

MAINE STATE LEGISLATURE

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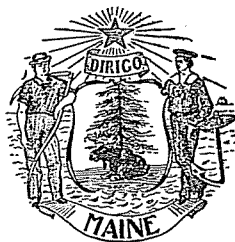
FIFTH REVISION.

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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of deceased.
may be cited
to account.
R. S., c. 64, § 68.

Penalties for
refusal to
appear and
answer when
cited.
R. S., c. 64, § 69.

render to him a full account thereof when required, the judge of probate may cite such person to appear before him and to render a full account under oath of any money, goods, chattels, bonds, accounts or other papers belonging to such estate, taken into his custody, and of his doings in relation thereto.

SEC. 72. If a person duly cited as aforesaid, refuses to appear and submit himself to such examination, or to answer all lawful interrogatories, or to produce such books, papers or documents, the judge shall commit him to jail, there to remain until he submits to the order of the court, or is discharged by the complainant or the supreme judicial court; and he is also liable to any injured party in an action on the case, for all the damages, expenses and charges arising from such refusal.

Note. Executors, administrators or other persons authorized to sell goods, chattels or land, by order of any court or judge of probate, may do so without license from municipal officers, c. 36, § 8.

No trust or banking company shall act as administrator, c. 48, § 85.

Compensation of executors and administrators, c. 65, § 37.

Executors and administrators to pay amount of stenographer's fees, c. 65, § 41.

CHAPTER 67.

PARTITION OF REAL ESTATE. ALLOWANCES. DISTRIBUTION OF PERSONAL ESTATE.

PARTITION OF REAL ESTATE.

Jurisdiction to
make
partition of
real estate.
R. S., c. 65, § 8.
35 Me., 421.

SEC. 1. The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all the real estate of such person in this state, among the widow or widower, and heirs, or devisees of such person, 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.

Reversions or
remainders
may be
divided.
R. S., c. 65, § 9.

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

Appoint-
ment, oath
and duties
of commis-
sioners.
R. S., c. 65, § 10.

SEC. 3. The partition shall be made by three disinterested commissioners, appointed by said judge, who shall first be sworn, and shall 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.

Partition of
estate in
different
counties.
R. S., c. 65, § 11.

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.

Proceedings,
when equal
division can-
not be made.
R. S., c. 65, § 12.
47 Me., 271.
62 Me., 114.

SEC. 5. When the whole or any part of the premises, of greater value than any 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 and pay to the others such sums, 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 satis-

faction 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 a widow or widower, or 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 the preceding section, such owner may make written application to the judge, before he accepts such division, for the share of such widow or widower, heir or devisee, and after notice to such widow or widower, heir or devisee, the judge may decide in favor of such owner, and he shall receive said share of the money, or so much thereof, as is proportional to his equitable interest.

Proceedings, when interest of widow or widower, heir or devisee has been alienated. R. S., c. 65, § 13. 31 Me., 207.

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

When such interest is under attachment. R. S., c. 65, § 14.

SEC. 8. When such partition is made on application of an heir or one holding under him, it shall be made among all the owners, and include 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.

What estate shall be included in the partition. R. S., c. 65, § 15. 12 Me., 464.

SEC. 9. Such partition may be ordered on the petition of any of the owners of any share, after giving personal notice to each of the other owners in the state, and public notice, if any reside out of the state.

Any owner may apply for partition.—notice. R. S., c. 65, § 16.

SEC. 10. The judge may, for sufficient cause, revoke any warrant issued by him for making partition, or for settling or determining other interests in real or personal estate, and grant a new warrant, or proceed otherwise, as circumstances require.

Warrant may be revoked.

—proceedings. R. S., c. 65, § 17.

SEC. 11. 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.

Guardians appointed for minors, and agents for owners out of the state. R. S., c. 65, § 18.

SEC. 12. When any of the real estate, of which partition is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition to be given to the co-tenant, which notice 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 the 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

Proceeding, when land is owned in common with other parties. R. S., c. 65, § 19. 31 Me., 110. 69 Me., 546. 70 Me., 234.

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and set off the estate of the deceased from that of such other persons, and then to make the partition prayed for.

Return of commissioners may be set aside, or recommitted; record and effect when accepted.
R. S., c. 65, § 20.
1895, c. 103.
12 Me., 199.

SEC. 13. The judge may set aside the return of the commissioners, and commit the case anew to the same or other commissioners. The return when accepted by the court, shall be recorded in the probate office, and the register of probate shall make out and certify a true copy thereof to the register of deeds for the county in which the lands lie, who shall record the same, and such partition shall be binding, to all intents and purposes, upon all the persons interested, saving the right of appeal to the supreme court of probate.

ALLOWANCES TO WIDOWS AND OTHERS.

Allowances to widows from personal estate.
R. S., c. 65, § 21.
See c. 72, § 21.

