, and record it in the same manner as a deed of real estate.

Register to certify copy of will to register of deeds within thirty days after proof, if real estate is devised. R. S., c. 63, § 16. See c. 11, § 18.

SEC. 22. For such service, the register of probate shall receive fifty cents for each copy so certified, and the register of deeds fifty cents for entering and recording the same, said sums to be paid by the executor or administrator when said will is proved, to the register of probate, who shall pay fifty cents to the register of deeds at the time said certified copy is furnished to him; and the executor or administrator shall charge said sums in his account.

Fees to be paid by executor or administrator. R. S., c. 63, § 17. See c. 11, § 18.

SEC. 23. In case of the death or absence of the register, the judge shall appoint a suitable person, of either sex, to act as register, until the register resumes his duties, or another is qualified in his stead; he shall be sworn, and if the judge requires it, give bond as in case of the register.

If register absent or dead, judge may appoint register pro tem. R. S., c. 63, § 18. 1899, c. 61.

SEC. 24. 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

Judges of probate and of the supreme court

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to inspect register's conduct, etc.
R. S., c. 63, § 19.

Proceedings, if register is incapable or neglects his duties.
R. S., c. 63, § 20.

Records, in case of vacancy.
R. S., c. 63, § 21.
63 Me., 250.

Register not to be counsel in probate cases.
R. S., c. 63, § 22.
1893, c. 163, § 2.

—penalty.

—shall not draft or aid in drafting any paper which he is required to record.
1893, c. 245.
See c. 11, § 14;
c. 81, § 15.

Supreme court of probate.
R. S., c. 63, § 23.

—appeal.

Appellant to file bond and reasons of appeal; service on other parties.
R. S., c. 63, § 24.

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 toward the expenses of completing the records of such register under the direction of said judge, and the surplus, if any, shall inure to the county; but if it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in an action on the case.

SEC. 25. When a register is unable to perform his duties or neglects them, the judge 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; such person shall be paid by the treasurer in proportion to the time that he has served, and the amount shall be deducted from the register's salary.

SEC. 26. 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 register's successor.

SEC. 27. No register shall be an 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 administrator, guardian, commissioner of insolvency, appraiser or divider of any estate, in any case within the jurisdiction of said court, except as provided in section fifteen of this chapter, nor be in any manner interested in the fees and emoluments arising therefrom, in such capacity; nor commence or conduct, either personally or by his agent or clerk any matter, petition, process or proceeding in the court of which he is register, in violation of this section, and for each and every violation of the preceding provisions of this section, such register shall be punished by imprisonment for not more than one year or by fine of not more than one thousand dollars. No register shall draft or aid in drafting any document or paper, which he is by law required to record in full or in part, under a penalty of not exceeding one hundred dollars, to be recovered by any complainant in an action of debt for his benefit, or by indictment for the benefit of the county.

SUPREME COURT OF PROBATE.

SEC. 28. 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 the 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 the appointment of such attorney. (a)

SEC. 29. 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

(a) 19 Me., 260; 27 Me., 82; 30 Me., 538; 34 Me., 44; 39 Me., 394; 44 Me., 63; 51 Me., 424; 52 Me., 195; 53 Me., 186, 558; 54 Me., 342; 56 Me., 413; 58 Me., 227; 67 Me., 504; 68 Me., 413; 73 Me., 224; 75 Me., 581; 79 Me., 38; 80 Me., 22, 91; 83 Me., 28; 85 Me., 360; 86 Me., 101; 93 Me., 213, 214; 94 Me., 422; 97 Me., 279.

effect, and to pay all intervening costs and damages, and such costs as the supreme court taxes against him, and he shall also file in the probate office the reasons of appeal; and, fourteen days at least before the sitting of the appellate court, he 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. When a non-resident party appears by an attorney residing in this state before the judge of probate in any case, and an appeal is taken, the service of a copy of the reasons of appeal upon such attorney shall be sufficient. 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. (a)

—service on attorney of record of a non-resident sufficient. 1893, c. 243. See c. 69, § 36.

SEC. 30. 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 requires 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; and said petition shall be heard at the next term after the filing thereof. (b)

Court may allow appeal accidentally omitted. R. S., c. 63, § 25.

SEC. 31. If the appellant fails to enter and prosecute his appeal, the supreme court, upon complaint of any person interested, 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, § 26.

SEC. 32. After an appeal is claimed, and the bond and reasons of appeal are filed, all further proceedings, in pursuance of the matter appealed from, cease, until the determination of the supreme court thereon. The register shall transmit to the appellate court all depositions, relating to the matter appealed from, filed in the probate court, and the same may be used in the appellate court.

Proceedings in probate court cease after appeal. R. S., c. 63, § 27.

SEC. 33. 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 appellate 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 framed for that purpose under the direction of the court, and so tried. (c)

Appeal to be heard at next term; proceedings. R. S., c. 63, § 28.

SEC. 34. Any person claiming under an heir at law has the same rights as the heir in all proceedings in probate courts, including rights of appeal.

Claimants under heir, have same rights as heir. R. S., c. 63, § 29. 81 Me., 223.

COSTS AND FEES.

SEC. 35. In all contested cases in the original or appellate court of probate, 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. (d)

Costs in contested cases. R. S., c. 63, § 30.

(a) 11 Me., 251; 44 Me., 63; 53 Me., 185; 82 Me., 211; 85 Me., 60, 360; 93 Me., 248; 94 Me., 423.

