



1905

## Rhode Island Court and Practice Act Part 2 (177-403)

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## CHAPTER 32.

## OF EXECUTIONS.

SECTION 603. Executions issued by any court shall issue in the name of the State of Rhode Island and Providence Plantations and shall be signed, sealed, and run in like manner as original writs.

SEC. 604. Executions, unless otherwise ordered or provided by law, shall issue after twenty-four hours immediately following the entry of judgment.

SEC. 605. Any justice of the supreme or superior court may, upon motion and for cause shown, stay execution upon any judgment or decree rendered in any court, until further order.

SEC. 606. Executions, original or alias, may be issued by any court at any time within six years from the rendition of the judgment originally or from the return day of the last execution.

SEC. 607. The superior court, or any district court, at any time upon application made by the party in favor of whom any original, alias, or pluries execution has issued, and upon proof that such execution has been lost or destroyed previous to the satisfaction thereof, may issue, or authorize the clerk of such court to issue, another execution in the place of the one so lost or destroyed.

SEC. 608. Every execution issued by the supreme or superior court shall, unless otherwise specially provided therein, be made returnable thereto six months from the date of such execution, and shall be returned by the officer charged therewith; and if the officer shall not return the same within that time, he shall be liable therefor as by law prescribed.

SEC. 609. Every execution issued by any district court shall, unless otherwise specially provided

therein, be returnable three months after the date thereof, and be returned to the district court which issued it.

SEC. 610. No person shall be entitled to an execution until the fee therefor shall have been paid.

SEC. 611. The clerk of any court, or justice, issuing an execution, shall note on the margin or in the body thereof the time when the judgment recited in the same was rendered, and also in which, if any, of the following actions, the execution was awarded against the defendant, to wit: in any action brought against him upon any penal statute, or in trover, replevin, detinue, trespass, trespass on the case, trespass and ejectment, and trespass quare clausum fregit in which the title to the close was not in dispute.

SEC. 612. No execution shall issue against the body of any female on any judgment founded on a contract where the debt or damages do not exceed fifty dollars, but in such case the execution shall issue against the goods and chattels and real estate of the female against whom such judgment shall have been rendered.

SEC. 613. An execution, original, alias, or pluries, may issue against the body of a defendant not exempt from arrest in an action, whenever the same shall have been brought upon a penal statute, or in trover, replevin, detinue, trespass, trespass on the case, trespass quare clausum fregit in which the title to the close was not in dispute, scire facias against bail in criminal cases, or whenever, the action being for the recovery of a debt or a state or town tax, the cause thereof accrued before the thirty-first day of March, one thousand eight hundred and seventy, or whenever such defendant shall have been arrested and held to bail upon an original writ or writ of mesne process therein, or whenever it shall be made

to appear to the court which rendered the judgment in such action, or to any justice thereof, that such defendant is about to leave the state without leaving therein sufficient real or personal estate to satisfy such judgment, or that such defendant has been guilty of fraud in fact involving moral turpitude or intentional wrong either in contracting the debt for the recovery of which such judgment was rendered, or in the concealment, detention, or disposition of his property.

SEC. 614. A writ of execution issued by the superior court shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

SC. *To the sheriffs of our several counties, or*  
(SEAL) *to their deputies, Greeting:*

Whereas of by the consideration of the SUPERIOR COURT holden at did on the day of recover judgment against of for the sum of debt (or damages) and costs of suit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods and chattels and real estate of the said , within your precinct, you cause to be levied and paid unto the said the aforesaid sums, being in the whole, with fifty cents more for this writ; and thereof also to satisfy yourself for your own fees; [and for want of the goods and chattels and real estate of the said to be found in your precinct to satisfy and pay the same as aforesaid, we command you to take the body of the said and commit unto our county jail in your



precinct, therein to be kept until pay the full sum above mentioned, with your fees, or until be discharged by the said or otherwise by order of law.]

Hereof fail not, and make true return of this writ and of your doings thereon to our superior court at for our county of on the day of A. D.

Witness, the seal of our superior court at this day of in the year

, Clerk.

SEC. 615. Writs of possession issuing from the superior court shall be substantially in the following form:—

29 R. 1. 024 THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

SC. *To the sheriffs of our several counties, or*  
(SEAL) *to their deputies,* *Greeting:*

Whereas of by the consideration of the SUPERIOR COURT holden at did on the day of recover judgment for the possession of with the privileges and appurtenances thereto belonging against of who had unjustly withholden from the possession thereof, and also by the consideration of the same court recovered judgment against the said for the sum of costs of suit, as to us appears of record, whereof execution remains to be done:— We command you, therefore, that without delay you cause the said to have possession of and in the said with the privileges and appurtenances thereunto belonging. We also command you that of the goods and chattels and real estate of the said , within your precinct,

you cause to be levied and paid to the said  
 the aforesaid sum of                    with fifty cents more  
 for this writ, and thereof also to satisfy yourself for  
 your own fees; [and for want of the goods and chat-  
 tels and real estate of the said                    to be found  
 in your precinct to satisfy and pay the same as afore-  
 said, we command you to take the body of the said  
                   and                    commit unto our county jail in  
 your precinct, therein to be kept until                    pay the  
 full sum above mentioned, with your fees, or until  
                   be discharged by the said                    or other-  
 wise by order of law.]

Hereof fail not, and make true return of this writ  
 and of your doings thereon to our superior court at  
                   on the                    day of                    A. D.

Witness, the seal of our superior court at  
 this                    day of                    in the year

, Clerk.

SEC. 616. A writ of execution issued by a district  
 court shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
 PLANTATIONS.

sc. *To the sheriff, his deputy, or to either of*  
 (SEAL)                    *the town sergeants or constables in the*  
                   *county of                    Greeting:*

Whereas                    of                    at a DISTRICT COURT  
 holden at                    did on the                    day of  
 recover judgment of said court against                    of  
                   for the sum of                    debt (or damages),  
 and costs of suit taxed at                    , as of record of  
 said court doth appear, which sums, in the whole,  
 amount to                    for which execution remains to  
 be done: We command you, therefore, that of the  
 goods and chattels and real estate of the said

within your precinct, you levy the said sum of \_\_\_\_\_, together with fifteen cents for this execution, as also your lawful fees for serving the same, and therewith satisfy and pay the said \_\_\_\_\_; [and for want of the goods and chattels and real estate of the said \_\_\_\_\_ to be by you found within your precinct, to satisfy and pay the same sums as aforesaid, we command you to take the body of the said \_\_\_\_\_ into your custody, and \_\_\_\_\_ safely secure in our jail in \_\_\_\_\_ until \_\_\_\_\_ satisfy and pay the said \_\_\_\_\_ the sums aforesaid and your fees, or until \_\_\_\_\_ be by the said \_\_\_\_\_ therefrom discharged, or otherwise by order of law.]

Hereof fail not, and make true return of this writ and of your doings thereon, on the \_\_\_\_\_ day of \_\_\_\_\_

A. D.

Witness, the seal of the district court of the judicial district, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

\_\_\_\_\_, Clerk (or Justice).

29 R. I. 241 SEC. 617. Writs of possession, issuing from a district court, shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

(SEAL) sc. *To the sheriff, his deputy, or to either of the town sergeants or constables in the county of \_\_\_\_\_ Greeting:*

Whereas \_\_\_\_\_ of \_\_\_\_\_ at a DISTRICT COURT holden at \_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_ recover judgment of said court for the possession of \_\_\_\_\_ with the privileges and appurtenances there- belonging against \_\_\_\_\_ of \_\_\_\_\_ who had un-



justly withholden from the possession thereof, and also, by the consideration of the same court, recovered judgment against the said for the sum of costs of suit, as of record of said court doth appear, whereof execution remains to be done: We command you, therefore, that without delay you cause the said to have possession of and in the said with the privileges and appurtenances thereunto belonging. We also command you that of the goods and chattels and real estate of the said within your precinct, you cause to be levied and paid to the said the aforesaid sum of with fifteen cents more for this writ, and thereof also to satisfy yourself for your own fees; [and for want of the goods and chattels and real estate of the said to be found in your precinct to satisfy and pay the same as aforesaid, we command you to take the body of the said and commit unto our county jail, in your precinct, therein to be kept until pay the full sum above mentioned, with your fees, or until be discharged by the said or otherwise by order of law.]

Hereof fail not, and make true return of this writ and of your doings thereon, on the day of

A. D.

Witness, the seal of the district court of the judicial district, this day of in the year

, Clerk (or Justice).

SEC. 618. If the execution issued by any court be one which may run against the body of the defendant, the words included in brackets in the forms prescribed in the preceding sections of this chapter shall be retained, otherwise they shall be stricken out.

SEC. 619. Whenever the court in which an original



writ is returnable shall release the defendant therein from arrest and discharge the bail, if any taken thereon, the execution in such actions shall not issue against the body of the defendant so released, but against his goods and chattels and real estate.

SEC. 620. The court issuing an execution in any case in which no form shall be prescribed, may vary the above forms so as to comply with the law.

SEC. 621. Whenever final judgment or decree shall be rendered for the plaintiff in any action or suit in which the writ was served by attachment of real estate, or goods and chattels, or stock or shares in any incorporated company, the execution issued on such judgment or decree shall be levied on the property so attached, as soon as may be; but if execution shall not be so levied within six months, if issued from the supreme or superior court, and within three months, if issued from a district court, from the day of entry of judgment or decree, the property attached shall be discharged of such attachment.

SEC. 622. In every execution issued against any defendant in an action or suit in which another person shall have been charged as the trustee of such defendant, there shall be inserted next after the words "goods and chattels and real estate of the defendant," the words following, namely, "and especially the personal estate of the said defendant in the hands or possession of (*here insert the name of the trustee*) charged as trustee of the said defendant to the extent of (*here insert the amount for which the trustee is charged*)"; or if the trustee shall be charged by his default in not filing the necessary affidavit in said cause, insert in lieu of the clause fixing the extent to which such trustee shall be charged, the following, after the words "charged as trustee of the

said defendant," namely, "by the default of the said trustee to file his affidavit in said cause."

SEC. 623. If any person named as the trustee of a defendant, who shall have been charged as trustee by reason of his default, shall make affidavit as to whether or not he had personal property of the defendant in his hands or possession at the time of the service of the original writ in said action or suit upon him, and stating the amount or articles, if any, so in his hands, and that he failed to file an affidavit therein before he was charged by the court as the trustee of the defendant, either from want of actual notice of the service of the said writ, or by accident or mistake, and shall give such affidavit to the officer charged with the service of the execution (who shall annex such affidavit to his return on such execution), or, if execution has not issued, if such person shall file such affidavit in the court in which he has been charged, with the clerk, if there be a clerk, otherwise with the justice thereof, and shall pay to said officer, clerk, or justice, respectively, the money paid for his attendance at the time of the service of the original writ, and another like sum, and, in case execution has issued, shall pay to said officer the sum stated in his affidavit to be so in his hands, if any, or so much thereof as may be necessary to satisfy said execution, or, if the property in his hands as disclosed by his affidavit consists of specific articles, shall then deliver the same to said officer, no further proceedings shall be had therein against such trustee, except as is provided in section 585 in case of a false answer or affidavit by the person summoned as trustee, and the officer shall pay the money paid to him by such trustee to the plaintiff, or take such specific articles on said execution.

## CHAPTER 33.

## OF THE SERVICE OF EXECUTIONS.

SECTION 624. Every officer to whom a writ of execution or other judicial writ shall be lawfully issued shall execute the mandates therein contained as commanded, and shall make returns of his doings thereon. If he be unable to execute such mandates, he shall set forth the reason of his failure in his return.

SEC. 625. The body of a deceased person shall not be liable to be taken for debt or damages on execution or upon any process whatsoever; and if any officer shall, under color of an execution or process, seize or take the body of any deceased person for debt or damages, he shall be fined not exceeding five hundred dollars or be imprisoned not exceeding six months.

SEC. 626. If any officer shall, at the same time, have two or more executions delivered to him to serve; in which the parties shall be reversed, and shall sue and be sued in the same right and capacity, he shall set off the debts or damages in the same and levy and collect the balance only that shall remain due thereon, with the costs on all said executions.

SEC. 627. Personal estate, when mortgaged and in the possession of the mortgagor, and while the same is redeemable either at law or in equity, may be levied on by execution against the mortgagor in the same manner as on his unincumbered personal estate.

SEC. 628. When levied on, whether by virtue of an attachment or otherwise, it shall be sold by the officer as in other cases of levies on personal property on executions.



SEC. 629. The proceeds of the sale shall be applied to the payment of the amount due on the mortgage, with such deduction for interest for the anticipated payment, or allowance for damages for such anticipated payment, as may be ascertained and allowed by the court to which the execution is returnable, and the balance shall be applied to the payment of the amount due on the execution.

SEC. 630. In case of such levy, the plaintiff in execution may redeem the mortgaged property in the same manner as the mortgagor might have done, and upon such redemption shall have the same lien on the property for the amount paid by him, with interest, as the mortgagee had.

SEC. 631. If the mortgage be not redeemed by the plaintiff, or sold as before mentioned, before the time of redemption expires, the attachment shall become void.

SEC. 632. In all cases when execution shall be levied on any goods or chattels, such goods and chattels shall be kept in the possession of the officer and shall be advertised at least ten days before they shall be exposed and offered for sale, in order that the person who owned such goods or chattels may, if he think fit, pay the money due, together with the costs which shall have accrued thereon, and thereupon have his said goods or chattels restored to him again: *Provided*, that if such goods and chattels shall be of a quickly perishable nature, the officer levying execution thereon shall immediately notify the defendant or his agent thereof, and may obtain an order from the court, or any justice thereof, issuing the execution, to sell said goods and chattels at such time and in such manner as said court or justice may prescribe, and such order may be obtained at any



time. Such an order to the officer may also be obtained by either party or his agent.

SEC. 633. In case such owner shall not redeem them as aforesaid, and in case they be not sold under special order, the officer shall sell the same at public auction to the highest bidder, and in any case if any overplus shall remain after the debt or damages and costs and charges are paid, the same shall be delivered by the officer to the owner or to any person legally qualified on his behalf to receive the same.

SEC. 634. The officer charged with the service of the execution, if he shall levy the same on real estate or any interest therein, shall set up notifications of such levy in three or more public places in the town where said real estate lies, for the space of three months after such levy and before the same shall be exposed to sale, notifying all persons concerned of the levy and intended sale of said estate, that the owner thereof may have an opportunity to redeem the same, and he shall also notify such sale by causing an advertisement thereof to be published once a week for the space of three weeks next before the time of such sale in some newspaper published in the county where such estate lies, and if no newspaper be published therein, then in some newspaper published daily in the city of Newport or Providence.

SEC. 635. Whenever execution shall be levied upon real estate or any interest therein which was not attached on the original writ or writ of mesne process, the officer shall, in addition to carrying out the requirements of the preceding section, leave a copy of the execution, with his doings thereon, with the town clerk or recorder of deeds, as the case may be, of the town in which such real estate shall lie, and the said town clerk or recorder of deeds, as the case may be, shall note upon such copy the exact time, as

near as may be, when the same was left with him, and shall also enter in a book, to be kept by him for that purpose, the names of the parties in such execution, the amount of the judgment, the time when such copy was left with him, and the court to which and time when such execution is returnable, and shall be entitled to demand and receive from such officer a fee of twenty-five cents in each case.

SEC. 636. The officer may, for good cause, from time to time, adjourn the sale of the estate levied on, giving one week's notice thereof by publication in a newspaper in the manner above provided.

SEC. 637. If no person appear to redeem the said estate, the officer shall sell the same, or so much thereof as shall be sufficient to satisfy the judgment obtained and the costs and charges, at public auction, and a deed thereof, by him given, shall vest in the purchaser all the estate, right, and interest which the debtor had therein at the time said estate was attached, or, in case there was no attachment, levied on as aforesaid, and the surplus of the money that shall arise from the sale of said estate, after satisfying the execution and the costs and charges, shall be deposited with the general treasurer for the owner thereof and be liable to be attached for his other debts.

SEC. 638. Such sale shall be made under the execution levied thereon, although the return day thereof may have passed.

SEC. 639. The following shall be substantially the form of the deed to be given whenever real estate is levied upon and sold as aforesaid, that is to say:—

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL  
COME.

send Greeting:

Whereas an execution against \_\_\_\_\_ at the suit  
of \_\_\_\_\_ was by me the said \_\_\_\_\_ on the  
day of \_\_\_\_\_ levied on (*here describe the premises*);  
and whereas on the \_\_\_\_\_ day of \_\_\_\_\_ all the  
estate, right, title, interest, and property of the said  
\_\_\_\_\_ in the premises aforesaid, were by me, the  
said \_\_\_\_\_ sold at public auction, for the satis-  
faction of the said execution, to \_\_\_\_\_, who was  
the highest bidder, for the sum of \_\_\_\_\_ which the  
said \_\_\_\_\_ hath since well and truly paid to  
me the said \_\_\_\_\_ : NOW KNOW YE, that by force  
and virtue of the law in such case made and pro-  
vided, I, the said \_\_\_\_\_ in consideration of the  
sum of money paid unto me as aforesaid, do by these  
presents bargain, sell, assign, and set over unto the  
said \_\_\_\_\_ heirs and assigns forever, all the estate,  
right, title, interest, property, freehold, and in-  
heritance of the said \_\_\_\_\_ of, in and to the said  
premises and appurtenances at the time of the levy  
thereon. TO HAVE AND TO HOLD the said premises  
and appurtenances to the said \_\_\_\_\_ heirs and  
assigns forever. IN WITNESS, &c.

And there shall be annexed to such deed, and form-  
ing a part thereof, a copy of such execution and the  
officer's return thereon, duly certified by such officer.

SEC. 640. Whenever attachment shall have been  
made by original writ or writ of mesne process, the  
officer shall insert the time thereof and vary his  
deed accordingly.

SEC. 641. A certified copy of such record of ex-  
ecution and return shall be admissible as evidence of  
the contents of such execution and return; and in



the event of the destruction, loss, or obliteration of such return, amendments thereof may be allowed to be made upon a copy of such record certified by the town clerk or recorder of deeds, as the case may be, of the town wherein such deed, execution, or return shall have been recorded, with the same effect as if such amendment had been made on the original return.

SEC. 642. Whenever execution shall issue against a defendant whose stock or shares in any banking association or any body corporate established within this state shall have been attached, the officer charged therewith shall serve a copy of the same, if a bank, upon the cashier; if an insurance company, upon the president or secretary; if any other corporate body within this state, upon the treasurer or person executing the duties of treasurer; and if any foreign corporation, upon the clerk or agent, or its attorney authorized to accept service of process in its behalf in this state; which shall be deemed a good and sufficient levy of such execution upon the stock or shares of the defendant in such company.

SEC. 643. The said stock or shares, or so much thereof as shall be necessary, shall be advertised and sold in the same manner as other personal property levied on by execution, and a deed or deeds thereof given by the officer aforesaid shall vest in the purchaser all the right, title, and interest of the defendant in such shares so sold as aforesaid, and shall be recorded by the recording officer of such company.

SEC. 644. The stock or shares of any person whatsoever in any banking association or in any incorporated company within this state, or in any foreign corporation having an attorney in this state, appointed by law, upon whom service of process against it can be made according to the provisions of chapter



29 of this act, shall be liable to be levied on by execution duly obtained, like other personal property; and such execution being directed to the proper officer according to law, he may levy the same, in the manner set forth in the preceding two sections, upon any stock or shares of the defendant to be found within his precinct, and shall proceed to advertise and sell and give deeds thereof in the manner therein prescribed.

SEC. 645. Whenever final judgment for any sum shall be rendered by any court against any banking association or any incorporated company, execution on the judgment shall be issued against the goods, chattels, and real estate of the corporation; and whenever any such execution shall be, by the officer charged with the service thereof, returned that he cannot find sufficient property of the corporation whereon to levy the same, the party in whose favor the judgment shall have been rendered may sue out of the office of the clerk of the court in which the judgment was rendered a writ of scire facias against the president and directors, trustees, managers, or other like officers of the corporation, if any such there be, and, if none, then against so many of the stockholders or members thereof as he may think fit, returnable to the court on a day to be named in the writ.

SEC. 646. On the return thereof, unless such president and directors, trustees, managers, other like officers, stockholders, or members shall make it appear that they had not, at the time of the service of such writ of scire facias, within their possession and control, sufficient property of the corporation to satisfy the judgment or any part thereof, the court shall issue execution against such president, directors, trustees, managers, or other like officers, or

stockholders, or members, for the amount of the judgment, with interest and costs, as for their own private debt; but if it shall appear that such officers, stockholders, or members had property as aforesaid to satisfy part of the judgment only, then an execution as aforesaid shall issue for such amount only and costs.

SEC. 647. In all levies on execution upon real estate, goods, and chattels, stocks or shares, or other subject of levy on execution whatsoever, he who shall first procure the attachment, if any, or, if there be no attachment, he who shall first procure levy to be made, shall be entitled to have his debt or damages satisfied before any other demand for which the same may be subsequently attached, or levied on by execution, at the suit of any other person; and all others in order of their attachments or levies, as aforesaid.

SEC. 648. As divers levies of the same real or personal estate may happen to be made on the same day, the officer who shall make any such levy, whether of real or personal estate, shall in his return set forth the time of the day when such levy was made, to the end that the priority of the attaching and levying creditors may be known.

SEC. 649. Every sheriff, deputy sheriff, town sergeant, and constable charged with the service of any execution for any debt or damages, shall levy, collect, receive and pay over interest on the same debt or damages, from the date entered on the margin, up to the time of its discharge by him.

SEC. 650. Whenever judgment shall be rendered against any person holding the office of sheriff, the execution issued thereon, directed in the ordinary form, may be delivered to the sheriff or a deputy sheriff of some other county, who, within the county

of the defendant sheriff, may levy on the property, subject to levy on execution, of the defendant, as the proper sheriff of the county might do in other cases, and proceed and sell the same according to law.

SEC. 651.\* For want of goods and chattels and real estate or other property, subject to levy on execution, such sheriff or deputy shall take the body of the defendant-sheriff and him commit to the jail in the county of the committing officer, whenever the writ of execution shall command him so to do.

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## CHAPTER 34.

### OF HABEAS CORPUS.

SECTION 652. Every person imprisoned in any common jail or otherwise restrained of his liberty by any officer or other person, except in cases mentioned in the following sections, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

SEC. 653. The following persons, confined in any jail, shall not be entitled, as of right, to demand and prosecute said writ:

*First.* Persons convicted of treason against this state, murder, rape, robbery, arson, burglary, or as accessories before the fact in either of those crimes, or committed on suspicion of being guilty of either of those crimes, or as accessories thereto before the fact, when the cause is plainly and specifically expressed in the warrant of commitment.

*Second.* Persons convicted, or in execution upon legal process, civil or criminal.

*Third.* Persons committed on mesne process in



any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

SEC. 654. Application for such a writ shall be made to the supreme or superior court, or to any justice of either of said courts, by complaint in writing, signed by the party for whose relief it is intended or by some person in his behalf, setting forth:

*First.* The person by whom and the place where the party is imprisoned or restrained, naming the prisoner and the person detaining him, if their names are known, and describing them if they are not known.

*Second.* The cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the person applying. If the imprisonment or restraint is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand of such copy could not be made. The facts set forth in the complaint shall be verified by the oath of the person making the application or by that of some other creditable witness, which oath may be administered by the court or justice to whom the application is made or by any justice of the peace or notary public.

SEC. 655. The court or justice to whom such complaint shall be made shall without delay award and issue a writ of habeas corpus; if against any sheriff or deputy sheriff of this state, or against the keeper of any jail or prison in this state, or against any marshal or deputy marshal of the United States, it shall be substantially in the following form:—





court shall then consider concerning him in this behalf, and summon the said                    then and there to appear before our said court to show the cause of the taking and detaining of the said                    and have you there this writ with your doings thereon.

Witness the seal of the                    court at this                    day of                    in the year                    , Clerk.

Or, Witness my hand this                    day of                    in the year                    . ■

*Justice of the                    Court.*

SEC. 656. Any justice issuing such writ shall make the same returnable to the court of which he is a justice.

SEC. 657. If the writ is returnable to the supreme court and the court is not in session upon the return of the writ, it shall be returned to, and action thereon be had by, the superior court at Providence. If returnable to the superior court for either Newport, Kent, or Washington county, and such court is not in session upon its return, it shall be returned to the superior court at Providence.

SEC. 658. Any person to whom the writ is directed shall receive it, and upon payment or tender of charges, if any be demandable for the execution of it, he shall make due return thereof.

SEC. 659. If the writ be directed to any sheriff, deputy sheriff, keeper of any jail, marshal, or deputy marshal, as herein provided, such officer shall state in his return thereon:

*First.* Whether he has or has not the party in his custody or power or under restraint.

*Second.* If he has the party in his custody or power or under restraint, he shall set forth at large the authority, and the true and whole cause of such imprisonment or restraint, with a copy of the writ,

warrant, or other process, if any, upon which the party is detained; and

*Third.* If he has had the party in his custody or power or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause, and by what authority such transfer was made.

If the writ be directed to any other person than such an officer, the person summoned shall state the same particulars in writing to the court before whom the writ is returnable.

SEC. 660. The return or statement shall be signed by the person making it, and it shall also be sworn to by him, unless he be a sworn public officer and shall make the return in his official capacity.

SEC. 661. The person who makes the return or statement shall at the same time bring the body of the party, if in his custody or power or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party.

SEC. 662. Whenever, from the sickness or infirmity of the party, he cannot, without danger, be brought to the place appointed for the return of the writ, that fact shall be stated in the return, and if it be proved to the satisfaction of the court, the court may proceed to the jail or other place where the party is confined and there make the examination, or may adjourn the same to another time or may make such other order in the case as law and justice shall require.

SEC. 663. When the writ of habeas corpus is returned, the court shall, without delay, proceed to examine the causes of the imprisonment or restraint, but the examination may be adjourned from time to time, as circumstances may require.



SEC. 664. Whenever it appears, from the return of the writ, or otherwise, that the party is detained on any process under which any other person has an interest in continuing his imprisonment or restraint, the party shall not be discharged until sufficient notice shall have been given to such other person or his attorney, if within the state or within thirty miles of the place of examination, to appear and object to such discharge, if he think fit, which notice shall be given by the party imprisoned, in the manner prescribed by the court, or, in default thereof, he shall be remanded to the custody of the person against whom the writ of habeas corpus issued.

SEC. 665. Whenever it appears from the return of the writ, or otherwise, that the party is imprisoned on any criminal accusation, he shall not be discharged until sufficient notice shall have been given to the attorney-general, or to the complainant in the matter, that he may appear and object to the discharge, if he think fit, which notice shall be given by the party imprisoned, in the manner prescribed by the court, or, in default thereof, he shall be remanded to the custody of the person against whom the writ of habeas corpus issued.

SEC. 666. The party imprisoned or restrained may deny any of the facts set forth in the return or statement, and may allege any other facts that may be material in the case, and the court shall proceed in a summary way to examine the causes of imprisonment or restraint and to hear the evidence that may be produced by any person interested and authorized to appear, both in support of such imprisonment or restraint and against it, and thereupon to dispose of the party as law and justice shall require.

SEC. 667. If no legal cause be shown for the im-

prisonment or restraint, the court shall discharge the party therefrom.

SEC. 668. If the party is detained for any cause or offence for which he is bailable of right, he shall be admitted to bail if sufficient bail be offered, and if not, he shall be remanded with an order of the court expressing the sum in which he shall be held to bail, and the court at which he shall be required to appear, and any person authorized thereto may, at any time before the sitting of said court, bail the party pursuant to such order.

SEC. 669. If the party is committed on mesne process in any civil action for want of bail, and if it shall appear that the sum for which bail is required is excessive and unreasonable, the court shall decide what bail is reasonable and shall order that on giving such bail the party shall be discharged.

SEC. 670. If the party is lawfully imprisoned or restrained and is not entitled to be enlarged on giving bail he shall be remanded to the person from whose custody he was taken or to such other person or officer as by law is authorized to detain him. No appeal or exception shall lie to the judgment of the superior court in habeas corpus; but if the superior court shall remand the person imprisoned or restrained, such judgment shall not bar an application to the supreme court, or a justice thereof, for another writ upon the same facts.

SEC. 671. Until judgment be given the court may remand the party or may bail him to appear from day to day, or may commit him to the sheriff of the county or place him under such other care and custody as the circumstances of the case may require.

SEC. 672. Every officer who shall refuse or neglect, for six hours, to deliver a true copy of the warrant or process by which he detains any prisoner to

any person who shall demand such copy and tender the fees therefor, shall forfeit and pay to such prisoner the sum of one hundred dollars.

SEC. 673. If any person to whom a writ of habeas corpus shall be directed shall refuse to receive the same or shall neglect to obey and execute it according to the provisions of this chapter, and no sufficient excuse shall be shown for his refusal or neglect, the court before which the writ is returnable shall proceed forthwith, by process of attachment as for a contempt, to compel obedience to the writ and to punish the person guilty of the contempt.

SEC. 674. If such attachment shall be issued against a sheriff or his deputy, it may be directed to any town sergeant or to any other person, to be designated therein, who shall have full power to execute the same; and if the sheriff or deputy should be committed upon such process, he may be committed to the jail of any other county than his own.

SEC. 675. Upon such refusal or neglect of the person to whom the writ of habeas corpus is directed, the court may also issue a precept to any officer or other person designated therein, commanding him to bring forthwith before such court the person for whose benefit the writ of habeas corpus was issued, and the prisoner shall be thereupon discharged, bailed or remanded, in like manner as if he had been brought in upon the writ of habeas corpus.

SEC. 676. Every person guilty of such refusal or neglect to receive and execute a writ of habeas corpus shall also forfeit and pay to the party aggrieved thereby one thousand dollars.

SEC. 677. Every person who shall have in custody or under his power any person entitled to any writ of habeas corpus, whether any writ has issued or not, and who shall, with intent to elude the ser-



vice of such writ or to avoid the effect thereof, transfer such prisoner to the custody, or place him under the power or control, of any other person, or conceal him, or change the place of his confinement, shall forfeit and pay to the party aggrieved thereby one thousand dollars.

SEC. 678. The recovery of any penalty imposed by this chapter shall not bar any action at the common law for false imprisonment, or for false return to the writ of habeas corpus, or for any other injury or damage sustained by the aggrieved party.

SEC. 679. No person who has been discharged upon a writ of habeas corpus shall be again imprisoned or restrained for the same cause, unless he shall be indicted therefor or convicted thereof, or committed, for want of bail, by some court of record having jurisdiction of the cause, or unless after a discharge for defect of proof or for some material defect in the commitment, in a criminal case, he shall be again arrested, on sufficient proof, and committed, by legal process, for the same offence.

SEC. 680. Nothing contained in this chapter shall be so construed as to restrain the power of the supreme or superior court, or any one of the justices thereof, to issue a writ of habeas corpus at their discretion, and thereupon to bail any person for whatsoever cause he may be committed or restrained, or to discharge him, as law and justice shall require.

SEC. 681. Whenever any person is committed to jail on any criminal accusation for want of bail, any justice of the supreme or superior court, or any person specially appointed by either of said courts, may admit him to bail in like manner as might have been done by the court or magistrate who committed him, and the said justices respectively shall have power to issue a writ of habeas corpus and to cause

such prisoner to be brought before them, whenever it shall be necessary for the purpose expressed in this section.

SEC. 682. Nothing contained in this chapter shall be so construed as to restrain the power of any court to issue a writ of habeas corpus, whenever necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court, or to bring in any prisoner to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, whenever they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

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## TITLE IV.

### OF PROBATE COURTS.

#### CHAPTER 35.

##### OF THE ESTABLISHMENT AND ORGANIZATION OF PROBATE COURTS.

###### PROBATE CIRCUITS.

Unless otherwise provided, the town councils shall be probate courts within their respective towns; the major part of the members elected to be a quorum for doing business, and the major part of those present at any legal meeting to decide upon any matter before them.

The municipal court of the city of Providence shall be the probate court for said city.

The town council of any town which may, at the annual meeting of said town, have delegated to

its town council such power, shall elect a judge of probate for such town, and any city council or any town may at the annual election of town officers elect a judge of probate for such city or town; and such judge of probate, upon being engaged, shall, instead of the town council, have the power and be subject to the duties of a probate court, and be entitled to the fees of such court and such salary, in addition to or instead of such fees, to be received of such city or town, as the city or town may allow. Unless otherwise provided, whenever the judge of probate of any city or town is a party or interested in any case arising in his town, or is absent or unable to perform his duties, the town council of such town shall perform such duties in the same manner as if no judge of probate had been elected.

The town or city clerk of each town and city, unless special provision be made by law or charter to the contrary, shall be the clerk of the probate court of the town or city.

The probate clerk shall attend the meetings of the probate court and shall record its proceedings and also all wills, administrations, inventories, accounts, decrees, orders, determinations, and other writings, which shall be made, granted, or decreed upon by the probate court of such town or city, and shall have the custody and safe-keeping of the seal of said court and of all the books and papers belonging to the probate office, and shall not act as attorney before the court of which he is clerk.

Whenever the clerk of any probate court shall not appear at the time and place appointed for the meeting of the court, such court may appoint a clerk for the time being, who, after being duly sworn, shall perform all the duties, exercise all the powers, enjoy all the emoluments, and be subject to all the re-



quirements granted to or conferred on or required of clerks of probate courts.

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## CHAPTER 36.

### OF THE GENERAL JURISDICTION OF PROBATE COURTS.

SECTION 721. Every probate court shall have jurisdiction, in the town or city in which it is established, of the probate of wills; the granting of administration; the appointment of custodians, of administrators, of guardians of persons and estates or of persons only or of estates only; and of conservators; the accepting and allowing of bonds, inventories, and accounts of executors, administrators, and guardians; the granting of leave to sell at public or private sale, or to mortgage property, as hereinafter provided; of the making of partition of the real estate of deceased persons; of the adoption of children; of change of names of persons; of assigning dower to widows; and of all other matters now within the jurisdiction of probate courts. Such court shall have power to accept the resignation of, or to remove, any custodian, executor, administrator, or guardian, or any other person appointed by such court, and also power to do and transact all matters and things incidental to the jurisdiction and powers vested in probate courts by law. The jurisdiction assumed in any case by the court, so far as it depends on the place of residence of a person, shall not be contested in any suit or proceedings except in the original case or on appeal therein or when the want of jurisdiction appears on the record.

SEC. 722. Every probate court may appoint any suitable person or persons as custodian or custodians

to have the charge and care of the personal property of deceased persons, the settlement of whose estates is within the jurisdiction of the court, until letters testamentary, or of administration, be granted; and may require such custodians to give bond to the court, with or without surety or sureties in its discretion; and may also, in its discretion, authorize such custodians to sell any property which is perishable, or can be kept only at disproportionate expense, that may come to their possession by virtue of such appointment, and to take such other action as the court may direct; and such custodians shall in all things be subject to the control of the court and act under its direction, and shall receive a reasonable compensation out of the estate.

SEC. 723. The probate court of any town or city shall take the probate of wills and grant administration on the estates of deceased persons who, at the time of their decease, were inhabitants of or residents in such town or city, and of other persons, not having any residence in this state, who die leaving rights, credits, or estates, real or personal, within such town or city: *Provided*, that the first probate of the will, and the first grant of administration on the estate, of any deceased person who, at the time of his decease, was not an inhabitant of, or resident within, this state, shall bar any other probate or grant of administration, although the deceased person may have left rights, credits, or estates, real or personal, in any other town or city in this state.

