

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
VOLUME 4

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1957

any general bequest other than of residue, which is not given in trust or for life or for a term of years; and by the inventory value of assets specifically devised and bequeathed. (1957, c. 183.)

Chapter 164.

Probate Bonds.

Actions on Bonds.

Sec. 9. Action on administrator's or executor's bond.

It is only when the breach is fraudulently concealed that action may be commenced later than six years from the time of breach of an administrator's or executor's bond, and then it must be commenced within three years from the date of discovery. *Dunton v. Maine Bonding & Casualty Co.*, 150 Me. 205, 107 A. (2d) 776.

Chapter 165.

Actions by or against Executors and Administrators.

Actions by or against Executors and Administrators.

Sec. 9. Actions for injuries causing immediate death.

History of §§ 9 and 10.

152 Me. 257, 127 A. (2d) 490.

It is common knowledge that this and the following section is the Death Statute or Lord Campbell's Act. *Picard v. Libby*, 152 Me. 257, 127 A. (2d) 490.

Allegations of negligence held sufficient.—See *Picard v. Libby*, 152 Me. 257, 127 A. (2d) 490.

Sec. 10. How such action brought; amount recovered, disposed of.

—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, except as hereinafter provided, shall be for the exclusive benefit of the widow or widower, if no children, and of the children, if no widow or widower, and if both, then for the exclusive benefit of the widow or widower and the children equally, and, if neither, of his or her heirs. The jury may give such damages as they shall deem a fair and just compensation, not exceeding \$20,000, with reference to the pecuniary injuries resulting from such death to the persons for whose benefit such action is brought, and in addition thereto, shall give such damages as will compensate the estate of such deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses, provided such action shall be commenced within 2 years after the death of such person. (R. S. c. 152, § 10. 1957, c. 188.)

Effect of amendment.—The 1957 amendment increased the maximum amount of damages which may be given from \$10,000 to \$20,000 in the second sentence.

Section assumes death causes some damages.

In accord with 1st paragraph in original. See *Picard v. Libby*, 152 Me. 257, 127 A. (2d) 490.

Death claim and claim for expenses to be separated.—The usual practice, and the better practice, is to place the death claim for the statutory beneficiaries and the

funeral and other expenses in separate counts. In bringing the action the administrator acts in two capacities—first, as trustee to recover damages for the statutory beneficiaries, and second, as administrator to recover expenses chargeable to the estate. Whether the death claim and expenses are included in one count or are separated in two counts, in either event, the jury must be directed to find and report the damages found in each type of claim. *Picard v. Libby*, 152 Me. 257, 127 A. (2d) 490.

Sec. 15. Claims against estates filed in writing with affidavit; no action for 30 days; claims not filed barred.—All claims against estates of deceased persons, including claims for amounts paid under the provisions of sections 276 to 297, inclusive, of chapter 25, and except for funeral expenses, expenses of administration, legacies, distributive shares and for labor and materials for which suit may be commenced under the provisions of section 39 of chapter 178, shall be presented to the executor or administrator in writing or filed in the registry of probate, supported by an affidavit of the claimant or of some other person cognizant thereof, either before or within 6 months after his qualification as such executor or administrator. No action shall be commenced against such executor or administrator on any such claim until 30 days after the presentation or filing of such claim. Any claim not so presented or filed shall be forever barred against the estate, except as provided in sections 18, 20 and 22. (R. S. c. 152, § 15. 1949, c. 233, § 1. 1957, c. 126, § 1.)

Effect of amendment. — The 1957 amendment changed the number of months after qualification from “12” to “6” months in the first sentence and made other minor changes in the phraseology of this section.

Suit not barred by § 17 where claim filed by state under this section.—Although under the provisions of this section the state must file a claim for old age assistance loans or advances within twelve

months after an administrator has qualified for the deceased recipient, which gives notice that the state has a claim against the real estate of the deceased, the state is not compelled by the provisions of § 17 of this chapter to commence suit within the twenty months period because said § 17 is not applicable to claims by the state for old age assistance furnished by the state. *State v. Crommett*, 151 Me. 188, 116 A. (2d) 614.

