

MAINE STATE LEGISLATURE

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either, the sale is not 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.

See c. 154, § 4, re sales of real estate, subject to contingent remainder, executory devise, or power of appointment; 53 Me. 204; *114 Me. 469.

CHAPTER 151.

PROBATE BONDS AND REMEDIES THEREON.

- Sections 1-5 Sufficiency of Probate Bonds.
 Sections 6-10 Actions on Bonds.
 Sections 11-16 Actions without Authority of Judge.
 Sections 17-19 Actions by Authority of Judge.
 Sections 20-22 Remedies on Other Probate Bonds.

Sufficiency of Probate Bonds

Sec. 1. Approval by judge. R. S. c. 86, § 1. No bond required to be given to the judge of probate, or to be filed in the probate office, is sufficient until it has been examined by the judge and his approval written thereon.

Sec. 2. Insufficient, new required. R. S. c. 86, § 2. When the sureties in any such bond are insufficient, on petition of any person interested, and notice to the principal, the judge may require a new bond with sureties approved by him.

See c. 141, § 63, re additional bonds may be required; c. 145, § 25, re judge may require new bond upon settlement of account; c. 147, § 3, re proceedings when trustee neglects to give bond; c. 149, § 30.

Sec. 3. Surety on bond may be discharged. R. S. c. 86, § 3. On application of any surety or principal in such bond, the judge on due notice to all parties interested may, in his discretion, discharge the surety or sureties from all liability for any subsequent, but not for any prior, breaches thereof, and may require a new bond of the principal with sureties approved by him.

*100 Me. 104; 103 Me. 382.

Sec. 4. Principal to give new bond or be removed. R. S. c. 86, § 4. 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.

Sec. 5. Court may reduce penal sum of bond signed by surety company. R. S. c. 86, § 5. If a surety company becomes surety on a bond given to a judge of probate, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond.

Actions on Bonds

Sec. 6. Suits on bonds to be in name of judge. R. S. c. 86, § 6. Suits on probate bonds of any kind payable to the judge shall be originally commenced in the superior 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 prosecuted, without notice, in the name of his successor; but no costs shall be awarded against the judge therein.

69 Me. 284.

Sec. 7. In suit against surety, principal may be made a party. R. S. c. 86, § 7. 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. 8. Proceedings and judgment. R. S. c. 86, § 8. Such surety may thereupon take out a writ, in the 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 14 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, is liable to respond to the judgment, as if made or taken in the original suit.

34 Me. 372.

Sec. 9. Action on administrator's or executor's bond, limitation. R. S. c. 86, § 9. Every action against sureties on an administrator's or an executor's bond must be commenced within 6 years after such administrator or executor has been cited to appear to settle his account in the probate court where administration is granted on the estate, or, if not so cited, within 6 years from the time of the breach of his bond, unless such breach is fraudulently concealed by the administrator or executor from the heirs, legatees, or persons pecuniarily interested, who are parties to the suit, and in such case within 3 years from the time such breach is discovered.

115 Me. 38.

Sec. 10. Judgment for plaintiff. R. S. c. 86, § 10. 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.

115 Me. 38; 119 Me. 359.

Actions without Authority of Judge

Sec. 11. Commencement of suit on bond. R. S. c. 86, § 11. Any person interested personally, or in any official capacity, in a probate bond, or in a 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 the Honorable ———, judge of probate for the county of ———;" otherwise it shall abate.

12 Me. 56; 18 Me. 58; 27 Me. 74; 34 Me. 99, 372; 62 Me. 167; 63 Me. 432, 445; 69 Me. 284; 78 Me. 27, 142; 83 Me. 196; 97 Me. 94; 103 Me. 380; 106 Me. 425.

Sec. 12. Judgment, if suit fails. R. S. c. 86, § 12. If such suit is not sustained, judgment shall be rendered and execution issued for costs against the person originating it as aforesaid.

69 Me. 284.

Sec. 13. Suit on bond, by creditor of insolvent estate. R. S. c. 86, § 13. Every creditor entitled to a dividend from an insolvent estate, originating any action mentioned in section 11, before he can recover, must produce an official copy of the decree of distribution among the creditors of said estate, particularly specifying all the claims allowed the several creditors, and must prove a demand on the administrator for his particular dividend.

Sec. 14. Suit by creditor or legatee of solvent estate. R. S. c. 86, § 14. 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 on him, and his neglect or refusal to satisfy the same, or to show personal estate of deceased for that purpose.

62 Me. 167; 63 Me. 432, 445; 103 Me. 380.

Sec. 15. Suit by widow, next of kin, or residuary legatee. R. S. c. 86, § 15. A widow entitled to an allowance made by the judge, a widow or next of kin entitled to a distributive share in the personal estate, or a residuary legatee of the deceased, before recovering in any action on such bond, must produce a decree of the judge specifying the amount due and prove demand and refusal as aforesaid.

Sec. 16. Judgment and execution in such suits. R. S. c. 86, § 16. When judgment in any action mentioned in section 11 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 a separate execution in the same form for the share of each, and the costs shall be apportioned under direction of the court; and such persons are creditors to all intents, and may levy their executions in their own names, on real estate or otherwise.

78 Me. 142.

Actions by Authority of Judge

Sec. 17. Judge may authorize suits; execution, in case of failure to account. R. S. c. 86, § 17. The judge of probate may expressly authorize or instruct an administrator or administrator de bonis non, on the petition of himself or 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 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 for charges of administration or debts paid.

1 Me. 145; 7 Me. 311; 27 Me. 74; 36 Me. 246; 54 Me. 151; 56 Me. 55; 65 Me. 477; 67 Me. 124; 69 Me. 284; 78 Me. 28; 79 Me. 154, 226; 97 Me. 94; 106 Me. 425; 134 Me. 496.

Sec. 18. Execution against administrator when no inventory, and for neglect. R. S. c. 86, § 18. 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.

4 Me. 157; 10 Me. 64; 11 Me. 168.

Sec. 19. Judgment to be in trust for all interested. R. S. c. 86, § 19. Every such judgment and execution shall be recovered by the judge 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 to be accounted for and distributed, or otherwise disposed of as assets.

79 Me. 155.

Remedies on Other Probate Bonds

Sec. 20. Like proceedings on other bonds. R. S. c. 86, § 20. 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 by executors, special administrators, guardians, testamentary trustees, surviving partners, assignees of insolvent debtors, and others, as are provided in this chapter in reference to bonds of administrators.

Sec. 21. Surety on probate bond may cite trust officers for an accounting. R. S. c. 86, § 21. Whenever any surety on any probate bond has reason to believe that the trust officer has depleted, or is wasting or mismanaging the estate, such surety may cite such trust officer before the judge of probate in the same manner as trust officers may be cited by the provisions of sections 83 to 85, inclusive, of chapter 141; and if upon hearing the judge of probate is satisfied that the estate held in trust by such officer has been depleted, wasted, or mismanaged, he may remove said trust officer and appoint another in his stead.

Sec. 22. Agreement for joint control made lawful. 1941, c. 8. It shall be lawful for any party of whom a bond, undertaking, or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a national bank, savings banks, safe-deposit or trust company, authorized by law to do business as such in this state, or with other depository approved by the court having jurisdiction over the trust or undertaking for which the bond is required, or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of such court, or judge thereof, made on such notice to such surety or sureties as such court or judge may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond.