MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

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Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

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 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 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.

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. 6. Appeal.—An appeal may be maintained by or against an administrator de bonis non, when it could be by or against an executor or first administrator. (R. S. c. 152, § 6. 1961, c. 317, § 535.)

Effect of amendment.—The 1961 amendment substituted "An appeal" for "A writ of error" at the beginning of this section.

Sec. 7. When only party to action dies.—When the only plaintiff or defendant dies while an action that survives is pending, 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 within 90 days 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 dismissal or default. (R. S. c. 152, § 7. 1961, c. 317, § 536.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "within 90 days" for "at the 2nd term" and "dismissal" for "nonsuit" in the present second sentence.

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 the deceased was a party to the same extent that the deceased might have done so. (R. S. c. 152, § 8. 1959, c. 317, § 293.)

Effect of amendment.—The 1959 amendment rewrote this section.

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

Sec. 9. Actions for injuries causing immediate death.

History of §§ 9 and 10.

It is common knowledge that this and the following section is the Death Statute or Lord Campbell's Act. Picard v. Libby, 152 Me. 257, 127 A. (2d) 490.

Allegations of negligence held sufficient.—See Picard v. Libby, 152 Me. 257, 127 A. (2d) 490.

Applied in O'Connell v. Hill, 157 Me. 57, 170 A. (2d) 402; Yeaton v. Knight, 157 Me. 133, 170 A. (2d) 398.

Cited in Buzynski v. Knox County, 159 Me. 52, 188 A. (2d) 270.

Sec. 10. How such action brought; amount recovered, disposed of.—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, except as hereinafter provided, 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 $30,000, with reference to the pecuniary injuries resulting from such death to the persons for whose benefit such action is brought, and in addition thereto, shall give such damages as will compensate the estate of such deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses, provided such action shall be commenced within 2 years after the death of such person. (R. S. c. 152, § 10. 1957, c. 188. 1961, c. 315.)

Effect of amendments. — The 1957 amendment increased the maximum amount of damages which may be given from $10,000 to $20,000 in the second sentence.

The 1961 amendment increased the maximum amount of damages from $20,000 to $30,000 in the second sentence.

Cause of action accrues at death.

The action is created on the death of the decedent. Buzynski v. Knox County, 159 Me. 52, 188 A. (2d) 270.

The action here created is the action not of the deceased person. Buzynski v. Knox County, 159 Me. 52, 188 A. (2d) 270.

It is the action of the wife, the children, and the estate for certain expenses. Buzynski v. Knox County, 159 Me. 52, 188 A. (2d) 270.

And it remains unchanged by the Workmen's Compensation Act. Buzynski v. Knox County, 159 Me. 52, 188 A. (2d) 270.

Section assumes death causes some damages.

In accord with 1st paragraph in original. See Picard v. Libby, 152 Me. 257, 127 A. (2d) 490.

Death claim and claim for expenses to be separated.—The usual practice, and the better practice, is to place the death claim for the statutory beneficiaries and the funeral and other expenses in separate counts. In bringing the action the administrator acts in two capacities—first, as trustee to recover damages for the statutory beneficiaries, and second, as administrator to recover expenses chargeable to the estate. Whether the death claim and expenses are included in one count or are separated in two counts, in either event, the jury must be directed to find and report the damages found in each type of claim. Picard v. Libby, 152 Me. 257, 127 A. (2d) 490.

Subrogation where benefits paid under Workmen's Compensation Act. — Where benefits are paid under the Workmen's Compensation Act (c. 31, §§ 1 to 47) to the dependents of a deceased and all the dependents fall within the designation of "dependent" included in c. 31, § 15, then the "employer" (c. 31, § 2 I) becomes subrogated to any action the dependents might have under this section; but such subrogation does not occur where there are dependents within the meaning of this section which are not dependents as specified in c. 31, § 15; that is, where the deceased had a child over the age of 18 years. Buzynski v. Knox County, 159 Me. 52, 188 A. (2d) 270.

Applied in O'Connell v. Hill, 157 Me. 57, 170 A. (2d) 402; Yeaton v. Knight, 157 Me. 133, 170 A. (2d) 398.

Sec. 12. Damages in actions sounding in tort; goods returned in replevin not assets.—When an action sounding in tort is commenced or prosecuted against an executor or administrator, the plaintiff can recover only the value of the

goods taken or damage actually sustained. 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. (R. S. c. 152, § 12. 1959, c. 317, § 294.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted "sounding in tort" for "of trespass, or trespass on the case" in the first sentence.

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

Sec. 14. Heirs, devisees or legatees may petition to defend action; bond.—When a civil action 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 action, 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 action or by said defense; and an entry of record shall be made that he is admitted to defend such action. (R. S. c. 152, § 14. 1961, c. 317, § 537.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "suit" near the beginning of this section and substituted "action" for "suit" in three places.

Sec. 15. Claims against estates filed in writing with affidavit; no action for 30 days; claims not filed barred.—All claims against estates of deceased persons, including claims for amounts paid under chapter 25, sections 276 to 297, and except for funeral expenses, expenses of administration, legacies, distributive shares and for labor and materials for which a civil action may be commenced under chapter 178, section 39, 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 6 months after his qualification as such executor or administrator. No action shall be commenced against such executor or administrator on any such claim until 30 days after the presentation or filing of such claim. Any claim not so presented or filed shall be forever barred against the estate, except as provided in sections 18, 20 and 22. (R. S. c. 152, § 15. 1949, c. 233, § 1. 1957, c. 126, § 1. 1961, c. 317, § 538.)