SEC. 724. Probate courts may determine all questions as to payments of legacies by executors and administrators with the will annexed, and may allow such payments in the accounts of executors and administrators.

SEC. 725. Any warrant or commission for the appraisement of an estate, for examining claims against the estate of a deceased person, for the partition of real estate, or for the assignment of dower or other interest in real estate may be revoked by the court for sufficient cause; and the court may thereupon issue a new warrant or commission, or proceed otherwise, as the circumstances of the case shall require, or in the case of death, disability, or resignation of one or more of such appointees may supply vacancies occasioned thereby in such manner as the court shall deem best.

SEC. 726. Any probate court may modify or revoke any order or decree made by it on an uncontested application before appeal therefrom, or, if no appeal is taken, before the time for taking an appeal has expired, and, if made in reference to the settlement of any estate, also before the final settlement thereof, upon the written application of any person interested therein, and after notice of the time and place of hearing thereon appointed by the court, given in the manner prescribed by it, to the person having charge of such estate and to all other interested parties; and upon any modification or revocation, there shall be the same right of and time for appeal as in case of any other order or decree.

SEC. 727. When it shall appear to a probate court, pending proceedings before it for the settlement of an estate as a testate estate, that the will under which such proceedings were had has been revoked by the testator, the court shall have power to annul any order or decree proving the will so revoked, and any other order or decree made by the court in the settlement of the estate under said will. The court shall have power to proceed with the settlement of the estate under a subsequent will, if there be one; or,



if there be none, to grant administration on the estate and proceed with the settlement thereof as an intestate estate, after such notice to all parties in interest as the court shall order; but the preceding executor or administrator shall not be personally liable for any thing by him done in good faith and in the line of his duties before such decree of annulment.

SEC. 728. When the validity of an act or proceeding of a probate court, or of a person acting as executor, administrator, or guardian, is called in question by reason of an alleged irregularity, defective notice, or want or improper exercise of authority, any party interested in or affected by such act or proceeding may apply to the probate court having jurisdiction of the subject-matter in respect to which the act or proceeding has been had; and the court, after such notice as it may order to all parties interested, may hear and determine the matter and confirm the act or proceeding in whole or in part, and may authorize and empower the executor, administrator, guardian, or any successor, or other person who may be legally appointed to act in the same capacity, to confirm such act or proceeding and to execute and deliver such deeds, releases, conveyances, and other instruments as may be found necessary for that purpose; but no act or proceeding shall be confirmed which the court might not have authorized in the first instance upon due proceedings.

SEC. 729. Any probate court may require the attendance of any party or person, whom it may see fit to examine or cause to be examined in any proceeding pending in said court, and may examine or cause to be examined on oath parties and witnesses either orally or on written interrogatories or both, or may receive their affidavits and may require any

writings or other evidence pertinent in such proceedings to be produced, before itself or otherwise, and may issue writs of subpœna *ad testificandum*, and of subpœna *duces tecum*.

SEC. 730. If any person has or is suspected of having under his control any property or documents belonging to the estate of a deceased person, or person under guardianship, or any thing which may tend to disclose the condition of such estate, and on demand therefor by the executor, administrator, guardian, conservator, or custodian refuses to deliver them to him without legal justification for such refusal; or if such person claims to have a lien thereon and refuses to disclose the amount and particulars of his claim; or if any person is suspected of having concealed, embezzled, or conveyed away any of the personal estate of such deceased person or ward, the probate court may, upon the written application of the executor, administrator, guardian, conservator, or custodian or any other party in interest, cite such person to appear before said court, and may examine him on oath concerning the matters complained of; and if he refuses to appear or to answer the interrogatories put to him by the court, it may adjudge him in contempt and may commit him therefor to the county jail until he shall submit to the order of the court or be legally discharged. The person so examined shall not be excused from answering any question on the ground that his answer will tend to criminate him, but his answer shall not be used as evidence against him in any criminal prosecution except for perjury.

SEC. 731. The probate court shall ascertain the expenses occasioned by such commitment, and the executor, administrator, guardian, conservator, or custodian of the estate shall pay the same; and if

the party paying the same shall afterwards recover judgment against the person committed, for any property withheld by him belonging to said estate, said expenses, as ascertained by the probate court, shall be taxed as part of the costs of the suit; or if such person after being imprisoned shall, without suit, surrender any effects belonging to the estate withheld by him, the executor, administrator, guardian, conservator or custodian may recover of him the amount of said expenses.

SEC. 732. Upon such examination, the person suspected may have counsel, who may examine and cross-examine him as to any matter deemed material arising in the course of the investigation.

SEC. 733. Every probate court may punish any contempt of its authority by fine or imprisonment or both.

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## CHAPTER 37.

### OF SALE AND MORTGAGE OF REAL ESTATE BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

SECTION 734. If the personal property of a deceased person is insufficient to pay his debts, funeral expenses, charges of administration, and the expense of supporting his family, as prescribed by law, and such legacies as are expressly or impliedly charged upon the real estate, his executor or administrator shall sell, in the manner hereinafter provided, so much of his real estate or of any interest therein as may be subject to and required for the purpose of such payments.

SEC. 735. Unless a different intention appear by the will, real estate not devised shall be subjected to



the payment of debts and legacies, before real estate devised.

SEC. 736. If the personal property in the hands of a guardian is insufficient to pay the debts of the ward, including incumbrances on his estate, and the expense of supporting him and his family, the guardian may be authorized by the probate court to sell, or to mortgage for an amount decreed, the real estate of his ward or any interest therein for that purpose. A guardian may also be authorized to sell the real estate of his ward or any interest therein for the purpose of making a better investment or for any other proper purpose.

SEC. 737. The probate court which issued letters of guardianship may authorize a guardian to mortgage the real estate of his ward upon a petition filed, describing the particular estate to be mortgaged, the amount of money necessary to be raised, and the purpose for which such money is required, and the decree of the court upon such petition shall fix the amount for which the mortgage is to be given and the rate of interest which may be paid thereon, and may order the whole or any part of the loan to be paid from time to time out of the income of the property mortgaged.

SEC. 738. The probate court which issued letters testamentary or of administration or guardianship may grant authority to an executor or administrator to sell the real estate of a deceased person, or to a guardian to sell the real estate of his ward, upon a petition filed describing the particular estate to be sold and setting forth the facts on which the petition is founded.

SEC. 739. If in any case it appears to the court to be necessary to sell only a part of the real estate described, but that by such partial sale the residue of

said estate or of some part thereof would be greatly injured, the court may authorize the sale of the whole of said estate or such part thereof as may appear advisable.

SEC. 740. The probate court may authorize executors, administrators, and guardians, at their option, to sell real estate of a person deceased, or of a ward, either at public auction or by private contract: *Provided*, if sale be made by private contract, such sale shall not be made for less than the sum fixed by the court in its decree authorizing the sale.

SEC. 741. Probate courts shall also have the power to grant petitions of executors, administrators, or guardians for leave to lay out, make, or dedicate highways, streets, or gangways upon lands of the deceased or ward, and to plat such lands into house lots, with streets, gangways, or open spaces: in the case of executors or administrators, as preliminary to sales of lands of the deceased; and in case of guardians, either as preliminary to sale or as beneficial to the estate of the ward: *Provided*, that no such petition shall be granted except upon notice as the court may require, and upon proof that such action will be beneficial to the estate.

SEC. 742. In granting any petition under any of the preceding sections the court may impose such conditions, in addition to those imposed by law, as it may see fit.

SEC. 743. The surplus proceeds arising from the sale of the real estate of a deceased person by an executor or administrator, or from the sale or mortgage of the real estate of a ward by his guardian, remaining on the settlement of the final account of such executor, administrator, or guardian shall be considered as real estate and shall pass to or be distributed in the same proportions among the same

persons who would have taken the real estate if it had not been sold or mortgaged.

SEC. 744. Every executor or administrator empowered to sell real estate as aforesaid shall, before making sale, give bond with surety or sureties satisfactory to the court that he will apply the proceeds of such sale to the purposes for which the same was made.

SEC. 745. Every guardian empowered to sell or to mortgage as aforesaid shall, before making sale or mortgage, give bond with surety or sureties satisfactory to the court that he will apply the proceeds of such sale or mortgage to the purposes for which the same was authorized, and invest the same, or the surplus thereof, as the case may be, in such investments as are allowed by law or in such other manner as the court may direct.

SEC. 746. A guardian appointed within this state whose ward removes from or resides out of the state may sell the real property of his ward and transfer and pay over the whole or any part of the proceeds or of the ward's personal property to a guardian, trustee, or committee appointed by competent authority in the state or country in which the ward resides, upon such terms and in such manner as the probate court by which he was appointed may, after notice to all parties interested, decree upon petition filed therefor.

SEC. 747. Before making any sale at auction, the executor, administrator, or guardian shall publish notice of the time and place and conditions of sale for four successive weeks in some public newspaper designated by the court in the decree authorizing the sale, and shall give additional notice thereof in such manner as the court in its decree may direct.

SEC. 748. The executor, administrator, or guar-



dian may, in his discretion, adjourn any auction sale to a future day whenever he may deem the same advisable, giving notice of such adjournment, in the same manner in which notice of the sale was given, as soon as may be after such adjournment and up to the day of the adjourned sale; unless the adjournment shall be from day to day only, and then by making public proclamation at the time and place of the sale and by setting up a notice thereof at such place.

SEC. 749. Every executor, administrator, or guardian making sale as aforesaid may by virtue of such authority make and execute, in due form of law, conveyances of the real estate sold; and such conveyances shall make as good title to the purchaser as the testator or intestate in his lifetime, or ward, being competent, could have made.

SEC. 750. The executor, administrator, or guardian making the sale shall, within ten days thereafter, make and file in the office of the probate clerk an affidavit stating the times and places of giving notice, which shall be *prima facie* evidence of the matters therein stated.

SEC. 751. A mortgage given by a guardian under leave from a probate court may contain such powers of sale, conditions, and covenants as are usual in mortgages taken by savings banks in this state. Notes secured by, and covenants contained in, mortgages given by guardians, so far as such notes and covenants are made by the guardian as such, shall not bind the guardian personally, but only the estate of his ward.

SEC. 752. In settling the accounts of executors, administrators, and guardians, the probate courts shall examine and adjudge whether they have complied with the law and the directions of the court in regard to the sale or mortgage of real estate.

SEC. 753. Guardians, after giving notice as required upon petition for leave to sell real estate, may be authorized by probate courts to release and discharge a vested, contingent, or possible right or interest in or to real estate, upon such terms and conditions as may appear to said courts to be proper.

SEC. 754. Probate courts may authorize executors, administrators, and guardians, after notice to all persons interested, as above provided, or upon assent of all such persons, filed in court, to sell and convey or release, upon such terms and in such manner as said courts may order, lots in cemeteries belonging to the persons or estates by them represented, when no provision to the contrary is made by will, deed, or the charter of the cemetery corporation.

SEC. 755. Probate courts may authorize guardians appointed or approved by them to exchange any lot of their wards in any burial-ground or cemetery within this state, or any right or interest of their wards in any such lot, for any other lot, right, or interest in the same or any other burial-ground or cemetery, upon such terms and conditions as said courts may prescribe: *Provided*, that in all such exchanges the title of the lot, right, or interest taken in exchange shall be taken in the name or names of the ward or wards whose lot, right, or interest is given in exchange.

SEC. 756. Whenever any real estate of a deceased person subject to the widow's dower shall be ordered sold, the probate court having jurisdiction of the estate, on application of the executor or administrator making such sale, and with the consent of the widow recorded in the records of said court, may order such sale to be made, including the right of dower, and, the sale being made, may, upon the execution of a release by her, order the present value

of her interest, as assessed by the court, to be paid to her in lieu of dower.

SEC. 757. Every executor, administrator, and guardian authorized to sell real estate by decree of court shall be required, upon application to the probate court by an heir, creditor, ward, or other person interested in the estate, to make answer, upon oath, as to all matters touching his compliance with said decree, as fully as he is liable to account and be examined in reference to personal estate. If there is any neglect or misconduct of such executor, administrator, or guardian in complying with said decree, or in making sale thereunder, by which a person interested in the estate suffers damage, such person may recover damages therefor on the probate bond or otherwise, as the case may require.

SEC. 758. No sale of real estate made by an executor, administrator, or guardian, under decree of a probate court, and no title under such sale, shall be avoided for the reason that the deed was not delivered within one year after the decree, or on account of any irregularity in the proceedings, if it appears: *First*, that the decree was granted by a court of competent jurisdiction; *second*, that the person authorized to make the sale gave a bond, if bond was required, which was approved by the probate court; *third*, that the notice of the time and place of sale, if at public auction, was given according to law and the order of the court; and *fourth*, that the premises were sold by public auction in accordance with the notice, or by private contract in pursuance of the decree, and are held by one who purchased them in good faith or by some one claiming under him.

SEC. 759. If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased or of the ward, or claiming under a



title that is not derived from or through the deceased or the ward, the sale shall not be held to be void on account of any irregularity in the proceedings if it appears that the executor, administrator, or guardian was authorized to make the sale by a court of competent jurisdiction, and that he accordingly executed and acknowledged in legal form a deed for the conveyance of the premises.

SEC. 760. When a decree is granted by a probate court authorizing a sale of real estate of a deceased person, or sale or mortgage of real estate of a person under guardianship, the adjudication of the court that the sale or mortgage is required shall be final so far as the same may affect any title acquired by virtue of such decree; but nothing herein contained shall affect the right of the executor, administrator, or guardian to contest the validity of any claim against the estate or ward.

SEC. 761. Every license granted by a probate court to sell real estate shall continue in force for one year, and every license to mortgage real estate shall continue in force six months, from the date of the decree; but the conveyance may be executed and delivered after said periods, respectively.

SEC. 762. The probate court which appointed or approved a guardian, upon the petition of such guardian setting forth a description of the real estate which it is proposed to lease, upon hearing, after such notice as the court shall order, may authorize such guardian to give a written lease of said real estate or any part thereof, and the decree of the court shall fix the term and the rental and approve the form of the lease: *Provided*, that a guardian of a minor shall not lease the real estate of his ward beyond the ward's minority.

SEC. 763. If any person who resides out of the

state, but within the United States, is under guardianship in the state, territory, or district where he resides, and has no guardian appointed in this state, the foreign guardian may file a copy of his appointment, duly authenticated according to the act of congress in such cases, in the probate court of any town or city in this state in which there is real estate of the ward; after which, upon petition to such probate court, he may be authorized to sell, mortgage, or lease the real estate of the ward in any town or city, for the purposes, in the manner, after like notice, and upon the terms provided in this chapter in case of sale, mortgage, or lease, by a guardian appointed in this state.

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## CHAPTER 38.

### OF PRACTICE IN PROBATE COURTS.

#### *Notices on Petitions, etc.*

SECTION 764. Every application, petition, or complaint to a probate court shall be in writing and signed by or in behalf of the party making the same.

SEC. 765. Every probate court shall, before proceeding, give notice to all parties known to be interested in the following cases:

1. In the granting of letters of administration.
2. In the probate of a will.
3. In the appointment or approval of a guardian.
4. In any complaint for the removal of an executor, administrator, or guardian.
5. In the acceptance of the resignation of an executor, administrator, or guardian.
6. In the making of any decree upon the account of an executor, administrator, or guardian.

7. In the appointment of commissioners and in the making of any order upon the report of commissioners on any estate.

8. In the making of any order of distribution among the next of kin of a deceased person.

9. In any petition of an executor, administrator, or guardian for leave to sell real estate of the testator, intestate, or ward.

10. In the granting of any petition of a guardian for leave to make a mortgage or written lease of real estate of his ward.

11. In canceling the bond of an executor administrator, or guardian.

SEC. 766. Authority to sell or mortgage real estate shall not be granted to a guardian until notice by public advertisement or otherwise, as the court may order, has been given to the husband or wife and the next of kin of the ward.

SEC. 767. In all other cases in which notice is not required by law the court may, in its discretion, before proceeding, order notice.

SEC. 768. In all cases in which notice is required and special provision is not made therefor, it shall be given by advertisement of a notice for fourteen days, once a week, at least, in such newspaper, printed in English and published in the county in which the matter is to be acted upon, as the probate court by general rule or special order may designate for that purpose.

Notice may also be given, in addition to the foregoing, in one of the following modes:

*First.* By causing a citation to be served, if within this state, by a sheriff, deputy sheriff, town sergeant, or constable, and, if without the state, by some disinterested person, upon all known parties interested, at least seven days before proceeding.



The citation shall give notice of the subject-matter of the proceeding and of the time and place thereof, and shall be served by reading the same to each of the parties or by leaving an attested copy thereof with him or at his last and usual place of abode with some person living there. If service is made without the state, the person making such service shall make return under oath of the manner in which, the time when, and the place where service was made.

*Second.* By mailing notice to all persons interested whose post-office address is known.

SEC. 769. The court may also, in addition to the foregoing modes, order notice by advertisement in a newspaper published in other than the English language or in such other manner as the case may require.

SEC. 770. If it shall appear to the court, before proceeding, that notice has been given in accordance with the foregoing provisions and in manner satisfactory to the court, it shall be sufficient to warrant proceeding; and its finding as to notice, unless appealed from, shall be conclusive.

SEC. 771. The notice required by law in any proceeding in a probate court may be dispensed with if all parties entitled thereto assent in writing to such proceeding.

*Service on Insane Persons.*

SEC. 772. Whenever application shall be made to probate court for the appointment of a guardian of any person confined in an asylum for the insane, whether such asylum be situated within or without the state, the court shall order personal notice to be served upon such person, which notice, if to be served within the state, shall be served by an officer authorized by law to serve citations, but if such notice is to

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be served without the state, it may be served by any disinterested person, who shall make return thereon, upon oath, that he has made service thereof, the manner in which, the time when, and the place where the service was made: *Provided, however,* that before any officer or disinterested person shall make service of any such notice, he shall apply to the physician in charge of the asylum where the person upon whom the notice to be served is confined, and if said physician shall return, upon oath, on the back of said notice, that in his opinion service of the notice upon such person will be injurious to his mental health, the officer or person charged with the service shall leave a copy thereof, with the physician's return thereon, with the keeper of the insane asylum and shall return the notice, with a return of his doings thereon, to the court which issued the same, without further service; and upon return being made in either case, the court before which the application shall be pending shall cause further notice of the pendency of the application to be given by publishing the same, in some newspaper published in the county where the application shall be pending, for at least two weeks, and then the court, having first appointed a guardian *ad litem* for such insane person, may proceed to act upon the application.

#### *Miscellaneous Provisions.*

SEC. 773. Whenever complaint shall be made by any person interested in the estate, or by any creditor, or by the surety on the bond of any executor, administrator, or guardian, for the removal of an executor, administrator, or guardian, a citation shall issue to such executor, administrator, or guardian, embodying the substance of the complaint or with a copy of said complaint annexed, which citation shall

be in the form, and shall be served, as provided in section 768.

SEC. 774. Whenever the account of any executor, administrator, or guardian contains a credit of the proceeds of any sale or mortgage of real estate, or of any interest therein, the notice given before settling of such account shall state that the account contains such credit.

SEC. 775. All the decrees and orders of probate courts shall be made in writing, and shall be recorded by the clerk in books kept for that purpose.

SEC. 776. Oaths required in proceedings in probate courts may be administered by the judge or clerk in or out of court, or by a notary public or justice of the peace; and when administered out of court, a certificate thereof shall be returned and filed or recorded with the proceedings; but the judge may require any such oath to be taken in open court.

SEC. 777. In cases contested before a probate court or on appeal therefrom, costs in the discretion of the court may be awarded to either party to be paid by the other, or to either or both parties to be paid out of the estate which is the subject of the controversy, as justice may require. Any person petitioning or objecting to a petition shall be deemed to be a party of record in the matter in which he appears.

SEC. 778. When costs are awarded to be paid by one party to the other, the probate court may issue execution therefor in like manner as a court of common law.

SEC. 779. When before or at the hearing on any proceeding in a probate court it appears to the court that the interest of a person unborn, unascertained, or legally incompetent to act in his own behalf is not fully represented, the court may, and upon the



request of any person interested shall, appoint some competent and disinterested person to act as guardian *ad litem*, or next friend, for such person unborn, unascertained, or legally incompetent, and to represent his interest in the case. The person so appointed shall make oath to perform his duty faithfully and impartially, and shall be entitled to such reasonable compensation, out of the estate, for his services as the court may allow.

SEC. 780. Whenever money is directed to be paid into the registry of the probate court, the court shall forthwith deposit the same in some one of the institutions for savings or in some one of the trust companies of this state. Such deposit shall be made in the name of said probate court and shall be subject to the order of the court.

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## CHAPTER 39.

### OF THE CUSTODY AND PROBATE OF WILLS.

#### *The Custody of Wills and their Production in Court.*

SECTION 781. A will may be deposited by the testator, or by any person for him, in the office of the probate clerk in the city or town where the testator lives, to be safely kept until delivered or disposed of as hereinafter provided; and the probate clerk, upon being paid a fee of one dollar therefor, shall receive and keep such will and give a certificate of the deposit thereof.

SEC. 782. Every will intended to be deposited as aforesaid shall be inclosed in a sealed wrapper, with an indorsement thereon of the name and place of residence of the testator and of the date when and

the person by whom it is deposited, and the wrapper may also have indorsed upon it the name of a person to whom the will is to be delivered after the death of the testator. A will, when so deposited, shall not be opened until it is delivered to a person entitled to receive it, or until it is otherwise disposed of as hereinafter provided.

SEC. 783. During the lifetime of the testator such will shall be delivered only to the testator himself, or in accordance with his order in writing duly proved before the probate judge; and after his death it shall be delivered to the person named in the indorsement, if such person demands it.

SEC. 784. If the will is not called for by the person, if any, named in the indorsement, it shall be publicly opened at the first probate court held after notice of the testator's death, and shall be retained in said clerk's office until it is so opened. If the jurisdiction of the case belongs to some other court, it shall be delivered to some one of the executors named in said will, or to the clerk of the probate court having jurisdiction thereof, upon proper receipt therefor.

SEC. 785. Every person, other than a probate clerk, who has the custody of the will, shall, within thirty days after notice of the death of the testator, deliver the same into the probate court which has jurisdiction of the probate thereof, or to the executors named in the will, who shall themselves deliver it into such court within thirty days after they receive the same; and if any executor or other person neglects without reasonable cause to deliver a will, after being duly cited for that purpose by such court, he may be adjudged to be in contempt and may be committed therefor to the county jail, there to remain until he delivers the will to the court; and he

shall be further liable, to any party aggrieved, for the damage sustained by reason of such neglect.

SEC. 786. Upon complaint under oath, made to a probate court by a person claiming to be interested in the estate of a person deceased against any one suspected of retaining, concealing, or conspiring with others to retain or conceal, a will or testamentary instrument of the deceased, the court may cite the suspected person to appear before it and be examined on oath upon the matter of the complaint. Upon such examination all interrogatories and answers shall be in writing signed by the party examined, and shall be filed in the court. If the person cited refuses to appear and submit to examination, or to answer such interrogatories as are lawfully propounded to him, or to obey any lawful order of the court, he may be adjudged to be in contempt and may be committed therefor to the county jail, there to remain until he submits to the order of court. On such complaint the court may, in its discretion, award costs to be paid by either party and may issue execution therefor.

### *The Probate of Wills.*

SEC. 787. The final probate of a will by the probate court, or on appeal, shall be conclusive as to its due execution.

SEC. 788. The will, duly executed, of any person who resides without the state at the time of his decease may be proved before the probate court of any town where any estate is situated upon which such will may operate.

SEC. 789. Any person who shall, either during the life of the testator or after his death, steal, or for any fraudulent purpose destroy or conceal, any will or



other testamentary instrument, either before or after probate, shall be imprisoned in the state prison for a term of not more than five years, and in any complaint, information, or indictment for such offence it shall not be necessary to allege that such will, codicil, or other instrument is the property of any person or that the same is of any value.

*Filing and Recording Foreign Wills.*

SEC. 790. Whenever the executor or any other person interested in any will which has been finally proved and allowed in a probate court in any other of the United States, in any territory or district thereof, or in a probate court in any foreign country, shall produce a copy of such will and of the probate thereof, duly authenticated according to the act of congress, to any probate court in any town or city in this state where the testator had estate, real or personal, whereon the will may operate, and shall in writing request that the will may be filed and recorded in the office of the probate clerk in such town or city, the court shall assign a time and place for a hearing thereon.

SEC. 791. Upon such request, the court shall cause notice thereof to be given in the same manner as if said will was presented to such court for probate, to the end that any person may appear and show cause why said copy should not be filed and recorded.

SEC. 792. If at the hearing no sufficient cause is shown to the contrary, the court may order said copy to be placed on file and recorded: *Provided, however,* that, as to real estate in towns other than that in which said copy is filed and recorded, the title shall not pass for the purposes of conveyance by the devisee until a certified copy thereof is re-

corded in the records of land evidence in such other town or city in which any such real estate is situated; *and provided, further*, that when any such copy is duly filed and recorded as aforesaid, title to lands devised by the will shall relate back to the death of the testator.

SEC. 793. Whenever a copy of any will which has been finally proved and allowed in any probate court in any other of the United States, in any territory or district thereof, or in any foreign country, shall be finally ordered to be filed and recorded in a probate court in this state pursuant to the three preceding sections, the filing and recording thereof shall be of the same force and effect as if the will had been originally proved and allowed in this state, subject to the provisos in section 792; and the probate court in which the copy of said foreign will is ordered to be filed and recorded may grant letters testamentary to the executor therein named, or letters of administration with the will annexed, to such person as the court may deem fit, taking bond from such executor or person, as in case of a will proved and allowed in such probate court.

SEC. 794. A person interested in a will which is operative without probate by the laws of the state or country where the testator had his domicile at the time of his decease may produce to the probate court of any town in this state in which there is any property, real or personal, on which such will may operate a copy of the will and of the official record thereof, duly authenticated according to act of congress, and the court shall thereupon assign a time and place for a hearing, and cause notice thereof to be given as in the case of a will offered for probate. If at such hearing the court finds, from the copies before it and any additional proof as to the authenticity and exe-

cution of the will, that the instrument ought to be allowed in this state as the last will of the deceased, it shall order the copy to be filed and recorded, and the will shall then have the same effect as if it had been originally proved and allowed in this state.

SEC. 795. The probate court in which an original will has been duly proved, allowed, and recorded may, after the expiration of the time within which an appeal may be taken from the decree admitting such will to probate, upon the petition of the executor or of a legatee named in such will, or of any person interested in the estate of the testator, and after such notice as the court may require and a hearing thereon, permit the original will, if it appears to be necessary for the purpose, to be taken from the files of such court and to be used in another state, territory, district, or foreign country, for the purpose of establishing the right or title of such executor, legatee, or person to the estate of the testator in such other state, territory, district, or foreign country, upon such terms and conditions as the court may prescribe. And likewise, before probate, an instrument purporting to be a last will may be annexed to a commission for taking depositions in proof of the same, in this or any other state, territory, district, or foreign country; a photographic copy of said instrument, duly certified, being retained on the files of the court. From any order of the court granting such permission, for annexing a will to a commission as aforesaid, no appeal shall lie. And in case the original will is lost, on proof of loss, the said copy may be proved in the same manner and shall have the same effect as the original.



## CHAPTER 40.

## OF APPEALS FROM COURTS OF PROBATE.

*Procedure on Appeal.*

SECTION 796. Any person aggrieved by an order or decree of a court of probate may, unless provision be made to the contrary, appeal therefrom to the superior court for the county in which such probate court is established, by taking the following procedure:

*First.* Within forty days after entry of the order or decree he shall file in the office of the clerk of the probate court a claim of appeal to the superior court and a request for a certified copy of said claim and the record of the proceedings appealed from, and shall pay the clerk his fees therefor.

*Second.* Within fifty days after the entry of such order or decree the appellant shall file in the superior court a certified copy of said claim and record and his reasons of appeal specifically stated, to which reasons the appellant shall be restricted, unless, for cause shown, and with or without terms, the superior court shall allow amendments thereof and additions thereto.

SEC. 797. When a probate appeal is entered in the superior court, the clerk shall notify all persons having an interest therein to appear, on the return day of the citation hereinafter provided, by advertisement for at least ten days in some public newspaper published in this state designated by the court, and shall also issue a citation to the adversary parties who entered an appearance in the probate court in the proceeding appealed from to appear on the assignment day on which said appeal shall be in order for assignment. The citation shall be served at least

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five days before the assignment day, provided that for cause shown further time may be granted, with or without terms, to give notice, make service, or to file a certified copy of the record of the proceeding appealed from; provided, further, that the superior court at any time during the pendency of the appeal may direct any additional notice or service, and, upon motion, may permit any interested party to enter an appearance.

SEC. 798. The appeal shall, unless otherwise ordered by the court, be in order for assignment on the assignment day which occurs next after sixty-five days from the date of the order or decree appealed from.

SEC. 799. If a matter of fact be in controversy, either party may, at any time before the assignment day, claim a jury trial by notice in writing filed with the clerk of the superior court.

*Default, Discontinuance, Amendment, etc.*

SEC. 800. If the appellant fails to enter his appeal within the time allowed by law, the probate court from which the appeal was taken may, upon petition of any person interested and upon such notice to the appellant as the court shall order, affirm the order or decree appealed from and further proceed as if no claim of appeal had been filed; and in such case the probate court may award double costs against the appellant.

SEC. 801. If an appellant, having filed his reasons of appeal, fails to perfect his appeal within the time allowed by law or by the superior court, or to prosecute the same, the superior court, on motion of any person interested, may affirm the decree or order appealed from or make such other order or decree as justice may require.

SEC. 802. The party taking an appeal from an order or decree of a probate court may at any time discontinue the appeal in the manner provided for the discontinuance of proceedings in the superior court; and upon presentation to the probate court of a certificate of such discontinuance from the clerk of the court having jurisdiction of the appeal, the appeal shall thereupon be entered on the minutes or record of the probate court as discontinued; and the suspension of the operation of the order or decree appealed from provided in section 806 shall thereupon cease, and such original order or decree shall thereupon take effect as if an appeal had not been taken.

SEC. 803. No order or decree of a probate court which may be appealed from, or in any collateral proceeding when the same shall not have been appealed from, shall be deemed to be invalid, or be quashed, for want of proper form, or for want of jurisdiction appearing upon the record, if the probate court had jurisdiction of the subject-matter of such order or decree. The superior court having jurisdiction of the parties to a probate appeal may allow amendments to be made in the papers filed in the case, to supply any deficiency or correct errors therein, upon such terms as it may deem proper.

SEC. 804. Whenever it shall appear in any probate proceeding that any person interested therein has not been duly notified, the jurisdiction of the court where the same is pending shall not be defeated thereby, but the court may order notice to be given to such person. Said notice shall be served not less than fourteen days before the return day, and after the service and return thereof all orders and proceedings of the court shall be effective in binding the person named in such notice.

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SEC. 805. Whenever there shall be more than one appeal in the superior court, relating to substantially the same matter, the court may by special order provide for the consolidation thereof, for admitting or summoning in other parties, and for giving notice or further notice to parties in interest.

*Effect of Appeal.*

SEC. 806. If an appeal is claimed from an order or decree of a probate court, the operation of such order or decree shall be suspended, except as otherwise provided, until the appeal is dismissed or discontinued or the order or decree shall be finally affirmed.

SEC. 807. If an appeal is claimed from a decree of a probate court granting letters testamentary, of administration, or of guardianship, the executor, administrator, or guardian, on giving bond as by law required, shall have power to file an inventory and to collect, receive, and take possession of all the rights, credits, and estates of the testator, intestate, or ward, as if no appeal had been claimed. All claims against the estate of the deceased or ward shall be filed within the time prescribed by law, and the executor, administrator, or guardian may, under the direction of the probate court, do such acts as the law requires concerning claims; and all limitations in regard to claims shall apply as if no appeal had been claimed.

SEC. 808. In case of an appeal from an order or decree of a probate court granting letters testamentary, of administration, or of guardianship, the executor, administrator, or guardian, pending the appeal, upon leave of the probate court first obtained, may sell at public auction or private sale any live animals, goods, and chattels of the testator, intestate,

or ward which are liable to perish or waste or to be greatly reduced in value by keeping, or which can not be kept without great and disproportionate expense, and hold the proceeds of such sales, after deducting therefrom the necessary expenses thereof, for the benefit of the estate.

SEC. 809. In case of an appeal from an order or decree of a probate court granting letters testamentary, of administration with the will annexed, or of guardianship, the executor or administrator with the will annexed, or guardian, having given bond according to law, shall, pending the appeal and until the same is finally affirmed or disaffirmed, have power to collect, sue for, and hold the income and rents of the real and personal estate of the testator or ward for the benefit of the persons entitled thereto; and said executor, administrator, or guardian may bring suit in his name for the possession of any such real or personal estate, pending such appeal, and shall have power, under the direction of the probate court, to pay any debts of the testator or ward which are preferred by law.

SEC. 810. A decree of a probate court removing an executor, administrator, or guardian shall have effect, notwithstanding an appeal therefrom, until otherwise finally determined on appeal. The probate court may in such case appoint a successor to the person removed, to whom, when qualified, the person removed shall forthwith deliver all the property held by him as such executor, administrator, or guardian, and the successor shall proceed in the performance of his duties in like manner as if no appeal had been taken. But if the decree of removal is reversed by final decree, the powers of such successor shall thereupon cease, and he shall forthwith deliver to his predecessor in the trust, or to such

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person as the court may order, all property of the estate in his possession.

SEC. 811. In case an appeal shall have been taken from a decree granting letters testamentary or of administration or of guardianship, any order or decree of the probate court made previous to discontinuance of the appeal, prescribing the amount and nature of bonds to be given by the executor, administrator, or guardian, may after discontinuance be modified or vacated, and new orders and decrees may be made in place thereof if necessary, and bonds given accordingly; and in case of the modification or vacation of any such former orders or decrees, the bond or bonds given thereunder may be cancelled and discharged by the probate court.

SEC. 812. The superior court may, upon appeal, affirm or reverse, in whole or in part, any order or decree of a probate court, and may enter such decrees therein as the probate court ought to have entered.

SEC. 813. A copy of the final decree or order entered by the superior court, in any appeal under the provisions of this chapter, shall be certified and transmitted by the clerk of such court, without fee therefor, to the probate court appealed from.

SEC. 814. In all cases where an executor, administrator, or guardian is directed by law to obtain the advice and direction of the probate court before acting, there shall be no appeal from such advice or direction; and the same shall be conclusive, and all parties acting thereon shall be protected thereunder.

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## TITLE V.

OF ESTATES OF DECEASED PERSONS, AND  
PERSONS UNDER GUARDIANSHIP.

## CHAPTER 41.

## OF THE ADMINISTRATION OF ESTATES.

*Appointment of Executors.*

SECTION 815. Upon the probate of a will the probate court shall issue letters testamentary thereon to the executor named therein, if he is legally competent, and gives bond as by law required.

SEC. 816. If any of the executors named in a will are not parties to a petition for probate, the clerk of the probate court, upon probate of the will, shall forthwith notify by mail the executors who are not parties and whose post-office address is known or can be ascertained.

