

MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE
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CHAPTER 101.

Actions by or Against Executors and Administrators.

Sec. 1. Process against estate in their hands. R. S. c. 92, § 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.

14 Me. 324; 23 Me. 253; 24 Me. 27; 36 Me. 246; 61 Me. 471; *96 Me. 381.

Sec. 2. Executions for costs against their own goods and estate. R. S. c. 92, § 2. Executions for costs 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 defense, 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.

6 Me. 49; 23 Me. 253; 24 Me. 29; 70 Me. 463; *96 Me. 381, 383.

Sec. 3. Execution against the estate of deceased, if returned unsatisfied. R. S. c. 92, § 3. When a proper officer makes his return, on an execution issued under section one, 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.

2 Me. 112; *97 Me. 393.

Sec. 4. Administrator de bonis non may prosecute and defend, and sue judgments. R. S. c. 92, § 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. An administrator de bonis non may maintain an action on uncollected judgments recovered by the deceased, or by his executors or administrators, before their death or removal from office.

14 Me. 324; 32 Me. 131, 175; 69 Me. 150; 78 Me. 141; 109 Me. 67.

Sec. 5. Scire facias against administrator de bonis non. R. S. c. 92, § 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 notice 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.

32 Me. 131, 175; *69 Me. 150; *78 Me. 141.

Sec. 6. Writ of error. R. S. c. 92, § 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.

69 Me. 150; 78 Me. 141; 109 Me. 67.

Sec. 7. When the only party to an action dies, proceedings. R. S. c. 92, § 7. When the only plaintiff or defendant dies while an action that survives is pend-

ing, 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.

19 Me. 346; 59 Me. 342; 64 Me. 385; 76 Me. 98; *108 Me. 350.

Sec. 8. Actions which survive. R. S. c. 92, § 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.

See c. 95, § 58; 3 Me. 176; 17 Me. 410; 30 Me. 201; 45 Me. 210; 46 Me. 159; 50 Me. 87; 55 Me. 144; 59 Me. 342; 60 Me. 491; 62 Me. 279; *65 Me. 18; 103 Me. 437; *104 Me. 115; *112 Me. 60.

Sec. 9. Actions for injuries causing immediate death may be maintained. R. S. c. 92, § 9. 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.

88 Me. 46; 89 Me. 119; 90 Me. 268; 92 Me. 457; 93 Me. 21; 94 Me. 500; 95 Me. 104, 150; 96 Me. 144, 291; 97 Me. 109, 248, 529; 98 Me. 304; 99 Me. 291, 436; *103 Me. 267; *104 Me. 113; 106 Me. 211; 109 Me. 67; 112 Me. 98, 492, 509; 113 Me. 271; 114 Me. 213, 220; 115 Me. 467; 116 Me. 25, 191; 117 Me. 61, 262; 118 Me. 334, 414; *124 Me. 156, 407; 126 Me. 17, 411, 558.

Sec. 10. How such action to be brought; and amount recovered, disposed of; limitation. R. S. c. 92, § 10. 1929, c. 1. 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 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 five thousand dollars, with reference to the pecuniary injuries resulting from such death to the persons for whose benefit such action is brought, provided, that such action shall be commenced within two years after the death of such person.

114 Me. 123; 115 Me. 467; 116 Me. 25; 117 Me. 262; 118 Me. 414; 124 Me. 156; 126 Me. 411.

Sec. 11. Damages in actions of trespass; goods returned in replevin, are not assets. R. S. c. 92, § 11. 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 discharges him.

62 Me. 279.

Sec. 12. Proceedings when one of several parties dies; survivors may testify. R. S. c. 92, § 12. 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 seven; and the action may be further prosecuted or defended by the survivors, and such executor or administrator jointly, or by either of them; and judgment may be entered against the survivors, and also against the goods and estate of the deceased in the hands of such executor or administrator, and a joint execution issued; and the survivors, if any, on both sides of the action, may testify as witnesses.

37 Me. 552; 50 Me. 88; 59 Me. 343; 60 Me. 353; 61 Me. 17; 64 Me. 385.

Sec. 13. Heirs, devisees, or legatees may petition to defend suit; bond. R. S. c. 92, § 13. When suit 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 suit, 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 suit or by said defense; and an entry of record shall be made that he is admitted to defend such suit.

Sec. 14. Claims against estates to be filed in writing with affidavit; no action for thirty days; claims not filed, barred. R. S. c. 92, § 14. 1917, c. 133, § 7. 1919, c. 177, § 1. All claims against estates of deceased persons, except for legacies and distributive shares and for labor and materials for which suit may be commenced under section thirty-four of chapter one hundred five, shall be presented to the executor or administrator in writing, or filed in the registry of probate, supported by an affidavit of the claimant, or of some other person cognizant thereof, either before or within twelve months after his qualification as such executor or administrator; and no action shall be commenced against such executor or administrator on any such claim until thirty days after the presentation or filing of such claim as above provided. Any claim not so presented or filed shall be forever barred against the estate, except as provided in sections sixteen, eighteen and twenty of this chapter.

107 Me. 308; *112 Me. 552; 113 Me. 390; *114 Me. 147; 116 Me. 212; 118 Me. 440; *119 Me. 465; 120 Me. 488; 121 Me. 78; *122 Me. 144; 128 Me. 272.