SEC. 14. 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 when she duly waives the provision made, the judge may allow the widow so much of the personal estate, besides her ornaments and wearing apparel, as he deems necessary, according to the degree and estate of her husband, and the state of the family under her care; he may also allow her any one pew in a meeting-house, of which the deceased died seized; and such allowance, when recorded, vests 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. And when, after an allowance has been made from any estate, additional personal property belonging to said estate comes to the knowledge of the judge, he may make a further allowance to her therefrom. (a)

Mortgage debts allowed, may be assigned.
R. S., c. 65, § 22.
54 Me., 535.

SEC. 15. When an 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 direction of the judge, shall assign said mortgage and deliver the evidence of such debt to her.

Temporary allowances during litigation.
R. S., c. 65, § 23.

SEC. 16. In the settlement of any testate estate, where no provision is made for the widow in the will of her husband, or she duly waives the provision made, the judge shall make her suitable allowances from the personal estate, from time to time, for the support of herself and family under her care, during any litigation concerning the will; and on final probate of the will he shall make her a final reasonable allowance from the personal estate, according to the degree and estate of her husband and the state of the family under her care.

Widow's support and quarantine.
R. S., c. 65, § 24.
1887, c. 89.
59 Me., 441.

SEC. 17. A widow shall have her reasonable sustenance out of the estate of her husband for ninety days after his death, and may remain in the house of her husband during said ninety days without being chargeable with rent therefor.

Allowance to minor children, if no widow.
R. S., c. 65, § 25.
1889, c. 245.
See c. 69, § 37.
85 Me., 169.

SEC. 18. 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, under fourteen years of age; and to those between fourteen and twenty-one years of age, who from ill health are unable to labor. And if there is a widow and such children by a former wife, the judge may, at his discretion, divide such allowance among the widow and such children of a former wife. And in solvent estates, where there is no widow, the judge may, at his discretion, make an allowance from the personal estate to minor children under twelve years of age, when the income from their distributive shares will be insufficient for their support and education.

(a) 31 Me., 67; 39 Me., 18; 46 Me., 539; 50 Me., 238; 52 Me., 199; 53 Me., 185; 54 Me., 534; 68 Me., 124; 83 Me., 17; 84 Me., 71; 85 Me., 169; 86 Me., 206.

SEC. 19. Upon the death of a wife whose estate is solvent, the judge may make an allowance to her husband from her personal estate, in the same manner as to a widow from the estate of her husband.

Allowance to husband from his wife's estate.
R. S., c. 65, § 26.

DISTRIBUTION OF PERSONAL ESTATE.

SEC. 20. When on the settlement of any account of an administrator or executor, there appears to remain in his hands property not necessary for the payment of debts and expenses of administration, nor specifically bequeathed, the judge upon petition of any party interested, after public notice and such other notice as he may order, shall determine who are entitled to the estate and their respective shares therein under the will or according to law, and order the same to be distributed accordingly; and alienage shall be no bar to any person, who, in other respects, is entitled to receive any part of such property. If an executor or administrator neglects to distribute the property in his hands in pursuance of such order, and the parties in interest reside out of the state, and had no actual notice of any such settlement of account, the judge, on petition of any such party, may, within six years after such settlement, order such executor or administrator to render a new account. If any sum of money directed by a decree of the probate court to be paid over, remains for six months unclaimed, the executor, administrator, guardian or trustee who was ordered to pay over the same, may deposit it in some savings bank or like institution, as the probate court directs, to accumulate for the benefit of the person entitled thereto. Such deposit shall be made in the name of the judge of probate for the time being, and shall be subject to the order of the judge and his successors in office, as hereinafter provided. The person making the deposit shall file in the probate court a statement thereof under oath, with the original evidence of such deposit, which shall be allowed as a sufficient voucher for such payment. When the person entitled to the money deposited, satisfies the judge of his right to receive the same, the judge shall cause it to be paid over to him. When an executor, administrator, guardian or trustee has paid or delivered over to the persons entitled thereto the money or other property in his hands, as required by a decree of a probate court, he may perpetuate the evidence thereof by presenting to said court, without further notice, within one year after the decree is made, an account of such payments or of the delivery over of such property; which account being proved to the satisfaction of the court, and verified by the oath of the party, shall be allowed as his final discharge, and ordered to be recorded.

Remainder of personal estate, how distributed.
R. S., c. 65, § 27.
1891, c. 49.
50 Me., 191.
78 Me., 463.
82 Me., 296.
84 Me., 549.
88 Me., 19.

—proceedings, if order of distribution is not executed.

—unclaimed shares to be deposited in savings bank.

—in name of judge.

—return.

—withdrawal of deposit.

—final account to be rendered.

SEC. 21. 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 to make report thereof to him for his acceptance.

Distribution of specific articles.
R. S., c. 65, § 28.
89 Me., 103.

