

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1959 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES  
VOLUME 4

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Place in Pocket of Corresponding  
Volume of Main Set

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1959

## Chapter 163.

### Sales of Real Estate by License of Court.

#### Granting of License.

##### Sec. 1. Sale, lease, mortgage or exchange of real estate.

**IV.** Of a husband or guardian of an incapacitated wife, resident in the county, to sell or mortgage, on such terms and conditions as the judge thinks proper, for a sufficient consideration, any real estate held by him in right of his wife, or any of her right and interest by descent in any real estate owned by him; and of a wife or guardian of an incapacitated husband, resident in the county, to sell or mortgage in like manner the right and interest by descent, of such ward, in any real estate owned by his wife. For the purposes of this subsection, an insane husband or wife who has been committed to an asylum for insane persons within this state shall be deemed to remain a resident of the county in which he or she had a residence at the time he or she was committed, so long as he or she shall remain in such asylum by virtue of such commitment. (1959, c. 11.)

**Effect of amendment.**—The 1959 amendment added the words “a wife or” and deleted the word “the” after the word “of” and before the word “guardian” and added the words “or mortgage” after the word

“sell” and before the words “in like manner” in the first sentence of subsection IV.

Since the remainder of the section was not affected by the amendment, only subsection IV is set out above.

## Chapter 164.

### Probate Bonds.

#### Actions on Bonds.

**Sec. 7. In action against surety, principal made party.**—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 proceedings 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. (R. S. c. 151, § 7. 1959, c. 317, § 289.)

**Effect of amendment.**—The 1959 amendment substituted the word “proceedings” for the words “scire facias” near the middle of this section.

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought

after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

##### Sec. 9. Action on administrator’s or executor’s bond.

It is only when the breach is fraudulently concealed that action may be commenced later than six years from the time of breach of an administrator’s or execu-

tor’s bond, and then it must be commenced within three years from the date of discovery. *Dunton v. Maine Bonding & Casualty Co.*, 150 Me. 205, 107 A. (2d) 776.

#### Actions without Authority of Judge.

**Sec. 11. Action on bond.**—Any person interested personally or in any official capacity in a probate bond, or in a judgment rendered thereon, whose interest has

been specifically ascertained by a decree of the judge of probate or by judgment of law, may originate an action on such bond or proceedings on such judgment without applying to the judge whose name was used in the bond or judgment, or to his successor; and 2 or more such persons may unite in the prosecution of the action, but the complaint shall allege the name and addition of such person, and that the same is sued out by him, "in the name of the Honorable . . . . ., judge of probate for the county of . . . . .;" otherwise it shall be dismissed. (R. S. c. 151, § 11. 1959, c. 317, § 290.)

**Effect of amendment.**—The 1959 amendment deleted "as hereinafter provided" after "law," substituted "an action" for "a suit" after "originate," "proceedings" for

"scire facias," "complaint" for "original writ" and "be dismissed" for "abate."

**Effective date of 1959 amendment.**—See note to § 7.

## Chapter 165.

### Actions by or against Executors and Administrators.

#### Actions by or against Executors and Administrators.

**Sec. 3. Execution against estate of deceased, if returned unsatisfied.**

—When a proper officer makes his return on an execution issued under section 1 that he cannot find personal property of the deceased, or other means to satisfy it, an action, suggesting waste, may be brought against the executor or administrator. 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. (R. S. c. 152, § 3. 1959, c. 317, § 291.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences, deleted "the provisions of" before "section 1" and substituted "an action, suggesting waste, may be brought" for "a writ of scire facias, suggesting waste, may be issued" in the first sentence.

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December

1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

**Sec. 5. Administrator de bonis non substituted as party on motion.**—

When an executor or administrator ceases to be such after judgment against him, the administrator de bonis non may be substituted as a party on motion, notice of which shall be served in the same manner as original process, and an execution may issue as provided in section 4; but the costs for which the executor or first administrator was personally liable may be enforced against his executor or administrator. (R. S. c. 152, § 5. 1959, c. 317, § 292.)

**Effect of amendment.**—The 1959 amendment substituted "the administrator de bonis non may be substituted as a party on motion, notice of which shall be served in the same manner as original process, and" for "a writ of scire facias may be issued

against the administrator de bonis non, and after due notice" following "him" and substituted "section 4" for "the preceding section."

**Effective date of 1959 amendment.**—See note to § 3.

**Sec. 8. Actions which survive.**—No personal action or cause of action shall be lost by the death of either party, but the same shall survive for and against the executor or administrator of the deceased, except that actions or causes of action for the recovery of penalties and forfeitures of money under penal statutes and proceedings in bastardy cases shall not survive the death of the defendant. An executor or administrator may seek relief from a judgment in an action to which