

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
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CHAPTER 87:

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

- Sec. 1. Executors and administrators, writs and executions against them, how issued.
2. Executors and administrators, executions for costs against them, how issued.
3. Executions against deceased returned unsatisfied, proceedings.
4. Administrators de bonis non may prosecute and defend suits as any other; may sue judgment recovered by deceased.
5. Executor or administrator ceasing to be such after judgment, scire facias may issue against administrator de bonis non.
6. Writs of error by or against administrators de bonis non.
7. When an only party to an action dies, proceedings.
8. Actions surviving enumerated, may be prosecuted or defended by executor or administrator.
9. Actual damages only recoverable in actions of tort; goods in replevin returned not as assets.
10. When one of several plaintiffs or defendants dies, his executor or administrator may prosecute or defend jointly with survivors; and joint judgment rendered; and if there are survivors on both sides, they may be witnesses.
11. Action against executor or administrator not maintainable unless demanded thirty days prior thereto, and brought within two years.
12. Not compelled to defend within one year after appointment; exceptions.
13. No suit after four years from notice of appointment; exceptions.
14. When action does not accrue within four years, claim to be filed; proceedings.
15. Estate liable for such claims, how suits sustained on them.
16. When such claims not filed, only remedy is against heirs and devisees.
17. Limitation of actions against administrators de bonis non.
18. Limitation of actions against administrators de bonis non, when no notice by first administrator.
19. Limitation of actions not applicable to actions for legacies; liability for unfaithful administration on administration bond.
20. How an execution may issue after creditor's decease.
21. What such execution shall set forth, and to what uses property levied on shall be held.

SEC. 1. Writs and executions against executors and administrators for costs, for which they are not personally liable, and for debts due from the deceased, run against his goods and estate in their hands. (a)

SEC. 2. Executions for costs shall run against the goods and estate, and for want thereof against the bodies of executors and administrators, in actions commenced by or against them, and in actions commenced by or against the deceased in which they have appeared, for costs that accrued after they assumed the prosecution or defence, to be allowed to them in their administration account,

(a) 14 Me. 320; 23 Me. 521; 24 Me. 25; 36 Me. 243.

Writs and executions against executors and administrators run against estate in their hands.
R. S. c. 87, § 1.
Executions when issued against their own goods and estate for costs.
R. S. c. 87, § 2.
6 Me. 48.
20 Me. 21.
28 Me. 251.
24 Me. 25.

CHAP. 87. unless the judge of probate decides that the suit was prosecuted or defended without reasonable cause.

Execution against the estate of deceased, returned unsatisfied, proceedings.
R. S. c. 87, § 3.
2 Me. 109.

SEC. 3. When a proper officer makes his return, on an execution issued under the first section, that he cannot find personal property of the deceased, or other means to satisfy it, a writ of scire facias, suggesting waste, may be issued against the executor or administrator; and if he does not show cause to the contrary, execution shall issue against him for the amount of the judgment and interest, not exceeding the amount of waste, if proved.

Administrator de bonis non, may prosecute and defend as any other.
May sue judgment recovered by deceased.
R. S. c. 87, § 4.
1862, c. 84.
14 Me. 320.
32 Me. 131.
32 Me. 174.

SEC. 4. When an executor or administrator ceases to be such, an action pending in his favor or against him may be prosecuted by or against an administrator de bonis non; and if he does not appear, after due notice, judgment may be rendered, as if the suit had been commenced by or against him for debt and for costs, as herein provided. An administrator, de bonis non, may maintain an action on uncollected judgments recovered by the deceased, or by his executors or administrators, before their death, or removal from office.

When an executor or administrator ceases to be such, scire facias may issue against administrator de bonis non.

SEC. 5. When an executor or administrator ceases to be such after judgment against him, a writ of scire facias may be issued against the administrator de bonis non; and after due notice an execution may issue as provided in the preceding section; but the costs, for which the executor or first administrator was personally liable, may be enforced against his executor or administrator.

R. S. c. 87, § 5.
32 Me. 131, 174.
Writ of error may be brought against administrator de bonis non.

SEC. 6. A writ of error may be maintained by or against an administrator de bonis non, when it could be by or against an executor or first administrator.

R. S. c. 87 § 6.
When an only party to an action dies, proceedings.
R. S. c. 87, § 7.
19 Me. 344.

SEC. 7. When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before its entry, his executor or administrator may prosecute or defend as follows; the action, or an appeal, if made, may be entered, the death of the party suggested on the record, and the executor or administrator may appear voluntarily; if he does not appear at the second term after such death, or after his appointment, he may be cited to appear, and after due notice thereof, judgment may be entered against him by nonsuit or default.

Actions which survive; may be prosecuted, or defended by executor or administrator.
R. S. c. 87, § 8.

SEC. 8. In addition to those surviving by the common law, the following actions survive; replevin, trover, assault and battery, trespass, trespass on the case, and petitions for and actions of review; and these actions may be commenced by or against an executor or administrator, or when the deceased was a party to them, may be prosecuted or defended by them. (a)

In trespass actual damage or value only, recoverable and goods returned in replevin, not assets.
R. S. c. 87, § 9.

SEC. 9. When an action of trespass, or trespass on the case, is commenced or prosecuted against an executor or administrator, the plaintiff can recover only the value of the goods taken, or damage

(a) 3 Me. 174; 17 Me. 409; 30 Me. 194; 45 Me. 209; 46 Me. 158; 50 Me. 87.

actually sustained; and when judgment is rendered against an executor or administrator in an action of replevin for a return of goods, those returned shall not be considered assets, and such return shall discharge him.