SEC. 817. If a person named as executor in a will is at the time of the probate thereof under the age of twenty-one years, the other executor or executors, if any qualify, shall administer the estate until the minor arrives at full age, when, upon qualifying, he may be admitted as a joint executor of the will. If no other executor shall qualify, administration may be granted with the will annexed during the minority of the person named as executor and until he shall qualify.

SEC. 818. If a person named as executor in a will and having possession thereof neglects or refuses to present the will for probate within thirty days after the decease of the testator, or within thirty days after

he has knowledge that he is so named, such neglect or refusal shall be deemed a declination of the office by such executor.

SEC. 819. If a person named as executor in a will has deceased or is incompetent or refuses to accept the trust or neglects to qualify for thirty days after the probate of a will, or within thirty days after notice of probate, as provided in section 816, the court shall grant letters testamentary to the other executors, if any are named in the will, who are competent and qualify, otherwise the court upon petition therefor shall grant administration on the estate with the will annexed to some suitable person.

SEC. 820. If a testator shall appoint more than one executor of his will, and any of them die or do not qualify, or, having qualified, shall die, resign, or be removed, or become incapable of acting, those who for the time being are qualified to act shall, unless otherwise provided in the will, have the same power and authority as is given by the will to the executors named therein.

SEC. 821. The executor of an executor shall not, as such, administer the estate of the first testator.

SEC. 822. If an unmarried woman shall be appointed an executor or administrator and thereafter shall marry, such marriage shall not make her husband an executor or administrator in her right nor disqualify her as executor, or administrator.

SEC. 823. If a will which disposes of only a part of the estate of a testator is admitted to probate, the executor of such will, or the administrator with the will annexed, shall, unless otherwise provided in the will and except as provided in the second clause of section 824, be *ex-officio* the administrator of the intestate estate, and shall give bond to cover all his duties.

*Appointment of Administrators.*

SEC. 824. Administration of the estate of a person dying intestate shall be granted as follows:

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*First.* To his widow or one or more of his next of kin, or to the widow jointly with one or more of the next of kin, they being suitable persons and competent.

*Second.* If the deceased was a married woman, to her husband, if competent, who shall not be compelled to distribute the surplus of the personal estate, after payment of her debts, but shall be entitled to retain the same for his own use.

*Third.* If the widow and next of kin shall neglect to apply for letters of administration within thirty days after the decease of a person intestate, or shall be unsuitable for the discharge of the trust, or renounce the administration, the probate court may, on petition therefor of some party in interest, grant administration to any suitable person.

SEC. 825. No person not an inhabitant of this state shall be appointed administrator by reason of any right to such trust, unless other circumstances, in the opinion of the court, render such appointment proper.

*Administration de bonis non.*

SEC. 826. If a sole or a surviving executor or administrator dies, resigns, or is removed before having fully administered an estate, or there is anything remaining to be done in execution of the will, the probate court shall grant letters of administration with the will annexed, or of administration, as the case may require, to administer the estate of the deceased not already administered.



*Removal and Resignation of Executors, Administrators, and Guardians.*

SEC. 827. Whenever an executor, administrator, or guardian shall for any cause become incapable of executing his trust, or shall neglect or refuse to do the duties thereof, or shall waste the estate of his ward or that on which he administers, the probate court, upon petition and after hearing, may remove such executor, administrator, or guardian from office and appoint an administrator or guardian in place of the person so removed, and take such other action as occasion may require.

SEC. 828. Whenever an executor, administrator, or guardian shall in writing resign his trust to the probate court having jurisdiction of the estate, the court may accept the resignation and, upon petition therefor, appoint a successor, who shall have all the power that the person resigning had unless provision to the contrary be made by will; but no resignation shall be accepted until the person resigning shall have settled his accounts with said court.

SEC. 829. In case the person so resigning was sole executor, administrator, or guardian, the court shall appoint an administrator or guardian as a successor; if he were a joint executor or joint testamentary guardian, the continuing executor or guardian if required shall give a new bond; but if he were a joint administrator or guardian appointed by the court, a new administrator or guardian, if deemed advisable, may be appointed in the place of the one so resigning; and a new bond of the survivor, or of the survivor with such new administrator or guardian, shall be given, and such other proceedings shall be taken as may be deemed advisable.

SEC. 830. An administrator or guardian appointed to succeed an executor, administrator, or guardian shall demand and receive of such preceding executor, administrator, or guardian, his heirs, executors, or administrators, all the goods and effects, books of account, securities, documents, or papers whatsoever belonging to the estate held by him, or them, and in case of neglect or refusal to deliver the same the probate court may, upon the petition of such successor or of any person beneficially interested, after hearing thereon, order the person holding the same to deliver the property so held by him, and shall have power to enforce such order by summary process for contempt, and such successor may also bring an action at law or suit in equity for the recovery of said property, and such successor shall also bring an action on the bond of such preceding executor, administrator, or guardian against all parties liable thereon, which action when brought shall bar all actions by others thereon for the same breach; but if such successor neglects or refuses to bring an action on the bond after written request therefor by any person interested, it shall be deemed a breach of his bond, and in such case suit may be brought on said first-named bond by any person interested.

SEC. 831. Whenever an executor, administrator, or guardian, by or against whom any action concerning the estate of the testator, intestate, or ward is prosecuted, shall die, resign, or be removed, the action shall not thereby be abated, but the successor, if any, may come into court to prosecute or defend, or may be summoned in, in such manner as the court may direct.

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*Compromises by Executors, Administrators, and Guardians.*

SEC. 832. The superior court may authorize the persons named as executors in an instrument purporting to be the last will of a deceased person, or the administrator with such will annexed, at any time before a final decree approving said instrument as the last will of such deceased person is entered, to adjust by compromise all controversies that may exist or arise thereon.

SEC. 833. When the executors or administrators with the will annexed have in writing compromised any such controversy as provided in the preceding section, they or any party thereto may file a bill or petition in equity in the superior court for the county in which the will is pending for probate, praying the court to authorize and confirm the compromise; to which bill or petition the persons named as executors, or the administrator with the will annexed, and all persons claiming under the will whose interest will, in the opinion of the court, be affected by the proposed compromise, and those entitled to the estate as intestate, shall be parties.

SEC. 834. If a person under legal disability is a necessary party to such bill or petition, he shall be represented by his guardian, or by a guardian *ad litem* appointed by the court, who shall, in the name and in behalf of the party he represents, make and receive all proper conveyances and payments necessary to carry into effect any compromise sanctioned by the court.

SEC. 835. If it shall appear to the court that any future contingent interests which would arise under said will, if admitted to probate, would be affected by the compromise, the court shall appoint some suit-



able person or persons to represent such interests in the proceedings. The court shall have like powers as to any gifts made in said will for charitable purposes if there is no trustee who can act.

SEC. 836. The compromise, if found by the court under the circumstances to be just and reasonable in relation to the parties in being, and in its effect upon any future contingent interests that might arise under such will and any gifts to charities made in the same, shall be confirmed by decree of the court and shall be valid and binding upon such contingent interests and gifts as well as upon the interests of all persons in being parties thereto.

SEC. 837. If the probate of the will in such case is pending on appeal in the superior court, said court may prove and allow the will, and the clerk of said court shall thereupon certify and transmit for record copies of the decree admitting the will to probate, and of the compromise and the decree of the court approving such compromise, to the clerk of the court appealed from; and if the probate of the will is pending in the probate court, the clerk of the superior court shall certify and transmit for record to the clerk of the probate court copies of the compromise and the decree approving the same; and thereupon the probate court may admit such will to probate. The estate of such deceased person shall be administered and disposed of according to the provisions of the will as modified by the compromise.

SEC. 838. The probate court may authorize executors, administrators, and guardians to submit to arbitration, or to adjust by compromise, any claim in favor of or against the estates by them represented.

*Rights of Joint Executors, etc.*

SEC. 839. Whenever two or more persons shall have letters testamentary or letters of administration granted to them, and any one or more of them shall refuse or neglect to apply the property in his or their hands to the settlement of the estate or to the payment of the debts or funeral charges of the testator or intestate, or shall refuse to account with the other executor or administrator, the aggrieved executor or administrator may bring his action or bill in equity against the others for an accounting.

82 R. I. 49  
SEC. 840. Executors for the time being, or administrators with the will annexed, shall have the same powers to sell, lease, or mortgage, and make conveyance of real estate, as are given by will to the original executors, unless such powers be expressly given to such executors as individuals apart from such office, or provision to the contrary be made in the will.

*Power of Foreign Executors, Administrators, and Guardians to Transfer Personal Property.*

SEC. 841. Any corporation organized under the laws of this state may, before having actual notice of the pendency of an application in this state for letters testamentary, of administration, or guardianship, permit the executor of the will or administrator of the estate of a decedent who at the time of his decease was not a resident in this state, or a guardian whose ward does not reside in this state, duly appointed, qualified, and thereto authorized under the laws of any other state, territory, or district of the United States, to transfer to any person shares of stock and registered bonds standing in the name of

such decedent or ward and to receive the dividends and interest thereon.

SEC. 842. Any person or corporation in this state, except as provided in section 59 of chapter 178 of the General Laws, before having actual notice of the pendency of an application in this state for letters testamentary, of administration, or guardianship, may pay any money owing or deliver any personal property belonging to the estate of any decedent whose residence at the time of his decease was not in this state, or belonging to any person under guardianship whose residence is not in this state, to the executor or administrator of such decedent or to the guardian of such ward duly appointed, qualified, and authorized to receive the same under the laws of any other state, territory, or district of the United States; and the receipt for payment or delivery to such executor, administrator, or guardian shall be a valid discharge for such moneys and personal property.

SEC. 843. If a corporation refuse to permit a transfer as provided in section 841 or a person indebted refuse to pay, or having possession refuse to deliver personal property as permitted in section 842, such executor or administrator, if there is no executor or administrator appointed in this state, upon application to the probate court of any town in this state in which any real estate of said decedent is located, or, if there is no such real estate, in which any personal property of such decedent is situate, or any debtor resides, or in which any corporation whereof the decedent owned shares of stock or registered bonds is located, may be authorized by such court to transfer such shares and bonds or to take possession of such personal property and collect such debts, and such executor or administrator may demand, sue for, and recover the same: *Provided*, that



no foreign executor or administrator shall be so authorized to make any transfer or take possession of personal property under the provisions of this section until he shall have filed in such court a copy of the will, if any, and of his appointment, authenticated as aforesaid, and until six months after his appointment, nor until he shall have given bond to the probate court appointing him, unless sufficient bond has been given, nor until he shall have advertised notice of his application in this state at least once each week for two successive weeks, in some newspaper as directed by said probate court; *and provided, further*, that no such authority to transfer or take possession shall be granted, if any creditor of such deceased person or ward shall show to the probate court valid objections thereto, supported by a sworn statement of his claim or demand and that the same is justly due.

*Executors in their Own Wrong.*

SEC. 844. Any person who shall embezzle or shall, without being thereto authorized by law, injuriously intermeddle with any personal property of a deceased person shall be liable as an executor in his own wrong to the creditors and other persons aggrieved.

*Filing Affidavits and Vouchers.*

SEC. 845. Every executor and administrator, after having qualified, shall give notice thereof by publication in such newspaper, and as often, as the probate court may direct. An executor or administrator shall file, in the court appointing him, his affidavit, or the affidavit of a person employed to give such notice, setting out a copy of such notice, the dates and place of its publication, and generally his

compliance with the order of the court. A certified copy of such affidavit shall be admitted as evidence of the time, place, and manner in which notice was given.

SEC. 846. Any paper or instrument discharging a claim, or purporting to acknowledge the performance of a duty or the payment of money, for which an executor, administrator, or guardian is chargeable or accountable in a probate court, shall, upon the request of a party interested, be recorded in the records of said court, certified copies of which record may be used in evidence; and the probate clerk shall enter, record, index, and certify any original paper or instrument offered as aforesaid.

*Power of Executors and Administrators to take Rents,  
Continue Business, etc.*

SEC. 847. Whenever the personal property subject to inventory, other than household furniture and stores, of any decedent shall not be sufficient to pay his debts and the charges against his estate, the probate court having jurisdiction of the estate may, instead of or in addition to granting leave to sell the real estate of the deceased, enter its decree empowering the executor or administrator to take upon himself and supersede the possession of the heirs or devisees of the deceased, as to all or any portion of the real estate of the deceased designated in such decree, so far, and so far only, as shall be necessary to enable the executor or administrator to demand, sue for, and recover the rents and income reserved and accruing therefrom after the entry of such decree from any tenants or other persons by whom such rents and income shall be payable; with power also to let the same from month to month or to make such

other leases of the premises as the court shall approve and direct; and the receipt of such executor or administrator for payments so made shall be valid as well against the heirs and devisees as against the executor or administrator, and any such letting or lease lawfully made by such executor or administrator shall be binding also upon the heirs and devisees of the deceased: *Provided, however,* that this section shall not in any way interfere with dower; *and provided, also,* that this section shall not apply to real estate which is specifically devised or as to which directions inconsistent herewith are given in and by a will, unless the other real estate is insufficient for the purposes of this section; *and provided, further,* that the court may at any time, after notice to the executor or administrator and a hearing, revoke its former decree without prejudice to existing leases by it approved and directed and order the executor or administrator to surrender possession of said real estate to the heirs or devisees.

SEC. 848. The executor or administrator shall have the care and control of the real estate covered by the decree mentioned in the preceding section, and shall apply so much as may be necessary of the rents and income in repairs and maintenance of said real estate and in payment of taxes and insurance thereon; and the amount so received and so applied shall be accounted for in his account as executor or administrator, and shall be subject to the approval and allowance by the court as in cases of personal property.

SEC. 849. Executors and administrators may be authorized, by the probate court before which the estate is in settlement, to work up and complete any stock and materials in an unfinished state, or to continue any business of the decedent so far as may be



expedient for the prudent winding up of the same, if the court shall find that it will be for the interest of the estate.

*Redemption of Incumbered Property.*

SEC. 850. The executor or administrator, if there be sufficient assets, may redeem all property of the deceased under mortgage, pledge, or levy, the redemption of which would increase the value of the estate, or he may sell the same subject to incumbrance; and any such executor or administrator shall in such case first obtain the advice and direction of the probate court as to whether he shall redeem or sell such property subject to incumbrance, and failure to comply with such advice and direction shall be deemed maladministration and waste.

*Limitations of Liabilities.*

SEC. 851. When an executor or administrator is removed, or when letters of administration or decrees are revoked, all previous sales, whether of real or personal estate, lawfully made by the executor or administrator and with good faith on the part of the purchaser, and all other lawful acts done by such executor or administrator, shall remain valid and effectual.

SEC. 852. Whenever any person acting as executor, administrator, custodian, or guardian shall make payments or deliver property or estate pursuant to the order of a probate court having jurisdiction, after the expiration of the time within which an appeal lies from such order and while an appeal is not pending therefrom, the person making such payment or delivery in good faith shall not be liable or in any way holden for the money so paid or the prop-

erty so delivered, although the order under or by virtue of which such payment or delivery shall be made shall afterwards be reversed, vacated, or set aside; but this provision shall not prevent a recovery of such money or property, by the person entitled thereto, from any person receiving the same or in possession thereof.

28 R. 1. 461  
SEC. 853. All persons making or permitting to be made any payment or transfer *bona fide* upon any official certificate of appointment of any executor, administrator, or guardian, issued by the probate court in respect of the estate of any deceased person or ward, shall be justified and held harmless in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such appointment: *Provided*, that the transfer of personal property or stock or rights of action is not made within forty days from an order or decree granting letters testamentary, of administration, or of guardianship, nor while an appeal is pending from such order or decree.

*Estates of Non-Residents.*

SEC. 854. When a will is filed and recorded or administration is granted in this state on the estate of a person who was an inhabitant of any other state, territory, or district of the United States, or of a foreign country, his estate, real and personal, found here shall, after payment of his debts, be disposed of according to his will, if he left any executed according to law; otherwise the real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of according to the laws of the state, territory, district, or country of which he was an inhabitant.

SEC. 855. Upon the settlement of such estate, and

after the payment of all debts for which the same is liable in this state, the residue of the personal estate may be distributed and disposed of in manner aforesaid by the probate court; or, in the discretion of the court, it may be transmitted to the executor or administrator, if any, in the state, territory, district, or country where the deceased had his domicile.

SEC. 856. If such person dies insolvent, his estate found in this state shall as far as practicable be so disposed of that all his creditors here and elsewhere may receive each an equal share in proportion to their respective debts. To this end his estate shall not be transmitted to the foreign executor or administrator until all the creditors who are citizens of this state, filing and proving their claims according to law, have received the just proportion that would be due to them if the whole estate of the deceased, wherever found, that is applicable to the payment of creditors were divided among all the creditors in proportion to their respective debts, without preferring any one species of debt to another, excepting those preferred by the statutes of this state; and no creditor who is not a citizen of this state shall be paid out of the assets found here until all those who are citizens have received their just proportion as herein provided.

SEC. 857. If there is any residue after such payment to the citizens of this state, it may be paid to any creditors who have duly filed and proved their debts here in proportion to the amount due to each of them; but no one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors as before provided. The balance may be transmitted to the foreign executor or administrator; but if there is no foreign executor or administrator, it shall, after the expiration of four



years from the qualification of the administrator in this state, be distributed ratably among all creditors, both citizens and others, who have proved their debts in this state.

*Agents of Non-Resident Executors, Administrators, and Guardians.*

SEC. 858. Every executor, administrator, or guardian appointed in, but residing out of, the state shall, before entering upon the duties of his trust, appoint in writing an agent residing in this state, and shall by such writing agree that the service of any legal process against him as such executor, administrator, or guardian, if made on, or acknowledged by, said agent, shall be of the same legal effect as if made on himself personally within this state. Such writing shall have the address of such agent, and shall be filed in the office of the clerk of the probate court by which such appointment was made, and the notice of appointment of such executor, administrator, or guardian shall state the name and address of his agent.

SEC. 859. Every executor, administrator, or guardian appointed in this state, but thereafter removing therefrom, shall in writing appoint a like agent with like stipulations, and shall cause such writing to be filed in the office of the clerk of the probate court which appointed him.

SEC. 860. If an agent appointed under the provisions of the two preceding sections dies, resigns, or removes from the state before the final settlement of the estate, another like appointment shall be made and filed as above provided.

SEC. 861. The power of an agent appointed under either of the three preceding sections shall not be

revoked until the final settlement of the estate, unless another agent is appointed in his place and such appointment filed as above provided.

SEC. 862. Neglect or refusal on the part of an executor, administrator, or guardian to comply with any requirement of the four preceding sections may be cause for removal.

SEC. 863. Service of any legal process upon an agent appointed under the preceding provisions shall be of the same legal effect as if made upon his principal in this state.

*Notice of Testamentary Gift to a Corporation.*

SEC. 864. Within thirty days after the admission to probate of any will containing a devise or bequest to any corporation or voluntary association, the clerk of the probate court before which it is proved shall deposit in the post-office, postage paid, a written notice of such devise or bequest directed to the devisee or legatee at the place where it is located, if the same is known.

*Expenses on Appeal from Probate of Will.*

SEC. 865. In case of an appeal from the order or decree of a probate court admitting or refusing to admit to probate the will of any deceased person, the court shall allow to the executor or administrator, as the case may be, his just and reasonable expenses, including counsel and attorney fees, in supporting or defending against such will, on such appeal; and such expense shall be allowed in the account of the executor or administrator with said estate as part of the expenses of the settlement thereof.

## CHAPTER 42.

## OF THE INVENTORY AND ASSETS OF ESTATES OF DECEASED PERSONS AND ALLOWANCES TO WIDOWS AND CHILDREN.

*Inventory and Appraisal.*

SECTION 866. Every administrator, except the husband as administrator on the personal estate of his wife, and every executor, unless he has given bond to pay the funeral charges, debts, and legacies of the testator, shall, within thirty days after his appointment, or such longer period as may be allowed by the probate court, return to the probate court, under oath, a true inventory of all the goods, chattels, rights, and credits of the deceased which have come to the knowledge of such administrator or executor, with an appraisement thereof.

SEC. 867. The property comprised in the inventory shall be appraised by three suitable disinterested persons appointed by the court. The appraisers shall be sworn to the faithful discharge of their trust.

SEC. 868. The wearing apparel of a deceased person, not including jewels and watches, shall not be included in the inventory nor be assets for the payment of debts, and if not bequeathed shall be distributed according to law.

SEC. 869. If any testator or intestate shall die after the first day of March in any year, all the emblements of his lands that shall be severed before the thirty-first day of December next following shall be included in the inventory and be assets in the hands of his executor or administrator; but all such emblements growing on the lands at the time of the death of the testator or intestate, if that event hap-



pen on or after the thirty-first day of December and before the first day of March, shall not so be included, but shall pass with the land.

SEC. 870. The appointment of a debtor as an executor shall in no case be deemed an extinguishment of the debt; but all such debts shall be accounted for as assets by the executor, unless otherwise directed by the will.

*Allowance to Widows and Children.*

SEC. 871. The wearing apparel of the widow and minor children of a deceased person shall belong to them, respectively. The widow shall be entitled, for herself and for the family under her care, to such household effects, supplies, and, in addition thereto, such other personal property of the husband, exempt from attachment by law, as the probate court shall deem necessary, having regard to all the circumstances of the case; or, if there is no widow, the minor children shall be entitled to the same or the use thereof in such manner as the court shall direct.

SEC. 872. The probate court shall make reasonable allowance out of the estate of the deceased for the support of his family, until the same can otherwise be provided for, not exceeding six months from the date of the decease, having regard to the situation of the family and the value and circumstances of the estate. Such allowance may be fixed at any time within one year after publication of notice of the qualification of the executor or administrator, upon his application or that of any party in interest. After exhausting the personal property, real estate may be sold to provide the amount of allowance decreed, in the same manner as for the payment of debts.

SEC. 873. Such part of the personal property as

the court shall allow to the widow or family of the deceased, although inventoried, shall not be assets in the hands of the executor or administrator.

SEC. 874. If there be no issue of a deceased person living at the time of his decease, the probate court shall also allow and set off to the widow such portion of the real estate of her deceased husband, not required for the payment of his debts, as may be suitable for her situation and support and in accordance with the circumstances of the estate, and such widow shall hold such real estate in addition to her dower, subject to the same conditions and for the same time as she holds her estate of dower.

*Debts Secured by Mortgage.*

SEC. 875. Debts due by mortgage of real estate, and the mortgaged premises, shall, unless the mortgage be foreclosed and the equity barred in the lifetime of the testator or intestate, be considered personal property for every purpose in settling the estates of deceased persons.

SEC. 876. The executor or administrator may sell the mortgage and the debt secured thereby in his discretion for the amount due thereon, and may sell the same for a less amount upon obtaining the advice and direction therefor of the probate court upon a petition filed for that purpose.

SEC. 877. The executor or administrator may take the surrender of, or sue in ejectment for, the seisin and possession of the real estate mortgaged as aforesaid; in which action it shall be sufficient for him to declare on the seisin and possession of his testator or intestate.

SEC. 878. Upon recovery or surrender of possession of real estate mortgaged as aforesaid, the executor or administrator shall be seised and possessed

of the mortgaged estate, subject to liability to sale if necessary for the payment of debts, legacies, or charges of administration in the manner provided by law for the sale of real estate by executors and administrators. The surplus proceeds of such sale, after payment of incidental expenses, debts, legacies, and expenses of administration, shall be held and distributed as personal property.

SEC. 879. After surrender or recovery of possession of real estate mortgaged as aforesaid, and before sale as aforesaid, or in case the testator or intestate die possessed of any real estate mortgaged to him which may be redeemed, if the mortgagor, his heirs, executors, administrators, or assigns, shall, within the time limited for redemption, redeem the mortgaged premises, the executor or administrator shall be entitled to receive the redemption money, and shall hold the same as personal property, and shall thereupon release and discharge the mortgaged premises by release, quitclaim, or other legal conveyance.

SEC. 880. In case of a mortgage containing powers of sale, the executor, administrator, or guardian of the estate for the time being of the mortgagee may on default, unless provisions to the contrary be made in the mortgage, exercise such powers of sale. The executor, administrator, or guardian may, if thereto empowered by the mortgage or by law, and if in his discretion it be necessary to prevent a sacrifice of the property, bid upon and buy in the mortgaged property at said sale; and having so purchased, may, on application to the probate court, be authorized to resell said property at public or private sale pursuant to the direction of the court, and convey, without being accountable for any resulting loss. The proceeds of such sale shall be personal property.



## CHAPTER 43.

OF PRESENTATION AND PROOF OF CLAIMS AGAINST  
ESTATES OF DECEASED PERSONS.*Filing Claims.*

SECTION 881. Periods of time in this chapter, where no other provision is made, shall be reckoned from the date of the first publication by the first executor or administrator of notice of his qualification.

SEC. 882. Claims against the estate of a deceased person, which by their terms are payable at a future day, shall, as against such estate, be deemed to be due at the time of the death of such person, and may be filed and shall be entitled to payment with other claims, deducting interest for the anticipated payment.

SEC. 883. All persons having claims, including pending suits, preferred claims, and claims of the executor or administrator, against the estate of a deceased person shall file statements of their claims in the office of the clerk of the probate court. Claims filed within six months from the said first publication shall be preferred in payment over all claims subsequently filed. Claims not filed within one year from said publication shall be barred: *Provided*, that a creditor who by reason of accident, mistake, or unforeseen cause has failed to file his claim may at any time before distribution of the estate file his claim, and shall forthwith give notice thereof in writing to the executor or administrator, which claim, if allowed, shall be paid out of assets remaining in the hands of the executor or administrator.

SEC. 884. Every creditor shall file with his claim,

30 R. I. 566

31 R. I. 551

32 R. I. 191

in the office of the probate clerk, his post-office address, and shall thereafter give notice to the clerk of any change of his address during the administration of the estate. All notices to which the creditor is entitled under this and the preceding title may be sent to his address so filed.

SEC. 885. A claimant shall, if requested by the executor or administrator, file in the office of the clerk of the probate court an affidavit in support of his claim, stating to the best of his knowledge and belief that he has given credit to the estate for all payments and offsets to which it is entitled, and that the balance claimed is justly due, and what security, if any, he holds for his claim, and, if the claim is not upon a negotiable instrument, that no such instrument has been given.

*Disallowance of Claims.*

SEC. 886. Within thirty days after the expiration of six months from said first publication, and at any time thereafter before payment, upon evidence discovered after said period, the executor or administrator shall file in the office of the clerk of the probate court a statement disallowing such of the claims filed as he intends to contest, and shall give notice in writing, either personally or by registered mail, to claimants whose claims are disallowed. A like statement shall be filed, within thirty days after the expiration of one year, relative to claims presented after six months, and claims filed after one year may be disallowed within thirty days after notice of filing. Any person interested may, during the time within which an executor or administrator may disallow a claim, file his objections in the office of the clerk of the probate court to any claim, which shall have the

28 R. I. 558

74071

277  
30 R. I. 283

R. I. 555

same force as a disallowance of the claim by an executor or administrator.

28 R. 1. 557  
SEC. 887. After the expiration of said six months and filing a statement of claims disallowed, if any there be, as provided in the preceding section, the executor or administrator, if he have sufficient assets to pay in full all creditors who have filed their claims within six months, shall pay claims not disallowed, and shall pay claims so filed and disallowed when proved.

In like manner after the expiration of one year and filing his statement of claims disallowed, if any there be, the executor or administrator shall, if he have sufficient assets, pay all claims filed and not disallowed or disallowed and afterwards proved. Claims thereafter filed shall be payable only out of assets remaining in the hands of the executor or administrator.

*Contested Claims, Etc., Against Solvent Estates.*

30 R. 1. 283  
SEC. 888. If the estate is solvent, the executor or administrator may within ten days after disallowance of a claim file a request that claims disallowed be proved before commissioners. The court may thereupon appoint one or three commissioners, who shall examine and determine said claims. All claims disallowed shall be heard and decided by the commissioners, and no suit shall be brought upon any such claim.

SEC. 889. The commissioners shall give such notice to creditors whose claims are referred to them, of the time when and place where their claims will be examined, as the court may direct. They shall report to the court within thirty days after the expiration of the time limited for proving claims, unless



further time for cause shown shall be allowed by the court.

SEC. 890. If an executor or administrator shall file a claim which he had against the testator or testate in his lifetime, the probate court shall examine and determine such claim. If there is a co-executor or co-administrator, he shall represent the estate at such hearing; otherwise the probate court may appoint some person to represent the estate. 183 R. 1. 257

SEC. 891. If the estate is solvent, and commissioners are not appointed, suit must be brought on a disallowed claim within six months after notice is given to the creditor that the same is disallowed; and unless otherwise authorized, suit on such claims shall not be brought thereafter against the executor or administrator. 50 R. 1. 283

SEC. 892. If commissioners are appointed on an estate as solvent, and it shall thereafter appear, before their report is confirmed, that the estate is probably insolvent, the probate court shall, upon application filed therefor by the executor or administrator, vacate the appointment and acts of the commissioners; but the commissioners shall receive from the estate a suitable compensation, to be fixed by the probate court.

#### *Claims Against Insolvent Estates.*

SEC. 893. An executor or administrator at any time during administration may represent the estate insolvent to the probate court, and apply for the appointment of commissioners to examine and determine claims. If the probate court finds the estate is probably insolvent, and there are claims which have been disallowed, it shall appoint one or three commissioners.

SEC. 894. If an executor or administrator pays

out, in accordance with law, the whole of the estate, he shall not be required in consequence of the filing of further claims to represent the estate insolvent, but such payment, after allowance of his account, shall bar any action against him.

SEC. 895. If an executor or administrator pays, under the provisions of section 887, so much of the estate and effects of the deceased that the remainder is insufficient to satisfy the claims filed after the expiration of said period of six months, and any of said claims are disallowed, he may represent the estate insolvent, and shall, pursuant to decree of the probate court, divide and pay over the estate and assets, remaining in his hands, among the creditors entitled thereto.

SEC. 896. At least fourteen days before the first meeting of the commissioners on an insolvent estate, the executor or administrator shall file in the office of the probate clerk a statement disallowing such claims, not previously disallowed, as he intends to contest, and he shall from time to time, and as soon as may be, file a like statement with respect to any claim thereafter filed which he intends to contest.

SEC. 897. When such disallowance is filed the executor or administrator shall forthwith give written notice to the claimant, either personally or by registered mail. When objection is filed by an interested person, the clerk shall forthwith give notice in like manner to the claimant.

#### *Proceedings After Appointment of Commissioners.*

SEC. 898. All claims against an insolvent estate which are disallowed shall be heard and decided by the commissioners.

SEC. 899. The probate clerk shall forthwith notify

the commissioners of their appointment. Each commissioner shall within ten days after such notice be engaged to the faithful discharge of his duties, and file with the probate clerk a certificate of his engagement, signed by the officer before whom he was engaged; if it does not appear at the expiration of said time that he has been so engaged, he shall be deemed to have declined the appointment and another commissioner shall be appointed in his stead.

SEC. 900. The court may for cause shown remove any commissioner.

SEC. 901. Whenever a commissioner shall die, resign, or be removed, or neglect, refuse, or be unable to serve, or whenever from any cause a commission shall fail to make report according to law, the probate court may, on the application of the executor or administrator, or of any creditor of the estate, appoint another commissioner in his place, or may appoint a new commission; and the commission in either case shall then proceed as the probate court shall direct.

SEC. 902. Commissioners on insolvent estates shall appoint convenient times and places for their meetings to hear and determine claims, and shall advertise notice thereof in one or more newspapers published in this state, as ordered by the court, at least once each week for two successive weeks before the first meeting. They shall, by mail or otherwise, give to all creditors whose claims are disallowed at least seven days' written notice of the times and places of the meetings.

SEC. 903. The commissioners may compel the attendance of witnesses and administer oaths in the same manner as courts of record.



*Interest, Set-off, and Secured Claims.*

SEC. 904. In case of solvent estates the commissioners shall allow interest to the expiration of the commission on claims carrying interest, and on claims not carrying interest to the same time from the death of the testator or intestate; upon claims not due and not bearing interest they shall discount such sum as will reduce them to their present value.

SEC. 905. In case of insolvent estates the commissioners shall allow interest to the death of the testator or intestate on claims drawing interest, and on claims not due at the decease of the testator or intestate they shall ascertain their value as of the date of the death of the decedent.

SEC. 906. When there are mutual claims between the estate of the deceased and the person claiming as a creditor, which are subject to offset, the commissioners, after reducing the claim of the creditor to its present value, if there is a balance in his favor, shall consider such mutual claims and allow the creditor only the balance justly due.

SEC. 907. If a creditor having a security for his claim against an insolvent estate upon any property of such estate shall file his claim, the commissioners shall inquire into the cash value of the security, and report the same to the probate court; and if the commissioners allow the claim, the executor or administrator shall give the creditor personal notice of the amount allowed and the value of the security as reported by the commissioners; and unless the creditor shall, within fifteen days after receiving such notice, lodge with the court a certificate of his election to relinquish the security, he shall be entitled to a dividend from the estate upon the excess only of

his claim above the amount of the commissioners' valuation of the security.

SEC. 908. If a claim against a solvent or insolvent estate shall be disallowed in whole or in part by the commissioners, the probate clerk shall mail a written notice thereof to the claimant or to his attorney within seven days after the filing of the commissioners' report.

SEC. 909. Claims shall be proved before the commissioners within three months from the date of their appointment, or within such extended time, not exceeding six months from said date, as the court for cause shown by claimants or commissioners may allow: *Provided*, that if an estate be represented insolvent within six months of the first publication of notice, at least six months from such publication shall be allowed for proving claims.

#### *Report of Commissioners.*

SEC. 910. Within thirty days from the expiration of the time limited for proving claims, or within such further time as the court may allow, the commissioners or a majority of them shall report to the probate court a list of the claims allowed and the order of their payment as provided in section 913, and a list of the claims disallowed.

SEC. 911. Upon coming in of the report the court shall appoint a time for hearing thereon. The executor or administrator shall give notice of the hearing by advertisement as the court shall direct, and also by mailing a notice to each person who has filed a claim and whose post-office address is filed with the court.

SEC. 912. The court at the time appointed for the hearing shall hear the parties and examine the re-

port and confirm the same, or may recommit the report for errors or for any misconduct of the commissioners. The commissioners may by leave of court correct any errors in the report. No claim shall be diminished without notice to the creditor or his attorney, nor increased without notice to the executor or administrator. Any claim not heard by commissioners through accident, mistake, or unforeseen cause, may be heard by the court. Claims heard and allowed by the probate court, and claims not disallowed by the executor or administrator, or not objected to as provided in section 896, shall be added to or inserted in the report. But no change shall be made in the report after confirmation, except on appeal.

SEC. 913. If the estate of a decedent is insufficient to pay his debts, the same, after deducting the charges of administration and such property as is set off and allowed to the widow and family, shall be applied to the payment of his debts and charges in the following order:

*First.* The necessary funeral charges of the deceased.

*Second.* The necessary expenses of his last sickness.

*Third.* Debts due to the United States.

*Fourth.* Debts due to this state, and all state and town taxes.

*Fifth.* Wages of labor performed within six months next prior to the death of such deceased person, not exceeding one hundred dollars to any one person.

*Sixth.* Other debts filed within six months of said first notice.

*Seventh.* All other debts.

