

MAINE STATE LEGISLATURE

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THE MICHIE COMPANY
CHARLOTTESVILLE VIRGINIA

Chapter 161.

Estates of Deceased Partners.

Sec. 1. Partnership property appraised and administered.—The executor or administrator of a deceased member of a partnership shall include in the inventory the property of the partnership, appraised as in other cases, except that an amount is to be carried out equal only to the share of the deceased. This property shall be retained and administered, unless the surviving partner gives bond to the judge as provided in the following section. (R. S. c. 148, § 1.)

Section gives probate court same jurisdiction in partnership administration as in other administrations.—The necessity of applying to a court of equity is obviated by this chapter which gives the judge of probate the same powers in the case of a partnership administration as in any other case of administration. It thus affords a jurisdiction where all controversies may be summarily determined and speedily enforced. It substitutes an administration with security for its due performance, for one without. *Cook v. Lewis*, 36 Me. 340.

And estate of firm of deceased partner must be settled in probate court.—This chapter requires not merely that the estate of the deceased partner but of the firm of which he was a member should be settled through the probate office and under the supervision of the judge of probate. *Cook v. Lewis*, 36 Me. 340.

The preference in administration is given by this section to the survivor, upon his giving a bond. *Cook v. Lewis*, 36 Me. 340.

Otherwise possession goes to administrator.—From the requirements of this section it necessarily follows that the actual possession of "the property of the partnership" falls to the administrator, unless the surviving partner gives the requisite bond. The administrator or survivor, however, succeeds to the right of possession, subject to the rights of any other person having an interest in or a valid lien thereon. *Putnam v. Parker*, 55 Me. 235.

Only administrator of deceased partner can require accounting of administrator of partnership estate.—Until he shall have performed his full duty, or have been regularly superseded, the administrator of a deceased partner is the only party, under this section, who has access to the court of probate to require of the administrators of the partnership estate any accounting. And the administrator of the decedent has, until his service is ended, the only direct interest that authorizes appeal. *Hume, Appellant*, 130 Me. 338, 155 A. 730.

And legatees of deceased partner can act against surviving partners only through administrator.—Ordinarily the widow and legatees of a deceased partner cannot, under this section, act directly against the surviving partners but must compel the executor or administrator to act for them. The remedy of such is to compel the representative of a decedent partner to account or have him removed. *Hume, Appellant*, 130 Me. 338, 155 A. 730.

Language of section does not compel appointment of administrator.—The provision in this section which requires that the administrator of a deceased member of a firm "shall include in the inventory the property of the partnership," and in a certain event administer it, offers no legal proof that an administrator is needed for the deceased partner and furnishes no reason why one should be appointed. *Shaw, Appellant*, 81 Me. 207, 16 A. 662.

He is not appointed with reference to firm, but upon proof of individual assets.—The fact of partnership assets is no legal reason for appointing an administrator. On the other hand, c. 153 from which the probate court gets all its authority, excludes it. The appointing power is the same whether the deceased was a member of a firm or otherwise. The administrator is not appointed for, or with reference to any firm, and if the duty of settling the partnership affairs devolves upon him it is only as an incident of his office, and after the surviving partner has refused to give the required bond. The only power the court has to appoint rests upon proof of individual assets. *Shaw, Appellant*, 81 Me. 207, 16 A. 662.

No sale or disposition of partnership property can be made until administrator appointed or survivor qualifies.—Each and every provision of this chapter tends to show that no sale of the goods, and that no transfer or disposition of the effects of the partnership, can be legally made before the appointment of a partnership administrator. An appraisal is required by § 1, and the property appraised is to re-

main with the survivor until delivered to the administrator who shall have given the requisite bonds, and who shall then, by § 4, take possession of the partnership property. *Cook v. Lewis*, 36 Me. 340.

No surviving partner can legally dispose of the partnership property except as an administrator duly appointed. For if the survivor can legally sell, he may sell and transfer the whole partnership estate and utterly disobey the requirements of this chapter and such disobedience will be deemed right and the requirements of law and the rights of all will be subordinated to his will. But such conclusions cannot be admitted. A third party having so purchased such partnership property is liable to the administrator. *Cook v. Lewis*, 36 Me. 340.

