

MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :
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1904.

HOW TRUSTEE MAY BE HELD, WHEN DEMAND AGAINST HIM IS ASSIGNED.

SEC. 86. When it appears that a person summoned as trustee is indebted to the principal defendant on any demand on which he might be held as trustee, but that it has been conditionally assigned as security, and the principal defendant has a subsisting right to redeem it, the court may order, that on fulfilment of such conditions by the plaintiff, within the time fixed by the court, and while the right to redeem exists, the trustee shall be held for the full amount of such demand; and when the court is satisfied that its order has been complied with, it may charge the trustee accordingly.

SEC. 87. The officer making demand on the trustee upon the execution, shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest, and shall apply the balance towards the execution; but if the demand has been redeemed otherwise than by the payment of money, the plaintiff shall be subrogated for the holder thereof, and have the same rights and remedies against the principal defendant, and may enforce them, at his own expense, in the name of such holder or otherwise.

Note. Proceedings to dissolve attachment on trustee process by application to court c. 83, § 77; by bond properly approved, c. 83, § 79.
Costs taxable for trustee, c. 117, § 14.

Demands assigned as security, may be trusted and redeemed. R. S., c. 86, § 89.

Plaintiff's rights, in case of redemption by him. R. S., c. 86, § 90. 60 Me., 173.

CHAPTER 89.

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

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 defense, 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.

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.

(a) 14 Me., 324; 23 Me., 253; 24 Me., 27; 36 Me., 246; 61 Me., 471; 96 Me., 381.

Process against estate in their hands. R. S., c. 87, § 1.

Executions for costs against their own goods and estate. R. S., c. 87, § 2. 6 Me., 49. 23 Me., 253. 24 Me., 29. 70 Me., 463. 96 Me., 381, 383.

Execution against the estate of deceased, if returned unsatisfied, proceedings. R. S., c. 87, § 3. 2 Me., 112. 97 Me., 393.

Administrator de bonis non may prosecute and defend, and sue judgments. R. S., c. 87, § 4. 14 Me., 324. 32 Me., 131, 175. 69 Me., 150. 78 Me., 141.

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Scire facias
against ad-
ministrato-
r de bonis non.
R. S., c. 87, § 5.

Writ of error
by or against.
R. S., c. 87, § 6.
69 Me., 150.
78 Me., 141.

When the
only party to
an action
dies, pro-
ceedings.
R. S., c. 87, § 7.
19 Me., 346.
59 Me., 342.
64 Me., 335.
76 Me., 38.

Actions
which sur-
vive.
R. S., c. 87, § 8.
—may be
carried on
by executor
or adminis-
trator.

Actions for
injuries
causing imme-
diate death,
may be main-
tained.
1891, c. 124, § 1.

How such
action shall be
brought; and
amount re-
covered, dis-
posed of.
1891, c. 124, § 2.
—limitation
of actions.

Damages in
actions of
trespass.
—goods re-
turned in re-
plevin, are
not assets.
R. S., c. 87, § 9.
62 Me., 279.

Proceedings
when one of
several par-

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. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as shall amount to a felony. (c)

SEC. 10. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of his widow, if no children, and of the children, if no widow, and if both, then of her and them equally, and, if neither, of his heirs. The jury may give such damages as they shall deem a fair and just compensation, not exceeding five thousand dollars, with reference to the pecuniary injuries resulting from such death to the persons for whose benefit such action is brought, *provided*, that such action shall be commenced within two years after the death of such person. (c)

SEC. 11. 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. 12. When either of several plaintiffs or defendants in an action that survives, dies, the death may be suggested on the record, and the

(a) 32 Me., 131, 175; 69 Me., 150; 78 Me., 141.

(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.

(c) 88 Me., 46; 89 Me., 119; 90 Me., 268; 92 Me., 457; 93 Me., 21; 94 Me., 500; 95 Me., 104, 150; 96 Me., 144, 291; 97 Me., 109, 248, 529.

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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. 13. When suit has been brought against an executor or administrator, any of the heirs, devisees or legatees of the deceased may personally or by attorney, petition the court for leave to defend the suit, setting forth the facts as he believes them to be and his reasons for so desiring to defend, and the court may grant or refuse such leave. If leave is granted, the petitioner shall give to the administrator or executor bond in such sum as the court orders, to hold the executor or administrator harmless, for any damages or costs occasioned by the suit or by said defense; and an entry of record shall be made that he is admitted to defend such suit.

SEC. 14. All claims against estates of deceased persons, except for legacies and distributive shares and for labor or materials for which suit may be commenced under section thirty-four of chapter ninety-three, shall be presented to the executor or administrator in writing, or filed in the probate court, supported by an affidavit of the claimant, or of some other person cognizant thereof, either before or within eighteen months after affidavit has been filed in the probate court that notice has been given by said executor or administrator of his appointment; and no action shall be commenced against such executor or administrator on any such claim until thirty days after the presentation or filing of such claim as above provided. Any claim not so presented or filed shall be forever barred against the estate, except as provided in sections fifteen, sixteen, eighteen and twenty-one of this chapter.

Actions against executors or administrators, on such claims, if brought within one year after notice is given by them of their appointment, shall be continued, without costs to either party, 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. No action shall be maintained against an executor or administrator on a claim or demand against the estate, except for legacies and distributive shares, and except as provided in sections fifteen and seventeen, unless commenced within eighteen months after affidavit has been filed in the probate court as provided in section forty-two of chapter sixty-six. 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; 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

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

ties dies;
joint judg-
ment may be
rendered;
survivors may
testify.
R.S., c. 87, § 10.

