

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.

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1841.

CHAPTER 120.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

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| <p>SECT. 1. Writs and executions to run against the estate of the deceased.</p> <p>2. Executor or administrator personally liable for costs, after becoming a party.</p> <p>3. Execution for costs, how awarded.</p> <p>4. How awarded, if for damages and costs.</p> <p>5. Costs paid, chargeable against the estate.</p> <p>6. Proceedings, if execution be returned unsatisfied.</p> <p>7. Administrator de bonis non, to prosecute or defend suits commenced by or against his predecessor.</p> <p>8. Proceedings, in case of judgment recovered whilst the predecessor was in office.</p> <p>9. Writs of error, in such cases.</p> <p>10. Executor or administrator to prosecute or defend actions commenced by or against the deceased.</p> <p>11. Suggestion of death on record, and appearance by him.</p> <p>12. Citation to appear.</p> <p>13. Nonsuit or default, if he do not appear.</p> <p>14. Not personally liable for costs in such case.</p> <p>15. Certain actions survive, which do not at common law.</p> <p>16. How prosecuted after decease of a party.</p> | <p>SECT. 17. Measure of damages, for trespass committed by the deceased.</p> <p>18. Goods taken from an administrator by judgment in replevin, not assets.</p> <p>19. If one of several plaintiffs or defendants die, action to proceed by or against survivor.</p> <p>20. When all die, to proceed by or against the administrator of the last.</p> <p>21. No executor or administrator bound to defend a suit within a year.</p> <p>22. Such suit to be continued.</p> <p>23. Limitation of actions against them.</p> <p>24. Proceedings, if assets are received after four years.</p> <p>25, 26. Uncertain or future claims, how preserved.</p> <p>27. Action therefor, how commenced.</p> <p>28. Judgment, and execution thereon.</p> <p>29. Liability for unfaithful administration.</p> <p>30. Liability of heirs and legatees in certain cases.</p> <p>31. Actions for legacies, not hereby barred.</p> <p>32. Proceedings, if administrator die, before completing administration.</p> <p>33. Limitation of actions against new administrator.</p> <p>34. Further liability if his predecessor gave no notice.</p> <p>35. Notice by new administrator.</p> |
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SECTION 1. All writs of attachment and execution, against executors and administrators, for debts due from the deceased testator or intestate, shall run against the goods and estate of the deceased in their hands.

SECT. 2. When a judgment, for costs, shall be rendered against an executor or administrator, in any action commenced by or against him or in any action commenced by or against the testator or intestate, wherein the executor or administrator has appeared, and taken upon himself the prosecution or defence of the action, he shall be personally liable for the costs; but, in the latter case, only for costs after he took on him the prosecution or defence.

SECT. 3. When judgment is recovered against an executor or administrator, for costs only, the execution shall be awarded against his body, goods and estate, as if it were for his own debt.

SECT. 4. When the judgment is for debt or damages, and costs also, an execution for the debt or damages shall be awarded against the goods and estate of the deceased, in the hands of the executor or administrator, and another execution for the sum due for costs,

Writs and executions to run against the estate of the deceased.

1821, 52, § 19.
Executor or administrator personally liable for costs after becoming a party.
16 Mass. 530.

Execution for costs, how awarded.

How awarded, if for damages and costs.

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Costs paid, chargeable against the estate.

Proceedings, if execution be returned unsatisfied. 1821, 52, § 19.

Administrator de bonis non to prosecute or defend suits commenced by or against his predecessor. 1821, 52, § 20. 5 Mass. 275.

Proceedings, in case of judgment recovered, whilst the predecessor was in office. 1821, 52, § 20.

Writs of error, in such cases. 1821, 52, § 20.

Executor or administrator to prosecute and defend actions commenced by or against the deceased. 1821, 52, § 21. 11 Pick. 389.

Suggestion of death on record and appearance by him.

against the goods and estate of the executor or administrator, and also against his body, as if it were for his own debt.

SECT. 5. All costs, paid by executors or administrators, and for which they are made personally liable, shall be allowed to them in their administration account; unless the judge of probate shall decide that the suit was prosecuted or defended without reasonable cause.