Upon the death of a partner the partnership is dissolved, and the law contemplates an entire cessation of its business. The goods and effects in possession, are held by the survivor and the representatives of the deceased, as tenants in common. No sale of the goods, and no transfer or disposition of the effects of the partnership, could be legally made by either before the appointment of an administrator of the estate, or a qualification of the survivor as provided by this section in such cases. *Putnam v. Parker*, 55 Me. 235.

Nor can administrator take possession of partnership property until dissolution—by death or agreement.—By the general rule of law, applicable to this section, every partnership is dissolved by the death of one of the partners. However, it is competent for the partners to provide by agreement for the continuance of the partnership after such death; then dissolution takes place by virtue of such agreement only, as the act of the parties, and not by mere operation of law. Under such agreement the firm is continued by the act of the parties and the operation of this section is postponed, at least until a dissolution does take place. This can be no violation of the section, for no time is fixed by the legislature when the administrator shall take possession, and the inference is that it should be after a dissolution of the firm. *Shaw, Appellant*, 81 Me. 207, 16 A. 662.

And section does not interfere with living partnership.—This section contemplates a dissolution. If there is no such administrator it clearly cannot be enforced. It is quite as evident that if there is no dissolution, it cannot be enforced. The use of the word "administrator" with the act of administration in the probate court, indicates that there must first be a dis-

solution, a closing up, a cessation of business. This section did not and could not intend to interfere with a living partnership and stop its business. *Shaw, Appellant*, 81 Me. 207, 16 A. 662.

No attachment can be made on partnership property in possession of survivor or administrator.—All power of disposition of the goods being either in an administrator, or surviving partner qualified as required by this section, no valid attachment upon mesne process can be made of them in a suit against the survivor, as upon a demand due from the late firm. The law has provided a different and specific mode of disposing of them in such cases, viz., through the agency of an administrator or the survivor of the firm, acting under the securities of a bond and subject to the supervision of the court of probate. Any assumed attachment of such partnership property upon a writ is void and creates no lien. *Putnam v. Parker*, 55 Me. 235.

Administrator liable as trustee for partnership property held.—Money actually received by an administrator under this section, in behalf of the estate which he represents, he holds as trustee for those interested, and he must account for it, even though wrongfully received, unless he shows his liability to refund or pay over the money to some other party having a right to demand it, and that payment has been demanded, or, at least, that it probably would be demanded. The same is true of other personal assets thus received. *Knowlton v. Chick*, 56 Me. 228.

Actions for protection of partnership property brought in names of survivors.—By the common law surviving partners are entitled to the possession of the partnership property, and must in their own names bring all actions necessary to its protection, and especially for the collection of debts due the firm. This chapter makes no change in the form of the action or the name in which it shall be brought. It may change the possession and control of the property, giving it to the representative of the deceased partner. But even then the action must, or certainly may be brought in the name of the survivor. *Platt v. Jones*, 59 Me. 232.

Section not applicable to claim assigned by partnership.—This section and §§ 2, 3, and 4, concerning settlement of estates of deceased partners, do not apply to a claim sued in the names of surviving partners for the benefit of one of the surviving partners, who acquired the claim by assignment from the partnership when all the partners were living. See *Matherson v. Wilkinson*, 79 Me. 159.

Capacity of administrator-plaintiff questioned by plea in abatement.—When one sues as administrator or executor his capacity to prosecute a suit as such, as contemplated by this section, can only be ques-

tioned by plea in abatement. *Strang v. Hirst*, 61 Me. 9.

Quoted in *Bass v. Emery*, 74 Me. 338.

Cited in *Bennett v. Bennett*, 92 Me. 80, 42 A. 237.

Sec. 2. Bond; conditions.—The bond shall be for such sum and with such sureties resident in the state, or with a surety company authorized to do business in the state, as surety, as the judge approves, conditioned to use fidelity and due diligence in closing the affairs of the late partnership; to apply the property thereof towards payment of partnership debts; to render an account, on oath when required, of all partnership affairs, including property owned, debts due to and from, the amount received and collected and the amount paid; and to pay to the executor or administrator of the deceased his proportion of any balance remaining after settlement, within 1 year after date of the bond, unless a longer time is allowed by the judge. (R. S. c. 148, § 2.)