Heirs, de-
visees or
legatees may
petition to
defend suit.
1903, c. 173.

—bond required,
if leave be
given to
defend.

Claims against
estates shall
be filed in
writing with
affidavit.
R. S., c. 87, § 12.
1899, c. 120, § 2.
1903, c. 198, § 1.

—no action
for thirty
days.

—claims not
filed, barred.

—continuance
of actions,
if brought
within one
year after
notice,
without costs.

—executors,
etc., resid-
ing out of
the state,
to appoint
an agent in
the state.

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attorney in the state, service may be made on one of his sureties in the same manner and with the same effect as if made on him. (a)

Action, when assets come into hands of executor, etc., after eighteen months.
R. S., c. 87, § 13.
1899, c. 120, § 3.

SEC. 15. When assets come into the hands of an executor or administrator, after said term of eighteen months, an action may be commenced and maintained within six months after the creditor had notice of the receipt of such assets. Judgments rendered in any action authorized by this section shall not disturb payments made in good faith by the executor or administrator prior to the commencement of said action. (b)

Proceedings, when action does not accrue within eighteen months.
R. S., c. 87, § 14.
1899, c. 120, § 4.
39 Me., 500.
63 Me., 332.
74 Me., 20.
76 Me., 20.

SEC. 16. When an action on a covenant or contract does not accrue within said eighteen months, the claimant may file his demand in the probate office within that time, verified as required in case of claims presented to the 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 the judge to pay whatever is found due on said claim.

Proceedings, when bond is given, and when not given.
R. S., c. 87, § 15.
63 Me., 332.

SEC. 17. 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.

Remedy on claim not filed within eighteen months.
R. S., c. 87, § 16.
1899, c. 120, § 5.

SEC. 18. When such claim has not been filed in the probate office within said eighteen months, 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. (c)

Actions against administrators de bonis non.
R. S., c. 87, § 17.
1899, c. 120, § 6.

SEC. 19. When a vacancy occurs within said eighteen months and an administrator de bonis non is appointed, an action may be commenced after six months from his appointment and within eighteen months after affidavit has been filed by him in the probate court as provided in section forty-two of chapter sixty-six. (d)

Failure to give notice, effect of; new administrator may be sued.
R. S., c. 87, § 18.
See c. 86, § 40.

SEC. 20. 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. (e)

When claim is not presented within the time limited, supreme court may give relief in equity.
R. S., c. 87, § 19.

SEC. 21. 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 judgment for the amount of his claim against the estate of the deceased person; but such

(a) Limitation begins to run from time of granting letters in usual form, c. 66, § 36; 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; 76 Me., 19, 45, 197; 79 Me., 385; 84 Me., 83, 145; 85 Me., 442; 92 Me., 83.

(b) 5 Me., 114; 40 Me., 201; 47 Me., 75; 63 Me., 333; 74 Me., 521; 85 Me., 442.

(c) 6 Me., 138; 63 Me., 332; 74 Me., 19; 76 Me., 20, 45; 77 Me., 198.

(d) 1 Me., 157; 14 Me., 323.

(e) 68 Me., 30; 84 Me., 145.

judgment shall not affect any payment or distribution made before the filing of such bill. (a)

SEC. 22. 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.

Actions for legacies not affected; liability for unfaithful administration.
R. S., c. 87, § 20.

EXECUTIONS MAY ISSUE AFTER CREDITOR'S DEATH.

SEC. 23. 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.

How an execution may issue after creditor's death.
R. S., c. 87, § 21.
71 Me., 190.

SEC. 24. 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.

What the execution shall set forth, and to what uses property levied on shall be held.
R. S., c. 87, § 22.

CHAPTER 90.

PARTITION OF REAL ESTATE BY THE SUPREME JUDICIAL COURT.

SEC. 1. Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants may be compelled to divide the same by writ of partition at common law. (b)

Partition, by writ at common law.
R. S., c. 88, § 1.

SEC. 2. Persons so entitled, and those in possession or having a right of entry for a term of years, as tenants in common, may present a petition to the supreme judicial court held in the county where such estate is, clearly describing it, and stating whether it is a fee simple, for life, or for years, and the proportion claimed by them, the names of the other tenants in common, and their places of residence, if known, and whether any or all of them are unknown. (c)

Partition by petition; what must be stated in it.
R. S., c. 88, § 2.

SEC. 3. The petition may be filed in the clerk's office in vacation, if all the co-tenants are named in it. A copy thereof, attested by the clerk, left with each or at his last and usual place of abode, twenty days before the session of the court to which it is addressed, is sufficient service.

Filing, if all co-tenants are named; service.
R. S., c. 88, § 3.

SEC. 4. When the co-tenants are not all named in the petition, it may be presented to the court in that, or in any other county, returnable in the

Order of notice when not

(a) 79 Me., 208; 87 Me., 201; 90 Me., 511; 93 Me., 242.

(b) 12 Me., 144, 327, 401; 16 Me., 391; 17 Me., 427; 21 Me., 49; 31 Me., 487; 35 Me., 110; 52 Me., 25; 64 Me., 99; 92 Me., 397.

(c) 5 Me., 461; 12 Me., 145, 327; 16 Me., 391; 17 Me., 427; 39 Me., 164; 52 Me., 416; 64 Me., 99; 94 Me., 490.