

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

certified by the register of probate, shall be competent evidence thereof.

CHAP. 71.

SEC. 27. If any person, interested in any estate sold as aforesaid, suffers damage by the neglect or misconduct of the executor, administrator, or guardian, in such proceedings, he may recover a compensation therefor in a suit on the probate bond or otherwise, as the case may require.

Remedy of party damaged by misconduct, &c.
R. S., c. 112, § 37.

ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

SEC. 28. No action shall be brought to recover any estate sold under this chapter, nor entry made thereon, except by judgment of law, with a view to avoid the sale by persons claiming under the deceased, or by the ward or persons claiming under him, unless it is done within five years after the sale, or the termination of the guardianship, except that persons out of the state, or under any legal disability at said times, are limited to five years after their return to the state, or the removal of the disability.

Actions or entries to recover back land sold under license, &c.
14 Maine, 344.
R. S., c. 112, § 18.

SEC. 29. In any action brought to contest the validity of any such sale, by the heir or others claiming under the deceased; the wife or her heirs, in case of a sale of her estate by her husband; or the ward or persons claiming under him, no such sale shall be avoided on account of any irregularity in the proceedings, if it appears:

Requisites of a valid sale against persons claiming under deceased or ward.
R. S., c. 112, § 35.

First.—That the license was granted by a court of competent jurisdiction, and the deed duly executed and recorded.

Second.—That the person licensed took the oath, and gave the bond and notice of the time and place of sale required by law.

Third.—That the premises were sold in such manner, and within such time as the license authorized, and are held by one who purchased them in good faith.

SEC. 30. If the validity of such sale is contested by one claiming adversely to the title of the wife, ward, or deceased aforesaid, or by a title not derived through either, the sale shall not be held void on account of any irregularity in the proceedings, if it appears that the license was granted by a court of competent jurisdiction, and the deed duly executed and recorded.

Also against such as claim adversely to the title sold.
R. S., c. 112, § 36.

CHAPTER 72.

PROBATE BONDS AND REMEDIES THEREON.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

- SEC. 1. Insufficient sureties may be discharged, and new ones required on petition of interested party.
2. When sureties, after six years, may be discharged, at their own request, from subsequent liabilities.
3. If principal does not give new bond when required, to be removed.

CHAP. 72.

ACTIONS ON BONDS.

- SEC. 4. Suits on probate bonds must be in the name of the judge, but may be prosecuted in the name of his successor.
5. How a principal may be made defendant on motion of a surety, when omitted in the suit.
6. How he may be summoned, and the effect thereof.
7. When judgment is for the plaintiff, in suit on probate bond, it shall be entered for the penalty.

ACTION BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

8. When and how an interested party may originate a suit on a bond, without applying to the judge.
9. If such suit not sustained, costs to be awarded against such party.
10. If such party is a creditor of an insolvent estate, must produce a copy of the order of distribution.
11. If a creditor or legatee of a solvent estate, he must produce a judgment at law, and prove demand and refusal.
12. If a widow, next of kin, or residuary legatee, he must produce a decree of probate court, and prove demand and refusal.
13. When judgment is for plaintiff, several executions to issue for amount due to each party interested in the suit. How such executions may be levied.

SUITS BY AUTHORITY OF THE JUDGE.

14. Judge may authorize suits for the benefit of the estate, and such authority shall be alleged. How execution shall be awarded for not rendering an account.
15. Also, for not returning an inventory, or for other misconduct.
16. Judgment recovered to be in trust for all parties interested. How the same shall be accounted for, or collected and distributed.

OTHER PROBATE BONDS.

17. Same proceedings to be had on all other probate bonds, when not otherwise provided.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

Insufficient sureties may be discharged, &c.

R. S., c. 113, § 1.

When sureties may be discharged, &c.

R. S., c. 113, § 2.

Principal to give bond, &c.

R. S., c. 113, § 3.

SEC. 1. When the sureties in any bond given to the judge of probate are insufficient, on the petition of any person interested, and notice to the principal, the judge may require a new bond to be given, with sureties approved by him.

SEC. 2. On the application of any surety in such bond, the judge of probate, on due notice to all parties interested, may, after six years from its date, discharge him from all liability for any subsequent, but not for any prior breaches thereof, and require a new bond of the principal, with sureties approved by him.

SEC. 3. In either case, if the principal does not give the new bond within the time ordered by the judge, he shall be removed, and another appointed in his place.

ACTIONS ON BONDS.

Suits on bonds must be in name of judge, &c.

R. S., c. 113, § 4.

SEC. 4. All suits, on probate bonds of any kind payable to the judge, shall be originally commenced in the supreme judicial court for the county where said judge belongs, and in his name or that of his successor at the time; and they shall not abate by the death of the plaintiff, his resignation, or the expiration of his term of office, but the process may be amended and prose-

cuted, without notice, in the name of his successor; but no costs shall be awarded against the judge therein.

SEC. 5. If the principal in any such bond resides in the state, when an action is brought thereon, and is not made a party thereto; or if, at the trial thereof, or on scire facias on a judgment against the sureties only, he is in the state, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring him into court.