Cross reference.—See c. 60, § 219, re foreign insurance companies as sureties on bonds.

Ample security prerequisite to granting of administration.—It is evident that the object and intent of this chapter was that ample security should be given for the protection of all interested as a preliminary to granting administration on the partnership estate, whether its affairs were to be closed by one of its surviving members or by the administrator on the estate of the deceased partner. *Cook v. Lewis*, 36 Me. 340.

Bond secures partnership creditors, the estate, and partners.—The bond required by this section to be given by the surviving partner, or by the executor or administrator, in case the surviving partner declines to assume the trust, was designed for the security of the partnership creditors, the estate, and the several members of the partnership. *Knowlton v. Chick*, 56 Me. 228.

The survivors, within the meaning of this statute, are owners in trust or otherwise until the settlement, and whatever the law allows to be done for the purpose of settlement must be done by them as owners, or in their names, and for this they are legally the owners and entitled to all the rights and remedies of owners. *Platt v. Jones*, 59 Me. 232.

Question of giving bond not raised by demurrer.—The rights of the parties under

the provisions of this chapter are the same whether the suit is prosecuted by the survivors or the representative. Therefore, as the form of the declaration is the same whether they have or have not given bond, this question is not raised by a demurrer. *Platt v. Jones*, 59 Me. 232.

It must be taken by plea in abatement.—The objection taken to the maintenance of the suit by a surviving partner, because he may not have given the bond required by this section, is analogous to the one that an administrator has not been properly appointed. It must be seasonably taken by plea in abatement. *Strang v. Hirst*, 61 Me. 9.

Objection that only one of several plaintiffs, all surviving partners, has given bond under this section should be taken by plea in abatement. See *Pope v. Jackson*, 65 Me. 162.

Applicability of c. 165, § 17, under this section.—While a suit by the surviving partner against a debtor of the firm is not subject to the limitation provided in c. 165, § 17, in suits against executors or administrators; such limitation is applicable to a suit by a surviving partner against an executor or administrator, within the meaning of this section. *Bennett v. Bennett*, 92 Me. 80, 42 A. 237.

Cited in *Putnam v. Parker*, 55 Me. 235; *Pope v. Jackson*, 65 Me. 162; *Holmes v. Brooks*, 68 Me. 416; *Matherson v. Wilkinson*, 79 Me. 159.

Sec. 3. Liability, as if administrator.—The judge has the same authority to cite the principal in such bond, and to adjudicate upon his accounts, and the parties interested have the like remedies on his bond as if he were an administrator. (R. S. c. 148, § 3.)

Surviving partner may be liable for partnership debts as partner and as administrator.—A surviving partner stands in two positions in each of which he might be liable for the debts of the partnership

and so subject to an action at law. In the first place, as surviving partner he is individually liable at common law. In the second place, as administrator of the partnership estate, under this section, he might

be liable by statute. *Burgess v. American Bond & Trust Co.*, 103 Me. 378, 69 A. 573.

But he is not liable as representative where administrator has given bond.—The surviving partner might be liable for a partnership debt as joint contractor, but is not liable as a representative of the partnership property where the administrator of the deceased partner has given bond and taken possession under this section. The surviving partner might be liable as administrator of the deceased partner, but in such an action only the private property of the deceased could be reached. *Bass v. Emery*, 74 Me. 338.

In action against surviving partner in statutory capacity, such capacity should be

averred.—The official bond as provided in this section is to secure the proper administration of the firm assets and not the individual liability of the surviving partner. In a suit against a surviving partner in his statutory capacity it should be clearly indicated by proper averments that a suit against the defendant in the purely statutory capacity of surviving partner is intended, and the judgments should be against him and the goods and estate of the late partnership in his hands and under his official administration. *Burgess v. American Bond & Trust Co.*, 103 Me. 378, 69 A. 573.

Cited in *Matherson v. Wilkinson*, 79 Me. 159.

Sec. 4. Administrator to give bond if survivor does not.—If the survivor, on being cited, does not give the bond required, the executor or administrator of the deceased shall give such bond with the necessary variations as is required in section 2, and take possession of the property. He may use the name of the survivor to collect the debts. (R. S. c. 148, § 4.)