If there is not sufficient property to pay all the



debts of any class, the creditors of that class shall be paid ratably upon their respective claims; and no payment shall be made to creditors of any class until all of those of the preceding class or classes have been paid in full.

SEC. 914. Upon receiving the report of the commissioners, the court shall allow them out of the estate a suitable compensation for their services.

### *Appeals, Actions, Etc.*

SEC. 915. Any person whose claim is not allowed in full by the commissioners on either a solvent or insolvent estate may appeal to the superior court from the decree of the probate court confirming the report of the commissioners; and in like manner an executor or administrator, or creditor or party interested, may appeal with respect to any claim allowed.

SEC. 916. The judgment of the superior court, on appeal, shall ascertain the claims and amounts to be added to or deducted from the claims as reported by the commissioners. The costs of the appeal shall be awarded by the court against either party, or be divided between them, as justice may require, and execution therefor shall issue accordingly.

SEC. 917. Any action or suit brought against a decedent in his lifetime, which survives, and in which the executor or administrator shall be notified to take upon himself the defence as provided in section 971, and any action or suit, upon any cause of action originating in the lifetime of the decedent and which survives, brought against the executor or administrator before the estate has been represented insolvent, shall not abate, but may be prosecuted to final judgment against the estate. All such claims shall be filed in the office of the probate clerk as pro-

vided in section 883, but need not be proved before commissioners. Execution upon the judgment in such case shall be stayed. If the estate is or shall be represented insolvent, the amount of the judgment shall be included in or added to the commissioners' report as a claim against the estate thereunder, subject to the provisions of section 907, but shall not be subject to appeal; and if the estate is solvent, execution may issue at any time after claims of the same class are payable.

SEC. 918. If any creditor whose claim has been disallowed or objected to shall not prove his claim before the commissioners within the time originally fixed or thereafter extended as aforesaid, he shall, unless otherwise provided by law, be forever barred of his action therefor against the executor or administrator.

SEC. 919. In case of an insolvent estate, if the executor or administrator shall have paid any just claim due to a creditor in full or in part before the appointment of commissioners, he may prove such claim before the commissioners.

#### *Payment of Debts, etc.*

SEC. 920. After the expiration of the time for claiming an appeal from the decree on the report of the commissioners on an insolvent estate, the probate court shall make a decree for the distribution of the estate among the creditors whose claims are allowed. If an appeal is claimed or if a suit is pending against the estate, the decree may be suspended until the determination of the appeal, or suit, or a distribution may be ordered among the creditors whose claims are allowed, leaving in the hands of the executor or administrator an amount sufficient to

pay claimants whose appeals or suits are pending a proportion equal to that of the other creditors. In case further assets shall come to the hands of the executor or administrator after such decree of distribution, the probate court shall make from time to time further decrees of distribution among the creditors.

SEC. 921. Except as provided in sections 917 and 922, no action shall be maintained against an executor or administrator after an estate has been represented insolvent: *Provided*, that a creditor who, under the provisions of section 883, may file his claim after the expiration of one year from the date of the first publication of notice may, if the assets prove more than sufficient to pay all claims allowed or proved, file and prosecute his claim at any time before the complete distribution of such surplus assets.

#### *Contingent Claims.*

SEC. 922. A person who has a contingent claim against a deceased person which can not be proved as a debt within the time allowed for filing claims may file his claim in the office of the clerk of the probate court within the time allowed for filing claims. If upon examination it appears to the court that such claim may become justly due from the estate, the probate court shall order the executor or administrator to deposit in the registry of the court assets sufficient to satisfy such claim, or its proportionate share in case of insolvency of the estate.

SEC. 923. If a person interested in the estate offers to give bond to the alleged creditor, with sufficient surety or sureties for the payment of his claim in case it shall be proved to be due, the court may order such bond to be taken instead of requiring assets to be de-

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posited as provided in the preceding section. But nothing herein contained shall be construed so as to prevent any person holding such contingent claim from waiting until his right of action accrues, and then bringing suit against the heirs, devisees, legatees, or next of kin, as hereinafter provided.

SEC. 924. The decision of the probate court as to depositing assets, or giving bond, upon the claim of such creditor, shall not be conclusive as to the validity of the claim against the executor or administrator or other person interested to oppose the allowance thereof; and they shall not be compelled to pay the same, unless it is proved to be due in an action commenced by the claimant within one year after his claim becomes payable. And in case of suit against the executor or administrator, recovery shall be limited to the assets in the registry of the court deposited as provided in section 922.

SEC. 925. The action referred to in the preceding section shall be brought against the executor or administrator, if he has been required to deposit assets therefor in the registry of the court, and such action against the executor or administrator may be brought although said period of two years has elapsed; otherwise, the action shall be brought upon the bond given under section 923.

SEC. 926. If the action is brought on such bond, the plaintiff shall set forth his original cause of action against the deceased in like manner as would be required upon the same demand against the executor or administrator, and may allege the non-payment of the demand as a breach of the condition of the bond; and the defendant may answer any matter of defence that would be available in law against the demand if prosecuted in the usual manner against the executor or administrator.

## CHAPTER 44.

## OF THE SETTLEMENT OF ESTATES OF ABSENTEES.

SECTION 927. If a resident of this state, having property therein, has disappeared and has been absent from his usual place of residence and his whereabouts have been unknown for more than one year, and has left no agent in charge of such property, the court of probate of the town in which he was last known to reside shall have power, upon the petition of the wife or next of kin or of one or more of his creditors, setting forth the above facts, to appoint a receiver to collect and take charge of such property until the fact of the death or survival of the absentee is established, and in case of his death, until an executor or administrator shall be appointed and qualified.

SEC. 928. The court before appointing such receiver shall give at least thirty days' notice by publication in one or more newspapers published in the state, in the manner provided for petitions for appointment of administrators, and by mailing a copy of such notice to the last known address of such absentee. Such notice shall be addressed to the absentee and to all persons who claim an interest in said property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property of said absentee should not be appointed. The court may order other and further notice to be given within or without the state.

SEC. 929. Any person may appear and show cause why the prayer of the petitioner should not be granted. If a receiver is appointed he shall give bond to the probate court in such sum and with such

conditions as the court orders, with surety satisfactory to the court.

SEC. 930. The court may make orders for the care, custody, leasing, and investing of said property and its proceeds. The court may order live stock or perishable property or any property which can not be kept without great and disproportionate expense to be sold at public or private sale. The court may, upon petition of the receiver and after such notice as is required in case of sale of real estate by executors and administrators, order all or any part of the real and personal estate of such absentee to be sold at public or private sale to supply money for the payments authorized by this chapter, or for re-investment approved by the court.

SEC. 931. The probate court may authorize the receiver to apply the income of said property, and if the income is insufficient, then the property or the proceeds of any sale thereof, in payment of charges incurred, or that may be incurred, in the support and maintenance of the absentee's wife and minor children, and to the payment of such debts as may be proved against said absentee before the probate court.

SEC. 932. The receiver shall be allowed such compensation and such disbursements, to be paid out of said income, property, or proceeds, as the probate court may approve.

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## CHAPTER 45.

### DESCENT, DISTRIBUTION, DIVISION AND ADVANCEMENT.

SECTION 933. Whenever any person having title to any real estate of inheritance shall die intestate



as to such estate, it shall descend and pass, excepting as provided in section 938, in equal portions to his kindred, in the following course:

*First.* To his children or their descendants, if any there be.

*Second.* If there be no children nor their descendants, then to the father of such intestate.

*Third.* If there be no father, then to the mother, brothers and sisters of such intestate, and their descendants, or such of them as there be.

SEC. 934. If there be no mother, nor brother, nor sister, nor their descendants, the inheritance shall go in equal moieties to the paternal and maternal kindred, each in the following course:

*First.* To the grandfather, if any there be.

*Second.* If there be no grandfather, then to the grandmother, uncles and aunts, on the same side, or their descendants by representation, or such of them as there be.

*Third.* If there be no grandmother nor uncle nor aunt, nor their descendants, then to the great-grandfathers or great-grandfather, if there be but one.

*Fourth.* If there be no great-grandfather, then to the great-grandmothers or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers and their descendants, or such of them as there be; and so on, in other cases, without end, passing to the nearest lineal male ancestors, and for want of them to the lineal female ancestors in the same degree, and the descendants of such male and female lineal ancestors, or such of them as there be.

SEC. 935. No right in the inheritance shall accrue to any persons whatsoever other than to the children of the intestate, unless such persons be in being and

capable in law to take as heirs at the time of the intestate's death.

SEC. 936. When hereinbefore the inheritance is directed to go by moieties to the paternal and maternal kindred, if there be no such kindred on the one part, the whole shall go to the other part; and if there be no kindred either on the one part or the other the whole shall go to the husband or wife of the intestate, and if the husband or wife be dead, it shall go to his or her kindred in the like course as if such husband or wife had survived the intestate and then died entitled to the estate.

SEC. 937. The descendants of any person deceased shall inherit the estate which such person would have inherited had such person survived the intestate, subject to the express provisions of these canons of descent.

SEC. 938. When the title to any real estate of inheritance, as to which the person having such title shall die intestate, came by descent, gift or devise, from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the kin next to the intestate, of the blood of the person from whom such estate came or descended, if any there be; and as between the legal and equitable title, in case of merger, the equitable title shall govern the course of descent under the provisions of this section.

SEC. 939. Bastards shall be capable of inheriting or transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

SEC. 940. Nothing in the preceding sections of this chapter shall be so construed as to bar any widow of her dower in the estate of her deceased husband,

or any husband of his curtesy in the estate of his deceased wife.

#### DISTRIBUTION.

SEC. 941. The surplus of any chattels or personal estate of a deceased person, not bequeathed, after the payment of his just debts, funeral charges, and expenses of settling his estate, shall be distributed by order of the probate court which shall have granted administration in manner following:

*First.* One-half part thereof to the widow of the deceased forever, if the intestate died without issue.

*Second.* One-third part thereof to the widow of the deceased forever, if the intestate died leaving issue.

*Third.* The residue shall be distributed among the heirs of the intestate in the same manner real estates descend and pass by this chapter, but without having any respect to the blood of the person from whom such personal estate came or descended.

#### DIVISION OF REAL ESTATE.

SEC. 942. After payment of the debts, charges, and expenses of settling the estate of any person dying intestate, the probate court which granted administration on the estate may divide the real estate of which such intestate died seised, among the parties entitled thereto, in the proportion by law prescribed, whenever application in writing shall be made to it for such purpose by all the said parties setting forth and particularly describing each parcel of said real estate.

SEC. 943. Upon the filing of such application a time shall be appointed for proceeding therein, and notice thereof shall be given, in such manner as the probate court shall appoint, to the parties in interest.



SEC. 944. At the time appointed, the court shall by decree determine who are the parties entitled to a share of the intestate's estate, the amount of advancement made by the intestate to any of the parties, and the share to which each of such parties is entitled out of the real estate; and shall thereupon appoint three discreet and disinterested persons, residing in any of the towns wherein the lands to be divided lie, as commissioners to make partition thereof according to the decree.

SEC. 945. The court shall issue its warrants to the commissioners, which shall be in substance as follows:

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

SC.

To            of            in the county of            Greeting:

Whereas the probate court of the town of \_\_\_\_\_ at its session on the \_\_\_\_\_ day of \_\_\_\_\_ did pass the following decree, to wit: [*Here insert a copy of the decree.*] You are therefore hereby authorized, after being engaged to the faithful discharge of the trust reposed in you, to appraise all the real estate described and referred to in said decree, each parcel by itself, at the present value thereof in money, and, after having made such appraisement, to divide said real estate among the parties named in said decree in the proportions set forth therein. You are to let all persons named in said decree have notice when you proceed to make such appraisement and division, and, having completed the same, you are to make return of this warrant, with your doings thereon, unto this probate court as soon as may be. Signed for and in behalf of the said probate court on this

day of

, Clerk.

SEC. 946. The commissioners shall proceed, as soon as may be after receiving their warrant, to execute the duties required of them by virtue thereof and divide the real estate in the manner and proportions prescribed in the decree recited in the warrant.

SEC. 947. If the share of any of the parties shall be less than the share of each of the other parties, and the shares of those other parties be equal, in such case the commissioners shall set off said smaller share to such party and assign the other shares by lot; and the assignment shall also be by lot if all the shares be equal: *Provided*, that if all the parties be *sui juris* the assignment may be made by agreement among themselves.

SEC. 948. The commissioners shall make report of all their proceedings under the warrant to the probate court that appointed them; which report shall be passed upon by the court after notice, and, if finally established, shall be recorded in the records of land evidence in the several towns or cities wherein any of the lands lie.

SEC. 949. In case any infant or person non compos mentis shall be interested in the partition of any estate as aforesaid, the application for the same shall be made and signed by his guardian, if he has one, otherwise by his guardian ad litem appointed by the court, whose acts in the premises shall be conclusive on such infant or person non compos mentis.

SEC. 950. Whenever any person shall die leaving a last will and testament duly executed, and shall at the time of his decease be seised of any real estate not disposed of by such will, such estate shall be divided

among the heirs at law of the deceased in the same manner as though he had left no will.

SEC. 951. Real estate holden in common by devise may be divided, according to the respective rights of the parties entitled to such real estate, in the manner and form hereinbefore prescribed for the division of intestate estates, and the like proceedings shall be had for effecting and confirming the same: *Provided*, that the interest of any woman having right of dower, or husband having right by curtesy, shall be protected in such division.

SEC. 952. Such part of the real estate of any testator or intestate as shall be assigned to his widow for her dower shall, after her decease, be divided among the devisees, or heirs at law, of the deceased, in the same manner as the same would have been divided in case it had not been assigned for dower as aforesaid.

SEC. 953. Whenever partition or division shall be made by any probate court, and there shall be an appeal to the superior court, and any one or more of the interested parties shall neglect or refuse to pay their just proportion of the expense of such division, the probate court which ordered such division may issue a warrant of distress against such delinquent: *Provided*, that an account of such expense be first laid before such probate court, and the just proportions of the persons interested be settled and allowed, they having been duly notified to be present at such settlement and allowance.

#### ADVANCEMENTS.

SEC. 954. If any child or grandchild of an intestate shall have received from him any real or personal estate for his advancement, the probate court shall ascertain the amount thereof before appointing



commissioners to divide such real estate, and shall, in its said decree of division, direct such commissioners to deduct the amount thereof from the share of such child or grandchild.

SEC. 955. If real estate shall be conveyed by deed of gift, or personal estate shall be delivered to a child or grandchild, and charged, or a memorandum made thereof in writing by the intestate or by his order, or shall be delivered expressly for that purpose in the presence of two witnesses, who were requested to take notice thereof, the same shall be deemed an advancement to such child to the value of such real or personal estate.

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## CHAPTER 46.

### OF UNCLAIMED ESTATES.

SECTION 956. Whenever any person shall die leaving any real or personal estate within this state, and shall leave no known heir or legal representative to claim the same, the town council of the town in which such real or personal estate may be may direct the town treasurer of such town to take the same into his possession for the use of such town until the heir or other legal representative of such deceased person shall call for the same, to whom the same shall be delivered on being claimed and evidence of the right or title of the claimant shown; and the said town shall in such case account with the claimant for such real or personal estate, but not including any income or interest received therefrom.

SEC. 957. Whenever any real or personal estate shall be taken into possession by any town treasurer pursuant to this chapter, the same shall be subject

and liable to the payment of the debts of the deceased to whom it belonged, as liens thereon; and such liens may be established and enforced by proceedings in a court of equity brought by said creditors against said town as trustee, at any time within two years after such town has taken possession.

SEC. 958. The town council may cite any person whom they may suspect of being possessed of the personal estate of any person dying without heirs as aforesaid to appear before them, and may examine the person so suspected on oath concerning the same.

SEC. 959. If any person shall appear to be possessed of any real or personal estate of one dying without known heirs or other legal representative as aforesaid, and shall on request refuse to deliver or surrender possession thereof to the town treasurer directed as aforesaid, such town treasurer may in his said capacity commence and prosecute an action for the recovery thereof.

SEC. 960. Whenever any person who shall be entitled as distributee or creditor to the personal estate, or any part thereof, in the hands of an executor, administrator, or guardian appointed in this state, shall for the space of five years after the decree of the probate court ordering the distribution or establishing the amount of the claim, neglect to apply for the same, such executor, administrator, or guardian, or probate court having control of the same shall pay over the same to the town treasurer of the town wherein administration or guardianship was granted on said estate, taking the receipt of said treasurer, which shall be a sufficient voucher therefor.

SEC. 961. Whenever the town treasurer of any town shall receive any money by virtue of the preceding section, he shall retain the same in his hands for the use of the town of which he is treasurer until

called for by the party entitled thereto or his executors, administrators, or assigns; and the town shall be liable to pay the amount so received, less the amounts paid out under the provisions of this chapter, to the party entitled to the same, without interest.

SEC. 962. If the town treasurer shall receive any personal property referred to in this chapter which shall consist in whole or in part of any property other than cash, he may sell the same at public auction and retain the proceeds of such sale in his hands, under the limitations and for the uses aforesaid, after paying expenses of such sale out of said fund.

SEC. 963. Whenever a town shall have been in possession of any real estate under the provisions of section 956 for ten years without any person having claimed the same as heir at law, devisee, legatee, or legal representative of such deceased person, and shall, by petition in equity setting forth all the known facts in relation to the title and possession of such real estate and in relation to the person who died leaving the same, apply to the superior court for leave to sell and convey the same, the court shall order such notice of the pendency of the petition as may to the court seem proper, and may, after the return of such notice and the hearing of all persons interested in such real estate, order the sale and conveyance thereof in such manner and upon such terms and conditions as the court shall prescribe.

SEC. 964. The proceeds of such sale, as also the balance of any proceeds after proceedings by creditors under section 957 over and above all expenses incurred by said town, shall be held by such town and be accounted for in the same way and be held for the same uses as the real estate would have been had no sale thereof been made.

SEC. 965. The town treasurer shall keep an exact



record of his proceedings under the provisions of this chapter.

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## CHAPTER 47.

OF DEBTS, CHARGES, AND ACTIONS AGAINST ESTATES  
OF DECEASED PERSONS, AND OF LEGACIES.

### *Debts and Charges.*

SECTION 966. The estate, real and personal, of every deceased person shall be chargeable with the expenses of administration, including allowances to widow and family, the funeral charges of the deceased, including the cost of a place of burial, if necessary, and the payment of his debts; and the same shall be paid by the executor or administrator out of the estate, so far as the same shall be sufficient therefor.

SEC. 967. The personal estate shall be first chargeable for such expenses, charges, and debts, and the real estate shall be chargeable only so far as the personal estate is insufficient for that purpose, except as otherwise provided by law or will.

SEC. 968. The expenses of assigning the widow's dower, of the division and assignment of the real estate, and of the appointment of guardians of minors and others incapacitated to take care of their interests, whether they be heirs or legatees, except there be an appeal from the order making or appointing the same, shall be included in the expenses of administration.

SEC. 969. An executor or administrator of a solvent estate may erect a headstone, and with the permission of the probate court may erect a monument, and with like permission an executor or adminis-

trator of an insolvent estate may erect a headstone at the grave of his testator or intestate. An executor or administrator of a solvent estate may pay to a cemetery corporation or to a town or city a reasonable sum for the perpetual care of the lot in which the body of his testator or intestate is buried. The probate court may determine after notice the amount of such payment and to whom the same shall be paid. All reasonable payments made under this section shall be allowed as part of the funeral charges in the settlement of the accounts of such executor or administrator.

*Abatement and Limitation of Actions.*

SEC. 970. In case any action, suit, or proceeding is commenced or shall be pending in any court, and either party shall die before final judgment, the executor or administrator of such deceased person, or his successor in case the deceased was acting in a representative capacity, may, if the cause of action survives, prosecute or defend such action, suit, or proceeding to final judgment.

SEC. 971. If an executor, administrator, or guardian shall neglect to appear and take upon himself the prosecution or defence of an action, suit, or proceeding as aforesaid, being duly notified thereof by order of the court where the same shall be pending, or if, having appeared and become a party thereto, judgment shall pass against such executor, administrator, or guardian, the court, subject to the provisions of section 917, may enter judgment against the estate in the hands of the executor, administrator, or guardian, and the like process shall be had thereon as if the action, suit, or proceeding had been originally commenced against him in his said capacity.

SEC. 972. No executor or administrator shall be held to answer to a suit at law or in equity, by a creditor of the deceased, which is commenced within six months from the date of the first publication of the notice of the qualification of the first executor or administrator, unless such suit is brought under the provisions of section 255, or other special provision made by statute.

SEC. 973. No executor or administrator shall be held to answer to the suit of a creditor of the deceased, except to a suit on his bond or as is otherwise provided in this or the preceding title, unless such suit is commenced within two years from the date of the said first publication and before any order of distribution has been made on the estate of the intestate.

SEC. 974. When an executor or administrator after qualification dies, resigns, or is removed, without having fully administered the estate, and a new administrator is appointed, such new administration shall be deemed to be a continuation of the preceding administration, and all limitations which could be claimed for or against the predecessor may be claimed for or against such successor: *Provided, however,* that the time when there is no representative of the estate shall not be reckoned as part of the periods for the filing or proof of claims or limitations for bringing suits; and such periods, and generally the periods referred to in this and the preceding title, where no provision to the contrary is made, shall be reckoned exclusive of such time.

SEC. 975. If further assets come to the hands of an executor or administrator after the expiration of one year from the date of the first publication of notice of the qualification of the first executor or administrator, he shall apply said assets to the payment of the claims of creditors and account therefor



in the same manner as assets received within said year; and if the surplus of such assets remaining after payment of said claims in full is in the opinion of the probate court sufficient to warrant so doing, the probate court may order notice given of the receipt of such assets and may extend the time for filing claims not to exceed six months after such notice. Claims filed within said extended time may be allowed or proved in the same manner as claims filed within said year, and shall be payable out of the assets remaining in the hands of the executor or administrator. In case of disallowance of a claim, suit may be brought thereon only within six months after notice of disallowance.

*Payment of Legacies and Distributive Shares.*

SEC. 976. When an executor or administrator, after having given bond for the discharge of his trust, is requested by a legatee to make payment in whole or in part of a legacy, the probate court, if such executor or administrator consents so to do, may require that such legatee shall first give bond to the executor or administrator, with surety or sureties to be approved by the court, and conditioned to refund the amount so to be paid, or so much thereof as may be necessary to satisfy any demands that may be afterwards recovered against the estate of the deceased and to indemnify the executor or administrator against all other loss and damage on account of such payment.

SEC. 977. A legatee may recover his legacy in an action at law; but no action shall be brought therefor against an executor or administrator with the will annexed, for the recovery of a legacy, until such executor or administrator has filed a statement of

the legacies to be paid under the provisions of the next section or failed to comply with the provisions thereof.

SEC. 978. An executor may, and for cause shown shall, file within two years after the date of said first publication or such further time as the probate court may allow, and at such time during said periods as the court may direct, a statement in the office of the clerk of the probate court setting out the names of the legatees and the amounts to be paid and the property to be turned over to them respectively or to be held by himself as trustee. Notice of the filing of such statement and of the time and place fixed by the court for hearing thereon shall be given by advertisement at least twice each week for two successive weeks in some newspaper, as ordered by the court. The probate clerk shall also give notice by registered mail to all persons interested whose post-office address is known.

SEC. 979. Upon hearing on said statement the court shall approve the statement as filed or shall amend and approve the same as amended, and shall enter its order directing the payment and satisfaction of the legacies. If an appeal is taken the probate court may order the payment and satisfaction of legacies not affected thereby.

SEC. 980. Whenever any question arises as to the identity of a legatee, or the construction or the payment and satisfaction of any legacy, the probate court, upon petition setting out such questions, after notice by citation to all known parties, and any additional notice the court may direct, and after hearing thereon, may determine the same and enter its order accordingly.

SEC. 981. An executor, being a residuary legatee, may bring his bill in equity for an account against his

co-executor concerning the estate in his hands, and for his part thereof, and every other residuary legatee shall have the like remedy against an executor or administrator with the will annexed; but in both cases without prejudice to any other remedies.

SEC. 982. At any time after one year from the date of the first publication of the notice of the qualification of the first administrator a probate court may make an order of distribution, if it shall appear to the satisfaction of the court that the administrator has paid all claims that have been filed and allowed or proved.

SEC. 983. Within two years after said first publication or such further time as the probate court for cause shown may allow, administrators shall obtain an order of distribution, ascertaining the distributees and the proportion of the personal estate due each.

*Liability of Heirs, Next of Kin, etc.*

SEC. 984. After the settlement of an estate by an executor or administrator, and after the expiration of two years from the date of the first publication of the notice of his qualification by the first executor or administrator, the heirs, next of kin, devisees, and legatees of the deceased shall be liable, in the manner provided in the following sections, for all debts for which suits could not have been brought against the executor or administrator and for which provision is not made under the preceding sections of this chapter. 29 R. 1546

SEC. 985. Any creditor holding a contingent claim, the right of action on which did not accrue during said period of two years, who shall bring his action within one year after his right of action accrues, and any creditor who from accident, mistake, or 29 R. 1-346



unforeseen cause has failed to file his claim within one year after the said first publication of notice who shall bring his action not later than three years after said first publication, may recover such claim against the heirs and next of kin of the deceased, or against the devisees and legatees under his will, each one of whom shall be liable to the creditor to an amount not exceeding the value of real or personal estate that he has received from the deceased. But if by the will of the deceased any part of his estate, or any one or more of the devisees or legatees, is made exclusively liable for the claim in exoneration of the residue of the estate or of other devisees or legatees, such provisions of the will shall be complied with and the persons and estates so exempted shall be liable for only so much of the claim as cannot be recovered from those who are first chargeable therewith.

59 R. L. 546  
SEC. 986. If an heir, next of kin, devisee, or legatee dies without having paid his just proportion of such claim, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

59 R. L. 546  
SEC. 987. In a case under the two preceding sections, the creditor shall recover such claim by a suit in equity against all persons so liable, or against such of them as are within reach of process. The court shall decide how much each one of the defendants is liable to pay towards the claim.

SEC. 988. Such suit shall not be dismissed or barred for not making all persons defendants who might have been so included, but in any stage of the cause the court, upon such terms as may be deemed reasonable, may summon in other parties and allow amendments as may be necessary.

SEC. 989. If an heir, devisee, or other person who was originally liable with others for the claim is in-

solvent, unable to pay his proportion thereof, or beyond reach of process, the others shall be liable to the creditor for the whole amount of his claim; but no one shall be compelled to pay more than the amount received by him from the estate of the deceased.

SEC. 990. If, in consequence of insolvency, absence, or other cause, a person liable for such claim fails to pay his just proportion thereof to the creditor, he shall be liable to indemnify all who pay more than their just proportion of the same. Such indemnity may be recovered at their election by all of them jointly, or in separate proceedings by one or more of them for his or their parts respectively.

*Personal Liability of, and Executions Against, Executors, etc.*

SEC. 991. No executor or administrator, except an executor in his own wrong, shall be holden to bail upon mesne process, nor shall his property be attached, nor his person arrested, nor his person or property taken on execution, for the debts or legacies of the testator or intestate, except upon suggestion of waste as hereinafter provided; but in such suits the writs of attachment and execution shall run against the goods, chattels, rights, and credits of the deceased only, in the hands of the executor or administrator.

SEC. 992. If the execution shall issue as aforesaid against the estate of the testator or intestate in the hands of the executor or administrator, and the officer charged with the service thereof shall return thereon that he cannot find any such estate whereon to levy such execution, and that the same has not been satisfied by such executor or administrator, a writ of scire facias may be sued out of the office of

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the clerk of the same court (although two years may have elapsed after the date of the first publication of the notice of the qualification of the first executor or administrator) against such executor or administrator, containing a suggestion of waste; and after said writ has been duly served by the officer to whom it shall be directed and by him returned, if the executor or administrator make default of appearance, or, coming in, shall not show sufficient cause to the contrary, execution shall be awarded against him and his own proper estate for the sum recovered, with interest due thereon, with costs, and, for want of estate, against the body of such executor or administrator.

SEC. 993. Whenever any judgment shall have been recovered by or in the name of any executor or administrator, a succeeding administrator of the estate not administered may sue out a writ of scire facias and take out execution upon such judgment.

SEC. 994. No heir or devisee of a deceased person shall have power, within two years and six months after the first publication of the notice of the qualification of the first executor or administrator on the estate of such person, to incumber or alien the real estate of the deceased so as to prevent or affect the sale thereof by the executor or administrator, if necessary, as prescribed by law: *Provided, however,* unless otherwise directed by will or codicil, that after the expiration of the period of two years and six months from the date of such first publication (without any deduction of time when there was no representative of the estate), the heir or devisee may aliene or incumber the same, and the same shall not be chargeable with any lien for the debts of the deceased.



## CHAPTER 48.

OF THE SETTLEMENT OF ACCOUNTS OF EXECUTORS  
AND ADMINISTRATORS.

SECTION 995. Every executor and administrator, except as provided in sections 1013 and 1014, shall make out and return to the probate court, within two years after his qualification, and thereafter at least once a year, and at such other times as shall be required by the court, an account relative to the estate in his hands, with a statement of the liquidated balance that may be due to or from him.

SEC. 996. Accounts rendered by an executor or administrator to the probate court shall be for a period stated therein, and shall charge the executor or administrator with the amount of the inventory, or, instead thereof, the amount of the balance of the last account rendered, as the case may be, and all income, and all gains from the sale of personal property and all other property received by him, although not inventoried, and all rents and proceeds of sale of real estate received by the executor or administrator; said accounts shall credit all charges, losses, and payments, including legacies and distributions and specific personal property delivered, and shall also show the investments of the balance of such account, if any, and changes of investment.

SEC. 997. An executor or administrator may be examined on oath before the court upon any matter relative to his accounts.

SEC. 998. Every probate court on petition therefor, whenever it deem proper, may issue citation to an executor or administrator, having accounts unsettled with such court, to render an account relative to the

estate in his hands, at such time as it may order in the citation.

SEC. 999. If an executor or administrator, after being cited, shall neglect or refuse to render an account within thirty days after the time named in the citation or such further time as the court may allow, he shall be held accountable for the full value of the personal property of the deceased, and the proceeds of sale of real estate and the rents received by him, with interest, and shall be entitled to no compensation for his services.

SEC. 1000. Whenever a sale of the assets of an estate is necessary, the same shall be sold by the executor or administrator, at public auction, after reasonable notice of such sale, or by private sale under the advice and direction of the court of probate. An unauthorized private sale or a sale by auction improperly made shall be deemed maladministration.

SEC. 1001. Executors and administrators shall be allowed in their accounts all reasonable and proper charges and disbursements made by them for the funeral of the deceased and in the execution of their trust.

SEC. 1002. Executors and administrators shall also be allowed in their final accounts such compensation for their services as the probate court shall consider just.

SEC. 1003. Executors and administrators may be charged in their accounts with interest, for the unreasonable detention of money, at a rate not more than six per centum per annum.

SEC. 1004. The settlement of the accounts of an executor or administrator by the probate court, or on appeal, shall be final and conclusive on all parties concerned therein: *Provided*, that, upon the settle-

ment of an account, all former accounts of the same executor or administrator may be so far opened as to correct a mistake or error apparent therein.

SEC. 1005. If the estate of a deceased person is to be distributed in whole or in part, the probate court, upon the petition of any person interested, after such notice as it may direct, may order the executor or administrator to convert the personal property into cash and to distribute it among the persons entitled thereto.

SEC. 1006. If an executor, administrator, or guardian has paid or delivered 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, within one year after the decree is made, an account of such payments or delivery, together with the vouchers therefor, which shall be kept in the files of the court. The account, being proved to the satisfaction of the court, and verified by the oath of the executor, administrator, or guardian, shall be allowed as his final discharge and ordered to be recorded. Such discharge shall forever exonerate the executor, administrator, or guardian, and his sureties, from all liability under such decree unless his account is impeached for fraud or manifest errors.

SEC. 1007. If, without an order of court, an executor, administrator, or guardian pays or delivers any money or other property in his hands to a legatee, distributee, or ward, and thereafter renders an account, upon oath, with a full and detailed statement thereof, to the probate court, and after notice it appears that the persons to whom such money has been paid or property delivered would have been entitled to an order of court for such payment or delivery, and that such account ought to be allowed, the probate



court may make a decree, which shall have the same effect to exonerate and discharge the executor, administrator, or guardian, and his sureties from further liability as if such payment or delivery had been made under a previous order of the probate court.

SEC. 1008. Whenever it shall appear in the final account of an executor or administrator that the estate of a minor or person non compos mentis in his hands does not exceed five hundred dollars, the same may be applied or disposed of in such manner as the probate court shall deem for the advantage of the said minor or person non compos mentis.

SEC. 1009. If money which a decree of a probate court has ordered to be paid over remains for six months unclaimed, the executor, administrator, or guardian who was ordered to pay over the same may deposit it in the registry of the probate court to accumulate for the benefit of the person entitled thereto. The person making such deposit shall take the receipt of the probate court therefor, and thereupon shall be discharged from all liability as to said money. When the person entitled to the money deposited satisfies the probate court of his right to receive the same, the court shall cause it to be paid over and transferred to him, with all accumulations thereon.

SEC. 1010. If an executor, administrator, or guardian holds any money, stock certificates, bond, or other chose in action payable or deliverable to a legatee, next of kin, ward, or other person, and the person entitled thereto cannot give a proper discharge therefor, or is out of the country, or his whereabouts are unknown after proper inquiry therefor, and the executor, administrator, or guardian desires to free himself from further liability therefor, he may pay or deliver the same into the registry of the probate court which appointed him, and present there-

with his petition praying to be discharged, and setting out under oath the title of such person and why he cannot give proper discharge therefor.

SEC. 1011. Upon the filing of such petition, such notice of the time and place of hearing thereon shall be given as the court shall direct; and after hearing thereon the court may enter a decree granting a discharge, if it deem it proper, and thereafter the executor, administrator, or guardian shall be relieved from all liability for said money, stock certificate, bond, or other chose in action, and interest thereon. All costs and expenses on such petition, including expenses and counsel fees of the executor, administrator, or guardian, as allowed by the court, shall be paid or retained out of such money or be a lien on any stock or chose in action and any dividend or interest payable thereon. When any person entitled to such money, stock, or chose in action shall appear and satisfy the court as to his right thereto, the same with the accumulations thereof, after deducting said expenses and counsel fees, shall be paid or delivered to him as the court shall direct.

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## CHAPTER 49.

### OF THE BONDS OF EXECUTORS, ADMINISTRATORS, AND GUARDIANS; AND OF SUITS THEREON.

#### *Form and Condition of Probate Bonds.*

SECTION 1012. Every executor, administrator, and guardian, before entering upon the execution of his trust, shall give bond to the court of probate in such sum as it shall require, with sufficient surety or sureties, and with condition, except as provided in sections 1013 and 1014, substantially as follows:

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1. In the case of an executor or administrator with the will annexed:

*First.* To make and return to the probate court as by law required a true inventory of all the testator's personal property which, at the time of making such inventory, shall have come to his possession or knowledge.

*Second.* To administer according to law and the will of the testator all personal property of the testator which may come to his possession or into the possession of any person for him, and all rents and proceeds of real estate which may be received by him.

*Third.* To render upon oath true accounts of his administration as by law required.

