

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

EIGHTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT  
DECEMBER 30, 1944

VOLUME II



By the Authority of the Legislature

---

AUGUSTA  
KENNEBEC JOURNAL PRINT

be transmitted to the foreign executor or administrator, or if there is none such, it shall, after 4 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. 35. Proceeds of sale of land under a foreign will, how disposed of. R. S. c. 78, § 35. 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.

---

## CHAPTER 144.

### INSOLVENT ESTATES.

Sections 1- 2	Distribution of Insolvent Estates.
Sections 3- 9	Commissioners and Proceedings.
Sections 10-11	Contingent Claims.
Sections 12-18	Appeals.
Sections 19-20	Suits Pending and Commenced.
Sections 21-23	Miscellaneous Provisions.
Sections 24-26	Decree of Distribution.

#### Distribution of Insolvent Estates

Sec. 1. Priority of claims and of payment. R. S. c. 79, § 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.
- 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.

See c. 81, § 88, re assignees, receivers, executors, etc. to pay taxes from money in their hands; 18 Me. 271; 19 Me. 264; 24 Me. 28; 61 Me. 470; 64 Me. 407; 67 Me. 506; 71 Me. 66; 77 Me. 501; 84 Me. 94; 97 Me. 389; 107 Me. 194; 126 Me. 555.

Sec. 2. When representation of insolvency need not be made. R. S. c. 79, § 2. When an estate is not sufficient to pay more than such expenses and claims of the first 4 classes, the administrator is exonerated from payment of any claim of the 5th class without making a representation of insolvency.

24 Me. 28; 62 Me. 167; 79 Me. 225; 84 Me. 94; 90 Me. 412; \*97 Me. 390, 391, 396; 113 Me. 560; 116 Me. 212.

### Commissioners and Proceedings

**Sec. 3. When representation must be made; commissioners to be sworn; their report.** R. S. c. 79, § 3. When it appears to the administrator that an estate may be insufficient to pay the debts of the 5th 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 first be sworn, and shall make report to the court of all claims presented, and of their disposal, with the sum allowed on each claim. The judge may, for sufficient cause, revoke such appointment and issue a new commission or proceed otherwise as the case may require.

85 Me. 461; 114 Me. 324.

**Sec. 4. Meetings and notice thereof; time allowed to prove claims; proceedings in case of death of commissioner.** R. S. c. 79, § 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 18 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 18 months and before the commission is returned, the judge may appoint new commissioners and allow an additional time not exceeding 3 months for the presentation of claims.

48 Me. 407; 105 Me. 357; 114 Me. 324.

**Sec. 5. Presentation and proof of claims.** R. S. c. 79, § 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. Any claim filed in the registry of probate supported by affidavit as provided in section 15 of chapter 152 shall be considered as if presented to said commissioners, provided the same is so filed before the expiration of the 6 months period named in the preceding section. Before making their report said commissioners shall adjudicate upon all claims so filed.

See c. 100, § 83, re set-offs of demands due from a deceased person; 67 Me. 197; 96 Me. 453; 114 Me. 324; 121 Me. 78; 130 Me. 171.

**Sec. 6. Refusal or perjury by claimant.** R. S. c. 79, § 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.

67 Me. 197; 114 Me. 324; 130 Me. 171.

**Sec. 7. Value of claimant's security to be deducted; appraisal.** R. S. c. 79, § 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 3 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. 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.

24 Me. 38; 90 Me. 297; 114 Me. 324; 130 Me. 171.

**Sec. 8. Interest on claims; report may be recommitted; claim of administrator.** R. S. c. 79, § 8. Interest shall be computed 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.

19 Me. 264; 48 Me. 483; 74 Me. 486; \*114 Me. 324; 130 Me. 171.

**Sec. 9. Commissioners forfeit compensation for neglect of duty.** R. S. c. 79, § 9. Commissioners of insolvency who neglect to render their report to the judge for 3 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.

67 Me. 115, 117; 114 Me. 324.

#### Contingent Claims

**Sec. 10. Proof of contingent claims.** R. S. c. 79, § 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.

32 Me. 463; 57 Me. 564.

**Sec. 11. Proceedings on such claims after 4 years.** R. S. c. 79, § 11. If, within 4 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.

57 Me. 564.

#### Appeals

**Sec. 12. Appeals; bond; notice.** R. S. c. 79, § 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 20 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 30 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.

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; \*96 Me. 453; 123 Me. 474; 130 Me. 171.

**Sec. 13. Petition for leave to bring suit, after failing to prosecute appeal.** R. S. c. 79, § 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 court in season, or after giving such notice has by accident or mistake omitted further to prosecute his appeal, may within 2 years after the report is made petition the superior 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 4 years from granting administration. No decree of distribution can be disturbed by a judgment so recovered.

See c. 100, § 8, re entry of appeals at another term of court; 68 Me. 413; 115 Me. 335; 130 Me. 171.

