

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

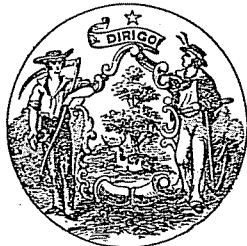
TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
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## CHAP. 72.

## CHAPTER 72.

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## WHAT BONDS ARE SUFFICIENT.

SEC. 1. No bond required by law to be given to the judge of probate, or to be filed in the probate office, shall be deemed sufficient, unless examined by the judge, and his approval written thereon.

No bond sufficient unless approved by the judge.  
 R. S. c. 68, § 13.

## WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

SEC. 2. When the sureties in any bond given to the judge of probate are insufficient, on the petition of any person interested, and notice to the principal, the judge may require a new bond to be given, with sureties approved by him.

When bond is insufficient, a new one may be required.  
 R. S. c. 72, § 1.

SEC. 3. On the application of any surety in such bond, the judge of probate, on due notice to all parties interested, may, after six years from its date, discharge him from all liability for any subsequent, but not for any prior breaches thereof, and require a new bond of the principal, with sureties approved by him.

Any surety may be discharged after six years.  
 R. S. c. 72, § 2.

SEC. 4. 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 in his place.

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Principal to give new bond, or be removed.  
R. S. c. 72, § 3.

ACTIONS ON BONDS.

SEC. 5. All suits, on probate bonds of any kind payable to the judge, shall be originally commenced in the supreme judicial court for the county where said judge belongs, and in his name or that of his successor at the time; and 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; but no costs shall be awarded against the judge therein.

Suits on bonds to be in the name of judge.  
R. S. c. 72, § 4.

SEC. 6. 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 scire facias 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.

In suit against surety principal may be made a party.  
R. S. c. 72, § 5.

SEC. 7. Such surety may thereupon take out a writ, in 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; and if, after fourteen 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, shall be liable to respond the judgment, as if made or taken in the original suit.

How he shall be summoned; proceedings and judgment.  
R. S. c. 72, § 6.

SEC. 8. When judgment is for the plaintiff by verdict, default, or otherwise, in any suit 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 hereinafter provided.

Judgment for plaintiff to be for penalty.  
R. S. c. 72, § 7.

ACTIONS BY INTERESTED PARTIES WITHOUT AUTHORITY OF THE JUDGE.

SEC. 9. Any person interested personally or in any official capacity in any probate bond, or in any judgment rendered thereon, whose interest has been specifically ascertained by a decree of the judge of probate, or by judgment of law, as hereinafter provided, may originate a suit on such bond, or scire facias on such judgment, without applying to the judge whose name was used in the bond or judgment, or to his successor; and two or more such persons may unite in the prosecution of the action, but the original writ shall allege the name and addition of such person, and that the same is sued out by him, "in the name of the ———, judge of probate for the county of ———;" otherwise it shall abate.

When and how party interested may bring suit on bond.  
R. S. c. 72, § 8.  
12 Me. 55.  
18 Me. 55.  
27 Me. 68.  
34 Me. 98, 370.

**CHAP. 72.** **SEC. 10.** If such suit is not sustained, judgment shall be rendered and execution issued for costs against the person originating it as aforesaid.

Judgment in suit not sustained.  
R. S. c. 72, § 9.  
Suit on bond by creditor of insolvent estate.  
R. S. c. 72, § 10

**SEC. 11.** Every creditor, entitled to a dividend from an insolvent estate, originating any action mentioned in section nine, before he can recover, must produce an official copy of the order of distribution among the creditors of said estate, particularly specifying all the claims allowed the several creditors, and prove a demand on the administrator for his particular dividend.

Suit by creditor or legatee of solvent estate.  
R. S. c. 72, § 11.

**SEC. 12.** 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 show personal estate of deceased for that purpose.

Suit by widow, next of kin, or residuary legatee.  
R. S. c. 72, § 12.

**SEC. 13.** Any widow entitled to an allowance made by the judge of probate; any widow or next of kin entitled to a distributive share in the personal estate; or any residuary legatee of the deceased, before he can recover in any action on such bond, must produce a decree of the judge of probate specifying the amount due, and prove demand and refusal as aforesaid.

Judgment and execution in such suits.  
R. S. c. 72, § 13.

**SEC. 14.** When judgment in any action mentioned in section nine 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; and when it was brought for the use of several, there shall be separate executions in the same form for the share of each, and the costs shall be apportioned under the direction of the court; and such persons shall be deemed creditors to all intents, and may levy their executions in their own names, on real estate or otherwise.

#### SUITS BY AUTHORITY OF THE JUDGE.

Judge may authorize suits; execution in case of failure to account.  
R. S. c. 72, § 14.  
1 Me. 139.  
7 Me. 302.  
27 Me. 68.  
36 Me. 243.  
54 Me. 150.  
56 Me. 52.

**SEC. 15.** The judge of probate may expressly authorize any party interested, to commence a suit on a probate bond for the benefit of the estate, and such authority shall be alleged in the process; and when it appears, in any such suit against an administrator, that he has been cited by the judge of probate 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 whatever for charges of administration or debts paid.

Execution in case of returning no inventory, &c.  
R. S. c. 72, § 15.

**SEC. 16.** 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.

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4 Me. 154.  
10 Me. 53.  
11 Me. 157.

SEC. 17. Every such judgment and execution shall be recovered by the judge of probate in trust for all parties interested in the penalty of the bond; and 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 accounted for and distributed, or otherwise disposed of as assets.

Judgment to be in trust for all interested.  
R. S. c. 72, § 16.

#### OTHER PROBATE BONDS.

SEC. 18. 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 of probate by executors, special administrators, guardians, testamentary trustees, surviving partners, and others, as are provided in this chapter in reference to bonds of administrators.

Like proceedings to be had on other bonds.  
R. S. c. 72, § 17.