

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAP. 87.

CHAPTER 87.

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

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17. Limitation of actions against administrators de bonis non, when no notice by first administrator.
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Precepts, how issued, &c.

23 Maine, 521.
24 Maine, 25.
R. S., c. 120,
§ 1, 4, 14.

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20 Maine, 21.
23 Maine, 251.
24 Maine, 25.
R. S., c. 120,
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Execution against the estate of deceased, returned unsatisfied, proceedings.

R. S., c. 120,
§ 6.

Administrator de bonis non, may prosecute and defend, &c.

R. S., c. 120,
§ 7.
1852, c. 280,
275.

When an ex'or or adm'r ceases, &c.

SEC. 1. 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.

SEC. 2. Executions for costs shall run against the goods and estate, and for want thereof against the bodies of executors and administrators, 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 defence, to be allowed to them in their administration account, unless the judge of probate decides that the suit was prosecuted or defended without reasonable cause.

SEC. 3. When a proper officer makes his return, on an execution issued under the first section, that he cannot find personal property of the deceased, or other means to satisfy it, a writ of scire facias, suggesting waste, may be issued against the executor or administrator; and 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.

SEC. 4. When an executor or administrator ceases to be such, an action pending in his favor or against him may be prosecuted by or against an administrator de bonis non; and if he does not appear, after due notice, judgment may be rendered, as if the suit had been commenced by or against him for debt and for costs, as herein provided.

SEC. 5. When an executor or administrator ceases to be such after judgment against him, a writ of scire facias may be issued against the administrator de bonis non; and after due no-

tice an execution may issue as provided in the preceding section; but the costs, for which the executor or first administrator was personally liable, may be enforced against his executor or administrator.

SEC. 6. A writ of error may be maintained by or against an administrator de bonis non, when it could be by or against an executor or first administrator.

SEC. 7. 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 at the second term 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 nonsuit or default.

SEC. 8. In addition to those surviving by the common law, the following actions survive; replevin, trover, assault and battery, trespass, trespass on the case, and petitions for and actions of review; and these actions may be commenced by or against an executor or administrator, or when the deceased was a party to them, may be prosecuted or defended by them.

SEC. 9. When an action of trespass, or trespass on the case, is commenced or prosecuted against an executor or administrator, the plaintiff can recover only the value of the goods taken, or damage actually sustained; and 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 shall discharge him.

SEC. 10. When one of several plaintiffs or defendants, in an action that survives, dies, his death may be suggested on the record, and the action may be further prosecuted or defended by the survivors; and when all the plaintiffs or defendants die, the action may be prosecuted or defended by the executor or administrator of the last surviving plaintiff or defendant.

SEC. 11. No executor or administrator can be compelled to defend a suit commenced against him within one year after his appointment, except on a demand not affected by an insolvency of the estate, or on a demand by an appeal from a decision of commissioners of insolvency; but all such suits shall be continued at the expense of the plaintiff till said year expires; and a tender of a debt within the year shall bar any such actions.

SEC. 12. And none after four years from the time of giving notice of his appointment, except as follows. When assets come to his hands after that time, he shall be accountable therefor in the probate court, and an action may be commenced within four years after the receipt thereof, and within one year after the creditor has notice of such receipt. (a)

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32 Maine, 131,
174.R. S., c. 120,
§ 8.

Writ of error.

R. S., c. 120,
§ 9.When an only
party to an
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19 Maine, 344.
R. S., c. 120,
§ 10, 11, 12, 13.
1854, c. 98, § 1.Actions which
survive; may
be prosecuted,
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3 Greenl. 174.

17 Maine, 409.

R. S., c. 120,

§ 15, 16.

1841, c. 1, § 21.

In trespass,
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R. S., c. 120,

§ 17, 18.

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ants die, in
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R. S., c. 120,

§ 19, 20.

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R. S., c. 120,

§ 21, 22.

And none after
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time of giving
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R. S., c. 120,

§ 23, 24.

(a) 11 Maine, 150; 14 Maine, 254, 320; 29 Maine, 458; 32 Maine, 72.

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When action does not accrue within four years; proceedings. 39 Maine, 498. R. S., c. 120, § 25.

Estate remains liable to such claims; how suits maintained. R. S., c. 120, § 26, 27, 28.

If such claim is not filed, remedy against heirs or devisees. 6 Greenl. 127. R. S., c. 120, § 30.

Time within which actions can be brought against administrators de bonis non. R. S., c. 120, § 32, 33.

Limitation of actions against an administrator de bonis non, &c. R. S., c. 120, § 34, 35.

Actions for legacies not affected, &c. R. S., c. 120, § 29, 31.

SEC. 13. And when an action, on a covenant or contract, does not accrue within said four years, the claimant may file such demand in the probate office within that time, and the judge of probate shall direct that sufficient assets, if such there be, shall be retained by the executor or administrator, unless the heirs or devisees of the estate give bond, with one or more sureties, approved by the judge of probate, to the executor or administrator to respond the same.

SEC. 14. When a bond is so given, no assets shall be retained; but the estate shall be liable in the hands of heirs or devisees, or those claiming under them, to answer such demand; and an action may be brought on such bond, or when no bond is given, against the executor or administrator, and if any thing is found due, the claimant shall have judgment therefor and for his costs.

SEC. 15. When such claim has not been filed in the probate office within said four years, the claimant may have remedy against the heirs or devisees of the estate within one year after it becomes due, and not against the executor or administrator.

SEC. 16. Upon the appointment of an administrator de bonis non, the time within which actions may be brought is extended as follows; to such a portion of the four years as remained unexpired before a vacancy, shall be added so much time after the new appointment as will make five years; and every new administrator shall in all cases be liable to actions of creditors for two years after notice given of his appointment, although the whole time may be extended beyond five years.

SEC. 17. When an executor or administrator does not give legal notice of his appointment, actions may be commenced against a new administrator within four years after notice of his appointment; and if he fails to give legal notice of it, he can have no benefit of the limitations contained in this chapter.

SEC. 18. An action, for the recovery of a legacy, shall not be affected by the provisions of this chapter. When an executor or administrator is guilty of unfaithful administration, he shall be liable on his administration bond for all damages occasioned thereby.

CHAPTER 88.

PARTITION OF REAL ESTATE.

- SEC. 1. Partition may be made by writ at common law.
2. Partition may be made by petition; what must be stated in it.
3. Petition may be filed in vacation, if all co-tenants are named.
4. Petition may be presented in any county, if all are not named, and notice ordered.
5. When persons not fully notified may appear; pleadings how made.
6. Plaintiff or petitioner may reply.
7. Guardians for infants and insane persons, and agents for persons out of the state, to be appointed.