REVISED STATUTES

OF THE

STATE OF MAINE

1954

1959 CUMULATIVE SUPPLEMENT

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been specifically ascertained by a decree of the judge of probate or by judgment of law, may originate an action on such bond or proceedings on such judgment without applying to the judge whose name was used in the bond or judgment, or to his successor; and 2 or more such persons may unite in the prosecution of the action, but the complaint 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 be dismissed. (R. S. c. 151, § 11. 1959, c. 317, § 290.)

Effect of amendment.—The 1959 amendment deleted "as hereinafter provided" after "law," substituted "an action" for "a suit" after "originate," "proceedings" for "scire facias," "complaint" for "original writ" and "be dismissed" for "abate."

Effective date of 1959 amendment.—See note to § 7.

Chapter 165.

Actions by or against Executors and Administrators.

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Sec. 3. Execution against estate of deceased, if returned unsatisfied.—When a proper officer makes his return on an execution issued under section 1 that he cannot find personal property of the deceased, or other means to satisfy it, an action, suggesting waste, may be brought against the executor or administrator. 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. (R. S. c. 152, § 3. 1959, c. 317, § 291.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, deleted "the provisions of" before "section 1" and substituted "an action, suggesting waste, may be brought" for "a writ of scire facias, suggesting waste, may be issued" in the first sentence.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 5. Administrator de bonis non substituted as party on motion.—When an executor or administrator ceases to be such after judgment against him, the administrator de bonis non may be substituted as a party on motion, notice of which shall be served in the same manner as original process, and an execution may issue as provided in section 4; but the costs for which the executor or first administrator was personally liable may be enforced against his executor or administrator. (R. S. c. 152, § 5. 1959, c. 317, § 292.)

Effect of amendment.—The 1959 amendment substituted "the administrator de bonis non may be substituted as a party on motion, notice of which shall be served in the same manner as original process, and" for "a writ of scire facias may be issued against the administrator de bonis non, and after due notice" following "him" and substituted "section 4" for "the preceding section."

Effective date of 1959 amendment.—See note to § 3.

Sec. 8. Actions which survive.—No personal action or cause of action shall be lost by the death of either party, but the same shall survive for and against the executor or administrator of the deceased, except that actions or causes of action for the recovery of penalties and forfeitures of money under penal statutes and proceedings in bastardy cases shall not survive the death of the defendant. An executor or administrator may seek relief from a judgment in an action to which

the deceased was a party to the same extent that the deceased might have done so. (R. S. c. 152, § 8. 1959, c. 317, § 293.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date of 1959 amendment.—See note to § 3.

Sec. 9. Actions for injuries causing immediate death.

History of §§ 9 and 10.

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. 12. Damages in actions sounding in tort; goods returned in replevin not assets.—When an action sounding in tort is commenced or prosecuted against an executor or administrator, the plaintiff can recover only the value of the goods taken or damage actually sustained. 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. (R. S. c. 152, § 12. 1959, c. 317, § 294.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted "sounding in tort" for "of trespass, or trespass on the case" in the first sentence.

Effective date of 1959 amendment.—See note to § 3.

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.

Cross reference.—See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

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.

Sec. 22. Children to care for parents according to ability.

When less than all children, residing within the state, or owning property within the state, shall comply with the obligations imposed upon them by the preceding paragraph, one or more may complain to the superior court in the county where such parent or parents reside; and the court may cause any defaulting child or children so alleged, to be summoned, and upon hearing or default may assess and apportion a reasonable sum upon all children residing within the state,