2. In the case of an administrator:

*First.* To make and return to the probate court as by law required a true inventory of all the intestate's personal property which, at the time of making such inventory, shall have come to his possession or knowledge.

*Second.* To administer according to law all the personal property of the deceased and rents which may come into his possession or into the possession of any person for him.

*Third.* To render upon oath true accounts of his administration as by law required.

*Fourth.* To deliver his letters of administration into the court if a will of the deceased is thereafter proved and allowed, and to settle his account in the probate court and to pay over and deliver all the assets remaining in his hands or due from him on such settlement to the executor of such will.

3. In the case of a guardian of an estate:

*First.* To make and return to the probate court as by law required a true inventory of all the real



and personal property of the ward which, at the time of making such inventory, shall have come to his possession or knowledge.

*Second.* To manage and dispose of all such property according to law and for the best interests of the ward, and faithfully to perform his trust.

*Third.* To render upon oath as by law required true account of the property of his ward and of his management and disposition thereof.

*Fourth.* At the expiration of his trust to settle his account in the probate court or with the ward or his legal representative, and to pay over and deliver all the property remaining in his hands or due from him on such settlement to the person entitled thereto.

SEC. 1013. Instead of the above bond an executor, if so authorized by the will, or if he be the residuary legatee thereunder, may give a bond to the probate court in a sum and with surety satisfactory to the court, and with condition to pay the funeral charges, debts, and legacies of the testator and such allowance as may be made by the court for the support of the widow and family of the testator. In such case an executor shall not be required to return an inventory, and an executor who is a residuary legatee need not render an account to the probate court.

SEC. 1014. The husband as administrator on the personal estate of his wife, in case she die intestate, instead of the bond required by section 1012 may give bond in a sum and with surety to the satisfaction of the probate court to pay her debts, and need not return an inventory or render an account to the court.

SEC. 1015. An order or request in a will that an executor or guardian shall be exempt from giving bond or surety shall only exempt the executor or guardian from giving surety. The probate court,

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however, may require such executor or guardian at any time to give bond with surety or sureties.

*Effect of Neglect to Give Bond.*

SEC. 1016. An executor, administrator, or guardian required by the provisions of the preceding sections to give bond who for thirty days after his appointment fails to file a bond approved by the court may be adjudged to have declined the trust.

*Defective Bond not to Disqualify.*

SEC. 1017. An executor, administrator, or guardian who has given to the probate court an instrument purporting to be a bond which has been accepted as such by the court having jurisdiction to accept it, shall be qualified as if he had given a proper bond, notwithstanding any defect in such instrument and notwithstanding any error committed in giving or accepting the same; but nothing herein contained shall affect the right of appeal in such cases or the right of the court to require a proper bond at any time. In case an appeal be sustained, the provisions of the preceding section shall not apply, if a new and satisfactory bond be given within thirty days after final decree therein.

*General Provisions.*

SEC. 1018. No bond required to be given to a court of probate shall be accepted until it has been examined and approved by the court or examined by the clerk and found to conform to the order of the court and the approval of the court or clerk entered of record.

SEC. 1019. Joint executors, administrators, and

guardians may give either a joint or several bond, or each may give a separate bond.

SEC. 1020. All bonds required to be given to a probate court shall be made payable to the court, and shall be filed in the office of the probate clerk. In case a bond be lost, a copy of the record of the same shall be admitted in evidence. Such bonds shall be sued in the name of the court.

SEC. 1021. If a bond given to a probate court is insufficient either in amount or security, the court shall require further bond or surety or sureties of the executor, administrator, or guardian, and on his neglect or refusal to give further bond or sureties within the time fixed by the court, the court shall remove such executor, administrator, or guardian without further notice and appoint an administrator or guardian, respectively, to succeed him.

SEC. 1022. A probate court, for cause shown, may cancel the bond of an executor, administrator, or guardian so as to relieve the principal and sureties for any breach thereafter committed and may take and accept a new and sufficient bond in its stead.

SEC. 1023. Upon a bond taken by a probate court, the surety, or his heirs, executors, or administrators, may at any time make written application to the court for relief from further liability thereon, and thereupon the court shall cause reasonable notice of such application to be given to the principal on the bond and to all persons whom the court shall find to be directly interested in the estate for the security of which such bond was given, to appear and be heard upon the application; and if it appears that the petition can be granted without prejudice to the estate, the court may order the principal to give, within such time as it may limit, a new probate bond; and if the order be not complied with, may remove



him and appoint a successor. If the new bond be duly given and approved, the surety on the original bond and his representatives shall not be liable for any breach thereof thereafter committed, nor shall the surety or sureties on the succeeding bond be liable for any default occurring prior to the approval of said new bond; and in any case where the surety upon any bond has become liable on such bond, he shall have liberty to institute any proper suit against his principal for his protection.

SEC. 1024. A surety or any person interested in a probate bond may at any time make written application to said court for an order requiring the principal to exhibit fully before the court the condition of the estate held by him, so that it may be ascertained whether or not the estate is being properly managed; and thereupon the court shall cause reasonable notice of said application to be given to the principal on the bond, and if upon hearing the court shall find that the application is made in good faith, it shall make said order; and if the principal shall refuse to obey the order, or if, upon obeying it, the court shall find that the estate is not being properly managed by him, it shall remove him and appoint a successor.

#### *Remedy Upon Bonds.*

SEC. 1025. Every person interested in a bond given to a probate court shall be entitled to a copy thereof on payment of the fee therefor, and to sue thereon in the name of the court to which the bond is given.

SEC. 1026. The writ, in addition to the usual indorsement of the name of the plaintiff and attorney, if there be one, shall also have written thereon the name or names of the person or persons for whose

benefit the suit is brought, who shall give surety for costs as in other cases, and against whom, if the defendant recover, execution for costs shall issue.

SEC. 1027. If such suit be brought by a creditor of the deceased person, he shall show:

(1) That his claim has been duly filed.

(2) That his claim has not been disallowed by the executor or administrator, or has been established by commissioners or by judgment.

(3) That a decree of unfaithful administration has been entered as provided in the next following section, and if the estate be insolvent, he shall also produce a copy of the order of distribution.

SEC. 1028. If any executor or administrator shall neglect or refuse to raise money out of the estate by collecting debts due or by selling the personal estate, or the real estate, if need be, and has power, or can obtain leave, to sell the same, or shall neglect or refuse to pay over what he has in his hands to the several creditors of the testator or intestate whose claims have been filed and allowed or proved according to law, or shall otherwise fail to perform his duties as such executor or administrator, and, after citation before the probate court, shall fail to show reasonable cause therefor, said court may decree that he is guilty of unfaithful administration; and thereupon an action may be brought upon the bond of such executor or administrator by any such creditor who may have been damnified thereby.

SEC. 1029. If the suit be brought by a distributee for his part of the personal estate, he shall exhibit a copy of the decree of the probate court, ascertaining its amount, and prove that he has made a demand therefor upon the administrator.

SEC. 1030. Upon a hearing in chancery upon the forfeiture of a bond, the court shall examine the

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claims of the several persons whose names are indorsed upon the writ, and judgment shall be rendered for such persons, respectively, for the amount so ascertained to be due to each (but with only one bill of costs, each claimant, however, being allowed fees of witnesses called in his behalf), in form, substantially, that the probate court have execution for the same to the use of the persons in whose favor such judgment shall be rendered.

SEC. 1031. Any person to whose use judgment shall be rendered in the name of the probate court as aforesaid may sue out execution thereon and have the same levied according to law, and shall be deemed to be the creditor to every intent and purpose whatsoever.

SEC. 1032. During the pendency of such suit the court may, on motion, permit any person interested to become a party thereto by indorsing his name on the writ, and by giving surety for costs, if required; and thereupon such person shall have the same rights and be subject to the same liabilities as if his name had been indorsed upon the writ before the service thereof.

SEC. 1033. After judgment for the penalty of such bond, any person interested, upon giving surety for costs as in other cases, may sue out a writ of scire facias on such judgment; and upon proof of his claim as aforesaid may have judgment as aforesaid that an execution issue to his use.

SEC. 1034. No suit or judgment on such bond shall abate or bar any suit thereon against any obligor against whom no suit has been commenced or judgment rendered.

SEC. 1035. A judgment in favor of the obligor shall in no case bar any suit on such bond for the



benefit of a different claimant or of the same claimant for a different claim.

SEC. 1036. A suit may also be brought on such bond for the benefit of all concerned in the estate at the instance of any party interested, who shall give surety for costs to the defendant on the writ, and satisfactory bond to the probate court securing such court against expenses and costs; in which case, indorsement that the suit is brought for the benefit of all interested in the estate shall be made upon the writ.

SEC. 1037. Suit on a probate bond, except the bond authorized by sections 1013 and 1014, may be brought whenever it shall appear that the administrator or the executor has received personal estate of the testator or intestate and has not, after being cited by the court so to do, exhibited upon oath a particular inventory thereof, or has refused or neglected to account upon oath for the property of the testator or intestate by him received.

SEC. 1038. In the cases mentioned in the preceding section judgment shall be rendered against the executor or administrator so in default for the full penalty of such bond; and, upon a hearing in chancery upon such forfeiture, the court shall award execution against such executor or administrator in favor of the probate court for the full value of the personal estate of the deceased proved to have come to his hands, or, in case he has once accounted, remaining or being in his hands at and since the last accounting, without any discount, abatement, or allowance for charges and expenses of administration.

SEC. 1039. In case of such recovery, the amount so recovered shall be deemed to be the property of the testator or intestate, and, after paying therefrom all expenses of recovery, shall be administered by a

new administrator to be appointed for that purpose.

SEC. 1040. Whenever suits are brought upon separate bonds of joint executors, administrators, or guardians, they may be consolidated. If judgment for the penal sum is obtained upon more than one of such bonds, upon the chancerization thereof, one execution shall issue for the amount found due for defaults for which two or more principals on the bonds are found liable, and separate executions shall issue for the amount found due for all individual defaults of either of the principals.

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## CHAPTER 50.

### OF GUARDIAN AND WARD.

#### *Jurisdiction.*

SECTION 1041. The probate court in each town, if occasion shall require, shall have power to appoint or approve guardians of the persons and estates or of the person or estate of minors and others who shall reside or have a legal settlement in the town, and of the estate within this state of minors or others who reside without this state and have estate within said town.

#### *Minors.*

SEC. 1042. A probate court may appoint a guardian of a minor under the age of fourteen years.

SEC. 1043. A minor of the age of fourteen years or over may nominate his own guardian, who, if approved by the probate court, shall be appointed accordingly.

SEC. 1044. If a minor of the age of fourteen years shall neglect to choose a guardian when cited by the court so to do, or shall choose one whom the court does not approve or one who shall neglect to give bond as required by the court or by law, the court may appoint a guardian in the same manner as if the minor were under the age of fourteen years.

SEC. 1045. Every person authorized by law to make a will may appoint by will, subject to the approval of the probate court, a guardian or guardians for his minor children, whether born at the time of making the will or afterwards, to continue during the minority of such children or for a less time: *Provided*, that, in the case of husband and wife, the survivor, being otherwise qualified, shall be guardian of their children.

SEC. 1046. A non-resident shall not be appointed or approved as guardian of a minor resident in this state, but this provision shall not apply to a testamentary guardian.

*Persons of Unsound Mind, Drunkards, and Others.*

SEC. 1047. A probate court may appoint a guardian of the person and estate of any idiot, lunatic, or person of unsound mind, of any habitual drunkard, or of any person who from excessive drinking, gaming, idleness, or debauchery of any kind, or from want of discretion in managing his estate, so spends, wastes, or lessens his estate, or is likely so to do, that he may bring himself or his family to want or suffering or may render himself or family chargeable upon the town for support. Such guardian may be appointed upon the petition of a relative or friend of such person or of the overseer of the poor of the town in which such person resides or has a legal settlement. Upon

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the petition being filed, the court shall order notice by publication.

SEC. 1048. The probate court for cause shown after such notice as it shall direct, pending any application for the appointment of a guardian, or pending any appeal from a decree appointing a guardian, may, if it shall deem proper, appoint a temporary guardian of the respondent.

SEC. 1049. A temporary guardian shall hold his office until the question of appointment of a guardian be decided, or until he shall be discharged by the court of probate; and from the appointment of such temporary guardian there shall be no appeal.

SEC. 1050. Every temporary guardian appointed as provided in the preceding section shall have the care and custody of the person of his ward, and the management of his estate, until he shall be legally discharged; and he shall give bond to the court of probate in like manner, and with like condition, as is required of guardians.

SEC. 1051. The petitioner may cause a copy of the petition, with the order of notice thereon, to be recorded in the records of land evidence for the town or towns in which any land of the respondent is located. If a guardian is appointed upon the petition, all contracts relative to, and sales and conveyances of, land made by the respondent after such record, and all other contracts, except for necessities, and all gifts, sales, or transfers of personal property, made by the respondent after the first publication of notice of the petition and before the termination of the guardianship, shall be void.

SEC. 1052. If a guardian is appointed for any person liable to be put under guardianship under the provisions of section 1047, the court shall make an allowance, to be paid by the guardian, for all reason-

able expenses incurred in prosecuting or in defending against the petition.

SEC. 1053. The guardian of an habitual drunkard, with the advice and approval of the court of probate in the town where his ward resides, may commit his ward to a curative hospital, either within or without this state, until he is cured, but not to exceed one year at any one time; and the guardian shall file with the court of probate the name and location of the hospital to which his ward is to be committed. From such advice and approval no appeal shall lie.

SEC. 1054. The estate of the ward shall be chargeable with the expenses properly incident to his committal and custody, under the provisions of the preceding section.

#### *Non-Residents.*

SEC. 1055. The probate court of any town may appoint or approve a guardian of the estate of a person who resides without this state and has estate in the town and has no guardian in this state and who if a resident would be liable to be put under guardianship under the provisions of this chapter.

#### *Service of Notice.*

SEC. 1056. No person shall be appointed guardian of the person of another, unless notice of the application for such appointment has been served upon the intended ward in person at least fourteen days prior to any action on said application, except as provided in section 772: *Provided*, if the intended ward is a minor under the age of twelve years, in lieu of such personal service, notice may be served upon such of the next of kin of said ward, or other interested person or friend, as the court may direct.

*Removal and Resignation.*

SEC. 1057. The court may remove any guardian appointed or approved by it who, by reason of absence, sickness, insanity, or other cause, shall become incapable of executing his trust, or who shall neglect or refuse to do the duties thereof, or who shall waste the estate of his ward, or who shall neglect or refuse to give a bond or sureties on his bond when ordered by the court. The court shall accept the resignation of any guardian after he has accounted with the court for the estate of his ward in his hands.

*Notice, Inventory, Presentation of Claims, and Actions.*

SEC. 1058. A guardian shall give immediate notice of his appointment by publishing a notice at least once each week for three successive weeks in such newspaper as the court may direct, and in the same notice shall notify creditors of his ward to file their claims in the office of the probate clerk within six months from the date of the first publication of said notice.

SEC. 1059. Within thirty days after his appointment, or such longer time as may be allowed by the probate court, a guardian shall return to the court of probate, under oath, an inventory and appraisement of all the real and personal estate of his ward, to be made by three suitable, disinterested persons appointed by the court, who shall be sworn to the faithful discharge of their trust.

SEC. 1060. Creditors of a ward shall file statements of their claims in the office of the probate clerk. Such claims filed within said six months, if allowed or proved, shall be preferred in payment over



all claims subsequently filed. Claims filed after said six months shall be payable only out of the surplus property remaining in the hands of the guardian after paying claims filed within said time and all expenses and all allowances made by the court.

SEC. 1061. All legal demands against the ward, although due at a future day, may be filed and be payable with other claims, deducting interest for the anticipated payment.

SEC. 1062. Every creditor shall file his post-office address in the office of the probate clerk, and, if requested, an affidavit in support of his claim, in the same manner as is provided in the case of claims against estates of deceased persons.

SEC. 1063. Within thirty days after the expiration of said six months the guardian shall file in the office of the probate clerk a statement disallowing such of the claims filed as he intends to contest, and shall give notice in writing, either personally or by registered mail, to claimants whose claims are disallowed.

SEC. 1064. No action shall be brought or prosecuted against any person under guardianship within seven months after the first publication of said notice. A creditor shall be entitled to his whole claim if the estate is solvent, or a dividend if the estate should prove insolvent, upon such sum as he may be allowed or recover. The party bringing suit, in addition to the service of the original writ, shall cause a true copy thereof to be served upon the guardian.

SEC. 1065. If a guardian shall neglect to return a true inventory of his ward's estate or shall neglect to apply the real and personal estate of his ward to the payment of his debts, it shall be deemed a breach of his bond, and he and his sureties shall be liable to an action thereon by any creditor or person interested,

and judgment shall be entered in such action and execution shall issue and recovery shall be had in like manner as on administration bonds.

SEC. 1066. A guardian shall return to the court of probate, in every year, his account, in the same manner as executors and administrators are by law required to do, and upon neglect shall be cited by the court so to do; and upon failure to comply with such citation for thirty days, without sufficient excuse, shall be accountable for the full value of the estate and property of his ward, and shall have no compensation; but the court may upon the application of the guardian excuse him from rendering an account in any year if satisfied that it is not necessary or expedient that it should be rendered.

SEC. 1067. Courts of probate are authorized to allow in the settlement of the accounts of any guardian such reasonable sums as the guardian shall have paid for the suitable support of his ward and family, and also a reasonable compensation to the guardian for his services.

#### *Powers and Duties of Guardians.*

SEC. 1068. Guardians of minors shall take special charge of their education, and guardians appointed under the provisions of section 1047 shall take the like charge of the education of the children of their wards, unless guardians shall be appointed for such children; and the estates of such wards, and also the estates of minors, shall be liable for the education of such children and minors aforesaid in the same manner as for their support and maintenance, and may be sold or mortgaged for that purpose.

SEC. 1069. Every guardian of the person shall take suitable charge of the person over whom he

shall be appointed guardian, and every guardian of the estate of another shall manage the same frugally and without waste, and shall apply the income and profits thereof, or so much thereof as may be necessary and proper, to the support and maintenance of the ward and his household or family.

SEC. 1070. A guardian shall collect all the personal property of his ward and sell and apply the same or so much thereof as shall be necessary, at such time and in such manner as the court of probate shall direct, to the payment of all the debts of his ward; but if such property shall be insufficient to pay such debts in full, then he shall pay the same ratably; except that debts due to the United States, debts due to this state, and state and town taxes shall be first paid, and in the order in which they are named. Every claim against the ward, allowed by the guardian or found due by judgment, shall be a lien upon the real estate of such ward during his minority and for one year thereafter.

SEC. 1071. A guardian may make application for the sale of the personal estate of his ward, or any of it, for better or more advantageous investment, or for the support of his ward and the ward's family, or for any other purpose beneficial to the ward, and for incidental charges. The application may be granted by the court of probate without notice. The court shall prescribe the manner in which the property shall be advertised and sold, and, in case of private sale, the minimum price. From the order granting such application there shall be no appeal.

SEC. 1072. Whenever a guardian of the estate only is appointed, the property of the minor in the hands of the guardian shall not be chargeable with any debt against such minor contracted during the life of his father; but in case any part of the property



of such minor is deemed necessary for his support or education, the same shall be paid out by the guardian for that purpose, under the advice and direction of the court of probate.

SEC. 1073. Guardians may be authorized to invest any money in their hands, not needed for the payment of debts or for the support or education of their wards, in notes secured by mortgage upon unincumbered improved real estate situated in this state, or in the bonds or other indebtedness of the United States or of this state, or in the bonds or notes of any city or town in this state, or to make deposits thereof in any savings bank or trust company in this state approved by the probate court, as he shall deem best for the interest of his ward; and may also, under direction of the court of probate, invest any such money in real estate or bank stocks in this state or in such other safe income producing securities as the probate court may approve.

SEC. 1074. Whenever the ward is the owner of stock in any corporation, the guardian shall have and exercise in behalf of his ward all the rights and powers of voting, either personally or by proxy, and the right of examination of books, incident to such ownership.

*Non-Resident Guardians, etc.*

28 R. 1. 144. SEC. 1075. In all cases where a guardian and his ward are both non-residents of this state and the ward is entitled to property of any description in this state, the guardian, on producing satisfactory proof to the probate court of the town where any such property is situated, by certificates duly authenticated according to the act of congress in such cases, that he has given bond and security in the state in which he and his ward reside in double the value of

the property of the ward, and it is found that a removal of the property will not prejudice the interest of any other person therein, then the guardian may demand, sue for, recover, and remove any such property to the place of residence of himself or ward.

SEC. 1076. Whenever such non-resident guardian shall produce an exemplification, under the seal, if any there be, of the proper court in the state of his residence, containing all the entries in relation to his appointment and in relation to his having given bond, duly authenticated as aforesaid, the probate court of the proper town in this state may cause suitable orders to be made, discharging any resident guardian, executor, or administrator and authorizing the delivering and passing over of such property, and also requiring receipts to be passed and filed if deemed advisable: *Provided*, that in all cases thirty days' notice shall be given to the resident guardian, executor, or administrator of the intended application for the order of removal, and the court may reject the application and refuse such order whenever it is satisfied it is for the interest of the ward or of any other person having a right therein that such removal shall not take place.

*Conservators of the Property of Aged Persons.*

SEC. 1077. If a person by reason of advanced age or mental weakness is unable to properly care for his property, the probate court of the town in which he resides, upon his petition or the petition of one or more of his relatives or friends, may appoint a conservator of his property. Upon the filing of such petition, the court shall appoint a time and place for a hearing, and shall cause at least fourteen days' notice thereof to be given to the person for whom a

conservator is to be appointed if he is not the petitioner. If at the hearing it appears that such person is incapable of properly caring for his property, a conservator shall be appointed, who shall have the charge and management of the property of such person subject to the direction of the court. Such conservator may be discharged by the probate court upon the application of the ward, or otherwise, when it appears that the conservatorship is no longer necessary. After the filing of such petition such person shall be under the same disability to contract, as a person, for whom an application for guardianship has been made, is under, by virtue of the provisions of section 1051.

SEC. 1078. Such conservator shall give bond and file inventory as is required of guardians of estates. All provisions of law relative to accounting and to the management, investment, sale, lease, or mortgage by guardians of estates shall apply to the accounting and to the management, investment, sale, lease, or mortgage of estates by conservators.

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## TITLE VI.

### OF FEES AND COSTS.

#### CHAPTER 51.

##### IN COURTS OF PROBATE.

Courts of probate shall be entitled to receive for every decree on petition for leave to adopt child, the sum of three dollars.

In all cases where the inventory shall not exceed the sum of three thousand dollars, the fees of courts of probate shall be as follows:



For the probate of every will, granting letters testamentary thereon, and allowing bond of executor to return an inventory, or to pay debts and legacies..... \$1 00

For receiving and allowing an inventory and engaging the executor, administrator, or guardian exhibiting the same, when the amount thereof shall be less than one hundred dollars.. 25

If amounting to one hundred dollars and not exceeding five hundred dollars..... 1 00

If amounting to five hundred dollars and not exceeding one thousand dollars..... 1 00

If over one thousand dollars, one-tenth of one per centum.

In addition, the same per centum on the amount of the personal property of the testator as would be payable if an inventory had been returned, such amount to be ascertained by the examination of the executor under oath.

For filing every will proved out of the state. 1 00

For granting letters of administration on an intestate estate and allowing bond of the administrator..... 1 00

For appointing and engaging appraisers.... 25

For allowing an account of an executor, administrator or guardian, and engaging the person exhibiting the same..... 1 00

For granting letters of guardianship over a minor or other person..... 50

For granting a warrant for dividing real estate or assigning dower, and engaging the persons appointed therein..... 1 00

For receiving and allowing a division of real estate or assignment of dower..... 50

For every decree on petition for sale of real estate, giving instructions and approving

bond, or for refusing to grant such decree after hearing..... \$2 00

For every decree, judgment, or order other than as above ..... 25

In all cases where the inventory shall exceed the sum of three thousand dollars, the fees of courts of probate shall be as follows:

For the probate of every will, granting letters testamentary thereon, and allowing bond of executor to return an inventory, or to pay debts and legacies ..... \$2 00

For filing every will proved out of the state.. 2 00

For granting letters of administration on an intestate estate, and allowing bond of the administrator..... 2 00

For appointing and engaging appraisers .... 25

For allowing an account of an executor or administrator, and engaging the person exhibiting the same..... 2 00

For allowing the account of a guardian and engaging the person exhibiting the same.... 1 00

For granting letters of guardianship over a minor or other person ..... 1 00

For granting a warrant for dividing real estate or assigning dower, and engaging the person appointed therein ..... 2 00

For receiving and allowing a division of real estate or assignment of dower..... 1 00

For every decree on petition for sale of real estate, giving instructions and approving bond, or for refusing to grant such decree after hearing..... 4 00

For every decree, judgment, or order other than as above..... 50

For receiving and allowing an inventory and engaging the executor, administrator, or

guardian exhibiting the same, one-tenth of one per centum, not exceeding in any case one hundred dollars.

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CHAPTER 52.

Amended  
Cap. 408  
Jan. '09.

OF AMENDMENTS AND REPEALS.

SECTION 1082. Section 11 of Chapter 16 of the General Laws is hereby amended so as to read as follows:

“SEC. 11. He shall distribute the numbers or volumes of the Rhode Island Reports as the same shall be published, as follows: Three copies to the librarian of congress, for the use of the United States; one copy to the secretary of each of the states and territories of the United States, for the use of the states and territories; one copy to each of the justices of the supreme and superior courts; one copy to each of said justices, for use in his office, to be by him transmitted to his successor in office; one copy to the justice of the supreme court of the United States assigned to the first circuit; one copy to each of the circuit judges of the United States for the first circuit; one copy to the district judge of the United States for the district of Rhode Island, said justices and judges, as newly appointed in succession, to receive all back numbers and volumes of reports so far as he can supply them; three copies to each of the clerks of the courts of this state and of the courts of the United States held in this state; one copy to each of the district courts; one copy to the governor; one copy to the lieutenant-governor; one copy to the attorney-general; one copy to the assistant attorney-general; one copy to the speaker of the house of

Amended  
Cap. 378  
Jan. '09.



representatives; one copy to the railroad commissioner; one copy to each of the sheriffs; one copy to the United States marshal for the district of Rhode Island; one copy to each of the town clerks; said copies to said clerks of courts, sheriffs, marshal, and town clerks to be kept as appendages to their said offices; ten copies to be kept in the state library in the state house in Providence; ten copies to the state law library; one copy to the library of Brown University; one copy to the Redwood Library; one copy to the Providence Athenæum; one copy to the Rhode Island Historical Society; one copy to the Providence Public Library; one copy to the People's Library in Newport; and one copy to the Free Public Library of Pawtucket. He shall reserve such number of volumes for the use of the state as in his opinion is necessary, and shall, at his discretion, sell or cause to be sold the remaining volumes of the edition, accounting to the general treasurer for the proceeds of such sales."

SEC. 1083. Section 1 of Chapter 17 of the General Laws is hereby amended so as to read as follows:

"SECTION 1. The attorney-general shall give his attendance at the general assembly, and at the supreme and superior courts, for the service thereof; and shall give unto the said courts due advice and information concerning any criminal matters, breaches of the peace, or wrong done to the state or any of the citizens thereof, that shall come to his knowledge."

SEC. 1084. Section 2 of Chapter 17 of the General Laws is hereby amended so as to read as follows:

"SEC. 2. He shall draw and present all informations and indictments, or other legal or equitable process, against any offenders, as by law required, and diligently, by a due course of law or equity,

prosecute the same to final judgment and execution.”

SEC. 1085. Section 3 of Chapter 22 of the General Laws is hereby amended so as to read as follows:

“SEC. 3. The original acts, resolutions, and other proceedings of the general assembly shall be deposited and safely kept in the office of the secretary of state, and shall not be removed therefrom except upon the order of the general assembly, or upon process issued by the supreme or superior court or by a justice of either of said courts.”

SEC. 1086. Section 6 of Chapter 24 of the General Laws is hereby amended so as to read as follows:

“SEC. 6. The officers hereinafter named shall be elected annually by the general assembly in grand committee at its January session, beginning in the year A. D. 1906, namely: An inspector of beef and pork, an inspector of lime, an inspector of scythe-stones, an inspector of cables, a clerk of the supreme court, a clerk and an assistant clerk of the superior court for the counties of Providence and Bristol, and a clerk for the superior court for each of the counties of Newport, Washington, and Kent. The persons so elected shall hold their respective offices until the first day of February in the year next after their election and until their successors are elected and qualified: Any vacancy occurring in the offices of state auditor, inspector of beef and pork, inspector of lime, inspector of scythe-stones, or inspector of cables shall be filled by the general assembly in grand committee for the remainder of the term: *Provided*, that if such vacancy occurs when the general assembly is not in session, the governor shall appoint some person to fill the same until it is so filled by the general assembly.”

SEC. 1087. Section 24 of Chapter 26 of the General Laws is hereby amended so as to read as follows:

“SEC. 24. Wherever in any act of incorporation or special statute, public or private, it is provided that any appeal may be taken, or any claim for jury trial may be had, or any other act done or right claimed, or proceeding had, in the supreme court, court of common pleas, or special court of common pleas, appellate division of the supreme court, or common pleas division of the supreme court in any county, the same may be had, done, claimed, or made to or in the superior court for the same county, with the same effect and in like manner as provided in such act or statute, and if the method of procedure is not so provided, then in such manner as the court may direct: *Provided*, that if such appeal or matter so brought before the superior court shall, in the opinion of such court, more properly fall within the jurisdiction of the supreme court, the superior court may certify the same to the supreme court.”

SEC. 1088. Section 6 of Chapter 28 of the General Laws is hereby amended so as to read as follows:

“SEC. 6. The supreme court shall have the custody of the law library, and shall be responsible for the care and keeping thereof, and shall permit no book to be taken therefrom, except for the use of the general assembly, or the justices of the supreme or superior courts, or upon the order of some one of said justices, or upon the order of some one of the standing masters in chancery; but any person may use the books within the library rooms. The supreme court shall appoint a librarian, who shall cause the library to be kept open daily, Sundays and holidays excepted, from nine o'clock in the forenoon until five o'clock in the afternoon, except during vacation of the courts, and on Saturdays, when it may be closed at three o'clock in the afternoon.”



SEC. 1089. Section 7 of Chapter 28 of the General Laws is hereby amended so as to read as follows:

"SEC. 7. The sum of four thousand dollars may be annually expended, under the direction of the supreme court, for the purchase of books and other literature, and binding the same, and for clerk hire and incidental expenses for the law library."

SEC. 1090. Section 7 of Chapter 34 of the General Laws is hereby amended so as to read as follows:

"SEC. 7. Every account allowed by the supreme court or by the superior court, and every certificate allowed for any attendance in such court in cases provided by law, except the attendance of officers in the county of Providence, shall within twenty days after the close of any session thereof in counties other than the county of Providence, and within twenty days after the fifteenth day of February, May, August, and November in each year in the county of Providence, and every account or bill of costs, with the items thereof, allowed by any district court or by the supreme court, or by the superior court at Providence for attendance of officers, shall, at the end of every month, be transmitted by the clerks of such courts, respectively, or the justice of any district court, if there be no clerk thereof, to the auditor; and such account, certificate, or bill of costs shall state the name of the person to whom such allowances have been made, the amount thereof, and for what the same has been allowed."

SEC. 1091. Section 15 of Chapter 34 of the General Laws is hereby amended so as to read as follows:

"SEC. 15. The clerk of the supreme court and the clerks of the superior court shall respectively, within twenty days after the fifteenth day of February, May, August, and November, in each year in the county of Providence, render a true and par-

ticular account to the state auditor of all fines, penalties, and forfeitures imposed or declared forfeit, and of all recognizances defaulted, and of all judgments rendered in favor of the state, or of any officer for the benefit of the state, during such preceding quarter; also copies of all bills of costs, taxed and actually paid, in whole or in part, in criminal prosecutions, or in any other case in which the state or the general treasurer may be a party, also copies of all allowances for extraordinary and incidental services and expenses; and also of all moneys belonging to the state, received by him from any source whatever; which account shall be accompanied by a certificate from one of the justices of the respective courts verifying the same. Said account shall state the number of cases tried or opened to the jury, and the amount of fines imposed for non-attendance of jurors; and clerks of district courts shall, as often as once in three months, render a like account to the state auditor."

SEC. 1092. Section 16 of Chapter 34 of the General Laws is hereby amended so as to read as follows:

"SEC. 16. The state auditor, at every session of the superior court, shall provide the sheriff or deputy sheriff, who shall be selected by the attorney-general to summon witnesses in criminal cases before such court in behalf of the state, with suitable books, for the certificates of the travel and attendance of witnesses summoned and attending such court in behalf of the state, and for the certificates of the fees of officers for summoning the same, and for serving other criminal process in behalf of the state at such session."

SEC. 1093. Section 19 of Chapter 34 of the General laws is hereby amended so as to read as follows:

"SEC. 19. At or before the summoning-in of any

grand jury, in any county, and from time to time during any session thereof, such sheriff or deputy sheriff may estimate the amount of money requisite for the payment of such witnesses, and the officers' fees for summoning the same, and for service of other criminal process in behalf of the state at such session, and until a grand jury shall again be summoned in, and, on the approval of such estimate by the attorney-general, the state auditor may, at any time not more than three days before such summoning-in of the grand jury, draw his order on the general treasurer in favor of such sheriff or deputy sheriff, for the amount of such estimated fees, and the general treasurer shall pay such order and charge the same to the account of the judicial expenses of the state."

SEC. 1094. Section 21 of Chapter 34 of the General Laws is hereby amended so as to read as follows:

"SEC. 21. The state auditor shall provide the clerk of every district court, or if there be no clerk then the justice thereof, with proper blanks for certificates of fees of witnesses and officers due from the state; and such clerk or justice, as the case may be, shall obtain like certificates of the fees of witnesses and officers before such court in behalf of the state, on such blanks, and, with the approval of the justice of such court, made on examination of the facts immediately after the trial of every case, shall forthwith pay, out of any public moneys in his hands, such fees, and take proper receipts therefor, under the proper title of the case, on such blanks, and obtain the signature of the justice approving the payments, in each case, upon such blanks."

SEC. 1095. Section 22 of Chapter 34 of the General Laws is hereby amended so as to read as follows:

"SEC. 22. Every such clerk or justice, as the case



may be, shall keep a true copy, by him attested, of all such certificates and receipts containing evidence of such disbursements, in his office, and shall return each original certificate and receipt to the state auditor, accompanied by his certificate that he believes the same to be true and just in every particular, whenever it shall become his duty according to law to settle his account with that officer; and shall include his account of such disbursements in the account which he shall then settle."

SEC. 1096. Section 35 of Chapter 34 of the General Laws is hereby amended so as to read as follows:

"SEC. 35. He shall furnish the clerk of the supreme court and the several clerks of the superior court, and of the district courts, or if a district court have no clerk then the justice thereof, and other officers required by this chapter to account to him, with such forms of accounts and returns as he shall think proper and convenient; and the said clerks, justices, and other officers shall make return to the auditor according to law, agreeably to such forms by him prescribed."

SEC. 1097. Chapter 40 of the General Laws is hereby amended by adding thereto the following sections, viz.:

"SEC. 40. Any person aggrieved by any order or decree of a town council may appeal therefrom to the superior court for the county in which such town is located, within forty days next after such order or decree shall have been made, unless other provision be made.

