

MAINE STATE LEGISLATURE

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CHAPTER 229

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS

Subch.	Sec.
I. General Provisions	2451
II. Survival of Actions	2501
III. Actions for Death or Injury	2551
IV. Tort Actions Generally	2601
V. Time for Action	2651

SUBCHAPTER I

GENERAL PROVISIONS

- Sec.
2451. Legatee may sue for legacy.
2452. Process runs against goods of estate.
2453. Executions for costs.
2454. Return unsatisfied against estate.
2455. Heirs, devisees or legatees may petition to defend action; bond.
2456. Actions for legacies not affected; liability for unfaithful administration.

§ 2451. Legatee may sue for legacy

Any legatee of a residuary or specific legacy under a will may sue for and recover the same of the executor in a civil action or other appropriate action.

R.S.1954, c. 156, § 27; 1961, c. 317, § 509.

§ 2452. Process runs against goods of estate

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.

R.S.1954, c. 165, § 1.

§ 2453. Executions for costs

Executions for costs run against the goods and estate and for want thereof against the bodies of executors and administra-

tors, 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 action was prosecuted or defended without reasonable cause.

R.S.1954, c. 165, § 2; 1961, c. 317, § 533.

§ 2454. **Return unsatisfied against estate**

When a proper officer makes his return on an execution issued under section 2452 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.1954, c. 165, § 3; 1959, c. 317, § 291.

§ 2455. **Heirs, devisees or legatees may petition to defend action; bond**

When a civil action 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 action, 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 action or by said defense; and an entry of record shall be made that he is admitted to defend such action.

R.S.1954, c. 165, § 14; 1961, c. 317, § 537.

§ 2456. **Actions for legacies not affected; liability for unfaithful administration**

An action for the recovery of a legacy is not affected by provisions of this chapter and sections 1605 to 1607. When an executor or administrator is guilty of unfaithful administration, he is liable on his administration bond for all damages occasioned thereby.

R.S.1954, c. 165, § 23.

SUBCHAPTER II

SURVIVAL OF ACTIONS

Sec.

2501. Actions which survive.

2502. Death of only party to action.

2503. Death of one of several; survivors may testify.

2504. Executions after creditor's death.

2505. —Recitals required; use of real estate levied on.

§ 2501. 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.1954, c. 165, § 8; 1959, c. 317, § 293.

§ 2502. Death of only party to action

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 within 90 days 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 dismissal or default.

R.S.1954, c. 165, § 7; 1961, c. 317, § 536.

§ 2503. Death of one of several; survivors may testify

When either of several plaintiffs or defendants in an action that survives dies, the death may be suggested on the record, and the executor or administrator of the deceased may appear or be cited to appear as provided in section 2502. The action may be further prosecuted or defended by the survivors and such executor or administrator jointly, or by either of them. Judgment

may be entered against the survivors and against the goods and estate of the deceased in the hands of such executor or administrator, and a joint execution issued. The survivors, if any, on both sides of the action may testify as witnesses.

R.S.1954, c. 165, § 13.

§ 2504. Executions after creditor's death

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 the court rendering such judgment, or by like order of the District Court rendering such judgment, upon application in writing of the executor or general or special administrator of the deceased creditor. Any execution so issued or renewed may be subsequently renewed, but no execution shall issue or be renewed after the time within which it might have been done if the party had not died.

R.S.1954, c. 165, § 24; 1961, c. 317, § 541; 1963, c. 402, § 266.

§ 2505. —Recitals required; use of real estate levied on

In an execution issued under section 2504, 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. 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.

R.S.1954, c. 165, § 25.

SUBCHAPTER III

ACTIONS FOR DEATH OR INJURY

Sec.

2551. Actions for injuries causing immediate death.

2552. Title of action; amount recovered; disposal.

2553. Conscious suffering preceding death.

§ 2551. Actions for injuries causing immediate death

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.

R.S.1954, c. 165, § 9.

§ 2552. Title of action; amount recovered; disposal

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 otherwise 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 \$30,000, 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.1954, c. 165, § 10; 1957, c. 188; 1961, c. 315.

§ 2553. Conscious suffering preceding death

Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death shall, in addition to the action at common law and damages recoverable therein, be liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in section 2552, separately found, but in such cases there shall be only one recovery for the same injury.

R.S.1954, c. 165, § 11.

SUBCHAPTER IV

TORT ACTIONS GENERALLY

Sec.

2601. Damages in actions sounding in tort; replevied goods not assets.

§ 2601. Damages in actions sounding in tort; replevied goods 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.1954, c. 165, § 12; 1959, c. 317, § 294.

SUBCHAPTER V

TIME FOR ACTION

Sec.

2651. Continuance of actions if brought within 6 months after qualification, without costs.

2652. Actions not accruing in 6 months.

2653. Time for action when no bond; when bond.

2654. Remedy on claim not filed within 6 months.

2655. Continuance of limitations claimed for or against old administrator.

2656. Relief when claim not presented in time limited.

§ 2651. 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 dis-

tributive shares, and except as provided in section 2653, 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.1954, c. 165, § 17; 1957, c. 126, § 2.

§ 2652. Actions not accruing in 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.1954, c. 165, § 18; 1957, c. 126, § 3.

§ 2653. Time for action when no bond; when bond

When no bond is so given, an action may be brought by the claimant against the executor or administrator within 6 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.

R.S.1954, c. 165, § 19.

§ 2654. 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.1954, c. 165, § 20; 1957, c. 126, § 4.

§ 2655. Continuance of limitations claimed for or against old administrator

When an executor or administrator after qualification dies, resigns or is removed without having fully administered the

estate, and a new administrator is appointed, such new administration shall be deemed to be a continuation of the preceding administration, and all limitations which could be claimed for or against the predecessor may be claimed for or against such successor. The time when there is no representative of the estate shall not be reckoned as part of the periods for the filing or proof of claims or limitations for bringing civil actions. Such periods, and generally the periods referred to where no provision to the contrary is made, shall be reckoned exclusive of such time.

R.S.1954, c. 165, § 21; 1961, c. 317, § 539.

§ 2656. Relief when claim not presented in time limited

If the Superior Court, upon a complaint filed by a creditor whose claim has not been prosecuted within the time limited by sections 2402, 2406 and 2651 to 2655, is of the 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 judgment shall not affect any payment or distribution made before the filing of such complaint.

R.S.1954, c. 165, § 22; 1961, c. 317, § 540.