

# MAINE STATE LEGISLATURE

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REVISION II.

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REPORT

OF THE

COMMISSIONER

APPOINTED TO

REVISE THE PUBLIC LAWS

OF THE

STATE OF MAINE.

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TITLES TO PROPERTY.

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TITLE VII.

Augusta:

FULLER & FULLER, PRINTERS TO THE STATE.

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1856.



## TITLE SEVENTH.

### TITLES TO PROPERTY.

- Chap.* 73. Conveyances by deed, their form and construction. Trusts.  
74. Wills, their execution and devises.  
75. Title by descent.  
76. Title to real estate by levy of execution.

### Chapter 73.

#### CONVEYANCES BY DEED, FORM AND CONSTRUCTION OF THEM. TRUSTS.

- Sect.* 1. Real estate conveyed by deed.  
2. Real estate conveyed and purchased by an alien.  
3. Contingent estates may be conveyed.  
4. Entailments may be barred by conveyance in fee simple.  
5. Conveyance of a greater estate conveys what is owned. Expectant estates not defeated.  
6. Conveyance or devise to one and his heirs, gives heirs a fee simple.  
7. Conveyances to two or more create estates in common.  
8. Conveyance not effectual against others than grantors, &c., unless recorded.  
9. Conveyance absolute not defeated by defeasance not recorded.  
10. No estate in lands unless by writing signed.  
11. No trust in lands unless by writing signed, exception.  
12. Titles not defeated by trusts without record or notice.  
13. Trustees in mortgage hold in joint tenancy. Survivors may convey.  
14. Deed of release conveys. Deed of husband and wife conveys her estate.  
15. Deeds and contracts of agents when binding on principal.  
16. Conveyances to treasurer or others for benefit of a county effectual.  
17. Deeds to be acknowledged and before whom.  
18. When grantor dead or out of state execution of deed may be proved.  
19. Grantor and witnesses dead or out of state, how proved.  
20. When grantor refuses to acknowledge, copy may be left with register.  
21. When grantor refuses to acknowledge, may be summoned before a justice and execution proved.  
22. Justice if satisfied to certify on deed, that it has been proved.  
23. Certificate of acknowledgment or proof endorsed or annexed to deed. No deed recorded without.  
24. Certificate made after commission expired valid.  
25. Register to certify on deed time, when received and enter it with names of parties on book open to inspection.  
26. Pews deemed real estate. Record of deeds and levies of them may be made by town clerk.

## CHAP. 73.

Real estate conveyed by deed.

R. S., c. 91, § 1.

An alien may purchase and convey real estate.  
Idem, § 2, 3, 1854, c. 64, 1856.

Contingent estates may be conveyed.

Idem, § 4.

Entailments may be barred by conveyance in fee simple.

Idem, § 6, 7, 1855, c. 126.

Conveyance of a greater estate conveys what is owned, &c.

Idem, § 9, 10, 11.

Conveyance or devise to one for life and to his heirs.

Idem, § 12.

Conveyances to two or more create estates in common.

Idem, § 13.

Not effectual against others, &c.

Idem, § 26.

SECT. 1. A person owning real estate and having a right of entry into it, whether seized of it or not, may convey it, or all his interest in it by a deed to be acknowledged and recorded as provided in this chapter. (a)

SECT. 2. An alien may take, hold, convey, and devise, real estate or any interest therein. All conveyances and devises of such estate or interest already made by or to an alien are confirmed and made valid.

SECT. 3. When a contingent remainder, executory devise, or estate in expectancy, is so limited to a person, that it will in case of his death before the happening of such contingency descend in fee simple to his heirs, he may before it happens convey or devise it subject to the contingency.

SECT. 4. A person seized of land as tenant in tail may convey it in fee simple. When a minor is so seized of land, his guardian duly licensed to sell it for his support and education or to invest the proceeds for his benefit may convey it in fee simple. When land is owned by one person for life with a vested remainder in tail in another, they may by a joint deed convey the same in fee simple. Such conveyances will bar the estate tail and all remainders and reversions expectant thereon.

SECT. 5. A conveyance of a greater estate, than he can lawfully convey, made by a tenant for life or years will pass what estate he has, and will not work a forfeiture, and no expectant estate can be defeated by any act of the owner of the precedent estate or by any destruction of it, except as provided in the preceding section.

SECT. 6. A conveyance or devise of land to a person for life and to his heirs in fee or by words to that effect shall be construed to vest an estate for life only in the first taker and a fee simple in his heirs.

SECT. 7. Conveyances not in mortgage and devises of land to two or more persons create estates in common, unless otherwise expressed. Estates vested in survivors upon the principle of joint tenancy are to be so held.

SECT. 8. No conveyance of an estate in fee simple, fee tail, or for life, or lease for more than seven years, will be effectual against any person, except the grantor his heirs and devisees and persons having actual notice thereof, unless the deed be recorded as provided in this chapter. (b)

(a) 13, Me. 281.

(b) 19, Me. 274. 23, Me. 165, 170, 246. 29, Me. 140.

SECT. 9. A deed purporting to convey an absolute estate  
2 in land can not be defeated by an instrument intended for  
3 that purpose as against any other person than the maker his  
4 heirs and devisees, unless such instrument be recorded in  
5 the registry, where the deed is recorded.

Absolute deed  
not defeated by  
defeasance not  
recorded, &c.  
Idem, § 27.

SECT. 10. There can be no estate created in lands greater  
2 than a tenancy at will, and no estate in them can be granted  
3 assigned or surrendered, unless by some writing signed by  
4 the grantor or maker or his attorney. (a)

No estate in  
lands unless by  
writing signed.  
Idem, § 30.

SECT. 11. There can be no trust concerning lands, except  
2 trusts arising or resulting by implication of law, unless cre-  
3 ated or declared by some writing signed by the party or his  
4 attorney. (b)

No trust in lands  
unless by  
writing, &c.  
Idem, § 31.

SECT. 12. The title of a purchaser for a valuable consider-  
2 ation or a title derived from levy of an execution cannot be  
3 defeated by a trust however declared or implied by law,  
4 unless the purchaser or creditor had notice of the trust.  
5 When the instrument creating or declaring it is recorded in  
6 the registry where the land lies, that is to be regarded as  
7 notice of the trust. (c)

Titles to estates  
not defeated by  
trusts, &c.

Idem, § 32, 33.

SECT. 13. When real estate is conveyed in mortgage and  
2 in trust to two or more persons with power to appoint a  
3 successor to one deceased, it is to be considered as held in  
4 joint tenancy, unless otherwise expressed. When one or  
5 more of the trustees by death or otherwise is divested of  
6 his interest, those remaining may convey such interest upon  
7 the same trusts without impairing the joint tenancy to trust-  
8 ees by them appointed, who will hold the title, have the  
9 rights, and be subject to the liabilities of the other trustees.  
10 Personal property conveyed with real estate and upon the  
11 same trusts is to be considered as held as the real estate is ;  
12 and it may be conveyed by the remaining trustees with the  
13 real estate and held in like manner.

Trustees in  
mortgage hold  
in joint tenancy,  
&c.

1856, c. 237.

SECT. 14. A deed of release or quitclaim of the usual  
2 form will convey the estate, which the grantor has and can  
3 convey by a deed of any other form. A joint deed of hus-  
4 band and wife will convey her estate, in which the husband  
5 has an interest.

Deed of release,  
conveys, &c.

R. S., c. 91,  
§ 5, 8.

SECT. 15. Deeds and contracts executed by an authorized  
2 agent of an individual or corporation in the name of his

Deeds and  
contracts by  
agent, &c.

(a) 13, Me. 209. 16, Me. 212. 20, Me. 18.

(b) 11, Me. 9. 16, Me. 268. 22, Me. 408. 29, Me. 410. 30, Me. 121. 33, Me. 530. 35, Me. 41.  
23, Me. 269. 28, Me. 355.

(c) 18, Me. 220.

**CHAP. 73.**

Idem, § 14;

Conveyances to  
treasurer or  
others for benefit  
of a county,  
effectual.  
Idem, § 15.

Deeds to be  
acknowledged;  
and before  
whom.

Idem, § 16, 17.

When grantor  
dead or out of  
state, execution  
of deed may be  
proved.

Idem, § 18, 23.

Execution, how  
proved, &c.

Idem, § 19.

When grantor  
refuses to  
acknowledge,  
&c.

Idem, § 20.

In such case  
grantor may be  
summoned  
before a justice  
and execution  
proved.

Idem, § 21.

Justice, if satis-  
fied, to certify on  
deed, &c.

Idem, § 22.

Certificate of  
acknowl-  
edgment, &c.

Idem, § 24.

3 principal, or in his own name for his principal, are to be  
4 regarded as the deeds and contracts of such principal.