SECT. 6. When an execution against an executor or administrator, for a debt due from the estate of the deceased, is returned by the officer, to whom it was delivered for service, unsatisfied, by reason of his being unable to find any goods or other personal estate of the deceased, the plaintiff may, upon a suggestion of waste, sue out a writ of scire facias against the executor or administrator; and, if he shall not appear after due service of the writ, and shew cause to the contrary, execution shall issue against him for the full amount of the original judgment and interest thereon; not exceeding the full amount of the waste, if it can be ascertained.

SECT. 7. When an executor or administrator shall die, or be removed from office, pending an action brought by or against him, the same may be prosecuted by or against any administrator de bonis non, who shall be appointed after due notice given; and, if, after such notice, he shall not appear and become a party to the suit, judgment may be rendered against him in the same manner, as if he had voluntarily appeared; or, as if the suit had been originally commenced by or against him, and he had afterwards been nonsuited or defaulted.

SECT. 8. When an executor or administrator shall die, or be removed from office, after judgment shall have been rendered for or against him, a scire facias may be sued out by or against the administrator, de bonis non; and, after due service thereof, an execution may issue, accordingly, upon such judgment, in like manner as it may be done against an executor or administrator, in case of the death of a testator or intestate; except only, that the judgment against the first executor or administrator for costs, for which he was personally liable, shall be enforced only against his executor or administrator, and not against the administrator, de bonis non.

SECT. 9. A writ of error, to correct any errors in such judgment, may be brought by or against the administrator, de bonis non, if any there be, in the same manner, as it might have been brought by or against the original executor or administrator, who was a party to such suit.

SECT. 10. In all personal actions, the cause of which by law survives, when there is only one plaintiff or one defendant, and such sole plaintiff or defendant shall die, after the commencement of the action, and before entry thereof, or after an appeal, and before entry of the appeal, or after entry, and any time before judgment, the executor or administrator of the deceased party may prosecute or defend the action, as hereafter mentioned in this chapter.

SECT. 11. When the action or appeal is entered, the death of the party shall he suggested on the record, and the executor or administrator of the deceased may appear voluntarily, and prosecute or defend the action, as though it had been commenced by or against him.

SECT. 12. If such executor or administrator does not appear voluntarily, the court, on motion of the surviving party, shall issue a citation to such executor or administrator, to appear and take on himself the prosecution or defence of the suit.

Citation to appear.

SECT. 13. If the executor or administrator shall not appear, at the time mentioned in the citation, after the same has been served on him, according to the order of court, he shall be nonsuited or defaulted, and judgment may be rendered against him.

Nonsuit or default, if he do not appear.

SECT. 14. But, in such case, the executor or administrator not having taken on himself the prosecution or defence of the suit, shall not be personally liable for any costs in the action; but judgment shall be rendered, for such costs, against the estate of the deceased in his hands.

Not personally liable for costs, in such case.

SECT. 15. In addition to actions, which survive, according to the principles of the common law, the following also shall survive, namely: actions of replevin, actions of trover, assault and battery, actions of trespass for goods taken and carried away, and actions of trespass, and trespass on the case, for damage done to real or personal property.

Certain actions survive, which do not at common law.
3 Mass. 228, 321.

4 Mass. 480.
21 Pick. 250.
22 Pick. 495.

SECT. 16. All such actions may be originally commenced by or against executors and administrators; and, if commenced by or against the original party in his life time; they may be prosecuted or defended by his executor or administrator.

How prosecuted, after decease of a party.
3 Greenl. 128.

SECT. 17. In actions of trespass, and trespass on the case, commenced or prosecuted against the executor or the administrator of the trespasser, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained.

Measure of damages for trespass committed by the deceased.

SECT. 18. When judgment for a return, in an action of replevin, is rendered against an executor or administrator, the goods, returned by him, shall not be considered as assets in his hands, and, if they have been inventoried, such judgment and return shall be a discharge for the executor or administrator.

Goods taken from an administrator, by judgment in replevin, not assets.

SECT. 19. When there are several plaintiffs or defendants in a personal action, the cause of which survives, and any of them shall die, the death shall be suggested on the record and the cause shall proceed, at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be.

If one of several plaintiffs or defendants die, action to proceed by or against survivor.

SECT. 20. When all the plaintiffs, or all the defendants, shall die, in such case, the action may be prosecuted, or defended, by the executor or administrator of the last surviving plaintiff, or defendant.

When all die, to proceed by or against the administrator of the last.