"SEC. 41. Such appeal shall be claimed within said forty days by the filing with the town or city clerk of a written claim of appeal and the payment to him at that time of the lawful fees for a copy of the record of the proceeding appealed from. Within

fifty days from the date of the determination appealed from the appellant shall file a copy of the record of the proceeding appealed from; together with a specific statement of his reasons of appeal, in the clerk's office of the superior court for the county, to which reasons the appellant shall be restricted, unless for cause shown, and with or without terms, the superior court allow amendments thereof and additions thereto. Notice of such appeal shall be given in the same manner, and the assignment day thereof shall be the same, as is provided for probate appeals, and any justice of the superior court may, with or without terms, extend the time for filing a copy of the record and for making service or further service of the notice of said appeal."

SEC. 1098. Section 1 of Chapter 41 of the General Laws is hereby amended so as to read as follows:

"SECTION 1. Every town clerk shall, within thirty days of the time of being sworn into office, give bond to the town treasurer of the town, with sufficient surety, in such sum as the town council of such town shall prescribe, conditioned for the faithful performance of the duties of his office."

SEC. 1099. Section 15 of Chapter 46 of the General Laws is hereby amended so as to read as follows:

"SEC. 15. Any person aggrieved thereby may, within six months after the time appointed for the payment of such tax, petition the superior court for the county, for relief from such assessment; and the clerk shall thereupon issue a citation substantially in the following form:

"THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

" SC. *To the sheriffs of our several counties,*  
(SEAL) *or to their deputies, Greeting:*

28 R. 1.5.75

“We command you to summon the assessors of taxes of the town of \_\_\_\_\_ : to wit, \_\_\_\_\_ of \_\_\_\_\_ (if to be found in your precinct) to answer the complaint of \_\_\_\_\_ of \_\_\_\_\_ on the return day hereof (said return-day being the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_) in the SUPERIOR COURT to be holden at the county court-house in \_\_\_\_\_ as by petition filed in court is fully set forth; and to show cause why said petition should not be granted.

“Hereof fail not, and make true return of this writ with your doings thereon.

“Witness, the seal of our superior court, at this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, Clerk.”

SEC. 1100. Section 16 of Chapter 46 of the General Laws is hereby amended so as to read as follows:

“SEC. 16. Said citation shall be made returnable and shall be served in like manner as a writ of summons, and said petition shall be subject to all provisions of law as to time for pleading, assignment day, and all other incidents applicable to an action at law originally commenced in the superior court; and said court shall have exclusive original jurisdiction of all such petitions, notwithstanding that the amount involved shall not exceed five hundred dollars.”

SEC. 1101. Section 10 of Chapter 68 of the General Laws is hereby amended so as to read as follows:

“SEC. 10. Any person who is aggrieved by any order of said inspectors may appeal therefrom to the district court of the judicial district in which the building which is the subject of the order is situated, by filing his reasons of appeal within seven days after the date of the order appealed from, and by giving notice thereof to the inspector who made the order within forty-eight hours after filing said reasons of appeal; and said court shall proceed to hear the said



appeal at its first session after such notice shall have been given, and shall approve, modify, or revoke said order as it may deem right, subject, however, to the right of a jury trial after decision as prescribed in section 272 of the court and practice act. And any such decision of said court from which a jury trial is not claimed shall be final and conclusive."

SEC. 1102. Section 11 of Chapter 71 of the General Laws is hereby amended so as to read as follows:

"SEC. 11. If any person through whose land a highway or driftway is laid shall be aggrieved by the doings of the committee or town council, he, his heir or devisee, may appeal to the superior court in accordance with the provisions of law with reference to appeals from town councils."

SEC. 1103. Section 12 of Chapter 71 of the General Laws is hereby amended so as to read as follows:

"SEC. 12. Such appeal shall be tried in the same manner as other civil causes pending in the superior court, and shall be subject to all provisions of law applicable to such causes."

SEC. 1104. Section 31 of Chapter 71 of the General Laws is hereby amended so as to read as follows:

"SEC. 31. Every appeal taken from any order and decree of the town council under the provisions of this title shall be taken and proceeded with according to the provisions of law with reference to appeals from town councils, except as provided in chapter 12 of the court and practice act where an appeal survives."

SEC. 1105. Section 33 of Chapter 72 of the General Laws is hereby amended so as to read as follows:

"SEC. 33. Every person having been notified as aforesaid, and having objected in writing to the action of the town council, on or before the day specified in said notice, who shall be aggrieved by any

appraisal of damages made by any town council under the provisions of the preceding section, or who shall be aggrieved by the assessment of any curbstome tax ordered as is hereinbefore provided, may appeal therefrom, according to the provisions of law with reference to appeals from town councils."

SEC. 1106. Section 4 of Chapter 76 of the General Laws is hereby amended so as to read as follows:

"SEC. 4. If either of the parties interested shall be aggrieved by the doings or orders of the town council, he, his heir or devisee, may appeal therefrom, according to the provisions of law with reference to appeals from town councils."

SEC. 1107. Section 5 of Chapter 77 of the General Laws is hereby amended so as to read as follows:

"SEC. 5. The use and enjoyment of all rights and franchises granted under the provisions of this chapter shall be subject to such reasonable rules and regulations and orders, controlling the extent and quality of construction and service to be maintained by the corporation to which such rights are granted, and prescribing the location and arrangement of its tracks, poles, wires, or conduits, and their appurtenances, as are, or may be from time to time, enacted by the town or city councils. In case any such regulation or enactment shall seem to any such corporation to be unreasonable, such corporation, within thirty days after the same has been passed, may file its petition in equity in the superior court, praying for a decision of the question whether such regulation or order is or is not reasonable in the premises; and thereupon the said court, after notice to the city or town, shall proceed to hear and determine the matter according to the course of equity."

SEC. 1108. Section 18 of Chapter 79 of the General Laws is hereby amended so as to read as follows:

“SEC. 18. Whenever any pauper shall not be suitably cared for by the town to which he is chargeable, any person, upon first issuing five days’ notice to any of the commissioners or overseers of the poor of the town of the situation of such pauper, and on continued neglect of the town, may complain in writing to the superior court, setting forth as nearly as may be the nature of the grievance complained of.”

SEC. 1109. Section 19 of Chapter 79 of the General Laws is hereby amended so as to read as follows:

“SEC. 19. The superior court may, after ordering notice to the town of the pendency of such complaint, appoint a commission of not exceeding three persons, who shall visit the pauper or paupers concerning whom the complaint is made and, upon hearing the allegations and evidence of the parties, report to said court, as soon as may be, whether or not said complaint is well founded.”

SEC. 1110. Section 16 of Chapter 80 of the General Laws is hereby amended so as to read as follows:

“SEC. 16. If the overseer of the poor of the town to which such poor person shall be removed as aforesaid shall think his town aggrieved by the determination and order of the town council for the removal of such person, he may in ~~ha~~half of his town appeal therefrom to the superior court for the county in which the town from which such poor person was removed is situated, according to the provisions of law with reference to appeals from town councils, within forty days after the delivery to him of such poor person and the leaving with him of an attested copy of such order.”

SEC. 1111. Section 4 of Chapter 81 of the General Laws is hereby amended so as to read as follows:

“SEC. 4. When the accused shall appear before



said district court, he may plead "not guilty" and waive an examination, and in that case shall be required by said court to recognize, with sufficient surety or sureties, in such sum as said court shall direct, to appear at the then session of the superior court, or at the session thereof then next to be holden for the county in which said district court is holden, unless said child shall not have been born, in which case he shall be recognized to appear at the then session of the superior court, or at any subsequent session thereof, next after the birth of said child, there to answer said complaint and abide the order of said court thereon, and to file in said court, on or before a day certain, a certified copy of said complaint and the proceedings thereon in said district court, and the trial of said complaint in said superior court shall proceed in the same manner as if said respondent had appealed from said district court to said superior court; and if at any time said respondent shall have omitted to file in said superior court a copy of said complaint and proceedings, said superior court shall require the justice or clerk of said district court to certify to said superior court a true copy of said complaint and the proceedings thereon in said district court, and the trial of said complaint in said superior court in such case shall proceed in the same manner as if said respondent had appealed from the decision of said district court to said superior court. If said accused shall plead "guilty" or "nolo contendere" before said district court, said district court shall adjudge him to be the putative father of said child and shall order him to pay to said overseer of the poor, by instalments or otherwise, such sum as shall in the judgment of said court be necessary to defray the expenses of the lying-in of such woman and the sup-

port of said child, and of the other expenses of said town in connection with said complaint and the costs of said complaint. If said accused shall plead "not guilty" and shall demand an examination before said district court, said examination shall be had; and if the accused person shall be adjudged to be the putative father of said child, the like order shall be made as if he had pleaded "guilty" or "nolo contendere" before said court; and whenever payment shall be ordered by said district court to be made by instalments, the court may also order security to be given to said overseer of the poor for the payment of said instalments. From all such orders of said district court there shall be an appeal to the superior court for the county in which said district court is holden, and said respondent shall be required to recognize, with surety or sureties, in such sum as said district court shall direct, to prosecute his appeal with effect, file a copy of said case on or before a day certain, then to be named, and abide and perform the order of said superior court thereon."

SEC. 1112. Section 19 of Chapter 82 of the General Laws is hereby amended so as to read as follows:

"SEC. 19. Nothing in this chapter shall be so construed as to impair or abridge the right of any person to the writ of habeas corpus; and upon any application for such writ, it shall be the duty of the court to inquire and determine as to the sanity or insanity or the necessity of restraint of the person confined, at the time such application was made. If it shall appear to the court necessary and proper, it may in its discretion direct an issue or issues touching the sanity or insanity or the necessity for the restraint of the person so confined, to be framed and submitted to a jury in the superior court. The jurors may be those in attendance on the court, if in

session at the time of such hearing, or may be summoned for the special purpose on writ of venire facias issued upon the order of the court. If it appears upon the verdict of the jury, or if it is the opinion of the court, if the issue is not submitted to a jury, that the person so confined is not insane, or that he is not dangerous to himself or others and ought not longer to be so confined, he shall be discharged from such confinement."

SEC. 1113. Section 24 of Chapter 82 of the General Laws is hereby amended so as to read as follows:

"SEC. 24. On petition of the board of state charities and corrections, setting forth that any person convicted of crime and imprisoned for the same in the state prison or in the Providence county jail, or of the clerk of the superior court for any of the other counties of the state, that any person so convicted and imprisoned in the jail of his county is insane, idiotic, or in such a state of impairment of body or mind, or both, as tends directly to insanity, idiocy, or dementia, or to a permanent incapacity for mental or physical labor, any justice of the supreme court may order such examination of said person as in his discretion he shall deem proper."

SEC. 1114. Section 39 of Chapter 82 of the General Laws is hereby amended so as to read as follows:

"SEC. 39. Whenever the agent of state charities and corrections shall make complaint in writing to any justice of the supreme court that he is informed and believes that any person reputed to be idiotic, lunatic, or insane, to be named or otherwise described in such complaint, is not humanely or properly cared for, or is improperly confined and restrained of his liberty, in any town, such court shall forthwith examine into the circumstances alleged in such complaint; and if the same be found to be true, such



justice shall order and cause such idiotic, lunatic, or insane person to be removed to the state hospital for the insane, and shall thereupon issue a warrant or order, to be directed to the sheriffs or their deputies of the several counties, for the removal of such person accordingly."

SEC. 1115. Section 3 of Chapter 93 of the General Laws is hereby amended so as to read as follows:

"SEC. 3. Any person aggrieved by the order or decree of the board of aldermen under section one of this chapter may, within three days from the service aforesaid upon him, appeal to the superior court for the county where such city is situated, by filing his reasons of appeal, together with an attested copy of the whole proceedings appealed from, in the clerk's office of said court, and said court shall forthwith hear said appeal; and either party to the proceedings may have a trial by jury of all questions of fact, by filing with the clerk of said court a demand for the same at least two days before the day assigned for hearing. In case of such demand, if the court shall not be in session for the purpose of jury trials, the clerk shall immediately issue a writ of venire facias directed to the sheriff of the county or his deputy, requiring him to summon twelve jurors, being good and lawful men of the county, to try such issue; and if there shall not be a sufficient number of jurors attending in pursuance of such writ from which a jury may be impanelled, such court shall direct the issuing of other writs of venire facias to complete a jury. If any person aggrieved shall, by reason of accident, misfortune, or mistake, fail to appeal as aforesaid from any such order or decree, and shall make it appear to such court that such failure was caused by accident or mistake, he may at any time within thirty days from the service of the copy of

the order or decree aforesaid upon him appeal from such order or decree, and prosecute the same as aforesaid, with the same effect as if done within the said three days."

SEC. 1116. Section 34 of Chapter 102 of the General Laws is hereby amended so as to read as follows:

"SEC. 34. If the cause of forfeiture be proved, the court before which the complaint or information shall be tried shall enter sentence of forfeiture to the state against said liquors and the casks or other vessels containing the same; and any person aggrieved by such sentence may appeal therefrom to the superior court according to the provisions relating to criminal appeals from district courts. If the cause of forfeiture be not proved, then all such seized liquors and the vessels containing the same shall be forthwith restored to the proper owner thereof or to the place from which they were taken by the officer who seized the same."

SEC. 1117. Section 40 of Chapter 102 of the General Laws is hereby amended so as to read as follows:

"SEC. 40. Any person convicted before a district court of any offence under this chapter may appeal from the sentence of such court, according to the provisions of law relating to criminal appeals from district courts."

SEC. 1118. Section 59 of Chapter 102 of the General Laws is hereby amended so as to read as follows:

"SEC. 59. In all cases of appeal under the provisions of this chapter from the sentence of a district court, and upon all questions arising under the same or under any complaint or warrant made under the provisions of this chapter in the supreme or superior court, the cases may be conducted and argued in behalf of the complainant by any attorney who may be employed or authorized by such complainant; and

in every such case in which the defendant or person answering the complaint shall be required to pay costs, the sum of six dollars shall be taxed in the bill of costs for the services of the attorney so employed or authorized and appearing as the attorney of record of the complainant; for which sum the clerk or other officer to whom the costs may be paid shall account with and pay over to the attorney of record within ten days after said bill of costs shall be paid: *Provided, however*, that if no attorney within five days after the appeal from the sentence of a district court, or after any question arising under the same or under any complaint or warrant under the provisions of this chapter, shall be presented in the supreme or superior court, shall enter his appearance in behalf of the complainant, then it shall be the duty of the attorney-general or the assistant attorney-general to take charge of, conduct, argue, and manage such appeal or question in the supreme or superior court, and for such services the sum of six dollars shall be taxed in the bill of costs, and shall be paid over to the officers so rendering the same by the clerk or other officer to whom such cost shall be paid."

SEC. 1119. Section 1 of Chapter 107 of the General Laws is hereby amended so as to read as follows:

"SECTION 1. The governor may from time to time, upon the application of any common carrier of passengers, commission during his pleasure one or more persons designated by such common carrier, who, having been duly sworn, may act at its expense as policemen upon the premises used by it in its business and upon its cars and vessels. When any such commission is issued or revoked the secretary of state shall notify the clerk of the superior court for each county in which it is intended that such policemen shall act."

Amended  
Cap. 1865.  
Jan. '08.



SEC. 1120. Section 8 of Chapter 108 of the General Laws is hereby amended so as to read as follows:

“SEC. 8. In all cases in which any person shall suffer injury or in which the death of any person shall ensue in consequence of the failure of the owner or owners of any building to provide the same with fire-escapes or stairs and stairways, as required by the provisions of this chapter, or in consequence of the failure of said owner or owners to comply with the written notice and requirement of any inspector of buildings, when made in conformity to the provisions of this chapter, such owner or owners shall be jointly and severally liable, to any person so injured, in an action of trespass on the case for damages for such injury; and in case of death such owner or owners shall be jointly and severally liable in damages for the injury caused by the death of such person, to be recovered, by action of trespass on the case, in the same manner and for the benefit of the same persons as is provided in sections 234 and 235 of the court and practice act; which action, when the owners are non-residents, may be commenced by attachment. It shall be no defence to said action that the person injured, or whose death ensued as aforesaid, had knowledge that any such building was not provided with fire-escapes or stairs and stairways as required by the provisions of this chapter, or that such person continued to work in or to occupy said building with said knowledge.”

SEC. 1121. Section 16 of Chapter 108 of the General Laws is hereby amended so as to read as follows:

“SEC. 16. All hoistway and elevator openings through floors where there is no shaft shall be protected by sufficient railings, gates, trap-doors, or other mechanical devices equivalent thereto, and the same shall be kept closed in the night-time or when

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not in use. Every passenger elevator, except plunger elevators, shall be provided with some safety arrangement to prevent falling, and every passenger elevator shall be fitted with some suitable device to prevent the elevator car from being started until the door or doors opening into the elevator-shaft are closed; and no person under the age of eighteen years shall take charge of or operate any passenger elevator.

It shall be the duty of every inspector of buildings elected or empowered under the provisions of this chapter to inspect all elevators in every building within his jurisdiction; and it shall be the duty of the factory inspectors appointed or empowered under the provisions of Chapter 68 of the General Laws to inspect all elevators in every building within their jurisdiction in any city or town where there is no inspector of buildings; and it shall be the duty of said inspectors of buildings and said factory inspectors to notify the lessee and owner or some one of the owners of every building in which an elevator shall be used or operated contrary to the provisions of this and the preceding section, of such violation and require the lessee and owner or some one of the owners of said building, within thirty days after the receipt of such notice, to comply with the provisions of said sections, and it shall be the duty of said lessee and owner or owners to comply with such requirement.

The owner or owners of any building or premises under lease, and their servants and agents, may enter upon such leased building or premises for the public welfare, with the purpose of making said building comply with the provisions of this and the preceding section, and may remain thereon during such time as may reasonably be required for the perform-

ance of such work as may be necessary to effect said purpose, interfering with the lessee no more than may be necessary.

In all cases in which any person shall suffer injury or in which the death of any person shall ensue in consequence of the failure of the lessee or owner or owners of any building to comply with the provisions of this and the preceding section, or in consequence of the failure of said lessee or owner or owners to comply with the written notice and requirement of any inspector of buildings or factory inspector, when made in conformity to the provisions of this and the preceding section, such lessee and owner or owners shall be jointly and severally liable to any person so injured in an action of trespass on the case for damages for such injury; and in case of death such lessee and owner or owners shall be jointly and severally liable in damages for the injury caused by the death of such person, to be recovered, by action of trespass on the case, in the same manner and for the benefit of the same persons as is provided in sections 234 and 235 of the court and practice act; which action, when the lessee and the owner are non-residents, may be commenced by attachment. It shall be no defence to said action that the person injured, or whose death ensues as aforesaid, had knowledge that any elevator was being operated in said building contrary to the provisions of this and the preceding section, or that such person continued to ride in said elevator with said knowledge.

The lessee or owner or owners of any building, or in case such lessee or owner, or any of them, be non compos mentis or a minor, the guardian of any such lessee or owner, or in case such lessee or owner, or any of them, be a non-resident, the agent of any such lessee or owner having charge of such property, who



shall neglect or fail to comply with the provisions of this and the preceding section shall be fined not less than five dollars nor more than ten dollars for each day that an elevator shall be used or operated in said building contrary to the provisions of this and the preceding section. In case there shall be several such lessees or owners or agents in charge of any building in which an elevator shall be used or operated contrary to the provisions of this and the preceding section, proceedings may be had against any or all of them jointly, or against any one of them, for the recovery of such fine."

SEC. 1122. Section 13 of Chapter 114 of the General Laws is hereby amended so as to read as follows:

"SEC. 13. Any claimant aggrieved by any such sentence of such district court may, before the execution of such sentence, appeal therefrom to the superior court in the manner provided with reference to criminal appeals from district courts."

SEC. 1123. Section 23 of Chapter 119 of the General Laws is hereby amended so as to read as follows:

"SEC. 23. No owner or other person interested in any such shipwrecked goods shall be held to pay to any person, other than said commissioner, any charge for services or expenses in taking or securing the property, unless it be for property taken or secured before the arrival of the commissioner, in which case the commissioner shall, upon due hearing of all parties interested, determine the compensation to be received; and any party dissatisfied with the award of such commissioner may appeal therefrom according to the provisions of law with reference to appeals from town councils for the county in which such wreck or shipwrecked goods may be found."

SEC. 1124. Section 16 of Chapter 129 of the General Laws is hereby amended so as to read as follows:

"SEC. 16. Whenever the sum demanded for damages exceeds five hundred dollars, or whenever the ownership in the beasts is in question and their value exceeds that sum, such action shall be brought before the superior court for the same county; and whenever any such fact shall appear of record or in evidence in any action brought in any district court, such court shall proceed no further therewith, but shall forthwith certify the same to the superior court for the same county, which shall proceed and try the same as if it had originally been brought there."

SEC. 1125. Section 49 of Chapter 178 of the General Laws is hereby amended so as to read as follows:

"SEC. 49. Such citation may also contain a temporary injunction on said corporation and all of its officers, restraining them from proceeding in any business which may diminish or endanger the assets of such corporation."

SEC. 1126. Section 68 of Chapter 178 of the General Laws is hereby amended so as to read as follows:

"SEC. 68. The said trustees shall, within twenty days after the issuing of the injunction, file an inventory of its assets and property and a statement of its debts and liabilities, under the oath of its treasurer, in the office of the clerk of the superior court, and shall, on the first day of each succeeding sixth month thereafter, file a statement, under the oath of its treasurer, of the assets which have been converted into money and what disposition has been made of the same and of the balance of inventory remaining on hand."

SEC. 1127. Section 7 of Chapter 181 of the General Laws is hereby amended so as to read as follows:

"SEC. 7. The receiver shall be clothed with all the powers and rights, in respect of the collection of debts due to such corporation, which the corporation pos-

*Repealed by  
Chap. 1070 - Jan. 04.*

sessed by virtue of its charter or otherwise, before such injunction issued; and may be removed and another may be appointed by the court in his stead; and the court shall have the same power and authority over the receiver, his acts, proceedings, and accounts, as is exercised by courts of equity in like cases."

SEC. 1128. Section 3 of Chapter 184 of the General Laws is hereby amended so as to read as follows:

"SEC. 3. When the insurance commissioner, on investigation, is satisfied that any corporation, doing business in this state under this chapter, has exceeded its powers, failed to comply with any provisions of law, or is conducting business fraudulently, he shall revoke its authority to do business in this state. Any corporation may petition the supreme court for relief from the decision of the insurance commissioner, and the clerk of said court shall issue a citation substantially in the following form:

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

sc. *To the sheriffs of our several counties, or*  
(SEAL) *to their deputies, Greeting:*

We command you to summon the insurance commissioner of said state: to wit of  
(if to be found in your precinct) to answer the complaint of of on the return day hereof  
(said return day being the day of  
A. D. 19 ) in THE SUPREME COURT to be holden at the county court house in Providence, in said state, as by petition filed in court is fully set forth; and to show cause why said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.



Witness, the seal of our supreme court, at  
 this            day of            in the year            , Clerk.

Said citation shall be returnable on the day named in said citation, and shall be served, exclusive of Sundays and legal holidays, not less than six nor more than twenty days before the return day thereof, and shall be entered in court on said return day. During the pendency of such petition, said corporation shall not carry on business except as permitted by the court."

SEC. 1129. Section 32 of Chapter 187 of the General Laws is hereby amended so as to read as follows:

"SEC. 32. The compensation of the commissioners for services and expenses under the preceding section shall be paid by the respective corporations in such proportions as the commissioners shall determine and set forth as a part of their award; which award shall be returned to the court, and be subject to revision in all matters of law arising thereon, and the court may, by injunction or other suitable order, compel the performance of any final order of the commissioners, or of the court, under the provisions of the preceding section."

SEC. 1130. Section 47 of Chapter 187 of the General Laws is hereby amended to read as follows:

"SEC. 47. Every railroad corporation or lessees, receivers, or trustees of such corporation operating railroads within this state shall cause flagmen or gates or other precautionary measures or appliances to be established or substituted wherever said railroads cross public highways, whenever and as often as in the opinion of the railroad commissioner it is necessary for the safety of the public: *Provided*, that any town or railroad corporation which claims to be aggrieved by the action of the railroad com-

missioner in ordering or refusing to order flagmen or gates or other precautionary measures or appliances to be established or substituted at such crossings may petition the supreme court for relief. The hearing on said petition shall be preceded by citation to said railroad commissioner in substantially the same form, and the like procedure shall be had, as is prescribed in section 3, Chapter 184, of the General Laws."

SEC. 1131. Chapter 187 of the General Laws is hereby amended by adding thereto the following sections, viz.:

"SEC. 60. Upon the application in writing of any railroad company, or of any person whose interest may be affected by the doings of such company, to the superior court for the county in which the estate affected lies, for a hearing and determination of any matter or thing whereof the superior court has jurisdiction and cognizance relative to railroads by virtue of any act of incorporation, or the provisions of section 62 of this chapter, the clerk shall cause citation to issue thereon, addressed to the parties named in such application, and made returnable to the superior court in said county, which said citation shall be served upon the adverse parties in the same manner as a writ in an action at law, and upon the return and entry thereof the matter shall proceed in all respects as an action at law.

"SEC. 61. Whenever any railroad company shall locate its road or any part thereof, it may file the report of such location with the clerk of the superior court for the county in which such located road is situated, and may in writing request the action of the court thereon according to charter or general or special act, or the provisions of section 62 of this chapter; and thereupon the clerk shall cause cita-

tion to issue addressed to the parties named in such application, and made returnable to the superior court in said county, which citation shall be served upon the adverse parties in the same manner as a writ in an action at law, and upon the return and entry thereof the matter shall proceed in all respects as an action at law.

“SEC. 62. The superior court shall have the same power and jurisdiction over the cases referred to in the preceding two sections as the court of common pleas, or special courts of common pleas, or common pleas division of the supreme court, formerly had by charter or by general law.”

Amended  
452,  
Cap.  
Jan. 1888  
SEC. 1132. Section 4 of Chapter 189 of the General Laws is hereby amended so as to read as follows:

“SEC. 4. If the insurance commissioner becomes satisfied after an examination, that the building-loan association applying to do business in this state is solvent and possessed of sufficient assets as provided by section two of this chapter and is conducting its business according to law, he shall issue to such building-loan association a license to do business in this state, for which license said building-loan association shall pay a fee of twenty-five dollars; but if said examination so made by said insurance commissioner shall show said building-loan association to be insolvent or not possessed of sufficient assets as provided by this chapter, the said insurance commissioner shall refuse to issue the license aforesaid, and forthwith notify said building-loan association of his refusal, with the reasons therefor, and upon such refusal said building-loan association applying for said license may appeal, within ninety days from the time it is notified of such refusal, to the supreme court sitting in Providence. Upon the filing of said appeal said appellant shall give bond in a sum not less than



two hundred dollars to the state of Rhode Island, with surety satisfactory to the clerk of said court, conditioned, if said appeal is not sustained, to pay all lawful costs to be taxed by said clerk. Said court shall, after notice to the insurance commissioner, proceed to hear said appeal after the manner of equitable causes, and if said appellant shall show to the satisfaction of said court that it is entitled to be allowed to do business in this state under the provisions of this chapter, the court shall sustain said appeal, and it shall be the duty of said insurance commissioner to at once issue the license to said appellant in accordance with the provisions of this chapter."

SEC. 1133. Section 5 of Chapter 189 of the General Laws is hereby amended so as to read as follows:

"SEC. 5. Every building-loan association admitted to do business in this state under the provisions of this chapter shall file with the insurance commissioner, on or before the first day of February in each year, a statement of its financial condition on the preceding thirty-first day of December and a statement of the amount and kind of business done in this state up to said date; and if said building-loan association shall refuse and neglect to file said statement, or if such statement so filed shall show said building-loan association to be insolvent, or not to be possessed of sufficient assets in accordance with the provisions of this chapter to transact business in Rhode Island, it shall be the duty of said insurance commissioner to revoke the license granted to said building-loan association, the said building-loan association to have the right to appeal to the said supreme court sitting in Providence, in the same manner and with the same rights as is provided in section four of this chapter: *Provided*, that the said insurance commissioner shall make an examination

Amended  
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Jan. '09.

of the financial condition of such building-loan association as often as once in two years, and may at any time examine into the financial condition of any building-loan association doing business in this state under the provisions of this chapter, for which examination he shall receive the same compensation as provided in section three of this chapter; and if such examination in the opinion of the insurance commissioner should show that the annual statement of said building-loan association was false, or that said building-loan association is not possessed of sufficient assets to transact business in Rhode Island under the provisions of this chapter, or that said building-loan association is not conducting its business in accordance with law, it shall be the duty of said insurance commissioner to revoke the license granted to said building-loan association, from which decision of said insurance commissioner the said building-loan association whose license is so revoked shall have the right to appeal to the supreme court in the same manner and with the same rights as provided in section four of this chapter."

SEC. 1134. Section 10 of Chapter 189 of the General Laws is hereby amended so as to read as follows:

"SEC. 10. Sections 560 to 565, inclusive, of the court and practice act shall not apply to building-loan associations included under the provisions of this chapter."

SEC. 1135. Section 8 of Chapter 192 of the General Laws is hereby amended so as to read as follows:

29 R. I. 446 "SEC. 8. Any petitioner may appeal to the superior court from the decree of the probate court on such petition, and any child made the subject of such petition may, by next friend, appeal in like manner, but no bond shall be required of or costs awarded against such child or next friend."

SEC. 1136. Section 7 of Chapter 193 of the General Laws is hereby amended so as to read as follows:

"SEC. 7. If, however, upon petition of her former husband to the superior court, served upon her by copy and citation, the return day whereof shall be at least thirty days after the date of such service, and setting forth substantially the whole subject-matter of complaint against her, it shall be made to appear by evidence that she is not a person of good moral character, suitable to have charge of her children, the court may, in its discretion, having regard to the well-being of the infant, order its custody to be changed."

SEC. 1137. Section 2 of Chapter 197 of the General Laws is hereby amended so as to read as follows:

"SEC. 2. If the parents of any child, in the care of such an institution, are dead and said child has no guardian, or if any child shall have been maintained by such institution for the space of one year without aid in its support from its parents or guardian or demand for its custody by either parent or guardian, such institution may petition for the custody of such child to the court of probate of the town or city where the institution is located or where the child last had its residence, if in this state, before going to such institution, and thereupon the court of probate shall give notice of a hearing on said petition, as required by chapter one hundred ninety-two, in cases for the adoption of children. If upon such hearing it shall appear to the satisfaction of the court that the parents are dead and the child has no guardian, the custody of the child during its minority may be awarded to the institution petitioning therefor; and if it appears that either parent or guardian be living, but no sufficient reason be shown why such child has not been provided for by such parent



or guardian, or no offer be made to the court by either of them for its proper maintenance in the future, it shall thereupon be decreed by said court that such child is abandoned and its custody during minority shall be awarded to said petitioning institution: *Provided, however,* that all rights of appeal and of application to the superior court shall be allowed as provided in said chapter one hundred ninety-two."

SEC. 1138. Section 12 of Chapter 198 of the General Laws is hereby amended so as to read as follows:

"SEC. 12. Every person of the age of twenty-one years, bound by the overseer of the poor of any town, who shall think himself aggrieved by the doings of the overseer, may apply for relief, by complaint to the said court for the county in which he is bound or in which the overseer of the poor who bound him dwells."

SEC. 1139. Section 6 of Chapter 202 of the General Laws is hereby amended so as to read as follows:

"SEC. 6. Any of the following instruments shall be recorded or filed by the town clerk or recorder of deeds, in the manner prescribed by law, on request of any person and on payment of the lawful fees therefor; that is to say:

"1. Letters of attorney.

"2. All contracts for sale of land.

"3. Bonds for title or covenants or powers concerning lands, tenements, and hereditaments.

"4. All notices to be filed under the provisions of section 439 of the court and practice act.

"5. All notices and process to be filed under other statutory provisions, and all decrees in equity and judgments at law affecting the title to land.

"6. All personal property mortgages.

"7. All instruments required by statute to be re-

corded, including deeds, mortgages and transfers and discharges thereof, leases and transfers and cancellations thereof, and the covenants, conditions, agreements, and powers therein contained.

“8. Instruments of defeasance.

“9. Instruments (excepting wills) creating trusts.”

SEC. 1140. Section 42 of Chapter 203 of the General Laws is hereby amended so as to read as follows:

“SEC. 42. Title to real or personal estate shall pass by will when such will has been finally proved: *Provided, however,* that title to real estate situated in any town or city of this state other than that in which the will is proved shall not pass by will for the purpose of conveyance by the devisee until, in addition to such probate, a copy of such will as proved, duly certified by the probate clerk, be recorded in the records of land evidence in such other town or city. Any foreign will shall be recorded as provided in sections 790 to 796, inclusive, of the court and practice act, and when finally allowed shall operate to pass the title to all lands in that town or city where such will is duly recorded as aforesaid, and in any other town or city in which a duly certified copy thereof has been recorded in the records of land evidence in such town or city, and not otherwise: *Provided, however,* that when any such will is duly proved, or proved and recorded, as aforesaid, title to lands as devised thereby shall relate back to the date of the death of the testator.”

SEC. 1141. Section 9 of Chapter 206 of the General Laws is hereby amended so as to read as follows:

“SEC. 9. At any time within twenty days after the commencement of legal process, as hereinbefore provided, the person commencing the same shall file his petition in equity, in the clerk's office of the superior court, setting forth the particulars of his ac-

count or demand, and particularly describing the building, canal, turnpike, railroad, improvement, land, and the estate and title in the same upon which he claims a lien for such account or demand, and praying that the said lien may be enforced against the same, and that the same may be sold to satisfy said account or demand, and all other accounts and demands for which the same is pledged and liable by this chapter."

SEC. 1142. Section 28 of Chapter 206 of the General Laws is hereby amended so as to read as follows:

"SEC. 28. Whoever has a lien at common law for money due him on account of work and labor, care and diligence, or money expended on or about personal property or for storage of personal property or has a lien therefor on such account by reason of any contract expressed or implied, if such money is not paid within thirty days after a demand in writing delivered to the owner or some one of the owners, or left at his usual place of abode, if within this state, with some person living there, or made by letter mailed to him at his usual post office address without the state, may apply, by petition in equity to the superior court for the county where the petitioner or some one of the petitioners resides, for an order for the sale of the property in satisfaction of the debt."

SEC. 1143. Section 1 of Chapter 208 of the General Laws is hereby amended so as to read as follows:

SECTION 1. Whenever no trustee is named in any instrument creating a trust, or the trustee named therein renounces or declines to accept the trusts thereof, or whenever a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or desires to be discharged from the trusts or powers reposed in or conferred on him, or



refuses to act or is incapable of acting therein, then any person interested under such trusts or the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may apply to the superior court in equity, either by original bill or by petition, and the court may thereupon, after due notice to the parties in interest or to such of them as the court shall adjudge to be necessary parties thereto, appoint some suitable person or persons to be trustee or trustees, or new trustee or trustees, as the case may be, under such trusts."

SEC. 1144. Section 2 of Chapter 208 of the General Laws is hereby amended so as to read as follows:

"SEC. 2. On application for the appointment of a new trustee, the number of trustees may be increased or decreased, but such action shall upon petition be subject to review by the supreme court."