SECT. 16. Conveyances in whatever form made to the  
2 inhabitants of a county, or to their treasurer, or to a person  
3 or committee, for its benefit are as effectual, as if made in  
4 the corporate name of the county.

SECT. 17. Deeds are to be acknowledged by the grantors  
2 or one of them or by their attorney executing the same  
3 before a justice of the peace in this state, or any justice of  
4 the peace magistrate or notary public within any of the  
5 United States, or before any minister or consul of the United  
6 States, or notary public in any foreign country. (a)

SECT. 18. When a grantor or lessor dies or departs from  
2 the state without acknowledging his deed, its execution may  
3 be proved by a subscribing witness before any court of record  
4 in this state. No deed without one subscribing witness can  
5 for this purpose be proved before any court or justice.

SECT. 19. When the witnesses are dead or out of the  
2 state, the hand writing of the grantor and subscribing wit-  
3 ness may be proved by other testimony.

SECT. 20. When a grantor refuses to acknowledge his  
2 deed, the grantee or person claiming under him may leave  
3 a true copy of it with the register of deeds, and it shall have  
4 the same effect for forty days as a record of the deed.

SECT. 21. In such case a justice of the peace, where the  
2 grantor resides, or where his land lies, may upon application  
3 of the grantee or person claiming under him summon the  
4 grantor to appear before him at a time and place named to  
5 hear the testimony of the subscribing witnesses. The date  
6 of the deed, the names of the parties and of the subscribing  
7 witnesses to it, must be stated in the summons, which must  
8 be served seven days before the time for proving the deed.

SECT. 22. When the justice at such hearing is satisfied by  
2 the testimony of witnesses, that they saw the deed duly exe-  
3 cuted by the grantor, he shall certify the same thereon and  
4 state in his certificate the presence or absence of the grantor.

SECT. 23. A certificate of acknowledgment or proof of  
2 execution as aforesaid must be endorsed on or annexed to  
3 the deed, and then the deed and certificate may be recorded  
4 in the registry of deeds. No deed can be recorded without  
5 such certificate. (b)

(a) 17, Me. 418. 20, Me. 413.

(b) 19, Me. 274.

SECT. 24. When a person authorized to take acknowledgments has or shall take and certify one in good faith after the expiration of his commission not being aware of it, such acknowledgment shall be as valid as if done before such expiration. (a)

CHAP. 74.

Certificate made after commission expired, valid.

1854, c. 68.

SECT. 25. The register shall certify on each deed by him recorded the time, when it was received, and it shall be considered as recorded at that time. Within one hour after its delivery to him he shall enter such time, the names of the grantor and grantee and their places of residence, in a book for that purpose and open to inspection in business hours. (b)

Register to certify on deed, time when received, &c.

Idem, § 25.

SECT. 26. Pews and rights in houses of public worship are deemed to be real estate. Deeds of them and levies by execution upon them may be recorded by the town clerk of the town where the houses are situated with the same effect as if recorded in the registry of deeds.

Pews deemed real estate. Record of deeds and levies of them made by town clerk. Idem, § 28, 29.

## Chapter 74.

### WILLS, THEIR EXECUTION AND DEVISES.

- Sect. 1. Will by whom and how made.
2. Witnesses competent at time sufficient. Property not disposed of distributed.
  3. Will how rendered invalid or revoked.
  4. What lands pass by will, not seized and disseized.
  5. Lands subsequently acquired pass.
  6. Property taken from a devisee, loss to be borne equally.
  7. Assets how marshaled for payment of debts.
  8. Posthumous child takes a share of estate.
  9. A child or issue of a deceased child having no devise takes exception.
  10. Lineal descendants of a relative take the share devised to him.
  11. Who contribute to loss of a devisee.
  12. When one cannot pay loss equally borne.
  13. Real estate not devised first applied to pay debts.
  14. Cases of contribution how determined.
  15. Will not effectual unless proved and allowed in probate court.
  16. Devise of land construed to convey all the estate of devisor.

#### NUNCUPATIVE WILLS.

17. Nuncupative wills where and when made, exception.
18. Testimony to prove not receivable after six months, exception.
19. Not effectual to dispose of property exceeding one hundred dollars unless three witnesses.

SECT. 1. A person of sound mind and of the age of twenty-one years may dispose of his real and personal estate by will in writing signed by him or by some person for him at

Will, by whom and how made.

(a) 37, Me. 423.

