

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



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## CHAPTER 87.

## ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

## DUTIES AND LIABILITIES TOUCHING WRITS AND EXECUTIONS.

- SEC. 1. Executors and administrators, writs and executions against them; how to be issued.
2. Executions for costs against them, how to be issued.
  3. Executions against deceased, when returned unsatisfied, proceedings.
  4. Administrator de bonis non may prosecute and defend suits like any other administrator; 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. Writ of error by or against administrator de bonis non.
  7. When the only plaintiff or defendant to an action dies, proceedings.
  8. Certain enumerated surviving actions, may be prosecuted or defended by executor or administrator.
  9. Actual damages only are recoverable in actions of tort; goods returned in replevin, are not considered as assets.
  10. When one of several plaintiffs or defendants dies, his executor or administrator may prosecute or defend jointly with survivors; joint judgment shall be rendered; survivors, on both sides, may be witnesses.
  11. Actions against executors or administrators commenced within a year after notice of appointment, shall be continued at plaintiff's expense. Exceptions.
  12. Actions not maintainable unless brought within two years, and after thirty days' written demand. Administrators and executors out of the state must appoint agent or attorney in the state.
  13. When a creditor out of the state may bring action.
  14. When an action does not accrue within two years, claim must be filed. Heirs or devisees may give bond.
  15. Proceedings, when bond is given and when not given.
  16. If claim is not filed, remedy is against heirs and devisees only.
  17. Limitation of actions against administrators de bonis non.
  18. Foregoing limitations do not apply to executors or administrators, failing to give notice. New administrator may be sued.
  19. Creditor, failing seasonably to present claim, may file bill in equity.
  20. Limitation of actions is not applicable to actions for legacies; liability for unfaithful administration on administration bond.

## EXECUTIONS MAY ISSUE AFTER CREDITOR'S DEATH.

- SEC. 21. How an execution may issue after creditor's death.
22. What such execution shall set forth, and to what uses property levied on shall be held.

## DUTIES AND LIABILITIES TOUCHING WRITS AND EXECUTIONS.

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

Process runs against estate in their hands. R.S., c. 87, § 1.  
Executions for costs, when to be issued against their own goods and estate. R.S., c. 87, § 2.  
6 Me., 49.  
23 Me., 253.  
24 Me., 29.  
70 Me., 463.

(a) 14 Me., 324; 23 Me., 253; 24 Me., 27; 36 Me., 246; 61 Me., 471.

SEC. 3. When a proper officer makes his return, on an execution issued under section one, 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.

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.

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. (a)

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.

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.

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. (b)

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 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 discharges him.

SEC. 10. When either of several plaintiffs or defendants in an action

(a) 32 Me., 131, 175; 69 Me., 150.

(b) 3 Me., 176; 17 Me., 410; 30 Me., 201; 45 Me., 210; 46 Me., 159; 50 Me., 87; 55 Me., 144; 59 Me., 342; 60 Me., 491; 62 Me., 279; 65 Me., 18.

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Execution against the estate of deceased, if returned unsatisfied, proceedings. R.S., c. 87, § 3. 2 Me., 112.

Administrator de bonis non may prosecute and defend; may sue a judgment recovered by deceased. R.S., c. 87, § 4. 14 Me., 324. 32 Me., 131, 175. 69 Me., 150.

When executor or administrator ceases to be such, scire facias may issue against administrator de bonis non. R.S., c. 87, § 5.

Writ of error by or against. R.S., c. 87, § 6. 69 Me., 150.

When the only party to an action dies, proceedings. R.S., c. 87, § 7. 19 Me., 346. 59 Me., 342. 64 Me., 385.

Actions which survive. R.S., c. 87, § 8. —may be carried on by executor or administrator.

In trespass, actual damage or value only, is recoverable; goods returned in replevin, are not assets. R.S., c. 87, § 9. 62 Me., 279.

When one of several par-

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ties dies, his executor or administrator may prosecute or defend jointly with survivors; joint judgment to be rendered; survivors on both sides, may testify. R.S., c. 87, § 10.

Actions against executors and administrators brought within a year, continued. 1872, c. 85.

Action against executor or administrator is not maintainable, unless demand is made thirty days prior thereto, and suit brought within two years. 1883, c. 243.

—executors and administrators residing out of the state are required to appoint an agent or attorney in the state, on whom demand or service may be made.

When creditor, absent from the state, may bring his

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. (a)

SEC. 11. Actions against executors or administrators, commenced within one year after notice is given by them of their appointment, shall be continued at the expense of the plaintiff until said year expires, and be barred by a tender of the debt within the year; except actions on claims not affected by the insolvency of the estate, and actions on appeals from commissioners of insolvency or other commissioners appointed by the judge of probate. (b)

SEC. 12. Actions against executors or administrators, on claims against the estate, except as provided in sections thirteen and fifteen, shall, if brought after the time limited in the preceding section, be continued at the cost of the plaintiff until the next term of court, and for such further time and on such other terms as the court may order, unless, at least thirty days before commencement of suit, and within two years after notice given by him of his appointment, such claim was presented in writing and payment demanded, or was filed in the probate office, supported by affidavit of the claimant, or of some other person cognizant thereof, as provided in section sixty-two of chapter sixty-four, and such notice given as the court orders thereon; a tender of payment or offer thereof filed in the case during the time of such continuance, shall bar the same, and the defendant shall recover his costs; and no action shall be maintained on such claim, unless commenced during said two years, or within six months following, except as provided in the following sections. Executors or administrators residing out of the state at the time of giving notice of their appointment, shall appoint an agent or attorney in the state, and insert therein his name and address. Executors or administrators removing from the state, after giving notice of their appointment, shall appoint an agent or attorney in the state, and give public notice thereof: demand or service made on such agents or attorneys has the same effect as if made on such executor or administrator. When an executor or administrator, residing out of the state, has no agent or attorney in the state, demand or service may be made on one of his sureties, with the same effect as if made on him. (c)

SEC. 13. A creditor who was absent from the state during said two years, and had no sufficient attorney in the state, may make presentment and demand of his claim, and after thirty days may commence his action,

(a) 37 Me., 552; 50 Me., 88; 59 Me., 343; 60 Me., 353; 61 Me., 17; 64 Me., 385.

