

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

any minor, as in the seventh specification in said section, all the provisions in this chapter, respecting the sale of real estate after license obtained, which may be applicable to the case, shall be construed, as including the same.

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CHAPTER 113.

GENERAL PROVISIONS, RESPECTING PROBATE BONDS, AND REMEDIES ON THE SAME.

- SECT. 1. When sureties are insufficient, judge to require new bonds.
- 2, 3. Of applications by sureties to be discharged, after six years.
4. Suits to be brought in name of the judge, &c. in the supreme judicial court for same county. Survivorship, &c.
5. As of right, by any persons interested.
6. Manner of inserting their names in the writ.
7. Of costs in such cases.
8. Principal obligor may be made a defendant, on motion of surety, if omitted.
9. How he may be summoned, and the effect thereof.
10. What evidence a creditor of an insolvent estate must produce.

- SECT. 11. A creditor of a solvent estate, &c. or a legatee.
12. Evidence required of widows, next of kin, and residuary legatees.
- 13, 14, 15. Of judgment, and proceedings thereon.
16. How execution to be awarded, for not rendering an account.
17. For not returning inventory, or other neglect or mismanagement.
18. Of suits by the judge, for all concerned, and the incidents thereof.
19. Provisions of this chapter to be applied to other probate bonds, as well as of administrators.
20. Sureties discharged from future liabilities on bonds, on request of the principal, stating that their testimony is required in a case, wherein he is a party in his official capacity.

SECTION 1. Whenever the sureties in any bond, given to the judge of probate, shall be insufficient, the judge of probate, on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with such sureties as he shall judge sufficient.

When sureties are insufficient, judge to require new bonds. 1821, 51, § 63.

SECT. 2. Any surety, in a bond given to the judge of probate, may, at any time, after the expiration of six years from the date of the bond, on his application, be discharged from all responsibility, for any subsequent breach of the condition of such bond, but for no prior breach; if the judge, on due notice to all persons interested, shall think proper to discharge him: and the principal shall thereupon give a new bond, with such sureties, as the judge shall approve.

Of applications by sureties to be discharged, after six years. 1821, 51, § 63.

SECT. 3. In the cases specified in the preceding sections, if the principal shall not give such new bond, within such time, as the judge shall order, he shall be removed from his trust, and some other person shall be appointed in his place.

Same subject. 1821, 51, § 63.

SECT. 4. All suits, brought upon a probate bond of any kind, payable to any judge of probate, shall be originally commenced in the supreme judicial court, held within and for the county, in which the said judge of probate shall belong, in the name of said judge,

Suits to be brought in name of the judge, &c. in supreme judicial court for same coun.

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ty. Survivorship, &c.
1821, 51, § 70.
14 Mass. 451.

As of right, by any persons interested.
1830, 470, § 1.
3 Fairf. 55.
5 Pick. 62, 398.
13 Pick. 152.

Manner of inserting their names in the writ.
1830, 470, § 1.
2 Greenl. 239.
10 Pick. 75.

Of costs in such cases.
1830, 470, § 1.
8 Mass. 488.
5 Pick. 62.

Principal obligor may be made a defendant, on motion of surety, if omitted.
1821, 51, § 71.

How he may be summoned, and the effect thereof.
1821, 51, § 71.

What evidence a creditor of an insolvent estate must produce.
1821, 51, § 72.
21 Pick. 58.

or his successor for the time being, as the case may be. And such suit shall not abate by the death, resignation, or expiration of the term of office, of the judge, in whose name the suit may be brought; but, upon the appointment of a successor, the process may be amended and prosecuted in the name of such successor, without notice.

SECT. 5. Any person interested, either personally or in any official capacity, in any probate bond, or in any judgment, that may have been rendered on such bond, shall have a right to originate a suit on such bond, or to sue out a scire facias on said judgment, as the case may require, without applying to the judge, whose name may have been used in said bond, or in such judgment, or to his successor; and any two or more parties, interested in the penalty of such bond, may unite in the prosecution of the action.

SECT. 6. The person, by whom the said action shall be brought, or his attorney or other person in his behalf, shall allege, in the original writ or scire facias, his own name and addition, and that the same is sued out by him, "in the name of ———; judge of probate for the county of ———;" otherwise the writ shall abate.

SECT. 7. If such suit is not sustained, the court before which the same is pending, shall render judgment and issue execution for costs, against the person instituting the suit; but no judgment shall be rendered against the judge of probate; provided, that this and the two preceding sections shall not be construed, as applicable to suits on such bonds, when commenced by the express authority of the judge of probate.

SECT. 8. If the principal in any such bond shall be resident within this state, at the commencement of the action on such bond, and shall not be made a defendant therein, and served with process accordingly, or if, at the time of the hearing of the parties in such action, or on a scire facias on a judgment recovered against his sureties only, on such bond; he shall be within the state, the court may, at the request of any such surety, continue or postpone the action, so long as may be necessary to summon or bring in the principal, in the manner, provided in the next section.

SECT. 9. The surety may thereupon take out a writ, in such form as the court shall prescribe, to arrest the principal, if liable to arrest, or to attach his goods or estate, and summon him to appear and answer, as a defendant in the original action; and if, after being duly served with such process, fourteen days at least before the time appointed for him to appear and answer to the suit, he shall neglect so to do, and if the judgment shall be for the plaintiff, it shall be rendered against such principal obligor, together with the other defendants, in the same manner, as if he had been originally a party to the suit; and any attachment made, or bail taken, on such process, shall be liable to respond the judgment, in like manner, as if made or taken in the original suit.