Sec. 15. Continuance of actions, if brought within one year after qualification, without costs. R. S. c. 92, § 15. 1917, c. 133, § 8. Actions against executors or administrators, on such claims, if brought within one year after their qualification, shall be continued without cost to either party, until said year expires and be barred by a tender of the debt within the year, 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 distributive shares, and except as provided in section seventeen, unless commenced and served within twenty 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.

Limitation begins to run from time of granting letters in usual form, c. 76, § 38; see c. 76, § 42; 3 Me. 19; 8 Me. 168; 11 Me. 151; 21 Me. 265; 37 Me. 552; 63 Me. 333; 68 Me. 30; 69 Me. 554; 71 Me. 101, 163, 490; 72 Me. 117, 222, 246, 344; 73 Me. 375; 74 Me. 519; 76 Me. 19, 45, 197; 79 Me. 385; 84 Me. 83, 145; 85 Me. 442; 92 Me. 83; 105 Me. 357; 107 Me. 308; 109 Me. 67; 110 Me. 213; 112 Me. 552; 116 Me. 212.

Sec. 16. Proceedings, when action does not accrue within twelve months. R. S. c. 92, § 17. 1919, c. 177, § 2. When an action on a covenant or contract does not accrue within said twelve 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; and 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.

39 Me. 500; 63 Me. 332; 74 Me. 20; 76 Me. 20; 110 Me. 213; 111 Me. 210; 116 Me. 212.

Sec. 17. Proceedings when bond is given, and when not given. R. S. c. 92, § 18. When no bond is so given, an action may be brought by the claimant against the executor or administrator, within six 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.

63 Me. 332; 110 Me. 212; 111 Me. 210.

Sec. 18. Remedy on claim not filed within twelve months. R. S. c. 92, § 19. 1919, c. 177, § 3. When such claim has not been filed in the probate office within said twelve months, 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.

6 Me. 138; 63 Me. 332; 74 Me. 19; 76 Me. 20, 45; 77 Me. 198; 111 Me. 210.

Sec. 19. Limitations claimed for or against old administrator continued; periods, how reckoned. 1917, c. 133, § 10. 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: provided, however, that 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 suits; and such periods, and generally the periods referred to where no provision to the contrary is made, shall be reckoned exclusive of such time.

1 Me. 157; 14 Me. 323.

Sec. 20. Relief in equity when claim is not presented within the time limited. R. S. c. 92, § 22. If the supreme judicial court, or the superior court, upon a bill in equity filed by a creditor whose claim has not been prosecuted within the time limited by the preceding sections, 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 bill.

79 Me. 208; 87 Me. 201; 90 Me. 511; 93 Me. 242; 100 Me. 209; 106 Me. 36; 110 Me. 212; 119 Me. 111.

Sec. 21. Actions for legacies not affected; liability for unfaithful administration. R. S. c. 92, § 23. An action for the recovery of a legacy is not affected by this chapter. When an executor or administrator is guilty of unfaithful administration, he is liable on his administration bond for all damages occasioned thereby.

Executions May Issue After Creditor's Death.

Sec. 22. How an execution may issue after creditor's death. R. S. c. 92, § 24. 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 any justice of the court rendering such judgment, in term time or vacation, or by like order of a municipal or police court or trial justice rendering such judgment, upon application in writing of the executor or general or special administrator of the deceased creditor; and any execution so issued or renewed, may be subsequently renewed; but no execution shall issue or be renewed, after the term within which it might have been done if the party had not died.

71 Me. 190.

Sec. 23. Recitals of the execution; to what uses property levied on shall be held. R. S. c. 92, § 25. In an execution so issued, 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; and 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.

CHAPTER 102.

Partition of Real Estate.

Sec. 1. Partition, by writ at common law. R. S. c. 93, § 1. Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants may be compelled to divide the same by writ of partition at common law.

12 Me. 144, 327, 401; 16 Me. 391; 17 Me. 427; 21 Me. 49; *31 Me. 487; *35 Me. 110; 52 Me. 25; 64 Me. 99; *92 Me. 397; 110 Me. 63; 111 Me. 194.

Sec. 2. Partition by petition; form of petition. R. S. c. 93, § 2. Persons so entitled, and those in possession or having a right of entry for a term of years, as tenants in common, may present a petition to the superior court held in the county where such estate is, clearly describing it, and stating whether it is a fee simple, for life, or for years, and the proportion claimed by them, the names of the other tenants in common, and their places of residence, if known, and whether any or all of them are unknown.

5 Me. 461; 12 Me. 145, 327; 16 Me. 391; 17 Me. 427; 39 Me. 164; 52 Me. 416; 64 Me. 99; 94 Me. 490; 111 Me. 194; 118 Me. 1; 125 Me. 219.

Sec. 3. Filing, if all co-tenants are named; service. R. S. c. 93, § 3. The petition may be filed in the clerk's office in vacation, if all the co-tenants are named in it. A copy thereof, attested by the clerk, left with each or at his last and usual place of abode, twenty days before the session of the court to which it is addressed, is sufficient service.

100 Me. 548.

Sec. 4. Order of notice when not all named. R. S. c. 93, § 4. When the co-tenants are not all named in the petition, it may be presented to the court in that, or in any other county, returnable in the county where the estate is, and