

MAINE STATE LEGISLATURE

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Maine
REVISED STATUTES
1964

*Prepared Under the Supervision
of the
Committee on Revision of Statutes*

Being the Tenth Revision of the
Revised Statutes of the State
of Maine, 1964

Volume 3
Titles 14 to 20



Boston, Mass.
Boston Law Book Co.

Orford, N. H.
Equity Publishing Corporation

St. Paul, Minn.
West Publishing Co.

Text of Revised Statutes
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CHAPTER 9
PROBATE BONDS

Subch.	Sec.
I. General Provisions	301
II. Sufficiency of Bonds	351
III. Actions on Bonds	401
IV. Action Without Judicial Authority	451
V. Action by Judicial Authority	501

SUBCHAPTER I

GENERAL PROVISIONS

Sec.

301. Applicability to proceedings on other bonds.
 302. Surety on probate bond may cite trust officers for accounting
 303. Agreement for joint control.

§ 301. Applicability to proceedings on other bonds

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.

R.S.1954, c. 164, § 20.

§ 302. Surety on probate bond may cite trust officers for accounting

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 chapter 213. 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.

R.S.1954, c. 164, § 21.

§ 303. Agreement for joint control

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. 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.

R.S.1954, c. 164, § 22.

SUBCHAPTER II**SUFFICIENCY OF BONDS**

Sec.

- 351. Approval by judge.
- 352. Insufficient, new required.
- 353. Surety on bond discharged.
- 354. New bond by principal or removal.
- 355. Reduction of penal sum where signed by surety company.

§ 351. Approval by judge

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.

R.S.1954, c. 164, § 1.

§ 352. Insufficient, new required

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.

R.S.1954, c. 164, § 2.

§ 353. Surety on bond discharged

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.

R.S.1954, c. 164, § 3.

§ 354. New bond by principal or removal

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.

R.S.1954, c. 164, § 4.

§ 355. Reduction of penal sum where signed by surety company

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.

R.S.1954, c. 164, § 5.

SUBCHAPTER III**ACTIONS ON BONDS**

Sec.

- 401. Action on bonds in name of judge.
- 402. In action against surety, principal made party.
- 403. Proceedings and judgment.
- 404. Action on administrator's or executor's bond.
- 405. Judgment for plaintiff.

§ 401. Action on bonds in name of judge

Actions 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. 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. No costs shall be awarded against the judge therein.

R.S.1954, c. 164, § 6; 1961, c. 317, § 527.

§ 402. In action against surety, principal made party

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 proceedings 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.

R.S.1954, c. 164, § 7; 1959, c. 317, § 289.

§ 403. Proceedings and judgment

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. 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 action.

R.S.1954, c. 164, § 8; 1961, c. 317, § 528.

§ 404. Action on administrator's or executor's bond

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 action, and in such case within 3 years from the time such breach is discovered.

R.S.1954, c. 164, § 9; 1961, c. 317, § 529.

§ 405. Judgment for plaintiff

When judgment is for the plaintiff by verdict, default or otherwise in any action 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 provided.

R.S.1954, c. 164, § 10; 1961, c. 317, § 530.

SUBCHAPTER IV

ACTION WITHOUT JUDICIAL AUTHORITY

Sec.

451. Action on bond.

452. Judgment if action fails.

453. Action on bond by creditor of insolvent estate.

454. Action by creditor or legatee of solvent estate.

455. Action by widow, next of kin of residuary legatee.

456. Judgment and execution.

§ 451. Action on bond

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, 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.1954, c. 164, § 11; 1959, c. 317, § 290.

§ 452. Judgment if action fails

If such action is not sustained, judgment shall be rendered and execution issued for costs against the person originating it.

R.S.1954, c. 164, § 12; 1961, c. 317, § 531.

§ 453. Action on bond by creditor of insolvent estate

Every creditor entitled to a dividend from an insolvent estate, originating any action mentioned in section 451, 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.

R.S.1954, c. 164, § 13.

§ 454. Action by creditor or legatee of solvent estate

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.

R.S.1954, c. 164, § 14.

§ 455. Action by widow, next of kin or residuary legatee

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.

R.S.1954, c. 164, § 15.

§ 456. Judgment and execution

When judgment in any action mentioned in section 451 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. 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. Such persons are creditors to all intents and may levy their executions in their own names on real estate or otherwise.

R.S.1954, c. 164, § 16.

SUBCHAPTER V

ACTION BY JUDICIAL AUTHORITY

Sec.

501. Judge may authorize actions; execution where failure to account.
502. Execution against administrator when no inventory and for neglect.
503. Judgment in trust for all interested.

§ 501. Judge may authorize actions; execution where failure to account

The judge of probate may expressly authorize or instruct an administrator or administrator de bonis non, on the complaint of himself or any party interested, to commence an action on a probate bond for the benefit of the estate, and such authority shall be alleged in the process. When it appears, in any such action 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.

R.S.1954, c. 164, § 17; 1961, c. 317, § 532.

§ 502. Execution against administrator when no inventory and for neglect

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.

R.S.1954, c. 164, § 18.

§ 503. Judgment in trust for all interested

Every such judgment and execution shall be recovered by the judge in trust for all parties interested in the penalty of the bond. 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.

R.S.1954, c. 164, § 19.