(b) 12, Me. 499. 17, Me. 391.



**CHAP. 74.**

R. S., c. 92,  
§ 1, 2.

Witnesses  
competent at  
the time suffi-  
cient, &c.

Idem, § 1, 2.

Will, how  
rendered invalid  
or revoked.

Idem, § 4.

Lands of which  
testator was not  
seized, and those  
of which he was  
disseized pass  
by will.

Idem, § 12.

Lands subse-  
quently acquired  
pass by the will.

Idem, § 13.

Property taken  
from a devisee  
for payment of  
debts, &c.

Idem, § 14.

Assets for  
payment of  
debts, how  
marshaled.

Idem, § 15, 16.

Posthumous  
child takes a  
share of estate  
as if no will ;  
how taken.

4 his request and in his presence and subscribed in his pres-  
5 ence by three attesting and credible witnesses. (a)

SECT. 2. When the witnesses are competent at the time  
2 of attestation their subsequent incompetency will not pre-  
3 vent the probate of the will. Property not disposed of by  
4 will is to be distributed as the estate of an intestate.

SECT. 3. A will so executed is valid, until destroyed  
2 altered or revoked by being intentionally burnt, canceled,  
3 torn, or obliterated, by the maker or by some person by his  
4 direction and in his presence, or by a subsequent will, codi-  
5 cil, or writing, executed as a will is required to be, or  
6 revoked by operation of law from subsequent changes in the  
7 condition and circumstances of the maker. (b)

SECT. 4. (c) Lands, into which the testator at the time  
2 has a right of entry though not seized of them, and lands, of  
3 which he is subsequently disseized, pass by his will, as they  
4 would, if not devised, have descended to his heirs; and his  
5 devisee will have the same remedy for their recovery, as his  
6 heirs would have had.

SECT. 5. Real estate owned by the testator, the title to  
2 which was acquired after the will was executed, will pass by  
3 it, when such appears to have been his intention.

SECT. 6. When property is taken by execution from a de-  
2 visee or legatee of it, or sold by order of court for payment  
3 of debts, all the other devisees legatees and heirs are to pay  
4 to him their proportion thereof, so as to make the loss fall  
5 equally on all, according to the value of the property received  
6 by each from the testator, except as provided in the follow-  
7 ing section.

SECT. 7. If the testator has made a specific bequest, so  
2 that by operation of law it is exempted from liability to con-  
3 tribute for payment of debts, or if he has required an appli-  
4 cation of his estate for that purpose different from the pro-  
5 visions of the preceding section, the estate is to be appro-  
6 priated according to the provisions of the will. No part of  
7 the estate can be exempt from liability for payment of debts  
8 if required.

SECT. 8. A child of the testator born after his death and  
2 not provided for in his will takes the same share of his es-  
3 tate, as he would, if his father had died intestate, to be as-

(a) 22, Me. 438. 21, Me. 261. 34, Me. 162.

(b) 4, Gr. 341.

(c) The sections respecting the competency of witnesses on account of their interest as devisees are omitted as superceded or inconsistent with the recent enactments allowing persons interested to be witnesses.

4 signed by the judge of probate and taken from all the de-  
 5 visees in proportion to the value of what they respectively  
 6 receive under the will, unless by a specific devise or some  
 7 other provision of the will a different apportionment is nec-  
 8 essary to give effect to the intention of the testator respect-  
 9 ing that portion of his estate, which passes by the will.

Idem, § 17.

SECT. 9. A child or the issue of a deceased child not hav-  
 2 ing any devise in the will takes the share of the testator's  
 3 estate, which he would if no will had been made, unless it  
 4 appears, that such omission was intentional, or not occa-  
 5 sioned by mistake, or that such child or issue had a due  
 6 proportion of the estate during the life of the testator. (a)

A child or his issue having no devise takes as an heir; exceptions.

Idem, § 18.

SECT. 10. When a relative of the testator having a devise  
 2 of real or personal estate dies before the testator leaving  
 3 lineal descendants, they take such estate as would have  
 4 been taken by such deceased relative had he survived.

A relative dying before testator, &c.

Idem, § 19.

SECT. 11. When a share of the testator's estate descends  
 2 as provided in the eighth and ninth sections, the person  
 3 taking it is liable to contribute and may claim contribution  
 4 as provided in the sixth section.

When share descends as if no will, &c.

Idem, § 20.