Sec. 17. Continuance of actions, if brought within 6 months after qualification, without costs.—Actions against executors or administrators on such claims, if brought within 6 months after their qualification, shall be continued without cost to either party until said 6 months expires and be barred by a tender of the debt within the 6 months, 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 section 19, unless commenced and served within 12 months after his qualification as such executor or administrator. When an executor, administrator, guardian, conservator or testamentary trustee, residing out of the state, has no agent or 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. (R. S. c. 152, § 17. 1957, c. 126, § 2.)

Effect of amendment. — The 1957 amendment changed the times mentioned in the first sentence from “one year” to “6 months” and the time mentioned in the second sentence from “20 months” to “12 months”.

Section not applicable to claim by state for old age assistance.—Although the state must file a claim for old age assistance against the estate of the recipient within twelve months after the administrator has qualified, as required by § 15 of this chapter, which gives notice that the

state has a claim against the real estate of the deceased, the state is not compelled to commence suit within the twenty months period provided for in this section because such provision of this section is not applicable to claims by the state for old age assistance furnished by the state. It is the general rule in Maine that a statute of limitations does not apply against the state unless the state is expressly named therein or in some manner it is specifically so stated. *State v. Crommett*, 151 Me. 188, 116 A. (2d) 614.

Sec. 18. When action does not accrue within 6 months.—When an action on a covenant or contract does not accrue within said 6 months, the claimant may file his demand in the registry of probate within that time, verified as required in case of claims presented to the commissioners on insolvent estates. 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. (R. S. c. 152, § 18. 1957, c. 126, § 3.)

Effect of amendment. — The 1957 amendment changed the time mentioned near the beginning of the section from “12 months” to “6 months” and made other minor changes in phraseology.

Sec. 20. Remedy on claim not filed within 6 months. — When such claim has not been filed in the probate office within said 6 months, the claimant may have remedy against the heirs or devisees of the estate within 6 months after it becomes due and not against the executor or administrator. (R. S. c. 152, § 20. 1957, c. 126, § 4.)

Effect of amendment. — The 1957 amendment changed the first time mentioned from “12 months” to “6 months” and the second time mentioned from “one year” to “6 months”.

Sec. 21. Limitations claimed for or against old administrator continued.

Applied in *State v. Crommett*, 151 Me. 188, 116 A. (2d) 614.

Chapter 166.

Domestic Relations. Marriage. Divorce.

Parents and Children.

Sec. 19. Custody and support decreed when parents live apart.

Cited in *Dumais v. Dumais*, 152 Me. 24, 122 A. (2d) 322.

Sec. 21. Funds paid to minor not having guardian.—Whenever, under any decree or order of the supreme judicial court or superior court of this state or of any justice of either of said courts, in term time or in vacation, or of any judge of any probate court in this state, any receiver, master, executor, administrator, trustee, guardian or other person acting under authority of either of said courts, or any justice or judge thereof shall have in his hands any funds not exceeding \$500 to be distributed or paid to any person under the age of 21 years, not having a guardian legally appointed in this state, payment may be made directly to such minor, if such minor be 10 years of age, and such minor's receipt therefor shall be a sufficient voucher for such payment in the settlement in court of any account by the party who makes such payment, and shall discharge and release him from any and all further liability on account of the same. When said minor is under 10 years of age, the payment may be made to either parent at the discretion of said person paying said money; provided, however, that where the money is paid directly to said minor the person paying the same may, in his discretion, require on such receipt the counter signature of one or both of the parents of such minor, and when the minor is under 10 years of age the person paying the same shall receive of either or both parents, or if neither parent is living may withhold payment until further order of court or until the appointment of a guardian. (R. S. c. 153, § 21. 1955, c. 199.)

Effect of amendment.—The 1955 amendment substituted “\$500” for “\$200” in line seven of the first sentence.