**Sec. 14. Proceedings on appeal.** R. S. c. 79, § 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 3 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 10 and 11.

36 Me. 141; 55 Me. 514; 57 Me. 564; \*61 Me. 242; \*68 Me. 413; 71 Me. 375; 73 Me. 347; 74 Me. 194; 96 Me. 454; \*105 Me. 358; 123 Me. 474; 130 Me. 171.

**Sec. 15. If claim is allowed and appeal taken by administrator, heir, or creditor, claimant may apply to superior court.** R. S. c. 79, § 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 14, may petition the superior 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 4 years from granting administration, but no decree of distribution can be disturbed by a judgment so recovered.

96 Me. 454; \*115 Me. 335; 130 Me. 171.

**Sec. 16. Proceedings in the suit, and judgment.** R. S. c. 79, § 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, 14 days before its return day; or 7 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.

68 Me. 414; 96 Me. 454; 130 Me. 171.

**Sec. 17. Reference; examination of creditor.** R. S. c. 79, § 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.

55 Me. 514; 67 Me. 197; 130 Me. 171.

**Sec. 18. Judgment against administrator, to be added to claims allowed.** R. S. c. 79, § 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.

\*55 Me. 525; 57 Me. 564; 60 Me. 355; 65 Me. 129; 68 Me. 431; 73 Me. 347; \*85 Me. 460; 96 Me. 382.

### Suits Pending and Commenced

**Sec. 19. Actions pending.** R. S. c. 79, § 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 provided in cases of appeal. No action can be commenced, except on a preferred claim, after such decree.

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; \*85 Me. 460; \*109 Me. 67; 121 Me. 79.

**Sec. 20. Claims not presented or not allowed, barred, except in case of further assets.** R. S. c. 79, § 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.

67 Me. 458; 125 Me. 152.

### Miscellaneous Provisions

**Sec. 21. Penalty for delay in settling account.** R. S. c. 79, § 21. If an administrator neglects to settle his account within 6 months after the report on claims is made, or within such further time as the judge allows, it is a breach of his bond.

5 Me. 48; 6 Me. 270; 8 Me. 25; 11 Me. 51; 79 Me. 224.

**Sec. 22. Waste or trespass on real estate of insolvent.** R. S. c. 79, § 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.

See c. 111, § 17, re liability of executor or administrator for waste; 59 Me. 355; 62 Me. 309; \*77 Me. 246.

**Sec. 23. Insolvency of estate in hands of executors and guardians.** R. S. c. 79, § 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.

See c. 145, § 19, re adjustment by guardian of claims against ward's estate; 68 Me. 432; 111 Me. 550.

### Decree of Distribution

**Sec. 24. Decree of distribution, when and how made.** R. S. c. 79, § 24. After 30 days from the time when the report on claims is made, the judge shall

made a decree of distribution of the balance in the hands of the administrator among the creditors, according to the provisions of this chapter. In case of further assets, he shall make another distribution on the same principles.

\*73 Me. 241.

**Sec. 25. Account of payments, allowed without notice. R. S. c. 79, § 25.** 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.

105 Me. 389.

**Sec. 26. Report of commissioners on exorbitant claims, final, even if estate is insolvent. R. S. c. 79, § 26.** When commissioners appointed under the provisions of section 67 of chapter 141 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.

See c. 111, § 16, re penalty for waste on lands of an insolvent deceased; c. 148, § 6, re appointment of commissioners on disputed claims; \*115 Me. 335.

---

## CHAPTER 145.

### GUARDIANS. ADOPTION OF CHILDREN. CHANGE OF NAME.

Sections 1-3	Appointment of Guardians for Minors.
Sections 4-10	Appointment of Guardians and Conservators for Adults.
Sections 11-29	Powers and Duties of Guardians.
Sections 30-32	Guardians Ad Litem; Next Friend.
Sections 33-34	Discovery of the Ward's Estate.
Sections 35-41	Adoption of Children.
Section 42	Change of Name.

#### Appointment of Guardians for Minors

**Sec. 1. Appointment of guardians; proceedings when judge is interested. R. S. c. 80, § 1.** The judge of probate may appoint guardians to minors resident in his county, or out of the state and having estate in his county; but no executor or administrator on an estate shall be guardian to a minor interested therein, unless he is the parent of such minor or is nominated as such guardian in the will of which he is an executor; but when any judge is interested, either in his own right, in trust, or in any other manner, or is within the 6th degree of kindred, such appointment shall be made by a judge in any adjoining county, and the record of said appointment shall show why it was so made.

33 Me. 210; 39 Me. 394; 53 Me. 403; 61 Me. 213; \*79 Me. 37.

**Sec. 2. Guardians, how nominated and appointed. R. S. c. 80, § 2.** If the minor is under 14 years of age, the judge may nominate and appoint his guardian; but a guardian for such minor, named by the deceased father in his last will, or, if the father has died without making such nomination, named by