SECT. 10. Every creditor, entitled to a dividend from an insolvent estate, on prosecuting an original suit against the administrator or executor on any probate bond, or suing out a scire facias on any judgment, previously recovered on the same, must produce an official copy of the order of distribution of the estate of the deceased

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among the creditors, particularly specifying all the claims allowed the several creditors; and prove, that a demand has been made on the administrator, for his particular dividend.

SECT. 11. If the estate be not insolvent, or if the claim be of a nature not affected by such insolvency, such creditor must first have his debt or damages ascertained by judgment of court, against the executor or administrator, whose bond is sued; and make it appear, that a demand has been made of such executor or administrator therefor; and that he has refused or neglected to satisfy the same, or to show goods or personal estate of the deceased, for that purpose. Any person claiming a legacy, under the will of the deceased, other than a residuary legatee, must also have the amount due him, ascertained by judgment of court, and prove such demand on the executor or administrator with the will annexed, as is required in the case of a creditor.

A creditor of a solvent estate, &c. or a legatee.
1821, 51, § 72.
20 Pick. 53.

SECT. 12. Any widow, to whom an allowance has been made by the judge of probate, or any widow, or next of kin, entitled to a distributive share in the personal estate, or any residuary legatee of any deceased person, before being entitled to recover in any such suit, upon the bond of any executor or administrator, or on any scire facias as aforesaid, must produce a decree of the judge of probate, ascertaining the amount due, and prove such a demand and refusal by the principal in such bond; as is required in the preceding section.

Evidence required of widows, next of kin, and residuary legatees.
16 Mass. 524.

SECT. 13. Whenever, in any original suit brought on any probate bond, it shall appear by verdict, default, confession or otherwise, that the condition of any probate bond has been broken, judgment shall be entered in the common form for the penalty, and the subsequent proceedings shall be had by the court, as hereinafter provided.

Of judgment, and proceedings thereon.

SECT. 14. Whenever it shall appear, for whose use the money so recovered shall enure, and that such person's claim has been ascertained, pursuant to sections ten, eleven and twelve, of this chapter, the court shall order, that the judge of probate, in whose name the action is brought, shall then have execution for any part of the penalty, equal to the principal and interest appearing to be due to the person, for whose use the suit may have been brought, with legal costs; and, when there are several persons, to whose use the money recovered is to enure, there shall be as many separate executions in the same form; and the costs shall be apportioned under the direction of the court.

Same subject.
1821, 51, § 73.

SECT. 15. The person or persons, to whose use execution shall have been awarded, shall have the same levied in their own names, respectively, on real estate or otherwise, and shall be deemed the creditors to all intents.

Same subject.
1821, 51, § 73.

SECT. 16. Whenever, in any such suit, against any administrator, it shall appear that he has neglected or refused to account, upon oath, for such property of the intestate, as he has received, after he has been cited by the judge of probate for that purpose, execution shall be awarded against him, for the full value of whatever personal property of the deceased has come to his hands, without any discount, abatement, or allowance for charges of administration or debts paid.

How execution to be awarded for not rendering an account.
1821, 51, § 72.
16 Mass. 129.
1 Greenl. 139.
7 Greenl. 302.

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For not returning inventory, or other neglect or mismanagement.

1821, 51, § 72.

4 Greenl. 154.

1 Fairf. 53.

2 Fairf. 157.

Of suits by the judge, for all concerned, and the incidents thereof.

4 Mass. 318.

5 Pick. 61.

Provisions of this chapter applied to all probate bonds.

1821, 51, § 72, 74.

Sureties discharged from future liabilities on bonds, on request of their principal, stating that their testimony is required in a case, wherein he is a party in his official capacity.

SECT. 17. Where any administrator shall have received personal property of an intestate, and shall not have exhibited, upon oath, a particular inventory thereof, and in all other cases of neglect or mismanagement, execution shall be awarded against him; for such part of the penalty of his bond, as may be adjudged on a trial in due course of law.

SECT. 18. All monies recovered on any judgment, or execution issued as aforesaid, excepting as provided in section, fourteen, of this chapter, shall be recovered by the judge of probate, in trust for all parties interested in the penalty of the bond; and he shall require any administrator or executor, against whom the judgment shall have been recovered, to account for the same; provided, such administrator or executor shall still retain the administration of the estate, on account of which the bond was given: and, in other cases, the judge shall assign such judgment and execution to the rightful executor or administrator, to be collected, and the avails thereof shall be accounted for and distributed, or otherwise disposed of, as assets.

SECT. 19. When not otherwise expressly provided by law, like proceedings, judgment and execution, so far as applicable, shall be had upon the bonds given to any judge of probate by executors, special administrators, guardians, testamentary trustees, surviving partners, or others, as is provided in this chapter, in reference to bonds of administrators in common cases.

SECT. 20. The judges of probate, within their respective jurisdictions, upon a written application to them by any executor, administrator, guardian or testamentary trustee, setting forth, that a surety on his bond is needed as a witness in a case, wherein he, in his official capacity, is a party, are authorized, upon satisfactory proof of the statement in such application, to make a decree, that such surety shall not be liable on the said bond, after the date of such decree, on account of any default of the principal, or any cause of action on such bond against the principal, which may accrue subsequently to the date of said decree; and that such executor, administrator, guardian, or trustee file a new bond for the liabilities of the principal in his official capacity: such decree shall be duly recorded, and shall operate, as a discharge of such surety from all liabilities on said bond, which may accrue, subsequently to the date of said decree; and a certified copy of such decree shall be conclusive evidence, that the liability of such surety has ceased.