SECT. 12. When a person liable to contribute as provided  
 2 in the sixth section cannot pay his proportion, the others  
 3 bear the loss, each in proportion to the value of the prop-  
 4 erty received by him. If any one liable to contribute dies  
 5 without having paid his proportion, his executor or adminis-  
 6 trator is liable therefor as for the debt of the deceased.

When one can not contribute, loss borne equally.

Idem, § 21.

SECT. 13. When a part of the real estate of a testator is  
 2 not disposed of by his will and the personal estate is not  
 3 sufficient to pay his debts, such *undevise*d (b) real estate is  
 4 to be applied for that purpose in exoneration of the real  
 5 estate devised, unless it appears, that a different arrange-  
 6 ment was made in the will for that purpose, and then the  
 7 assets are to be applied according to its provisions.

Real estate not devised, applied to pay debts before what is devised; exception.

Idem, § 22.

SECT. 14. All cases of contribution arising under this  
 2 chapter may be determined in an action at law, if the case  
 3 will allow it, or in the probate court subject to appeal, or in  
 4 the supreme judicial court by a bill in equity.

Cases of contribution, how determined.

Idem, § 24.

SECT. 15. No will is effectual to pass real or personal  
 2 estate unless proved and allowed in the probate court. Its  
 3 probate by that court is conclusive proof of its execution. (c)

Will not effectual unless proved, &c.

Idem, § 25.

(a) 32, Me. 268.

(b) The word *undevise*d has been substituted for the word "undivided" which is found in the prior printed revision, by some error, it is believed, either in writing or printing, the sense seems to require the change.

(c) 27, Me. 17.

**CHAP. 75.**

Devise of land  
construed to, &c.  
Idem, § 26.

- SECT. 16. A devise of land must be construed to convey  
2 all the estate of the devisor therein, unless it appears by  
3 his will, that he intended to convey a less estate.

*Nuncupative wills.*

Nuncupative  
wills, where and  
when made.  
Soldiers and  
sailors not  
included.

Idem, § 9, 10.

Testimony to  
prove not  
received after  
six months;  
exception.

Idem, § 11.

Not effectual to  
dispose of prop-  
erty exceeding  
\$100, &c.

Idem, § 9.

- SECT. 17. A nuncupative will must be made during the  
2 last sickness of the testator at his home, or at the place  
3 where he resided ten days before making it, unless he is  
4 suddenly taken sick from home and dies before returning to it.  
5 But a soldier in actual service or mariner at sea may dispose  
6 of his personal estate and wages without regard to the pro-  
7 visions of this chapter.

- SECT. 18. No testimony can be received to prove any tes-  
2 tamentary words as a nuncupative will after the lapse of six  
3 months from the time they were spoken, unless the words or  
4 the substance of them were reduced to writing within six  
5 days after they were spoken.

- SECT. 19. No nuncupative will can be effectual to dispose  
2 of property exceeding in value one hundred dollars, unless  
3 proved by the oath of three witnesses, who were present at  
4 the making of it and were requested by the testator to bear  
5 witness that such was his will.

**Chapter 75.****TITLE BY DESCENT.****DESCENT OF REAL ESTATE.**

- Sect. 1.* Rules of descent established.  
2. Degrees of kindred computed according to civil law. Half blood inherits.  
3. Heirship of an illegitimate child.  
4. Descent of estate of an illegitimate.  
5. Advancements how established: considered part of the estate.  
6. Advancements how operate on distribution; not to be refunded.  
7. Advancements when one receiving dies, proceedings.

**DESCENT OF PERSONAL ESTATE.**

8. Personal estate distributed as real estate is, exceptions.  
9. Widow's share of it.  
10. Disposition of money received for insurance on life.  
11. When an heir is indebted to the estate a lien is created, how enforced.

*Descent of real estate.*

- SECT. 1. The real estate of a person deceased intestate  
2 being subject to the payment of debts descends according to  
3 the following rules.  
4 *First*—In equal shares to his children and to the lawful  
5 issue of a deceased child by right of representation. If no

Rules of descent.  
R. S., c. 33, § 1.  
1852, c. 295,  
§ 1, 2.

To children and  
lineal  
descendants.

6 child living at the time of his death to all his lineal descend-  
7 ants; equally if all are of the same degree of kindred, if not  
8 according to the right of representation.

9 *Second*—If no such issue, it descends to his father.

Father.

10 *Third*—If no such issue or father, it descends in equal  
11 shares to his mother brothers and sisters, and when a broth-  
12 er or sister has deceased, to his children or grand children  
13 by right of representation. (a)

Mother, brothers  
and sisters.