SEC. 1145. Section 11 of Chapter 208 of the General Laws is hereby amended so as to read as follows: 28 R. L. 544

"SEC. 11. Whenever the sale, exchange, or conveyance of any trust estate, real or personal, or the platting of lands held in trust, or the dedication, laying-out, or conveyance, with or without compensation, of lands held in trust, for streets or ways, either in connection with such platting, or independently, shall for any reason become necessary or expedient, the superior court may upon a suit in equity decree such sale, exchange or conveyance, and the investment, re-investment, change of investment from time to time, and application of the proceeds thereof, upon such security or securities and in such manner as shall best effect the objects of the trust and be most safe and beneficial for all interested therein, and may in like manner authorize the platting of lands, dedication, laying-out or conveyance of strips for streets

or ways as aforesaid; but no sale or exchange, platting of lands, dedication, layout or conveyance of strips for streets, shall be decreed where the deed or instrument creating the trust prohibits the same."

SEC. 1146. Section 13 of Chapter 208 of the General Laws is hereby amended so as to read as follows:

"SEC. 13. Trustees may enter into a rule of the court, in like manner as other parties, to submit matters in dispute in relation to the estates represented by them to arbitration and award."

SEC. 1147. Chapter 208 of the General Laws is hereby amended by adding thereto the following sections, viz.:

"SEC. 23. Whenever a trustee holds any sum of money, or any bond, note, or other obligation for money, or evidence of indebtedness, or any certificate of stock or other chose in action, payable or deliverable to, or the property of, another, and the person entitled thereto cannot, for any reason, give proper receipt or discharge therefor, and the trustee holding the said moneys or property desires to free himself from further liability therefor, he may pay or deliver the same into the registry of the superior court, presenting therewith his petition or bill in equity praying to be discharged, and setting out, under oath, to the best of the knowledge, information, and belief of the affiant, the circumstances under which he holds the same, and how such person or persons is or are entitled thereto, and why he or they cannot give proper receipt or discharge therefor; and upon the filing of such petition or bill, notice of the same shall be given in such manner as the court shall direct. And the court shall take such proceedings in respect of said moneys or property as upon a bill of interpleader or for instructions as it shall deem best. And the costs and expenses, including expenses and

counsel fees of such trustee, as between solicitor and client, as allowed by the court or by one of the justices thereof, shall be paid or retained out of such money or property accordingly.

“And when any person entitled to such moneys or property so paid or deposited in the registry shall appear and satisfy the court as to his right to the same, the same shall be paid or delivered over to him as the court shall direct.

“SEC. 24. Where an instrument contains or a person adds to his signature thereto words indicating that he contracts or signs in his representative capacity as trustee, executor, administrator, guardian, or conservator, he shall not be personally liable on the instrument, if he was duly authorized to make the same in his representative capacity; and action on the instrument shall be brought against such trustee, executor, administrator, guardian, or conservator in his representative capacity, or against his successor, and execution on any judgment obtained against him shall run only against the goods, chattels, and real estate of the estate in the hands and possession of such trustee, executor, administrator, guardian, or conservator, or successor, and not against his own property and estate: *Provided*, that upon a suggestion of waste as provided in section 992 of the court and practice act, a writ of scire facias may be sued out against him in the same manner provided in said section 992, and the procedure thereon shall in all respects conform thereto.”

SEC. 1148. Section 13 of Chapter 231 of the General Laws is hereby amended so as to read as follows:

“SEC. 13. Whenever a writ of habeas corpus shall issue from either the supreme or superior court for the production and appearance before it of a prisoner confined in said jail, such writ shall be delivered to

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the sheriff of said county or to his deputy, and whenever such writ is issued from any other court, such writ shall be delivered to the sheriff of the county, his deputy, or to any town sergeant or police constable in such county, subject, however, to the provisions of section 163 of the court and practice act, who shall duly present the same to said keeper, and said keeper shall thereupon deliver to the custody of such officer such prisoner; and such officer shall take and receive into his custody such prisoner, and shall duly present him before said court pursuant to the commands of said writ, and shall keep and hold such prisoner until by order of said court he shall be recommitted to jail or otherwise disposed of. Upon the delivery of the custody of such prisoner by said keeper to such officer, said keeper shall indorse such delivery upon said writ, and said officer shall receipt on the books of said jail for such custody; and said officer, upon the production of such prisoner in court, shall further indorse such fact on said writ and deliver the same to the clerk or (if there be no clerk) the presiding justice thereof; but shall, as an officer of said court, maintain safe custody of such prisoner until he shall be, by further order thereof, recommitted or discharged."

SEC. 1149. Section 2 of Chapter 258 of the General Laws is hereby amended so as to read as follows:

"SEC. 2. Such person may also, at any time before final judgment against him as bail on scire facias, discharge himself as bail in either of the two following modes:

"*First.* By committing his principal to jail in the county in which he became bail or in which the original writ was returnable, paying or tendering to the creditor or his attorney the costs, if any, which shall have accrued on a writ of scire facias against him as

bail, and leaving with the keeper of such jail a certified copy of the original writ and the return of the officer thereon, and a certified copy of the bond given to the officer serving said writ or given to the keeper of the jail in the county of Providence, if either of said bonds have been given, and giving to the plaintiff, if in this state, or his agent or his attorney of record, notice in writing of the time and place of such commitment within six days after making the same; or,

*“Second.* By bringing his principal into the court where the writ of scire facias against him as bail shall be pending before final judgment shall be rendered thereon after notice to the plaintiff or his attorney of record, paying the cost on such writ of scire facias to the costs of the commitment of such principal and one week’s board at the jail and delivering his principal into the custody of such court.”

SEC. 1150. Section 3 of Chapter 258 of the General Laws is hereby amended so as to read as follows:

“SEC. 3. If the principal shall be so surrendered by his bail to the court in which the original action is pending, he shall be by such court committed to jail, and there remain to be taken in execution or to be discharged in the same manner as though committed for want of bail in the first instance, and he shall remain in jail in like manner if committed by his bail before final judgment be rendered in such action.”

SEC. 1151. Section 8 of Chapter 258 of the General Laws is hereby amended so as to read as follows:

“SEC. 8. The plaintiff in any suit wherein judgment shall be rendered in any district court, and the amount of debt, costs, and interest due upon such judgment shall exceed five hundred dollars, shall be entitled to his writ of scire facias against the bail from the superior court for the county in which such

judgment shall be rendered, upon which writ the proceedings shall be the same in all respects as if the judgment had been rendered in said court."

28 R. 1. 2. 43

SEC. 1152. Section 1 of Chapter 259 of the General Laws is hereby amended so as to read as follows:

"SECTION 1. Whenever any person shall be imprisoned upon original writ, mesne process, execution, or surrender or commitment by bail, in any action whatsoever, the party at whose suit such person is imprisoned shall pay to the keeper of the jail in which he is imprisoned the sum of three dollars per week in advance for the board of such prisoner, reckoning such board from the time of such commitment; which payment in advance shall continue to be made by such creditor during the time such prisoner shall be detained at his suit: *Provided, however,* that in case of commitment by bail, the bail so committing him shall pay such board in advance until one week after notice in writing of such commitment shall have been duly served upon the creditor, or his attorney of record, by the sheriff, his deputy, or some town sergeant or constable, and lodged with the said jailer."

28 R. 1. 1. 16

SEC. 1153. Section 1 of Chapter 260 of the General Laws is hereby amended so as to read as follows:

"SECTION 1. Any person who shall be imprisoned for debt, whether on original writ, mesne process, or execution, or for non-payment of military fine or town or state taxes, or on execution awarded against him as defendant in any action of trespass and ejection or trespass quare clausum fregit, in which title to the close was in dispute between the parties, may complain to the justice of any district court in the county where such person shall be committed that he has no estate, real or personal, wherewith to support himself in jail or to pay jail charges and may request to be admitted to take the poor debtor's oath."



SEC. 1154. Section 6 of Chapter 260 of the General Laws is hereby amended so as to read as follows:

“SEC. 6. Such oath being administered and taken by said prisoner, the justice shall deliver to him a certificate thereof, under his hand and seal, in the following form:

“To                    keeper of the jail at                    in the county of                    I, the subscriber, authorized by the statute in such case made and provided, do certify, that                    a poor prisoner confined upon mesne process (*or otherwise, as the case may be*) in the prison at                    aforesaid, has caused                    the party at whose suit he was so confined, to be notified according to law, of his the said                    desire of being admitted to take the poor debtor's oath; that in my opinion the said                    has not any estate, either real or personal, except what is exempt from attachment by law (*or, over ten dollars, as the case may be*), and that he has not conveyed or concealed his estate with design to secure the same to his own use or to defraud his creditors; and that I have, after due caution to the said                    administered to him the oath (*or, affirmation*) prescribed by law to be administered to poor debtors.

“Witness, my hand and seal, this                    day of                    A. D.,                    Justice of the District Court of the                    Judicial District.”

SEC. 1155. Section 13 of Chapter 260 of the General Laws is hereby amended so as to read as follows:

“SEC. 13. The defendant in such case may apply to the court in which such action is pending for a citation to the creditor to appear at the court to show cause why the defendant should not be admitted to take said oath.”

SEC. 1156. Section 14 of Chapter 260 of the General Laws is hereby amended so as to read as follows:

“SEC. 14. Such citation shall be served by any sheriff, deputy sheriff, town sergeant, or constable, at least four days before the time therein appointed for taking said oath, by reading the same to the plaintiff or by leaving an attested copy thereof at his last and usual place of abode in this state, with some person living there, and such citation shall be returned to the court in which such action is pending. If the plaintiff does not reside in this state, service of such citation may be made in like manner upon the agent or attorney of record of the plaintiff in this state.”

SEC. 1157. Section 3 of Chapter 261 of the General Laws is hereby amended so as to read as follows:

“SEC. 3. Such citation shall set forth that such prisoner has made complaint as aforesaid, and such keeper upon issuing the citation shall, at the expense of the state, cause service thereof to be made by the sheriff, his deputy, or any town sergeant or constable, on the person to whom such citation shall be directed as aforesaid, by reading the same to him in his presence and hearing, or by leaving a true and attested copy thereof at his last and usual place of abode in this state, with some person living there.”

SEC. 1158. Section 4 of Chapter 261 of the General Laws is hereby amended so as to read as follows:

“SEC. 4. Whenever any person shall have been imprisoned for six months upon original writ, mesne process, execution, or upon surrender or commitment by bail in any action brought since the twentieth day of April, one thousand eight hundred seventy-six, on any penal statute, action of trover, replevin, trespass, trespass and ejection or trespass quare clausum fregit, in which the title to the close is not in dispute, or other civil action in which such person is not now entitled to his discharge, upon being admitted to take the poor debtor's oath, such person

so imprisoned may petition the justice of a district court in the county in which he is imprisoned, setting forth that he is detained in prison, the term of his imprisonment, the cause of his committal, and the name and residence of the person at whose suit he was committed, and that he is unable to pay the judgment upon which he is committed and to pay his prison charges: *Provided, however,* that any person who shall have been imprisoned as aforesaid upon a writ issued out of a district court or upon execution wherein the debt or damages and costs shall not exceed five hundred dollars may petition as aforesaid after ninety days of imprisonment."

SEC. 1159. Section 5 of Chapter 261 of the General Laws is hereby amended so as to read as follows:

"SEC. 5. Upon the receipt of any petition of any poor tort debtor under the provisions of the preceding section, the justice to whom the same shall be addressed shall fix a time and place for the hearing of such petition and shall issue a citation directed to the committing creditor or to his attorney of record in said suit, or, if the committing creditor be deceased, to the legal representative of such deceased creditor, which citation shall be served upon one of the persons to whom it is directed at least six days before the return day thereof. Upon the return of such citation duly served, such justice shall cause the petitioner to be brought before him upon habeas corpus at the time and place named in such citation, and either then or at such other time as said justice shall appoint, shall proceed to examine the petitioner and to hear the evidence which may be properly adduced in favor of and against the granting of the prayer of said petition, and if it shall be made to appear that the petitioner has no property, rights, or credits with which to pay prison charges, or which is



not exempt by law from attachment, and that the debtor has made an assignment to the jailer in the manner prescribed in the preceding chapter, if said justice shall be of the opinion that such petitioner can truly take the oath prescribed in section five of the preceding chapter, said justice may administer to such petitioner said oath, and the like certificate shall be issued thereof, and the certificate shall have the like effect in all respects with reference to the discharge of the petitioner from jail, and the issue of execution, or of alias or pluries execution, upon the judgment shall be in the form and with the like effect, as if the said petitioner had been entitled to and admitted to take the poor debtor's oath, under the provisions of the preceding chapter."

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28 R. L. 230. SEC. 1160. Section 1 of Chapter 263 of the General Laws is hereby amended so as to read as follows:

"SECTION 1. The title to any office, to determine which the writ of quo warranto lies at the common law, may be brought in question by petition in equity in the supreme court."

30 R. L. 195,  
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SEC. 1161. Section 9 of Chapter 264 of the General Laws is hereby amended so as to read as follows:

"SEC. 9. Whenever judgment for dower shall be rendered in favor of a plaintiff in an action of dower, the said judgment shall set forth the manner in which the plaintiff shall be endowed, and shall annul any assignment of dower to the plaintiff theretofore made."

SEC. 1162. Section 20 of Chapter 264 of the General Laws is hereby amended so as to read as follows:

32 R. L. 369  
370 "SEC. 20. Whenever the lands, tenements, or hereditaments in which dower is claimed are situate in two or more counties in the state, the suit for dower, whether at law or in equity, may be brought in either

county where any of the lands, tenements, or hereditaments are situate."

SEC. 1163. Section 23 of Chapter 264 of the General Laws is hereby amended so as to read as follows:

"SEC. 23. Whenever such an application shall be made to such court of probate, such court, upon hearing the parties thereto, shall, in the first instance, decree in what manner the dower ought to be assigned in the premises described in the application, whether by metes and bounds or in some special and certain manner as set forth in section two of this chapter, and any person aggrieved by such decree may appeal therefrom to the superior court, according to the provisions of law relating to appeals from probate courts; but if no appeal be made within the time prescribed by law, or if the parties waive their right to appeal in writing within that time, then such decree shall be final."

SEC. 1164. Section 6 of Chapter 265 of the General Laws is hereby amended so as to read as follows:

"SEC. 6. Partition of real estate holden in joint tenancy or in common, and situate in two or more counties in the state, may be sued for at law or in equity in any county in which any of the real estate is situate."

SEC. 1165. Section 24 of Chapter 265 of the General Laws is hereby amended so as to read as follows:

"SEC. 24. In actions at law for partition, after judgment for partition has been entered, the superior court on motion shall appoint and commission one or more discreet, impartial, and disinterested persons to make partition pursuant to such judgment, who shall be sworn to the faithful discharge of their trust."

SEC. 1166. Section 1 of Chapter 266 of the General Laws is hereby amended so as to read as follows:

“SECTION 1. Any person having any interest in land bordering on public tide-water, whenever a harbor line shall have been confirmed and established in front of or adjacent to said land, may apply by petition to the supreme court for the settlement and determination of the lines and boundaries of his interest and of the interests of all others in the land covered by public tide-water within such harbor line.”

SEC. 1167. Section 4 of Chapter 266 of the General Laws is hereby amended so as to read as follows:

“SEC. 4. The proceedings upon such petitions shall be according to the rules of practice in equity.”

SEC. 1168. Section 1 of Chapter 270 of the General Laws is hereby amended so as to read as follows:

“SECTION 1. Every person who shall cut, destroy, or carry away any tree, timber, wood, or underwood whatsoever, lying or growing on the land of any other person, without leave of the owner thereof, shall, for every such trespass, pay the party injured twice the value of any tree so cut, destroyed, or carried away; and for the wood or underwood, thrice the value thereof; to be recovered by action of trespass.”

SEC. 1169. Section 11 of Chapter 272 of the General Laws is hereby amended so as to read as follows:

“SEC. 11. The writ of return and restoration shall be substantially as follows:

“THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

“ sc. *To the sheriffs of our several counties, or*  
(SEAL) *to their deputies,* *Greeting:*

“Whereas of in the county of  
lately replevied the following goods and chattels  
viz.: (*here enumerate and particularly describe them*)  
which of in our said county of



had unlawfully taken (detained, *or* attached, *as the case may be*,) as the said                    suggested, and caused the said                    to be summoned to appear before our superior court to be holden at                    to answer unto said                    for such unlawful taking (detaining, *or* attaching, *as the case may be*,) on the                    day of                    . And whereas, to our said court at their said session holden as aforesaid, upon a full hearing of the cause of the taking (detaining, *or* attaching, *as the case may be*,) it appeared that the said taking (detaining, *or* attaching *as the case may be*,) was lawful and justifiable, whereupon it was then and there by said court considered that the same be returned and restored unto the said                    irrelevia-ble, and that the said                    recover against the said                    the sum of                    dollars damages, for his taking the same by the said process of replevin and his costs of defence taxed at                    as to us appears of record, whereof execution remains to be done: We command you, therefore, that you forthwith return and restore the same goods and chattels unto the said                    and also that of the goods and chattels and real estate of the said                    within your precinct, you cause to be levied and paid unto the said                    the aforesaid sums, being in the whole                    with twenty-five cents more for this writ, together with your fees; and for want of such goods and chattels or real estate of the said                    to be by you found within your precinct, to satisfy and pay the sums aforesaid, we command you to take the body of the said                    and him commit to our county jail in your precinct, therein to be kept until he pay the sums aforementioned, with your fees, or until he be discharged by the said                    or otherwise by order of law. Hereof fail not, and make true return of this writ and your doings thereon, to our superior court



indenture of apprenticeship, any deed, covenant, indenture, or assurance whatsoever respecting any property, real or personal, shall be deemed guilty of larceny."

SEC. 1173. Section 13 of Chapter 279 of the General Laws is hereby amended so as to read as follows:

"SEC. 13. Every person who shall fraudulently receive any stolen money or other article, knowing the same to be stolen, shall be deemed guilty of larceny, although the person who stole the same may not have been prosecuted or convicted therefor."

SEC. 1174. Section 14 of Chapter 279 of the General Laws is hereby amended so as to read as follows:

"SEC. 14. Every person who shall personate another, or who shall falsely represent himself to be the agent or servant of another, and shall thereby receive any money or other property intended to be delivered to the person so personated or to the alleged principal or master of such agent or servant, shall be deemed guilty of larceny."

SEC. 1175. Section 16 of Chapter 279 of the General Laws is hereby amended so as to read as follows: *amended*

"SEC. 16. Every officer, agent, clerk, or servant, or person to whom any money or other property shall be intrusted for any specific purpose, who shall embezzle or fraudulently convert to his own use or shall take or secrete, with intent to embezzle and fraudulently convert to his own use, any money or other property which shall have come into his possession or shall be under his care or charge, by virtue of such employment or for such specific purpose, shall be deemed guilty of larceny, and may be tried, sentenced, and punished as for any other larceny. Any person convicted of an offence under sections 11, 13, 14, or 16 of this chapter shall, if the value of the property or money stolen, received, or em-

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*29 R. L. / 36*



bezzled exceed five hundred dollars, be punished by imprisonment for not more than five years or by a fine of not more than one thousand dollars, or both, or if the value of the property or money stolen, received, or embezzled does not exceed five hundred dollars, any person so convicted shall be punished by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both."

SEC. 1176. Section 18 of Chapter 279 of the General Laws is hereby amended so as to read as follows:

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"SEC. 18. In prosecutions under the preceding two sections it shall be sufficient to allege generally in the indictment or complaint an embezzlement, fraudulent conversion, taking or secreting with such intent, or an embezzlement or appropriation with intent to cheat or defraud, as the case may be, of money to a certain amount, or property of a certain value, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement, fraudulent conversion, or appropriation, or taking or secreting with intent so to embezzle or fraudulently convert, committed within six months next after the time stated in the indictment or complaint, and it shall be sufficient to maintain the charge in the indictment or complaint, and shall not be deemed a variance, if it is proved that any bullion, money, notes, bank notes, check, draft, bill of exchange, or other security or money or other property of such person, copartnership, incorporated bank or company or other body corporate, of whatever amount, was fraudulently embezzled, appropriated, or converted, or taken or secreted with intent so to embezzle or convert, by such officer, agent, clerk, or servant within said period of six months."

SEC. 1177. Section 23 of Chapter 279 of the General Laws is hereby amended so as to read as follows:

“SEC. 23. Every person who shall take and carry away, without the consent of the owner thereof, any corn, grain, fruit, or growing vegetable out of any field, garden, or orchard, or who shall willfully and without the consent of the owner thereof root up, cut down, or otherwise injure or destroy or take and carry away any tree or underwood growing or standing upon the land of another, or shall maliciously root up, cut down, or otherwise injure or destroy any tree, root, fruit, or vegetable growing in any garden, field, orchard, highway, common, or public square, or who shall take and carry away, without the consent of the owner thereof, any cultivated plant, tree, or shrub from any graveyard or from any public or private grounds, or who shall wantonly or maliciously injure or destroy any plant or shrub growing upon the land or in the building of another, or who shall poison the earth about such plant or shrub so as to prevent or injure the growth thereof, or who shall maliciously or wantonly in any way injure or deface any building not his own or break the glass or any part of it in any such building, or shall maliciously injure any fence on or enclosing lands not his own, shall be imprisoned not exceeding one year or be fined not exceeding two hundred dollars.”

SEC. 1178. Section 2 of Chapter 284 of the General Laws is hereby amended so as to read as follows:

“SEC. 2. Every person who shall aid, assist, abet, counsel, hire, command, or procure another to commit any crime or offence, shall be proceeded against as principal or as an accessory before the fact, according to the nature of the offence committed, and upon conviction shall suffer the like punishment as the principal offender is subject to by this title.”

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SEC. 1179. Section 1 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

“SECTION 1. No person shall be put on trial for any offence before the superior court, except upon indictment found by a grand jury or appeal from the sentence of a district court.”

SEC. 1180. Section 7 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

“SEC. 7. Every person who shall be accused of any offence shall be proceeded against in the county in which the offence shall have been committed and not elsewhere, except that proceedings by indictment or on appeal for offences committed in the county of Bristol shall be had in the county of Providence, and except in cases in which special provision is made to the contrary.”

SEC. 1181. Section 13 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

“SEC. 13. No person accused of treason against the state, murder, robbery, rape, arson, or burglary shall be bailed, except by one of the justices of the supreme or superior court.”

SEC. 1182. Section 14 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

“SEC. 14. Every person who is held on capias or other process issuing out of the superior court, any district court, or from any justice of any district court or justice of the peace, to answer to any complaint or indictment against him in or from either of said courts, justices, or justices of the peace, shall be released upon giving recognizance, with sufficient sureties, before a justice of the superior or of any district court, in the sum named in such capias or other process, if any have been named therein, and if not, then in such sum as the justice shall deem reasonable, to appear before the court wherein the



complaint or indictment against him is pending or to which he may be bound over by any court, justice, or justice of the peace, to appear, to answer to said complaint or indictment and to answer the same whenever called upon so to do, and abide the final order of the court thereon, and in the meantime keep the peace and be of good behavior, and any justice of the superior or of any district court may take such recognizance in any place within the state, and said recognizance shall be returned to the court to which the accused has recognized to appear."

SEC. 1183. Section 15 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 15. No person imprisoned in any jail upon any criminal process shall be bailed, except by a justice of the superior or any district court or by some person specially appointed for that purpose by a justice of the superior court."

SEC. 1184. Section 20 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 20. The superior court may require any witness before it in any criminal matter to recognize with or without surety for his appearance to testify at any future time in the same cause."

SEC. 1185. Section 24 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 24. Whenever any person is tried upon a complaint or indictment and the court or jury, as the case may be, shall not be satisfied that he is guilty of the whole offence but shall be satisfied that he is guilty of so much thereof as shall substantially amount to an offence of a lower nature, or that the defendant did not complete the offence charged but that he was guilty only of an attempt to commit the same, the court or jury may find him guilty of such lower offence or guilty of an attempt to commit the

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same, as the case may be, and the court shall proceed to sentence such convict for the offence of which he shall be so found guilty, notwithstanding that such court had not otherwise jurisdiction of such offence."

SEC. 1186. Section 37 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 37. Unless otherwise provided, every person sentenced to imprisonment for a term of more than one year shall be imprisoned in the state prison and there kept at hard labor, and every person sentenced for a term of one year or less shall be imprisoned in the county jail in the county where he shall have been convicted, or in the state workhouse and house of correction, unless sentenced to be imprisoned in the jail in some other county."

SEC. 1187. Section 62 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 62. Every person who shall be sentenced to imprisonment in the state prison for a term of more than one year, for any one offence, shall forever thereafter be incapable of being elected to any office of honor, trust, or profit in this state and of acting as an elector therein, unless such person be expressly restored to such privilege by act of the general assembly."

SEC. 1188. Section 66 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 66. The superior court may appoint, whenever occasion may require, one or more attorneys to conduct the defence of any indigent person charged with any offence against the laws of the state."

SEC. 1189. Section 67 of Chapter 285 of the General Laws is hereby amended so as to read as follows:

"SEC. 67. The attorney or attorneys so appointed shall receive for the services rendered in conducting

the defence of such indigent person a reasonable compensation, to be allowed by the court: *Provided*, that, except in the defence of indigent persons charged with a capital offence, such compensation shall not exceed fifteen dollars per day for every day necessarily employed in conducting such defence, or in case no trial shall be had such attorney or attorneys shall receive not exceeding ten dollars for the services rendered in such cause, and shall also receive the necessary disbursements made therein, to be allowed by the court, which sums shall be paid out of any money in the treasury not otherwise appropriated; *and provided, further*, that in all cases except in the trials of any indigent person indicted for murder, the attorney or attorneys so appointed shall not receive pay for more than two days in the trial of any one case."

SEC. 1190. Section 2 of Chapter 288 of the General Laws is hereby amended so as to read as follows:

"SEC. 2. All complaints and warrants, indictments, actions, and informations founded on any penal statute shall be brought within the county in which the offence was committed, and not elsewhere: *Provided*, that the superior court for the county of Providence shall have jurisdiction of all such proceedings for the recovery of more than five hundred dollars when the offence was committed in the county of Bristol."

SEC. 1191. Section 22 of Chapter 288 of the General Laws is hereby amended so as to read as follows:

"SEC. 22. An appeal may be claimed by either party from any judgment of forfeiture rendered by a district court, to be taken in like manner as by defendants in criminal cases within the jurisdiction of a district court to try and determine, to the superior court for the same county, and like proceedings may



be had therein as in cases of informations for forfeitures originally filed in said court."

SEC. 1192. Section 8 of Chapter 289 of the General Laws is hereby amended so as to read as follows:

"SEC. 8. All misconduct or deficiencies with regard to the treatment or condition of the prisoners shall be reported by the said board to the general assembly, at its next session; all danger to the public safety or the safety of the prisoners from the insufficiency of the jail, apprehension of rescue, or the prevalence of disease shall be reported by the sheriff or said board to the superior court, as well as to the general assembly."

SEC. 1193. Section 9 of Chapter 289 of the General Laws is hereby amended so as to read as follows:

"SEC. 9. If, in the opinion of such court, it shall be expedient, from any of the causes mentioned in the preceding section, that persons who would otherwise be committed to the jail in any county should be committed to the jail of some other county during the continuance of such causes, the court may direct all persons who would otherwise be committed to such jail to be committed to the jail of any other county, and there to be detained until remanded to the jail where they would otherwise have been committed by order of court, or discharged according to law; and upon notice of such direction, all courts shall conform every process of commitment thereto, and all committing officers shall commit prisoners accordingly."

SEC. 1194. Section 10 of Chapter 289 of the General Laws is hereby amended so as to read as follows:

"SEC. 10. If, in the opinion of the superior court, it shall be expedient, from the insufficiency of the jail in any county, or the rebuilding or repairing of the same, the apprehension of rescue, the prevalence

of disease, or other cause, to remove any prisoner or prisoners to the jail of any other county, upon application in writing to it by the sheriff or inspector of the jail, may make an order for such removal and issue a warrant therefor, and have such prisoner or prisoners confined in the jail of some other county, and allow to the officer or officers executing such order and warrant all proper costs and expenses thereof."

SEC. 1195. Section 11 of Chapter 289 of the General Laws is hereby amended so as to read as follows:

"SEC. 11. Every prisoner or prisoners so removed shall be detained in the same manner and by the same process as in the jail from which they were removed, to be certified to the jailer by the removing officer, until remanded back by the order of the court, or discharged, according to law."

SEC. 1196. Section 12 of Chapter 289 of the General Laws is hereby amended so as to read as follows:

"SEC. 12. Said court may order and cause to be established a nightly guard at any of the jails, whenever they shall deem it necessary for the public safety or the safety of the prisoners, and may continue the same for so long a time as they may deem proper, and allow the proper expense thereof."

SEC. 1197. Section 13 of Chapter 294 of the General Laws is hereby amended so as to read as follows:

"SEC. 13. The justices of the supreme and superior courts, the stenographic clerks of said court, the attorney-general, and the assistant attorney-general shall be allowed and paid, in addition to their salaries, their actual expenses for traveling and subsistence when performing official duties outside the limits of the counties in which they reside, not exceeding the sum of three hundred and fifty dollars each per annum. And the state auditor shall draw

his orders from time to time upon the general treasurer for such expenses, upon the certificates of such justices or any one of them, to be paid out of any moneys in the treasury not otherwise appropriated."

SEC. 1198. Section 7 of Chapter 295 of the General Laws is hereby amended so as to read as follows:

"SEC. 7. The following fees shall be taxed and allowed in bills of costs to attorneys and parties in the superior court in civil cases:

"To the attorney of the party obtaining judgment.....	\$5 00
"To plaintiff's solicitor for every bill in equity, original and supplemental.....	5 00
"To defendant's solicitor for every answer to bill in equity, original or supplemental, one only to be taxed, though several filed, if defence be joint.....	5 00"

SEC. 1199. Section 10 of Chapter 295 of the General Laws is hereby amended so as to read as follows:

"SEC. 10. The fees of witnesses shall be:

"For every day's attendance before the supreme or superior court.....	\$1 50
"For every mile's travel.....	10
"For every day's attendance before any other tribunal or magistrate, including attendance in giving depositions.....	50
"For every mile's travel.....	10
"For every day's commitment in jail upon default to enter into recognizance with surety.	2 00

"For any witness who shall come from without the jurisdiction of the state to testify in behalf of the state, in any criminal proceedings, such sum, in addition to his travel and attendance, as the court before which said proceedings are had shall deem proper.



“In addition to the fees above provided, witnesses summoned and testifying as experts in behalf of the state, or any person acting as an interpreter, before the supreme, superior, or district court, or coroner, may be allowed and paid such sum as such court or coroner may deem just and reasonable: *Provided*, that the allowance so made by any coroner shall be subject to the approval of a justice of the superior court.”

SEC. 1200. Section 12 of Chapter 295 of the General Laws is hereby amended so as to read as follows:

“SEC. 12. The fees of sheriffs, deputy sheriffs, town sergeants, and constables shall be as follows:

“For serving any writ of arrest..... \$2 00

“For serving any writ of summons, or of attachment, issued by the supreme or superior court..... 75

“For serving any writ of summons, of attachment, or other civil process, issued by a district court, wherein the ad damnum, debt, damages, or property claimed is more than one hundred dollars, excepting a writ of replevin. 75

“For serving a writ in any action brought to recover possession of lands or tenements... 75

“For serving any other writ issued by a district court, excepting a writ of replevin... 50

“For taking bail by bond or indorsement on a writ of arrest..... 50

“For taking bond for the debt on a writ of attachment, if the amount of said bond be five hundred dollars or under..... 50

“If over five hundred dollars..... 1 00

“For taking bond for goods and chattels attached, the same as taking bond for a debt.

“For taking an inventory of goods and chattels attached, for every hour after the first necessarily employed..... 20

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“For every page of one hundred words of such inventory . . . . .	15
“Excepting writs issued by a district court, for every copy of a writ, or for every copy of a writ having thereon a reference to the property attached, or time or place of attachment, or for every copy of a writ with the officer’s doings thereon, required to be left with or for, or to be mailed to, any person, for every one hundred words . . . . .	15
“For every copy of a writ issued by a district court . . . . .	50
“For committing a person on original writ or mesne process . . . . .	50
“For serving a writ of replevin, including taking bond and delivering property . . . . .	2 00
“For every hour necessarily employed in making an inventory of the property replevied . . . . .	20
“For every page of one hundred words of such inventory . . . . .	15
“If the damage laid in a writ of arrest, attachment, or replevin be over five hundred dollars, in addition one-twentieth of one per centum for all sums over.	
“For every return on a writ, setting forth that the defendant cannot be found, or that no goods and chattels and real estate and shares in any banking-association and personal estate in the hands of a trustee, or either, as the writ shall command the attachment thereof, can be found . . . . .	50
“For serving an execution, when the money due thereon is collected or paid during commitment, and does not exceed four dollars . . . . .	30
“If above four dollars and not exceeding seven dollars . . . . .	40

“If above seven dollars and not exceeding twenty dollars.....	60
“If above twenty dollars and not exceeding fifty dollars.....	1 00
“If above fifty dollars and not exceeding one hundred dollars.....	1 50
“If above one hundred dollars and not exceeding two hundred dollars.....	2 00
“If above two hundred dollars, two dollars and one-tenth of one per centum; none of the less sums to be included in the greater.	
“For serving an execution by levy on real estate.....	50
“For serving an execution by levy on personal estate, the same as for serving a writ by attachment of like property.	
“For serving all executions where the money due thereon is collected or paid during commitment, and does not exceed four dollars	30
“For committing a person on execution....	1 00
“For delivering possession of lands while actually employed by the day.....	1 00
“For advertising real or personal estate to be sold at auction.....	1 00
“For advertising every adjournment of same.....	50
“For selling at public auction real or personal estate, if sold for one hundred and fifty dollars or under, two per centum.	
“If sold for over one hundred and fifty dollars and under three hundred dollars, one and one-half per centum.	
“On all sums over three hundred dollars and under one thousand dollars, one per centum, and all over one thousand dollars, ten dollars and one-tenth of one per centum in addition,	



to be computed on the amount of the sales, and none of the less sums to be included in the greater.

“For serving a subpoena on a witness, if not more than one mile from the place of appearance..... 50

“For serving a divorce citation..... 2 00

“For travel per mile to serve a subpoena or writ, to be computed from the place where the same is returnable; and if more than one person is named therein, the travel shall be computed from the place of service which shall be nearest, adding thereto the extra travel which shall be necessary to serve it on the others... 10

“Except as hereinafter provided for serving a warrant, or capias, or a writ of habeas corpus, in a criminal case, and conveying the prisoner to court, if not more than one mile.. 60

“For serving a capias issued by the superior court, upon dismissal of appellate proceedings for failure to file reasons of appeal in criminal cases, and conveying the prisoner to court, if not more than one mile..... 2 00

“For every original commitment of a prisoner in such case to any jail or to the state prison or other place of commitment..... 70

“For every subsequent commitment on same complaint..... 25

“For travel with a prisoner in custody in such case to court, county jail, or to the state prison or other place of commitment, per mile 20

“For attending a district court by the day, in a criminal case..... 50

“For attendance by sheriffs upon the supreme or superior court, or upon the district courts of the first, sixth, eleventh, and twelfth

judicial districts, each, whether sitting at the same time or not, by the day.....	3 00
“For actual attendance by deputy sheriffs upon the supreme or superior court, by the day.....	3 00
“For actual attendance by other officers, and waiters, by the day.....	2 00
“For actual attendance by deputy sheriffs upon district courts where authorized by law, by the day.....	2 00
“For attending the district court of the tenth judicial district, by the week.....	2 00

“The fees of sheriffs and deputy sheriffs for serving writs and executions in scire facias against bail in criminal cases shall be the same as above provided for similar service of writs and executions in civil cases; and when the amount of such fees shall be certified to the state auditor by the clerk of the court to which such writ or execution shall have been returned, the state auditor shall draw his order upon the general treasurer in favor of the sheriff or deputy sheriff who shall have served such writ or execution for the amount of such fees.”

