

# MAINE STATE LEGISLATURE

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# FIFTY-FIRST LEGISLATURE.

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SENATE.

No. 21.

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## STATE OF MAINE.

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The Committee on the Judiciary, to which was referred the bill entitled "an act to amend chapter 87 of the Revised Statutes, relating to actions by or against executors or administrators," have had the same under consideration, and ask leave to report the same in a new draft, and that it be printed and recommitted.

Per order.

W. H. McLELLAN.

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IN SENATE, January 31, 1872.

Read and accepted.

Sent down for concurrence.

SAMUEL W. LANE, *Secretary.*

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HOUSE OF REPRESENTATIVES, }  
February 1, 1872. }

Read and concurred.

S. J. CHADBOURNE, *Clerk.*



# STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SEVENTY-TWO.

AN ACT to amend chapter eighty-seven of the revised statutes, relating to actions by or against executors or administrators.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :*

Chapter eighty-seven of the revised statutes is  
2 amended, in sections eleven, twelve, thirteen, four-  
3 teen, fifteen, sixteen, seventeen and eighteen, so as to  
4 read as follows :

SECT. 11. Any action against an executor or admin-  
2 istrator, commenced within one year after notice is  
3 given by him of his appointment, shall be continued  
4 at the expense of the plaintiff, until said year expires,  
5 and shall be barred by a tender of the debt within the  
6 year ; excepting actions on claims not affected by the  
7 insolvency of the estate, and actions in case of appeals  
8 from commissioners of insolvency or other commis-  
9 sioners appointed by the judge of probate.

SECT. 12. No action against an executor or admin-

2 istrator, commenced since the third day of February,  
3 1869, on a claim against the estate, shall be main-  
4 tained, except as provided in the thirteenth and  
5 fifteenth sections, unless such claim is first presented  
6 in writing and payment demanded, at least thirty days  
7 before the action is commenced, and within two years  
8 after notice is given by him of his appointment; and  
9 none on a claim so presented and demanded, unless  
10 commenced during said two years or within six months  
11 next following. Executors or administrators residing  
12 out of the state at the time of giving notice of their  
13 appointment, shall appoint an agent or attorney in the  
14 state, and insert his name and address in such notice.  
15 Executors or administrators removing from the state,  
16 after giving notice of their appointment, shall appoint  
17 an agent or attorney in the State, and give public  
18 notice thereof. Demand or service made on any such  
19 agent or attorney, shall have the same effect in law as  
20 if made on such executors or administrators.

SECT. 13. A creditor who was absent from the state  
2 during said two years, and had no sufficient attorney  
3 in the state, may make presentment and demand of his  
4 claim, and after thirty days commence his action,  
5 within six months from his return or appointment of  
6 such attorney. When assets come into the hands of  
7 an executor or administrator after said term of two

8 years, presentment and demand may be made by a  
9 creditor, and after thirty days an action commenced,  
10 within two years from the receipt of such assets, and  
11 within six months after the creditor has notice thereof.  
12 Judgment rendered in any action authorized by this  
13 section, shall not disturb payments made in good faith  
14 by the executor or administrator, prior to presentment  
15 of the claim sued in such action.

SECT. 14. When an action on a covenant or con-  
2 tract does not accrue within said two years, the claim-  
3 ant may file his demand in the probate office within  
4 that time, verified as required in case of claims pre-  
5 sented to commissioners on insolvent estates; and the  
6 judge of probate shall direct that sufficient assets, if  
7 such there be, shall be retained by the executor or  
8 administrator, unless the heirs or devisees of the estate  
9 give bond to the executor or administrator, with one  
10 or more sureties, approved by said judge, to pay what-  
11 ever may be found due on said claim.

SECT. 15. When no bond is so given, an action may  
2 be brought by the claimant against the executor or  
3 administrator, within six months after his demand  
4 becomes due. But when a bond is given, assets shall  
5 not be reserved, but the estate shall be liable in the  
6 hands of the heirs or devisees, or those claiming under  
7 them, and an action may be brought on such bond. If

8 anything is found due, the claimant shall have judg-  
9 ment therefor, and for his costs.

SECT. 16. When such claim has not been filed in  
2 the probate office within said two years, the claimant  
3 may have remedy against the heirs or devisees of the  
4 estate within one year after it becomes due, and not  
5 against the executor or administrator.

SECT. 17. When a vacancy occurs within said two  
2 years, and an administrator de bonis non is appointed,  
3 an additional year shall be allowed for the presentment  
4 and demand of claims against the estate; but the  
5 time whilst the vacancy continues shall not be deemed  
6 a part of the three years limited; and on any claim  
7 presented to the administrator de bonis non, or his  
8 predecessor, and demanded, within the said three years,  
9 an action may be commenced after thirty days, and  
10 within six months from the end of said three years,  
11 but not within one year from the notice of appointment  
12 given by the executor or first administrator.

SECT. 18. When any executor or administrator does  
2 not give legal notice of his appointment, he shall have  
3 no benefit from the limitations contained in this  
4 chapter; and actions may be commenced against a  
5 new administrator on the same estate as though he  
6 were the first administrator or executor, subject to the  
7 conditions and limitations contained in this chapter.