Effect of amendments. — The 1957 amendment changed the number of months after qualification from "12" to "6" months in the first sentence and made other minor changes in the phraseology of this section.

The 1961 amendment substituted "a civil action" for "suit" in the first sentence of this section and made other minor changes in such sentence.

Suit not barred by § 17 where claim filed by state under this section. — Although under the provisions of this section the state must file a claim for old age assistance loans or advances within twelve months after an administrator has qualified for the deceased recipient, which gives notice that the state has a claim against the real estate of the deceased, the state is not compelled by the provisions of § 17 of this chapter to commence suit within the twenty months period because said § 17 is not applicable to claims by the state for old age assistance furnished by the state. State v. Crommett, 151 Me. 188, 116 A. (2d) 614.

Sec. 17. Continuance of actions, if brought within 6 months after qualification, without costs.—Actions against executors or administrators on such claims, if brought within 6 months after their qualification, shall be continued without cost to either party until said 6 months expires and be barred by a tender of the debt within the 6 months, 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 19, unless commenced and served within 12 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. (R. S. c. 152, § 17. 1957, c. 126, § 2.)

Effect of amendment. — The 1957 amendment changed the times mentioned in the first sentence from "one year" to "6 months" and the time mentioned in the second sentence from "20 months" to "12 months".

Section not applicable to claim by state for old age assistance. — Although the state must file a claim for old age assistance against the estate of the recipient within twelve months after the administrator has qualified, as required by § 15 of this chapter, which gives notice that the state has a claim against the real estate of the deceased, the state is not compelled to commence suit within the twenty months period provided for in this section because such provision of this section is not applicable to claims by the state for old age assistance furnished by the state. It is the general rule in Maine that a statute of limitations does not apply against the state unless the state is expressly named therein or in some manner it is specifically so stated. State v. Crommett, 151 Me. 188, 116 A. (2d) 614.

Sec. 18. When action does not accrue within 6 months.—When an action on a covenant or contract does not accrue within said 6 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. 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. (R. S. c. 152, § 18. 1957, c. 126, § 3.)

Effect of amendment. — The 1957 amendment changed the time mentioned near the beginning of the section from "12 months" to "6 months" and made other minor changes in phraseology.

Sec. 20. Remedy on claim not filed within 6 months. — When such claim has not been filed in the probate office within said 6 months, the claimant may have remedy against the heirs or devisees of the estate within 6 months after it becomes due and not against the executor or administrator. (R. S. c. 152, § 20. 1957, c. 126, § 4.)

Effect of amendment. — The 1957 amendment changed the first time mentioned from "12 months" to "6 months" and the second time mentioned from "one year" to "6 months".

Sec. 21. Limitations claimed for or against old administrator continued.—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. 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 civil actions. Such periods, and generally the periods referred to where no provision to the contrary is made, shall be reckoned exclusive of such time. (R. S. c. 152, § 21. 1961, c. 317, § 539.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted "civil actions" for "suits" in the present second sentence.

Applied in State v. Crommett, 151 Me. 188, 116 A. (2d) 614.

Sec. 22. Relief when claim not presented within time limited.—If the superior court, upon a complaint filed by a creditor whose claim has not been

prosecuted within the time limited by sections 1 to 21, 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 complaint. (R. S. c. 152, § 22. 1961, c. 317, § 540.)

Effect of amendment.—The 1961 amendment substituted "If the superior court, upon complaint" for "If the supreme judicial court or the superior court, upon a bill in equity" at the beginning of this section, substituted "sections 1 to 21" for "the preceding sections" near the middle of the section and substituted "complaint" for "bill" at the end of the section.

Executions after Creditor's Death.

Sec. 24. Executions after creditor's death.—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 the court rendering such judgment, or by like order of the district court rendering such judgment, upon application in writing of the executor or general or special administrator of the deceased creditor. Any execution so issued or renewed may be subsequently renewed, but no execution shall issue or be renewed after the time within which it might have been done if the party had not died. (R. S. c. 152, § 24. 1961, c. 317, § 541. 1963, c. 402, § 266.)

Effect of amendments. — The 1961 amendment divided this section into two sentences, substituted "the court rendering such judgment" for "any justice of the court rendering such judgment, in term time or vacation" in the present first sentence and substituted "time" for "term" in the present second sentence.

The 1963 amendment substituted "the district court" for "a municipal court or trial justice" in the first sentence.

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Chapter 166.

Domestic Relations. Marriage. Divorce.

Sections 40 to 50-A. Judicial Separation.
Sections 51 to 54-A. Illegal Marriages and Annulment.
Sections 55-70B. Divorce.

Marriage.

Sec. 4. Intention of marriage recorded.

Upon application by both of the parties to an intended marriage, when both parties are residents of this state or both parties are nonresidents, or upon application of the party residing within the state when one of the parties is a resident and the other a nonresident, a judge of probate or a judge of the district court may, after hearing such evidence as is presented, grant a certificate stating that in his opinion it is expedient that the intended marriage be solemnized without delay. Upon the presentation of such a certificate or a copy thereof certified by the clerk of the court by which the certificate was issued, or in extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergyman, priest, rabbi or attending physician, the clerk or registrar of the city or town in which the intention to be joined in marriage has been filed shall at once issue the certificate as prescribed in this section.

(1963, c. 402, § 267.)