SEC. 6. Such surety may thereupon take out a writ, in form prescribed by the court, to arrest the principal, if liable to arrest, or to attach his estate and summon him to appear and answer as a defendant in the action; and if, after fourteen days previous service of such process, he fails thus to appear at the time appointed, and judgment is rendered for the plaintiff, it shall be against him and the other defendants as if he had been originally a party, and any attachment made, or bail taken on such process, shall be liable to respond the judgment, as if made or taken in the original suit.

SEC. 7. When judgment is for the plaintiff by verdict, default, or otherwise, in any suit on a probate bond, it shall be entered for the penalty in common form, and the subsequent proceedings shall be had by the court as hereinafter provided.

ACTIONS BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

SEC. 8. Any person interested personally or in any official capacity in any probate bond, or in any judgment rendered thereon, whose interest has been specifically ascertained by a decree of the judge of probate, or by judgment of law, as hereinafter provided, may originate a suit on such bond, or scire facias on such judgment, without applying to the judge whose name was used in the bond or judgment, or to his successor; and two or more such persons may unite in the prosecution of the action, but the original writ shall allege the name and addition of such person, and that the same is sued out by him, "in the name of ———, judge of probate for the county of ———;" otherwise it shall abate.

SEC. 9. If such suit is not sustained, judgment shall be rendered and execution issued for costs against the person originating it as aforesaid.

SEC. 10. Every creditor, entitled to a dividend from an insolvent estate, originating any action mentioned in section eight, before he can recover, must produce an official copy of the order of distribution among the creditors of said estate, particularly specifying all the claims allowed the several creditors, and prove a demand on the administrator for his particular dividend.

SEC. 11. If the estate is not insolvent, or the claim is one not affected by insolvency, such creditor, or any person, not a residuary legatee, claiming a legacy under the will of the deceased, must first have the amount due ascertained by judgment of law against the administrator, and prove a demand therefor

CHAP. 72.

How a principal may be made defendant on motion of surety, &c.
R. S., c. 113, § 8.

How summoned, and effect thereof.
R. S., c. 113, § 9.

When judgment for plaintiff, &c.
R. S., c. 113, § 13.

When and how interested party may originate suit on bond, &c.
12 Maine, 55.
27 Maine, 68.
34 Maine, 98, 370.
R. S., c. 113, § 5, 6.

If suits not sustained, &c.
R. S., c. 113, § 7.

If party is creditor of insolvent estate, &c.
R. S., c. 113, § 10.

If a creditor or legatee of a solvent estate, &c.
R. S., c. 113, § 11.

CHAP. 72.

If a widow,
next of kin,
&c.

R. S., c. 113,
§ 12.

When judg-
ment is for
plaintiff, &c.
R. S., c. 115,
§ 14, 15.

on him, and his neglect or refusal to satisfy the same, or show personal estate of deceased for that purpose.

SEC. 12. Any widow entitled to an allowance made by the judge of probate; any widow or next of kin entitled to a distributive share in the personal estate; or any residuary legatee of the deceased, before he can recover in any such action, must produce a decree of the judge of probate specifying the amount due, and prove demand and refusal as aforesaid.

SEC. 13. When judgment in any action mentioned in section eight is rendered in favor of the judge of probate, whose name is therein used, the court shall order an execution to issue in his name for so much of the penalty of the bond as appears to be due, with interest and costs, to the person for whose use the action was brought; and when it was brought for the use of several, there shall be separate executions in the same form for the share of each, and the costs shall be apportioned under the direction of the court; and such persons shall be deemed creditors to all intents, and may levy their executions, in their own names, on real estate or otherwise.

SUITS BY AUTHORITY OF THE JUDGE.

Judge may
authorize
suits, &c.

1 Greenl. 139.
7 Greenl. 302.
27 Maine, 68.
36 Maine, 243.
R. S., c. 113,
§ 7, 16.

Also, for not
returning in-
ventory, &c.
4 Greenl. 154.
10 Maine, 53.
11 Maine, 157.
R. S., c. 113,
§ 17.

Judgment re-
covered to be
in trust for all
interested, &c.
R. S., c. 113,
§ 18.

SEC. 14. The judge of probate may expressly authorize any party interested, to commence a suit on a probate bond for the benefit of the estate, and such authority shall be alleged in the process; and when it appears, in any such suit against an administrator, that he has been cited by the judge of probate to account, upon oath, for such personal property of the deceased as he has received, and has not done so, execution shall be awarded against him for the full value thereof, without any allowance whatever for charges of administration or debts paid.

SEC. 15. When an administrator has received personal estate, and has not returned, on oath, a particular inventory thereof, and in all other cases of neglect or mismanagement, execution shall be awarded against him for so much of the penalty of his bond as is adjudged on trial to be just.

SEC. 16. Every such judgment and execution shall be recovered by the judge of probate in trust for all parties interested in the penalty of the bond; and he shall require the delinquent administrator to account for the amount of the same, if still in office, but if not, he shall assign it to the rightful administrator to be collected, and the avails thereof accounted for and distributed, or otherwise disposed of as assets.

OTHER PROBATE BONDS.

Same proceed-
ings to be had
on other
bonds, &c.
R. S., c. 113,
§ 19.

SEC. 17. When not otherwise expressly provided by law, like proceedings, judgment, and execution, so far as applicable, shall be had on the bonds given to any judge of probate by executors, special administrators, guardians, testamentary trustees, surviving partners, and others, as are provided in this chapter in reference to bonds of administrators.