SEC. 22. If any evidence of debt, or account due to the deceased is thus assigned, the assignee may use the name of the executor or administrator to collect the same, by suit or otherwise, on giving such indemnity against costs, as the judge orders, saving to all supposed debtors the right to set off any claim against the estate of the deceased.

Debts may be assigned; conditions.
R. S., c. 65, § 29.

SEC. 23. 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

Bond may be required in certain cases.
R. S., c. 65, § 30

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of the payee a sufficient bond to refund so much thereof, as said sum 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.

Legatee
may sue for
legacy.
R. S., c. 65, §31.

SEC. 24. 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. (a)

DISTRIBUTION OF LANDS HELD IN MORTGAGE OR TAKEN ON EXECUTION.

Lands held
in mortgage
or taken on
execution,
before fore-
closure to be
treated and
sold as per-
sonal estate.
R. S., c. 65, §32.
See c. 92, § 13.

SEC. 25. Real estate held by an executor or administrator, guardian or trustee, in mortgage, or taken on execution, shall, until the right of redemption has expired, be deemed personal assets, and be held in trust for the persons who would be entitled to the money, if paid; and if it is paid, he shall release the estate; but if it is not paid, he may sell it as he could personal estate at common law, and assign the mortgage and debt; and the purchaser has the same rights and liabilities as the purchaser of personal property, sold by license of the probate court. All sales so made heretofore are valid. (b)

To be sold
by license for
payment of
debts, legacies
and charges.
R. S., c. 65, §33.
61 Me., 315.
92 Me., 491.

SEC. 26. Any such real estate may, for the payment of debts, legacies or charges of administration, be sold by a license of the probate court like personal estate. And the judge, if he deems it necessary, may require due notice to be given before granting such license, and an additional bond from the executor or administrator.

In case of
death of ex-
ecutor or ad-
ministrator,
proceedings.
R. S., c. 65, §34.

SEC. 27. When an executor or administrator has taken land on execution for a debt due the estate, and dies without disposing thereof, the judge may license his executor or administrator to sell and convey it, in order to carry into effect the trust whereby it is held, or for any other legal purpose.

Distribution,
if not sold or
redeemed.
R. S., c. 65, § 35.
54 Me., 536.
79 Me., 299.
92 Me., 491.
See c. 73, § 1.
¶ viii.

SEC. 28. If such real estate is not so redeemed or sold, it shall be distributed among those who are entitled to the personal estate, but in the manner provided in this chapter for the partition 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 it sold by the executor or administrator, and the money distributed as in other cases of personal estate.

DISTRIBUTION OF THE ESTATES OF DECEASED NON-RESIDENTS.

Estates of
deceased non-
residents,
how to be
disposed of.
R. S., c. 65, § 36.
85 Me., 378.
86 Me., 206.
91 Me., 542.

SEC. 29. When administration is taken in this state on the estate of any person, who, at the time of his death, was not an inhabitant thereof, his estate found here, after payment of his debts, shall be disposed of according to his last will, 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 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.

Proceedings,
if such
person died
insolvent.
R. S., c. 65, §37.

SEC. 30. If such person died insolvent, his estate found in this state, shall, so far as practicable, be so distributed that all his creditors here and elsewhere may share in proportion to their debts; and to this end

(a) 30 Me., 142; 80 Me., 332; 82 Me., 209.

(b) 6 Me., 132; 52 Me., 569; 54 Me., 535; 59 Me., 164; 61 Me., 315; 79 Me., 301; 92 Me., 491.

his estate shall not be transmitted as aforesaid, until all his resident creditors have received the proportion that they would have had, if the whole estate applicable to the payment of creditors, wherever found, had been 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, until all the resident creditors have received their proportions as herein provided.

SEC. 31. 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 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 is none such, it shall, after 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.

SEC. 32. Where lands in this state held in trust under a foreign will, for persons not residing here, have been sold, the probate court for the county in which the will has been allowed, may, in its discretion, order the money to be transmitted to the trustee, if there is any, in the state or country where the testator had his domicile.

Distribution of residue.
R. S., c. 65, § 38.

Proceeds of sale of land under a foreign will, how disposed of.
R. S., c. 65, § 39.

CHAPTER 68.

INSOLVENT ESTATES.

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.
- III. To debts entitled to a preference under the laws of the United States.
- IV. To public rates and taxes, and money due the state. (a)
- V. To all other debts.

Priority of claims and of payment.
R. S., c. 66, § 1.
See c. 65, § 41.
18 Me., 271.
19 Me., 261.
24 Me., 28.
61 Me., 470.
71 Me., 66.
77 Me., 501.
84 Me., 94.
97 Me., 389.

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. (b)

When representation of insolvency need not be made.
R. S., c. 66, § 2.

COMMISSIONERS AND PROCEEDINGS.

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

When representation must be made.
R. S., c. 66, § 3.

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

(b) 24 Me., 28; 62 Me., 167; 79 Me., 225; 84 Me., 94; 90 Me., 412; 97 Me., 390, 391, 396.