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terest therein. The superior court may enforce such agreement as a trust. (R. S. c. 150, § 12. 1961, c. 317, § 525.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, deleted "the supreme judicial court or" formerly appearing at the beginning of the present second sentence and deleted "in equity" formerly following "agreement" near the end of the section.

General Provisions.

Sec. 28. Neglect or misconduct of person licensed.—If a person, interested in any estate sold as aforesaid, suffers damage by neglect or misconduct of the executor, administrator or guardian in such proceedings, he may recover compensation therefor in a civil action on the probate bond or otherwise as the case may require. (R. S. c. 150, § 28. 1961, c. 317, § 526.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "suit" in this section.

Chapter 164.

Probate Bonds.

Actions on Bonds.

Sec. 6. Actions on bonds in name of judge.—Actions on probate bonds of any kind payable to the judge shall be originally commenced in the superior court for the county where said judge belongs and in his name or that of his successor at the time. 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. No costs shall be awarded against the judge therein. (R. S. c. 151, § 6. 1961, c. 317, § 527.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted "Actions" for "Suits" at the beginning of the section.

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. 8. Proceedings and judgment.—Such surety may thereupon take out a writ, in the 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. If, after 14 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 is liable to respond to the

judgment as if made or taken in the original action. (R. S. c. 151, § 8. 1961, c. 317, § 528.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "action" for "suit" at the end of the section.

Sec. 9. Action on administrator's or executor's bond. — Every action against sureties on an administrator's or an executor's bond must be commenced within 6 years after such administrator or executor has been cited to appear to settle his account in the probate court where administration is granted on the estate, or, if not so cited, within 6 years from the time of the breach of his bond, unless such breach is fraudulently concealed by the administrator or executor from the heirs, legatees or persons pecuniarily interested, who are parties to the action, and in such case within 3 years from the time such breach is discovered. (R. S. c. 151, § 9. 1961, c. 317, § 529.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the end of the section.

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 executor'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.

Sec. 10. Judgment for plaintiff.—When judgment is for the plaintiff by verdict, default or otherwise in any action 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 provided. (R. S. c. 151, § 10. 1961, c. 317, § 530.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" and deleted "hereinafter" preceding "provided" at the end of this section.

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.

Sec. 12. Judgment, if action fails.—If such action is not sustained, judgment shall be rendered and execution issued for costs against the person originating it. (R. S. c. 151, § 12. 1961, c. 317, § 531.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the beginning of this section and deleted "as aforesaid" at the end thereof.

Actions by Authority of Judge.

Sec. 17. Judge may authorize actions; execution, in case of failure to account.—The judge of probate may expressly authorize or instruct an administrator or administrator de bonis non, on the complaint of himself or any party interested, to commence an action on a probate bond for the benefit of the estate, and such authority shall be alleged in the process. When it appears, in any such action against an administrator, that he has been cited by the judge to ac-

count, 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 for charges of administration or debts paid. (R. S. c. 151, § 17. 1961, c. 317, § 532.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted "complaint" for "petition" and "an action" for "a suit" in the present first sentence and substituted "action" for "suit" in the present second sentence.

Chapter 165.

Actions by or against Executors and Administrators.

Actions by or against Executors and Administrators.

Sec. 2. Executions for costs against own goods and estate.—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 action was prosecuted or defended without reasonable cause. (R. S. c. 152, § 2. 1961, c. 317, § 533.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the end of this section.

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. 4. Administrator d. b. n. may prosecute and defend and sue judgments.—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. If he does not appear after due notice, judgment may be rendered, as if the action had been commenced by or against him for debt and for costs. 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. (R. S. c. 152, § 4. 1961, c. 317, § 534.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences, substituted "action" for "suit" in the present second sentence and deleted "as herein provided" at the end of the present second sentence.