When administrator takes possession under bond he must administer whole partnership property.—When the executor or administrator gives bond and takes possession under this section he alone has possession, and must hold it against all persons, for the purpose of administration. It then becomes his duty to administer upon the whole partnership property. This implies not only a right to collect the debts due the firm, but the duty of paying what is due from it. *Bass v. Emery*, 74 Me. 338.

Sureties on administrator's bond responsible for appropriation of partnership property by him.—When the share of the deceased partner in the personal assets of the firm has been ascertained, and has gone into the hands of his executor or administrator, as part and parcel of the individual estate of the deceased partner, the sureties on the executor's or administrator's bond

required by § 2 are responsible for its appropriation in a proper manner by him, in like manner as they are for any other portion of the assets of the estate into which it is absorbed. Nor does the fact that the administration of the partnership estate proceeded without the filing of any bond by the executor, as surviving partner, affect such responsibility. *Knowlton v. Chick*, 56 Me. 228.

Administrator liable for neglect in paying debts.—While by this section the executor or administrator may, for obvious reasons, use the name of the survivor, to collect the debts, for equally obvious reasons he is nowhere exempt from an action for a neglect of duty in not paying the debts. *Bass v. Emery*, 74 Me. 338.

Cited in *Cook v. Lewis*, 36 Me. 340; *Platt v. Jones*, 59 Me. 232; *Matherson v. Wilkinson*, 79 Me. 159.

Sec. 5. Survivor to produce property for appraisal and administration.—Every surviving partner shall exhibit to the executors or administrators of a deceased partner for appraisal all partnership property existing at the time of his decease, and if such executors or administrators administer upon the partnership property shall deliver it to them with all books, notes, documents and papers pertaining thereto and shall afford them all reasonable information and facilities for the execution of their trust. If he neglects to do so, the judge, after citing him to show cause, may enforce obedience by committing him until he complies or is released by the executors or administrators or by order of the superior court. (R. S. c. 148, § 5.)

Cited in *Cook v. Lewis*, 36 Me. 340.

Sec. 6. Commissioners on disputed claims; partnership estate represented insolvent.—The person filing such bond may apply for commissioners on claims deemed exorbitant, unjust or illegal with like proceedings and effect as in case of administrators or executors; or, if the partnership estate appears to

be insufficient to pay the partnership debts, he may represent it to be insolvent, commissioners may be appointed, claims proved and allowed, and the partnership assets may be distributed to pay such claims as are allowed, and like proceedings shall be had as are prescribed in chapter 157, so far as applicable and with like effect. Nothing herein invalidates the right of claimants to recover from the surviving partner or the estate of the deceased partner any balances due them after the partnership property is exhausted. Such proceedings already had are valid. (R. S. c. 148, § 6.)

Cross references.—See c. 113, § 187, re execution upon award to creditors by commissioners on exorbitant, etc., claims against a solvent estate; c. 154, § 74, re commissioners may be appointed on disputed claims against estates.

Former provision of section.—For a case relating to a former provision of this section concerning attachment of partnership property, see *Egery v. Howard*, 64 Me. 68.

Sec. 7. Sale of copartnership real estate when partner died.—The executor or administrator of a deceased member of a copartnership or the surviving partner who files a bond and is authorized to close the affairs of a partnership estate may, on application to the judge of probate of the county, be licensed to sell real estate, assets of the late partnership, in the same manner as any other executor or administrator is licensed to sell real estate, on petition and notice, and on giving bond, with sufficient sureties, to appropriate the proceeds to the payment of the partnership debts; and to pay over any balance that remains in his hands, after closing the affairs of said partnership estate, to the persons entitled to the same, and on complying with all the requirements of the law authorizing a sale of real estate. (R. S. c. 148, § 7.)

Cross reference.—See c. 163, §§ 1-6, re granting of license by probate courts for

sale, etc., of real estate.

Cited in *Bass v. Emery*, 74 Me. 338.

Sec. 8. Death of administrator on partnership estate.—When the person who has given bond to administer on a partnership estate where one of the partners is deceased dies before completing the administration, the judge may commit administration on the estate of the partnership not already administered to such person as he thinks fit, who shall give the bond required by section 2, with the necessary variations, and comply with all the provisions of this chapter applicable to such cases. (R. S. c. 148, § 8.)

See c. 153, § 45, re fees of surviving partners, etc.