(b) 58 Me., 227; 79 Me., 33; 81 Me., 182; 85 Me., 60; 92 Me., 253, 361.

(c) 45 Me., 584; 53 Me., 186; 64 Me., 208; 73 Me., 138; 80 Me., 22, 57.

(d) 25 Me., 243; 78 Me., 299; 85 Me., 407; 88 Me., 167.

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Fees of registers.
R. S., c. 63, § 31.

SEC. 36. The register shall receive for such copies as are taxable by law twelve cents a page; for authenticating the official signature of a magistrate, twenty-five cents; for each certificate, under seal of the court, of the appointment and qualification of an administrator, executor, guardian or trustee, twenty-five cents; 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 thereto, one copy of each will proved.

Fees of executors, administrators, guardians, etc.
R. S., c. 63, § 32.
1897, c. 290.
32 Me., 160.

SEC. 37. Executors, administrators, guardians, surviving partners and trustees, may be allowed one dollar for every ten miles travel to and from court, and one dollar for each day's attendance; and also, at the discretion of the judge, having regard 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; *provided*, that if the surviving partner or partners succeed to the business of the late firm, the benefit accruing from such succession shall be taken into account by the judge in determining the amount of commission to be allowed.

Pay of appraisers, commissioners and witnesses.
R. S., c. 63, § 33.
1887, c. 40.

—how paid.

SEC. 38. Appraisers of estates, commissioners for examining claims against insolvent estates or determining disputed claims, and commissioners appointed to make division of estates, may be allowed a reasonable compensation 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 and fifty cents 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.
R. S., c. 63, § 34.

—process, if not paid.

SEC. 39. When a partition of real estate is made by order of a 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 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, the judge may issue a warrant of distress against such delinquent for the amount due from him, and costs of process.

Fees of register in case of foreign estates.
R. S., c. 63, § 35.

SEC. 40. When administration is granted on the estate of a person not a resident of the state, or the will of such person is proved, or administration is granted to a public administrator, or a guardian is appointed for a non-resident minor, the register shall have a reasonable compensation, to be fixed by the judge, for entering and filing the orders and decrees, and for making the necessary records, to be paid by the executor, administrator or guardian, and allowed to him in his account.

Compensation of stenographers.
1891, c. 64, § 6.

SEC. 41. Stenographers appointed under the provisions of this chapter, shall be allowed five dollars a day for their services in court, or at an examination, and travel at the rate of twelve cents a mile from place of residence to the place of holding the court or examination, and ten cents for every hundred words of transcript furnished for the files of the court, to be paid by the county in which the court or examination is held, after the stenographer's bill has been allowed by the judge of the court in which

the services were rendered. But if any stenographer so appointed, neglects or refuses to perform any part of the duty required of him he shall receive no pay for his services, and also may be punished for contempt of court. In probate matters, the executor, administrator or guardian shall, in each case out of the estate in his hands, pay to the register for the county, the amount of said stenographer's fees, and in insolvent matters, the assignee shall pay the same to the register for the county before any claims are paid, other than those named in paragraph one of section forty-two of chapter seventy-two.

—penalty for neglect.

—how fees shall be paid.

SEC. 42. Such stenographers shall also furnish correct and legible long hand or type-written copies of their notes of the oral testimony taken at any hearing or examination, to any person calling for the same, upon payment of ten cents for every hundred words of the copy furnished.

Stenographers shall furnish copies to any person calling for them. 1891, c. 64, § 7.

RULES OF PRACTICE.

SEC. 43. The rules of practice and procedure in the courts of probate and insolvency, approved by a majority of the justices of the supreme judicial court September sixteen, eighteen hundred and ninety-five, are in force in all courts of probate and insolvency; and the blanks for use in said courts approved by the supreme judicial court November eight, eighteen hundred and ninety-five, shall be used in all courts of probate and insolvency, and no other blanks shall be used therein. The governor may at any time, upon the request in writing of a majority of the judges of the courts of probate and insolvency, appoint a commission composed of three judges and two registers of probate, who may make new rules and blanks, or amendments to existing rules and blanks, which new rules and blanks, or amended rules and blanks shall, when approved by the supreme judicial court or a majority of the justices thereof, take effect and be in force in all courts of probate and insolvency. The expenses of such commission or commissions shall be reported to the governor, and upon the approval of the same by the governor and council, they shall be allowed and paid in the same manner as other claims against the state.

Rules of practice and procedure. 1895, c. 17.

—uniform blanks.

—appointment of commission to revise rules and blanks.

—approval by S. J. Court.

—expenses, how paid.

SEC. 44. Each county shall provide all necessary printed blanks and record books for its probate courts and courts of insolvency, and said record books may be printed to correspond with the printed blanks.

Blanks and records. R. S., c. 63, § 37. 1891, c. 10.

NOTICES.

SEC. 45. In laws relating to probate courts and proceedings, the words "public notice" denote notice published three weeks successively in a newspaper published in the county whose court has jurisdiction, or in which the deceased last dwelt, as ordered by the judge, 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.

Notice in probate proceedings, defined. R. S., c. 63, § 38. 1897, c. 179.

SEC. 46. Notices to be published in a newspaper, shall be published in such paper published in the county as the party required to publish it selects, unless the judge deems such paper unsuitable for want of circulation or other substantial reason.

Parties may select newspaper for notices. R. S., c. 63, § 39.