SEC. 1201. Section 23 of Chapter 295 of the General Laws is hereby amended so as to read as follows:

“SEC. 23. There shall be taxed and allowed to the state in the bill of costs against every person, in a criminal cause pending in the superior court to which it shall be the duty of the attorney-general to attend:

“For every indictment drawn which shall be found by the grand jury.....\$1 50

“For the argument of any indictment or complaint in which issue is joined in law or in fact..... 5 00”

SEC. 1202. Section 6 of Chapter 296 of the General Laws is hereby amended so as to read as follows:

“SEC. 6. Persons of the following description, so long as they shall remain of said description, shall be exempted from the performance of military duty, to wit.: The justices of the supreme and superior courts, and the clerks, assistant clerks, and deputy clerks thereof, the justices and clerks of the district courts, the secretary of state, the attorney-general and the assistant attorney-general, the general treasurer, the state auditor, the commissioner of public schools, the members of both houses of the general assembly and the officers of said houses, the sheriff and his regular deputies of each county, the members of the board of state charities and corrections, members of the state board of soldier’s relief, one ferryman at each stated ferry who usually navigates the boat, the keepers of light-houses within the state, all settled or ordained ministers of the gospel, all licensed preachers, the president, professors, tutors, and registrar of Brown University, the members of the town councils of the several towns, the mayor and aldermen of any city, town and city treasurers, town and city clerks, practicing physicians, practicing surgeons, not including the pupils of either, regular preceptors and ushers of academies and schools, and active members of fire companies who are a part of the active fire department of the town or city in which they reside, not exceeding twenty men to any one company, unless otherwise provided by special enactment, and such others as shall make oath or affirmation that they are conscientiously scrupulous against bearing arms, which fact shall appear by certificate of the magistrate before whom such oath or affirmation was given.”

SEC. 1203. Section 132 of Chapter 296 of the Gen-



eral Laws is hereby amended so as to read as follows:

“SEC. 132. The judge-advocate-general, his assistant, or the brigade judge-advocate may be empowered by the commander-in-chief to issue during the encampment provided for in section one hundred thirty-one, a warrant, returnable to the district court of the district in which such offence shall be committed, for any offence where, by the provisions of law, the justice or clerk of a district court may issue a warrant: *Provided*, such offence shall be committed during the time of such encampment, and within the limits of the camp or within a distance of one mile from the guard-line. No commissioned officer of the militia entering a complaint to the judge-advocate-general, his assistant, or the brigade judge-advocate, in such cases, shall be required at the time of complaint or thereafter to enter into recognizance or in any way to become liable for the costs that shall accrue thereon.”

SEC. 1204. Section 159 of Chapter 296 of the General Laws is hereby amended so as to read as follows:

“SEC. 159. Whenever in any county in this state there shall be any tumult, riot, mob, or any body of men acting together, with intent to commit felony, to offer violence to persons or property, or in any other way to resist the laws of the state by force of arms or by violence, or whenever any of said acts shall be threatened, and the fact made to appear to the commander-in-chief or the sheriff of said county, or to either of the justices of the supreme or superior court, or to the president of the town council, or, if in any city, then to the mayor of such city in the first instance, or, in his absence, to the president of the board of aldermen, that the services of the militia are required, the commander-in-chief shall issue his

order, or such justice, sheriff, mayor, or president shall issue his or their precept to that effect, properly signed, directed to the commander-in-chief, and in case he cannot be informed, a copy thereof to the commanding officer of the brigade, regiment, battalion, or company, making requisition for troops upon either of them, as the case may be, who shall order out his command, or any part of the same, and by such precept or order empowering them to suppress such riot, tumult, or mob, and to prevent the perpetration of any such felony, or act of unlawful violence."

SEC. 1205. Section 2 of Chapter 332 of the Public Laws is hereby amended so as to read as follows:

"SEC. 2. Every person having under his control any such child between the ages of seven and eighteen years shall cause such child to attend school at said institute for such period of time or such prescribed course, in each individual case, as may be deemed expedient by the board of trustees, and for any neglect of such duty the person so offending shall be fined not exceeding twenty dollars: *Provided*, that if the person so charged shall prove to the satisfaction of said board that the child has received or is receiving, under private or other instruction, an education suitable to his condition, in the judgment of said board, then such penalty shall not be incurred; *provided, further*, that no child shall be removed to said institution or taken from the custody of its parent or guardian except as a day scholar, unless such parent or guardian is an improper person to have such custody, and the supreme court shall have jurisdiction in habeas corpus to examine into and revise all findings of said board of trustees under this act."

SEC. 1206. Section 2 of Chapter 499 of the Public Laws is hereby amended so as to read as follows:

“SEC. 2. In case any person is injured by the breach of said bond he may sue upon the same in like manner as he might do upon a sheriff's bond in a like case under the provisions of sections 197 and 198 of the court and practice act.”

SEC. 1207. Section 3 of Chapter 580 of the Public Laws is hereby amended so as to read as follows:

“SEC. 3. The city council of any city or the town council of any town may, after fourteen days' written notice to all parties interested of the time and place at which they will consider such matter, and after hearing all parties, if the public necessity and convenience in the use of any portion of a street require it, for good and sufficient reasons, to be stated in the order therefor, order that the location and the right to maintain, continue, and use tracks, with poles, wires, and other appurtenances, in such portion shall be revoked; and such revocation of such location and right shall take effect when approved by the railroad commissioner, after public notice and hearing. Upon revocation, as aforesaid, the company shall remove the tracks in conformity with the order of revocation, and shall put the portion of the surface of the streets disturbed by such removal in as good condition and with the same material as the adjacent surface of said streets. If the company neglects to execute such order, after thirty days' notice thereof, the city council of such city or the town council of such town may cause the same to be executed and the work done at the expense of the company, to be recovered in an action of the case: *Provided, however,* that in each such case of revocation such city or town council shall in and by such order grant to such company interested a right in another



street or highway in such city or town, as nearly similar in public convenience as possible, to construct, maintain, use, and operate its railroad and the appurtenances thereof; *and provided, further*, that no such location or right of any company accepting the provisions of this act shall hereafter be revoked by any city or town council, except under and in accordance with the provisions of this act; *and provided, further*, that any city or town council, or any company aggrieved thereby, may appeal from any decision of any such railroad commissioner upon any such order, within thirty days after the rendering of such decision, to the supreme court, and such court shall thereupon hear and determine all matters of law and fact involved in said appeal, including the question of public necessity and convenience, and the propriety of the order or decree made by such city or town council, and may annul, modify, or amend any such order or decree, and take such other action in the premises as law and justice may require."

SEC. 1208. Section 1 of Chapter 582 of the Public Laws is hereby amended so as to read as follows:

"SECTION 1. The superior court shall hear and determine petitions of persons alleging themselves to be citizens, residents, and domiciled inhabitants of this state, and praying a judicial declaration of such citizenship, residence, and domicile."

SEC. 1209. Section 15 of Chapter 853 of the Public Laws is hereby amended so as to read as follows:

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349 "SEC. 15. Any person aggrieved by the decision of the commissioners upon any application for a private or several oyster ground or oyster fishery may petition the supreme court for a reversal or modification of such decision."

SEC. 1210. Section 17 of Chapter 853 of the Public Laws is hereby amended so as to read as follows:

“SEC. 17. Such case shall be heard and tried in the same manner as other cases entered upon the docket of said court, and the judgment of the court (which shall be entered immediately upon the rendition of decision) shall be conclusive upon the question whether said land shall or shall not be leased, and the commissioners shall grant or refuse a lease accordingly.”

SEC. 1211. Section 32 of Chapter 853 of the Public Laws is hereby amended so as to read as follows:

“SEC. 32. Each of said commissioners shall be by virtue of his office a special constable, and, as such commissioner, may arrest any person found violating any of the provisions of this act, and may seize any boat or vessel, with her tackle, apparel, and furniture, and all implements belonging thereto, when employed in taking oysters or in injuring any oyster bed in violation of the provisions of this act, and shall make complaint when called upon to do so for all such violations, and in any such complaint he shall not be required at the time of complaint or thereafter to enter into recognizance or in any way to become liable for the costs that may accrue thereon; and the attorney-general shall, when notified to do so by the complainant, prosecute all such complaints in the court where the same shall be made or be pending; and all cases of appeal thereof from the sentence of a district court, and all questions arising under the same, or under any complaint and warrant made under the provisions of this act, shall be conducted by said attorney-general.”

SEC. 1212. Section 1 of Chapter 984 of the Public Laws is hereby amended so as to read as follows:

“SECTION 1. Any assignee at common law for the

benefit of creditors, upon application to the superior court by one-fifth in amount of the creditors of the assignor, may be required to give bond to the court, with good and sufficient surety, to be approved by the court, in the amount of the total value of all property conveyed by the deed of assignment, conditioned on the faithful performance of his duties. All such bonds shall be filed in the office of the clerk of the superior court, and may be sued upon in the proper court at the relation of any party interested or aggrieved, upon surety for costs being given to the court in which such suit is brought. Joint assignees may give joint or several bond; and any assignee so required to give bond failing to give such bond in manner aforesaid shall be deemed to have resigned or refused his trust."

SEC. 1213. Section 8 of Chapter 984 of the Public Laws is hereby amended so as to read as follows:

"SEC. 8. No such assignee at common law for the benefit of creditors shall, except by consent in writing of all the creditors of the assignor, pay any dividend until the expiration of the period of four months from the making of such assignment. In case no petition in bankruptcy or insolvency has been filed within such period, such assignee shall complete the administration of said assigned estate as soon as may be, and upon the payment of final dividend shall make itemized sworn report in writing to the superior court of all his proceedings under his trust; and said court, after at least ten days' notice by such assignee by mail post-paid, directed to the creditors of such assignor at the respective addresses as they appear in the schedule made by such assignor and filed with such assignee, of the time and place for hearing upon such assignee's report, shall examine such assignee's report and hear any parties interested, and upon the expira-



tion of thirty days after the approval of such report, or upon a decision approving such report by the supreme court upon appeal, or upon certification by the superior court as hereinafter provided, the surety upon any bond of such assignee shall be thereupon discharged."

SEC. 1214. Section 9 of Chapter 984 of the Public Laws is hereby amended so as to read as follows:

"SEC. 9. In all proceedings arising under this chapter, whenever such assignor or some one of such assignors is an inhabitant of or located in Providence or Bristol county, the papers shall be filed in the clerk's office of the superior court in Providence; and whenever such assignor or one of such assignors is an inhabitant of or located in either Newport, Kent, or Washington county, the papers shall be filed in the clerk's office of said court in Newport, East Greenwich, or South Kingstown, respectively. Any party aggrieved by a decision or order of the superior court upon any question arising in any proceedings hereunder may appeal to the supreme court by claiming the same in writing filed with the clerk at any time within thirty days after the entry of such decision or order; and also the said court may at once certify any question to the supreme court. The proceedings in all cases under this chapter shall be deemed matters of record; but the same shall not be required to be recorded at large, but shall be filed and numbered in the office of the clerk of the superior court, and a docket only, or short memorandum thereof, shall be kept by the clerk of the supreme court, in books provided for that purpose."

SEC. 1215. Section 13 of Chapter 1100 of the Public Laws is hereby amended so as to read as follows:

"SEC. 13. Said board shall have power to revoke

any certificate of registration granted by it under this act, for (a) gross incompetency; (b) the keeping of a shop, or the tools, appliances, or furnishings thereof, in an unclean or unsanitary condition; (c) failure to comply with the requirements of section 11 of this act: *Provided*, that before any certificate shall be so revoked the holder thereof shall have notice in writing of the charge or charges against him, and shall have reasonable opportunity to be heard in his defence. Any person whose certificate has been so revoked may apply to have the same reissued, and the same shall be issued to him upon a satisfactory showing that the disqualification has ceased. The said board shall have power by its chairman to summon any person to appear as a witness and testify at any hearing appointed by it touching any such charge preferred against any barber of any city in this state, and to examine such witness relating thereto; and may administer oaths to such witness.

“Any person aggrieved by any decision or ruling of said board may, within thirty days, exclusive of Sundays and legal holidays, after receiving notice of said decision, take an appeal therefrom to the supreme court, and said court shall, as soon as may be, hear and determine said appeal.”

SEC. 1216. The following sections of the General Laws, to wit: Section 4 of chapter 2, sections 8 and 23 of chapter 34, sections 35 and 36 of chapter 71, section 6 of chapter 79, sections 9, 11, and 12 of chapter 114, section 9 of chapter 119, sections 5 and 6 of chapter 123, section 2 of chapter 157, section 3 of chapter 187, section 1 of chapter 272, sections 44 and 45 of chapter 285, sections 4 and 21 of chapter 288, and sections 8 and 13 of chapter 295; and the following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Section 12 of chap-

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ter 833, and section 10 of chapter 969, are hereby amended by striking out in each of said sections the words "common pleas division of the supreme" wherever they occur and inserting in lieu thereof in each of said sections the word "superior."

SEC. 1217. Section 4 of chapter 2 of the General Laws, and section 16 of chapter 853 of the Public Laws enacted since January 1, A. D. 1896, are hereby amended by striking out in each of said sections the words "common pleas division" wherever they occur and inserting in lieu thereof in each of said sections the word "court."

SEC. 1218. Section 10 of chapter 984 of the Public Laws enacted since January 1, A. D. 1896, and the following sections of the General Laws, to wit: Section 5 of chapter 22, sections 5 and 9 of chapter 25, and section 41 of chapter 291, are hereby amended by striking out in each of said sections the word "court" wherever it occurs and inserting in lieu thereof in each of said sections the words "and superior courts."

SEC. 1219. The following sections of the General Laws, to wit: Sections 6, 7, and 13 of chapter 22, and section 10 of chapter 24, are hereby amended by striking out in each of said sections the words "several divisions of the supreme court" wherever they occur and inserting in lieu thereof in each of said sections the words "supreme and superior courts."

SEC. 1220. The following sections of the General Laws, to wit: Section 15 of chapter 29, section 14 of chapter 36, sections 15, 16, and 17 of chapter 71, section 24 of chapter 100, section 2 of chapter 161, section 16 of chapter 176, section 27 of chapter 177, sections 42, 45, 51, 67, 69, 71, 72, and 76 of chapter 178, section 23 of chapter 180, sections 4 and 13 of chapter 181, section 41 of chapter 187, section 9 of

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chapter 192, section 8 of chapter 193, sections 18, 19, and 20 of chapter 194, section 13 of chapter 195, sections 12, 18, and 21 of chapter 201, sections 16, 17, 18, and 21 of chapter 208, section 16 of chapter 265, and section 1 of chapter 267; and the following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Section 5 of chapter 303, and sections 4 and 5 of chapter 984, are hereby amended by striking out in each of said sections the words "appellate division of the supreme" wherever they occur and inserting in lieu thereof in each of said sections the word "superior."

SEC. 1221. Section 5 of chapter 165 of the General Laws, and the following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Section 4 of chapter 363, section 10 of chapter 804, section 19 of chapter 825, section 10 of chapter 930, and section 10 of chapter 1034, are hereby amended by striking out in each of said sections the words "either division of the supreme" wherever they occur and inserting in lieu thereof in each of said sections the word "any."

SEC. 1222. The following sections of the General Laws, to wit: Section 4 of chapter 54, section 6 of chapter 60, section 6 of chapter 109, section 2 of chapter 122, section 4 of chapter 123, sections 9 and 17 of chapter 198, section 5 of chapter 268, sections 11 and 12 of chapter 280, and section 16 of chapter 288; and the following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Section 1 of chapter 1101 and section 5 of chapter 1106, are hereby amended by striking out in each of said sections the words "common pleas division of the supreme court in" wherever they occur and inserting in lieu thereof in each of said sections the words "superior court for."

SEC. 1223. The following sections of the General Laws, to wit: Section 20 of chapter 71, sections 1 and 3 of chapter 123, section 7 of chapter 231, and section 60 of chapter 285, are hereby amended by striking out in each of said sections the word "supreme" wherever it occurs and inserting in lieu thereof the word "superior."

SEC. 1224. The following sections of the General Laws, to wit: Section 7 of chapter 79, sections 5, 10, and 12 of chapter 81, and section 3 of chapter 122, are hereby amended by striking out in each of said sections the words "said common pleas division" wherever they occur and inserting in lieu thereof in each of said sections the words "the superior court."

SEC. 1225. Sections 7, 8, 9, and 11 of chapter 81 of the General Laws are hereby amended by striking out in each of said sections the words "common pleas division" wherever they occur and inserting in lieu thereof in each of said sections the words "superior court."

SEC. 1226. The following sections of the General Laws, to wit: Section 5 of chapter 14, section 6 of chapter 124, section 5 of chapter 165, sections 31, 44, and 45 of chapter 187, section 17 of chapter 188; and the following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Sections 1 and 2 of chapter 583, are hereby amended by striking out in each of said sections the words "appellate division of the" wherever they occur.

SEC. 1227. The following sections of the General Laws, to wit: Section 17 of chapter 188, sections 18, 19, and 20 of chapter 194, and section 29 of chapter 206, and the following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Section 2 of chapter 582, and sections 2 and 3 of chapter 583, are hereby amended by striking out in

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each of said sections the word "division" wherever it occurs and inserting in lieu thereof in each of said sections the word "court."

SEC. 1228. The following sections of the General Laws, to wit: Sections 8 and 22 of chapter 191, section 7 of chapter 275, section 1 of chapter 278, and section 2 of chapter 295, are hereby amended by inserting in each of said sections the words "or superior" after the word "supreme" wherever it occurs.

SEC. 1229. Sections 12, 18, and 21 of chapter 201 of the General Laws, and section 5 of chapter 984 of the Public Laws enacted since January 1, A. D. 1896, are hereby amended by striking out in each of said sections the words "appellate division" wherever they occur and inserting in lieu thereof in each of said sections the word "court."

SEC. 1230. The following sections of the General Laws, to wit: Sections 20, 21, and 22 of chapter 79, and section 5 of chapter 93, are hereby amended by striking out in each of said sections the words "or justice" wherever they occur.

SEC. 1231. Sections 1 and 4 of chapter 288 of the General Laws are hereby amended by striking out in each of said sections the word "twenty" wherever it occurs and inserting in lieu thereof in each of said sections the words "five hundred."

SEC. 1232. Section 18 of chapter 208 of the General Laws, and section 3 of chapter 984 of the Public Laws enacted since January 1, A. D. 1896, are hereby amended by striking out in each of said sections the words "appellate division" wherever they occur and inserting in lieu thereof in each of said sections the words "superior court."

SEC. 1233. Sections 4 and 24 of chapter 260 of the General Laws are hereby amended by striking

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out in each of said sections the words "any justice of the supreme court or."

SEC. 1234. Sections 12, 15, and 23 of chapter 260 of the General Laws are hereby amended by striking out in each of said sections the words "or division" wherever they occur.

SEC. 1235. Sections 1 and 12 of chapter 272 of the General Laws are hereby amended by striking out in each of said sections the word "three" and inserting in lieu thereof in each of said sections the word "five."

SEC. 1236. The following sections of the General Laws, to wit: Section 14 of chapter 36, and section 9 of chapter 81, are hereby amended by striking out in each of said sections the words "said division" wherever they occur and inserting in lieu thereof in each of said sections the words "the court."

SEC. 1237. The following sections of the General Laws, to wit: Sections 21 and 22 of chapter 26; section 10 of chapter 264; section 28 of chapter 265; section 42 of chapter 279; and sections 6 and 7 of chapter 294, are hereby repealed.

SEC. 1238. The following chapters of the General Laws, to wit: chapter 196; chapters 209 to 230, both inclusive; chapters 233 to 257, both inclusive; chapter 262, chapter 271, and chapter 274 are hereby repealed.

SEC. 1239. The following sections of the Public Laws enacted since January 1, A. D. 1896, to wit: Sections 2 and 3 of chapter 548; section 9 of chapter 562; section 4 of chapter 582; section 1 of chapter 680; section 1 of chapter 701; sections 43 and 44 of chapter 809; section 1 of chapter 852; section 4 of chapter 891; and section 2 of chapter 973 are hereby repealed.

SEC. 1240. The following chapters of the Public Laws enacted since January 1, A. D. 1896, to wit:

chapters 299, 308, 309, 313, 317, 324, 325, 328, 331, 346, 347, 348, 349, 351, 401, 421, 422, 440, 441, 442, 444, 451, 457, 463, 465, 471, 508, 519, 521, 523, 524, 533, 542, 546, 550, 578, 598, 624, 649, 651, 653, 670, 671, 673, 675, 676, 681, 714, 721, 722, 724, 736, 750, 751, 784, 795, 811, 831, 836, 841, 843, 845, 850, 864, 878, 915, 948, 962, 967, 976, 977, 978, 979, 980, 985, 995, 996, 997, 998, 999, 1002, 1054, 1061, 1062, 1063, 1064, 1093, 1108, 1109, 1110, 1111, 1112, 1149, 1150, and 1153 are hereby repealed.

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## CHAPTER 53.

### OF PROVISIONS FOR CARRYING THIS ACT INTO EFFECT.

SECTION 1241. Annual salaries shall be paid as follows:

To the chief justice of the supreme court, six thousand dollars.

To the associate justices of the supreme court, each fifty-five hundred dollars.

To the presiding justice of the superior court, fifty-five hundred dollars.

To the associate justices of the superior court, each five thousand dollars.

To the reporter of the decisions of the supreme court, twelve hundred dollars.

To the secretary of the supreme court, fifteen hundred dollars.

To the clerk of the supreme court, twenty-five hundred dollars.

To the assistant clerks of the supreme court, not exceeding eighteen hundred dollars each, to be fixed in amount by the supreme court.

Amended  
Cap. 1585.  
Jan. '08.

Amended  
Cap. 1564.  
Jan. '08.

To the clerk of the superior court for the counties of Providence and Bristol, twenty-five hundred dollars.

To the assistant clerk of the superior court for the counties of Providence and Bristol, having an office in Bristol, six hundred dollars.

To the other assistant clerks of the superior court for the counties of Providence and Bristol, not exceeding eighteen hundred dollars each, to be fixed in amount by a majority of the justices of the superior court.

To the clerk of the superior court for the county of Newport, eighteen hundred dollars.

To the clerk of the superior court for the county of Washington, twelve hundred dollars.

To the clerk of the superior court for the county of Kent, twelve hundred dollars.

To the crier of the supreme court, seven hundred dollars.

SEC. 1243. The sum of ninety thousand dollars is hereby appropriated for the payment of the salaries of the officers named in sections 1244 and 1245, for clerical assistance in the office of the clerk of the superior court for Newport county, for the payment of officers' and witness fees in, and for the incidental expenses of the supreme and superior courts, for the travelling expenses of the superior court, for the fiscal year ending on the 31st day of December, A. D. 1905; and the state auditor is hereby authorized to draw his order for such portion thereof as may be required from time to time, upon the receipt by him of properly authenticated vouchers.

SEC. 1244. The clerks of the appellate division of the supreme court and of the common pleas division of the supreme court in the several counties are hereby required to surrender up and deliver over, immediately upon the taking effect of this act, all books, papers, and records of their several offices, in-



cluding the seals of their respective courts, and all other public property therein in their custody and control, to the clerk of the supreme court and to the clerks of the superior court, or to the district courts, as and in such manner as the supreme court may by general rule or special order direct, in accordance with and in furtherance of the provisions of this act; and every clerk or district court receiving such property shall receipt therefor to the clerk surrendering the same.

SEC. 1245. The clerk of the appellate division of the supreme court in Providence at the time when this act takes effect shall thereupon and thereafter become and be the clerk of the supreme court, and shall hold said last-named office in continuation of said first-named office until his successor shall be duly elected and qualified.

SEC. 1246. The clerks of the common pleas division of the supreme court in the counties of Providence, Newport, Washington, and Kent at the time when this act takes effect shall, respectively, thereupon and thereafter become and be the clerks of the superior court for the counties of Providence and Bristol, for the county of Newport, for the county of Washington, and for the county of Kent, and each of them shall hold his last-named office until his successor shall be duly elected and qualified.

SEC. 1247. The secretary of the appellate division of the supreme court at the time this act goes into effect shall become and be the secretary of the supreme court until another is appointed as provided in section 69. The court stenographers of the common pleas division of the supreme court at the time this act takes effect shall become and be the court stenographers of the superior court until others are appointed in their places as provided in section 70.

SEC. 1248. The clerks of the probate courts in the several towns and cities at the time when this act takes effect shall, respectively, thereupon and thereafter become and be the clerks of the probate courts in said towns and cities, and each of them shall hold his last-named office until his successor shall be duly elected and qualified.

SEC. 1249. The supreme court shall, as soon as may be after this act takes effect, by general or special order, give such directions to each of the present clerks of the appellate division of the supreme court and of the common pleas division of the supreme court in the several counties, as to what disposition he shall make of each of the actions, suits, and proceedings, civil and criminal, then pending in the court of which he is clerk, and to which clerk of the courts established by this act, or to which of the several district courts, he shall transmit the original papers, exhibits, and records therein, as may be necessary to carry into effect the provisions of this act.

SEC. 1250. The supreme court and the superior court for the several counties and the several district courts to which the said original papers, exhibits, and records shall have been transmitted as aforesaid, shall have jurisdiction of all actions, suits, records, and proceedings so transmitted, and shall proceed therein in all respects as if the same had been originally brought before such supreme, superior, or district court under this act.

SEC. 1251. In all cases, civil or criminal, wherein, at the time this act takes effect, any appeal shall have been lawfully claimed and be pending from any sentence, order, determination, judgment, or decree of the common pleas division of the supreme court, or of any district court, court of probate, town council,

Amended by P. L.

Cap. 327 Jan. 06

R. L. 33

*pending*

commissioners, or other body or lawfully constituted board of authority, to the appellate division of the supreme court or common pleas division of the supreme court in any county, but not entered in the appellate court, such appeal may be entered in accordance with the provision of this act in the superior court for such county at the time when the same should have been entered in the appellate division of the supreme court or common pleas division of the supreme court in accordance with such appeal as claimed; and if so entered, the superior court for such county shall have jurisdiction thereof as if such appeal had been originally claimed and taken thereto under and in accordance with the provisions of this act on claim for jury trial, any provision of this act, as to appeals in similar cases, originally taken under this act, to the contrary notwithstanding: *Provided*, that in any case covered by this section either party shall be entitled to a trial by jury in such superior court, of any issue of fact arising therein, with the right to move for a new trial or to prosecute a bill of exceptions in all said appealed cases, whether tried by court or jury, and with the right to have the case tried upon an agreed statement of facts in the supreme court, in accordance with the provisions of this act; *and provided, further*, that any bond lawfully given or other sufficient steps lawfully taken before this act takes effect shall be sufficient to sustain such appeal, and that any such bond shall be and remain in full force and effect as though given under this act.

SEC. 1252. In any case, civil or criminal, wherein, when this act takes effect, any finding, order, judgment, or decree shall have been made or entered by the appellate division of the supreme court in any county setting aside, affirming, or ordering the entry



of any verdict, finding, determination, judgment, or decree, or allowing any motion or petition for new trial, or sustaining or overruling any bill of exceptions, in, by, or from the common pleas division of the supreme court in any county, or any district court, or directing the entry or re-entry of such case in the common pleas division of the supreme court, or in the district court, such case shall be entered or re-entered, and such finding, order, judgment, or decree shall be had or made, in the superior court for the same county, or in the district court on the calendar day or days or at the time when the same would but for this act have been lawfully had, made, entered, or re-entered in such common pleas division of the supreme court or district court under such finding, order, judgment, or decree; and thereupon such superior court or district court shall have jurisdiction of such case, and shall proceed therein as if the same had been originally directed to be brought, entered, or re-entered before it under the provisions of this act.

SEC. 1253. Every writ, subpœna, precept, citation, execution, and process whatever, civil or criminal, that may be outstanding and have been issued out of or made returnable to either division of the supreme court in any county when this act takes effect, and every arraignment, attachment, summons, trustee process, arrest, levy, replevin, execution, warrant, capias, distress, recognizance, bail bond, security, and every other act, matter, and thing that may have been lawfully made, given, taken, or done thereunder or therein, shall be and remain in full force and effect; and every such writ, subpœna, precept, citation, execution, and process shall be held and deemed to be returnable on the return day named therein to the supreme court or to the su-

perior court for the county to which the same would have been returnable if it had been originally issued under and in accordance with the provisions of this act; and if the same be returned and entered as aforesaid, the supreme or such superior court, as the case may be, shall have jurisdiction over the same with the same effect as if it had been originally brought or begun hereunder.

SEC. 1254. All persons bound over by any district court to appear before the common pleas division of the supreme court in any county, to be holden after this act goes into effect, shall be holden and obliged to appear before the superior court for such county on the day on which they were bound over to appear before said common pleas division, if such superior court be then in session; and if not in session, then on the first day thereafter when such superior court is in session; and the conditions of all commitments made and all recognizances taken in such cases shall be deemed and taken to call for such appearance as herein provided.

SEC. 1255. Every judgment, order, determination, and decree made, and every stipulation, security, bond, and agreement given or made, and every act done by any party or garnishee or trustee in any action, cause, or proceeding pending in or returnable to either division of the supreme court in any county when this act takes effect, shall continue to have the same force and effect in the supreme and superior courts and in district courts to which such cases may be sent under this act as it would have had in the division in which it was pending or to which it was returnable.

SEC. 1256. Whenever verdict, decision, or judgment has been rendered or decree entered before this act takes effect, all procedure on a bill of exceptions,

or to obtain a trial, new trial, hearing, or rehearing, shall be had in the same manner and decided by the same law as if this act had not been passed; and any trial, new trial, hearing, or rehearing shall be had, or, when relief is denied, judgment or decree shall be ordered entered, in the court provided for the same under the provisions of this act.

SEC. 1257. The superior court for any county is authorized to issue executions under its seal, in all cases transferred thereto under this act, upon judgments rendered or decrees entered by either division of the supreme court in such county with the same effect as if said executions had been issued by the courts in which said judgments were rendered.

SEC. 1258. The superior court for any county may, in all divorce petitions, in all suits and proceedings in equity, in all proceedings following the course of equity, in all habeas corpus proceedings and proceedings relating to the poor, and in all other proceedings over which it has jurisdiction, which may have been heard or determined in or by either division of the supreme court in any county when this act takes effect, and transferred thereto, do any additional acts and grant any supplementary or additional process or relief with the same effect and in the same manner as if such suit or proceeding had been originally heard or determined by such superior court under the provisions of this act.

SEC. 1259. In all cases which were originally brought and entered in either division of the supreme court not herein expressly provided for, the supreme court shall have full power and authority to do any act or to grant any redress, process, or relief which such division might have done or granted if this act had not been passed, or to direct that the

*disposal of cases*



same shall be done or granted by the superior court for any county.

SEC. 1260. For the purpose of electing the justices of the superior court this act shall take effect upon its passage; for the purpose of drawing jurors this act shall take effect June 15, A. D. 1905. All other provisions of this act shall take effect on the seventeenth day of July, A. D. 1905, unless otherwise expressly provided therein, and the terms of the justices and judges so elected shall commence upon said last-named date.

SEC. 1261. All provisions of the laws of this state heretofore enacted and in force which are in substance the same as those contained in this act shall be deemed and taken to have continued in force from the time of their first enactment, and as if this act had not been passed.

SEC. 1262. All provisions of the General Laws, of the Public Laws, and of any special law, which are repugnant to or inconsistent with the provisions herein contained are hereby repealed, except as otherwise provided in this act.

SEC. 1263. The repeal of the acts hereinbefore referred to or herein enumerated shall not affect any act done or any right accruing or accrued, or acquired, or established, or any remedy for an injury thereto, or any suit or proceeding had or commenced in any civil case, before the time when such repeal shall take effect; but the proceedings in every such case shall be conformed, whenever necessary, to the provisions of this act.

SEC. 1264. No offence committed and no penalty or forfeiture incurred under any of the acts hereby repealed, and before the time when such repeal shall take effect, shall be affected by the repeal. And no suit, prosecution, or indictment pending at the time

of said repeal, for any offence committed or for the recovery of any fine, penalty, or forfeiture incurred under any of the acts hereby repealed, shall be affected by such repeal, except that the proceedings in such suit, prosecution, or indictment shall be conformed, whenever necessary, to the provisions of this act.

SEC. 1265. All persons who at the time when said repeal shall take effect shall hold office under the acts hereby repealed or amended shall continue to hold the same under the tenure thereof, except in the case of offices which are abolished and those as to which a different provision is made by this act.

SEC. 1266. No act which has been heretofore repealed shall be revived by the repeal contained in this act of any of the acts hereby repealed.

SEC. 1267. Whenever any statute not herein repealed refers to and adopts any statute or part of a statute which is herein repealed, or any provision or rule of law which is abrogated or modified by this act, such statute or part of a statute or provision or rule of law so referred to and adopted shall not be deemed repealed by the provisions of this act, but shall be in force so far only as the same shall have been so adopted, and for no other purpose, and so far only as it is not repugnant to or inconsistent with the provisions of this act.

SEC. 1268. Whenever a limitation or period of time prescribed in any of the acts repealed by this act for the acquiring of any right or the barring of any remedy, or for any other purpose, shall have begun to run, and the same or any similar limitation is prescribed in this act, the time of limitation shall continue to run and shall have the like effect as if the whole period had begun and ended under the operation of this act.

SEC. 1269. All estates pending before any probate court at the time this act takes effect shall be administered under the system of administration as to presentation and proof of claims, limitations and otherwise, as prescribed in the law in force at the time this act goes into effect, and such law shall continue in force for such purpose.

SEC. 1270. The supreme and superior courts may, by general or special order, make such provision as may be necessary to enable any court to do justice in any cause that may have been begun or be pending in or returnable to any court when this act takes effect, and which may be brought before any such court under the provisions of this act, to the end that such cases may be adapted to this act.

SEC. 1272. Wherever in this act a general provision shall be in conflict with a special provision relating to the same or to a similar subject, the two provisions shall be construed, if possible, so that effect may be given to both; and in such cases, if effect cannot be given to both, the special provision shall prevail, and shall be construed as an exception to the general provision.

SEC. 1273. All actions, suits, and proceedings, civil or criminal, pending in either division of the supreme court, in any county, when this act takes effect, that have been continued or assigned to any time or day thereafter shall be continued or assigned to such time or day as the court to which such action, suit, or proceeding has been transferred under the provisions of this act may by general rule or special order prescribe.

SEC. 1274. Whenever in this act sections are referred to without other reference, they shall be deemed to be sections of this act, and for all



purposes this act may be cited as "The Court and Practice Act."

SEC. 1275. Whenever in this act the words "court of probate" are used they shall be construed to refer to the probate court.