SECT. 21. No executor or administrator shall be compelled in any court to defend a suit, commenced against him in his said capacity, within the term of twelve months next after taking on him such trust; unless brought for recovery of a demand, not affected by the insolvency of the estate; or unless the suit is brought, by way of appeal from the decision of the commissioners of insolvency on the estate, for the purpose of a trial at common law, to ascertain the nature or amount of the claim in dispute.

No executor or administrator bound to defend a suit within a year.
1821, 52, § 18.

SECT. 22. All such suits, except as mentioned in the preceding section, shall be continued at the expense of the plaintiff, till the year from the time the trust was accepted shall have expired; and any tender of a debt to a creditor, within such year, shall bar any action, improperly commenced in the course of said year.

Such suits to be continued.
1821, 52, § 18.

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Limitation of actions against them.

1821, 52, § 26.
2 Fairf. 150.
14 Maine, 254, 320.
4 Pick. 283.
5 Pick. 140, 321.
6 Pick. 276.
8 Pick. 108, 394.
11 Pick. 173.

Proceedings, if assets are received after four years.

Uncertain, or future claims, how preserved.
1821, 52, § 27.

Same subject.
1821, 52, § 27.

Action therefor, how commenced.

Judgment, and execution thereon.

Liability, for unfaithful administration.

Liability of heirs and legatees in certain cases.
1821, 52, § 28.
6 Greenl. 127.
20 Pick. 2.

Actions for legacies, not hereby barred.
1821, 52, § 28.

Proceedings, if administrator

SECT. 23. No executor or administrator, who has given bond and notice of his appointment, according to law, shall be held to answer to the suit of any creditor of the deceased, unless it shall be commenced within four years from the time of his giving bond as aforesaid; excepting in the cases after mentioned.

SECT. 24. When assets shall come to the hands of an executor or administrator, after the expiration of said four years, he shall account for, and apply the same, in like manner, as if they had been received within said four years; and he shall be answerable at law, or to any process in the probate court, on account of such new assets for the benefit of any creditor in like manner, as if received within four years; provided, such action or process be commenced, within one year after the creditor shall have notice of the receipt of such new assets, and not more than four years, after the same shall be actually received.

SECT. 25. When the demand of any creditor against the estate of any person deceased, founded on any covenant, contract or agreement, shall not accrue within the said four years, the claimant may file such demand in the probate office within said term; and the judge of probate shall direct the executor or administrator, to retain in his hands assets, if there are sufficient, to satisfy such demand, unless the heirs to such estate, or devisees thereof, shall give bond, with sufficient surety or sureties in the opinion of the judge of probate, to such executor or administrator, to respond the same.

SECT. 26. When such security is given, the executor or administrator shall not be allowed to retain in his hands assets for such purpose; but the estate shall be liable in the hands of the heirs and devisees, or those claiming under them, to answer the said demand.

SECT. 27. When no bond is given, as mentioned in the twenty fifth section, then the action founded on such claim shall be brought against the executor or administrator; and, when such bond is given, the action shall be brought on the bond.

SECT. 28. In such action on the bond, if any thing is found due to the claimant, he shall have judgment and execution therefor, with costs.

SECT. 29. When an executor or administrator is guilty of unfaithful administration, he shall be liable to an action on his administration bond, for all damages occasioned thereby.

SECT. 30. Where a creditor has a demand against the estate of a person deceased on any covenant, contract or agreement, which could not be claimed until after the said term of four years, such claimant, if he has not filed the same in the probate court, as mentioned in the twenty fifth section, may have his remedy against those, who inherit the estate, or the devisees thereof, against whom the demand lies, if such claim be made, within one year after the same becomes due; and not against the executor or administrator.

SECT. 31. Nothing in this chapter shall bar any action against an executor with the will annexed, for the recovery of any legacy, but the same may be commenced in the same manner, as they might otherwise have been.

SECT. 32. When an executor or administrator shall die, or be removed, without having fully administered the goods and estate of

the deceased, and a new administrator on the same estate shall be appointed, the time allowed for creditors of the deceased, for bringing their actions, shall be enlarged, as follows, viz: to so much of the four years, provided for the limitation of said actions, as shall have expired, while the former executor or administrator continued in office, shall be added so much time after the appointment of the new administrator, as shall make five years in the whole; and the new administrator shall not be held to answer to the suit of any creditor, commenced after the expiration of said five years, except as provided in the following section.