(b) 63 Me., 333; 68 Me., 30; 72 Me., 345.

(c) 3 Me., 19; 8 Me., 168; 11 Me., 151; 21 Me., 265; 37 Me., 552; 63 Me., 333; 68 Me., 30; 69 Me., 554; 71 Me., 101, 163, 490; 72 Me., 117, 222, 246, 344; 73 Me., 375; 74 Me., 519.

within six months from his return, or the appointment of such attorney. When assets come into the hands of an executor or administrator after said term of two years, presentment and demand may be made by a creditor, and after thirty days an action may be commenced, within two years from the receipt of such assets and within six months after the creditor has notice thereof. Judgment rendered in any action authorized by this section, shall not disturb payments made in good faith by the executor or administrator prior to presentment of the claim sued in such action.

SEC. 14. When an action on a covenant or contract does not accrue within said two years, the claimant may file his demand in the probate office within that time, verified as required in case of claims presented to commissioners on insolvent estates; and the judge of probate shall direct that sufficient assets, if such there are, shall be retained by the executor or administrator, unless the heirs or devisees of the estate give bond to the executor or administrator, with one or more sureties, approved by said judge, to pay whatever is found due on said claim.

SEC. 15. When no bond is so given, an action may be brought by the claimant against the executor or administrator, within six months after his demand becomes due. When a bond is given, assets shall not be reserved, but the estate is liable in the hands of the heirs or devisees, or those claiming under them, and an action may be brought on such bond. If anything is found due, the claimant shall have judgment therefor, and for his costs.

SEC. 16. When such claim has not been filed in the probate office within said two 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. (a)

SEC. 17. When a vacancy occurs within said two years, and an administrator de bonis non is appointed, an additional year is allowed for the presentment and demand of claims against the estate; but the period of the vacancy shall not be a part of the three years limited; and on any claim presented to the administrator de bonis non or his predecessor, and demanded within said three years, an action may be commenced after thirty days, and within six months from the end of said three years, but not within one year from the notice of appointment given by the executor or first administrator.

SEC. 18. When an executor or administrator does not give legal notice of his appointment, he cannot avail himself of the limitations contained in this chapter; and actions may be commenced against a new administrator on the same estate as though he were the first administrator or executor, subject to the conditions and limitations contained in this chapter.

SEC. 19. If the supreme judicial court, upon a bill in equity filed by a creditor whose claim has not been prosecuted within the time limited by the preceding sections, is of opinion that justice and equity require it, and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him

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action.  
1872, c. 85.  
5 Me., 114.  
40 Me., 201.  
47 Me., 75.  
63 Me., 333.  
74 Me., 321.

Proceedings, when action does not accrue within two years.  
1872, c. 85.  
39 Me., 500.  
63 Me., 332.  
74 Me., 20.

Proceedings, when bond is given, and when not given.  
1872, c. 85.  
63 Me., 332.

When claim is not filed within two years, remedy.  
1872, c. 85.

Time within which actions can be brought against administrators de bonis non.  
1872, c. 85.  
1 Me., 157.  
14 Me., 323.

Failure of executor, &c., give notice, effect of; new administrator may be sued.  
1872, c. 85.  
68 Me., 30.

When claim is not presented within the time limited, supreme court may give judgment on a bill

(a) 6 Me., 138; 63 Me., 332; 74 Me., 19.

**CHAP. 87.** judgment for the amount of his claim against the estate of the deceased person ; but such judgment shall not affect any payment or distribution in equity by creditor. 1883, c.189, §1. made before the filing of such bill.

Actions for legacies not affected; liability on bond for unfaithful administration. R.S., c.87, § 19.

**SEC. 20.** An action for the recovery of a legacy, is not affected by this chapter. When an executor or administrator is guilty of unfaithful administration, he is liable on his administration bond for all damages occasioned thereby.

EXECUTIONS MAY ISSUE AFTER CREDITOR'S DEATH.

How an execution may issue after creditor's death. R.S., c.87, § 20. 71 Me., 190,

**SEC. 21.** 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 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 or be renewed, after the term within which it might have been done if the party had not died.

What the execution shall set forth, and to what uses property levied on shall be held. R.S., c.87, § 21.

**SEC. 22.** In an 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 died, 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.

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## CHAPTER 88.

### PARTITION OF REAL ESTATE BY THE SUPREME JUDICIAL COURT.

- SEC.**
1. Partition may be made by writ at common law.
  2. Partition may be made by petition; what must be stated in it.
  3. Petition may be filed in vacation, if all co-tenants are named; how served.
  4. Petition may be presented in any county, if all are not named; and notice ordered on the others.
  5. When persons not fully notified may appear; pleadings how to be made.
  6. Petitioner may reply by counter brief statement, showing insufficiency of defence.
  7. Guardians for infants and insane persons, and agents for persons out of the state, shall be appointed.
  8. Division of time for occupation of saw mills, may be made.
  9. Respondent claiming the whole of a specific parcel, may have a separate trial, and one having no interest, pays cost.
  10. Petitioner owning a less share than claimed, pays costs; proceedings.
  11. Owners may join or sever. Petitioner dying or conveying, his heirs, devisees or grantees may be admitted to proceed.