SEC. 10. When either of several plaintiffs or defendants in an action that survives, dies, the death may be suggested on the record, and the executor or administrator of the deceased may appear, or be cited to appear, as provided in section seven; and the action may be further prosecuted or defended by the survivors, and such executor or administrator jointly, or by either of them; and judgment may be entered against the survivors, and also against the goods and estate of the deceased in the hands of such executor or administrator, and a joint execution issued; and the survivors, if any, on both sides of the action, may testify as witnesses.

SEC. 11. No action, commenced since the third day of February, eighteen hundred and sixty-nine, against an executor or administrator residing at the time in this state, on a claim against the estate, shall be maintained, unless commenced within two years after notice is given by him of his appointment, nor unless such claim is first presented to him in writing and demanded at least thirty days before the action is commenced.

SEC. 12. No executor or administrator can be compelled to defend a suit commenced against him within one year after his appointment, except on a demand not affected by an insolvency of the estate, or on a demand by an appeal from a decision* of commissioners of insolvency; but all such suits shall be continued at the expense of the plaintiff till said year expires; and a tender of a debt within the year shall bar any such actions.

SEC. 13. And none after four years from the time of giving notice of his appointment, except as follows. When assets come to his hands after that time, he shall be accountable therefor in the probate court, and an action may be commenced within four years after the receipt thereof, and within one year after the creditor has notice of such receipt. (a)

SEC. 14. And when an action, on a covenant or contract, does not accrue within said four years, the claimant may file such demand in the probate office within that time, and the judge of probate shall direct that sufficient assets, if such there be, shall be retained by the executor or administrator, unless the heirs or devisees of the estate give bond, with one or more sureties, approved by the judge of probate, to the executor or administrator to respond the same.

SEC. 15. When a bond is so given, no assets shall be retained; but the estate shall be liable in the hands of heirs or devisees, or those claiming under them, to answer such demand; and an action may

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When one of several parties dies, his executors or administrator may prosecute or defend jointly with survivors, and joint judgment rendered, and if there are survivors on both sides these may be witnesses.
R. S. c. 87, § 10.
1870 c. 123.
1870 c. 172.
37 Me. 530.

Action against executor or administrator not maintainable, unless demanded 30 days prior thereto, and brought within two years.
1869 c. 9, § 76.
1870 c. 113, § 23.
1870 c. 162.

Not compelled to defend suits within a year after appointment; exceptions.
R. S. c. 87, § 11.
3 Me. 167.
21 Me. 263.
24 Me. 25.
37 Me. 530.

No suit after four years from time of giving notice of appointment. Exceptions.
R. S. c. 87, § 12.

When action does not accrue within four years; proceedings.
R. S. c. 87, § 13.
39 Me. 498.

Estate remains liable to such claims; how suits maintained.
R. S. c. 87, § 14.

(a) 3 Me. 17; 5 Me. 108; 11 Me. 150; 40 Me. 197; 47 Me. 72.

CHAP. 87. be brought on such bond, or when no bond is given, against the executor or administrator, and if any thing is found due, the claimant shall have judgment therefor and for his costs.

If such claim is not filed, only remedy against heirs or devisees.
R. S. c. 87, § 15.
6 Me. 127.

SEC. 16. When such claim has not been filed in the probate office within said four years, the claimant may have remedy against the heirs or devisees of the estate within one year after it becomes due, and not against the executor or administrator.

Time within which actions can be brought against administrators de bonis non.
R. S. c. 87, § 16.
1 Me. 156.
14 Me. 320.

SEC. 17. Upon the appointment of an administrator de bonis non, the time within which actions may be brought is extended as follows; to such a portion of the four years as remained unexpired before a vacancy, shall be added so much time after the new appointment as will make five years; and every new administrator shall in all cases be liable to actions of creditors for two years after notice given of his appointment, although the whole time may be extended beyond five years.

Limitation of actions against an administrator de bonis non, when no notice, first administrator.
R. S. c. 87, § 17.

SEC. 18. When an executor or administrator does not give legal notice of his appointment, actions may be commenced against a new administrator within four years after notice of his appointment; and if he fails to give legal notice of it, he can have no benefit of the limitations contained in this chapter.

Actions for legacies not affected; liability for unfaithful administration on bonds.
R. S. c. 87, § 18.

SEC. 19. An action, for the recovery of a legacy, shall not be affected by the provisions of this chapter. When an executor or administrator is guilty of unfaithful administration, he shall be liable on his administration bond for all damages occasioned thereby.

EXECUTIONS TO ISSUE AFTER CREDITOR'S DECEASE.

How an execution may issue after creditor's decease.
1869, c. 14, § 1.

SEC. 20. When a judgment creditor dies before the first execution issues, or before an execution issued in his lifetime is fully satisfied, such execution may be issued or renewed by order of any justice of the court rendering such judgment, in term time or vacation, or by like order of a municipal or police judge, or trial justice rendering such judgment, upon the application, in writing, of the executor, or general or special administrator of the deceased creditor; and any execution so issued or renewed may be subsequently renewed; but no execution shall issue nor be renewed, after the term time within which it might have been done if the party had not deceased.

What the execution shall set forth, and to what uses property levied on shall be held.
1869, c. 24, § 2.

SEC. 21. In any execution so issued, originally or by renewal, besides the ordinary recitals it shall be set forth in substance, that since the rendition of judgment the creditor, naming him, has deceased, and that the person whose name is inserted in his place, is the executor or administrator of his estate; and the command to the officer shall be the same as if the judgment had been recovered by the executor or administrator, who shall hold any real estate levied on, to the same uses, as if he had recovered judgment in his representative capacity.