SECT. 33. Every such new administrator shall, in all cases, be liable to the actions of the creditors, for the space of two years after he shall have given bond for the discharge of his trust, although the whole time allowed to the creditors, should thereby be extended beyond the five years:

SECT. 34. If the former executor or administrator shall not have given notice of his appointment, according to law, the new administrator shall be liable to the actions of the creditors for the space of four years, from the date of such new administrator's bond.

SECT. 35. Such new administrator shall give notice of his appointment in the same manner, as an original administrator; and, failing so to do, he shall have no benefit from the limitations, contained in this chapter.

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die, before completing administration.

Limitation of actions against new administrator.

Further liability, if his predecessor gave no notice.

Notice by new administrator.

CHAPTER 121.

OF PARTITION OF REAL ESTATE BY SUPREME JUDICIAL COURT, AND DISTRICT COURT.

SECT. 1. Tenants in common, &c. bound to make partition.

2. Petitions for partition.

3. Estate to be described.

4. Cotenants to be named, if known.

5. In such case, petition may be filed and served in vacation.

6. If cotenants be not named, court to order notice.

7. Notice returnable in the county where the lands lie.

8. New notice, in case of failure.

9. Persons not notified may appear, and contest, at any time before final judgment.

10. Guardians for the suit.

11. Pleadings or brief statements by respondents.

12. Replications.

13. Costs for respondent, if petition fail.

14. Costs, if petitioner hold all, or a part only, of what he alleges.

15. Pleadings and costs on writs of partition.

SECT. 16. Who may join in a petition. Proceedings, if a petitioner die, or his share be alienated.

17. Interlocutory judgment.

18. Proceedings, if exceptions be filed.

19. Appointment of commissioners.

20. Petitioners' shares may be set off severally, or in common.

21. Commissioners to be sworn.

22. Appointment of guardians or agents for persons absent or incapacitated.

23. Commissioners to give notice.

24. All must act: a majority may decide.

25. Proceedings, if it cannot be equally divided.

26. Payment of expenses of partition.

27. New partition in certain cases, if a part owner be out of the state, and not notified by the commissioners.

28. Mode of proceeding.

29. Return of the commissioners. Acceptance and record thereof.

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

dence shall be drawn up in the form of a report, and signed by the presiding judge; and, if the motion shall be founded on any alleged cause, other than the rulings and instructions of the judge to the jury, the evidence, as to the facts stated in the motion, shall be heard, examined and reported by the judge, and, in either case, the action shall be continued, to be heard on the motion before the whole court.

The same chapter shall be further amended, by inserting, at the close of section, one hundred and four, the following words:

In which case, the first execution may be issued in not less than one year, and not more than two years from the time judgment was rendered.

Time of issuing execution, when defendant was out of the state and not notified.

R. S. ch. 117.

SECTION 20. The one hundred and seventeenth chapter shall be amended, in section fifteen, by striking out the words, "in case of goods and chattels," and inserting instead thereof, the following words: "is provided in the nineteenth section"; so that the said fifteenth section, as amended, will be as follows:

Shares in incorporated companies, if attached on the writ, may be sold on execution without further notice to the corporation.

R. S. ch. 120.

Survivorship of applications for review and actions of review. 1821, 59, § 27, 28.

R. S. ch. 123.

Supreme judicial court, on petition, may allow entry of an appeal or complaint which was omitted through mistake or accident. 1821, 57, § 6.

SECT. 15. If the property has been, and then is attached, the officer shall proceed in seizing and selling it on execution, in the same manner, as is provided in the nineteenth section.

SECTION 21. The one hundred and twentieth chapter shall be amended, by inserting, at the end of section, fifteen, the following words:

Applications for review of actions, and actions of review.

SECTION 22. The one hundred and twenty third chapter shall be amended, by inserting, at the end thereof, three new sections, as follows:

SECT. 11. When an appeal shall be claimed from the judgment of a district court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment, in the supreme judicial court, the court may, on the petition of the appellant or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

District court may allow entry of an appeal or complaint, which was omitted through mistake or accident. 1821, 57, § 7.

SECT. 12. When an appeal shall be claimed from the judgment of a justice of the peace, or a municipal or police court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment in the district court, the court may, on the petition of the appellant, or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

Petitions therefor limited to one year. Attachments and

SECT. 13. No petition for the entry of any such appeal or complaint shall be sustained, unless it be presented to the court, or filed in the clerk's office, within one year after the term at which the