14 *Fourth*—If no such issue father brother or sister, it de-  
15 scends to his mother to the exclusion of the issue of  
16 deceased brothers and sisters.

Mother.

17 *Fifth*—If no such issue father mother brother or sister, it  
18 descends to his next of kin in equal degree; when they  
19 claim through different ancestors, to those claiming through  
20 a nearer in preference to those claiming through an ancestor  
21 more remote.

Next of kin.

22 *Sixth*—When he leaves a child or children, and the issue  
23 of one or more deceased children, and one of those surviv-  
24 ing children dies without having been married and under  
25 age, the share of his father's estate that descended to him,  
26 descends in equal shares to the other children of his father  
27 and to the children *and grand children* (b) of those deccas-  
28 ed by right of representation; in equal shares, if they are  
29 all of the same degree of kindred, otherwise according to  
30 the right of representation.

Share of one  
dying under age  
without  
marriage.

31 *Seventh*—If he leaves no kindred it escheats to the state.

Escheat.

SECT. 2. The degrees of kindred are computed according  
2 to the rules of the civil law. (c) Kindred of the half  
3 blood inherit equally with those of the whole blood in the  
4 same degree.

Degrees of  
kindred com-  
puted by civil  
law, &c.  
Idem, § 2.

SECT. 3. An illegitimate child is an heir of his mother and  
2 of a person, who in a writing signed in the presence and  
3 attested by a competent witness acknowledges himself to  
4 be his father, and inherits as if born in lawful wedlock. But  
5 he does not inherit as representing his father or mother any  
6 part of the estate of their kindred either lineal or collateral,  
7 unless before his death his parents intermarry and have  
8 other children, *or* his father acknowledges him as aforesaid,  
9 or adopts him into his family, and then he is deemed legit-

Heirship of an  
illegitimate  
child.

(a) 14, Me. 309. Altered by statute 1852, c. 295.

(b) When by the statute of 1852, grand children were permitted to inherit from ancestor under the third rule, no change was made in the sixth rule, and they are still excluded under that; the new words of "grand children" enables them to do so; if not judged right, those words should be erased.

(c) 32, Me. 312, note of reporter.

CHAP. 75. 10 imate and as such inherits from others and they from

Idem, § 3.  
1852, c. 266.

Descent of  
estate of an  
illegitimate.

Idem, § 4.  
1852, c. 260, § 1.

Advancements,  
how established.

Idem, § 8, 9.

How it operates  
on a distribution,  
not to be  
refunded.

Idem, § 10, 11.

When one  
receiving an  
advancement  
dies,  
proceedings.

Idem, § 12, 13.

11 him. (a)

SECT. 4. If an illegitimate child dies intestate without  
2 lawful issue his estate descends to his mother, and if she  
3 has deceased, to her heirs at law, unless such child leaves a  
4 husband or widow, who then inherits an equal share with the  
5 mother or with her children.

SECT. 5. Gifts and grants of real or personal estate to a  
2 child or grandchild are deemed an advancement, when so  
3 expressed therein, or charged as such by the intestate, or  
4 acknowledged in writing to be such. For purposes of de-  
5 scent and distribution they are to be regarded as part of  
6 the estate of the intestate and as taken towards a share  
7 of it.

SECT. 6. When the value of an advancement is deter-  
2 mined by the intestate in his gift or charge, or is acknowl-  
3 edged in writing, it is to be allowed in the distribution, if  
4 not, the value is to be estimated at the time when given.  
5 When it exceeds his share, he is excluded from any further  
6 portion, when less he is to receive sufficient to make it an  
7 equal share. He does not refund any part of an advance-  
8 ment.

SECT. 7. When an advancement is made in real, it is to  
2 be regarded as part of the real, and when in personal as  
3 part of the personal, estate. If it exceeds his share of the  
4 real or personal, he receives so much less of the other, as  
5 will make his whole share equal. If such child or grand-  
6 child dies before the intestate leaving issue, the advance-  
7 ment made to him is to be regarded as made to such issue  
8 and distribution is to be made accordingly.

### *Descent of personal estate.*

Personal estate  
distributed by  
rules respecting  
real estate;  
exceptions.

Idem, § 15, 20.

Widow's share.  
Idem, § 17,  
18, 19.

SECT. 8. The personal estate of an intestate, except that  
2 portion assigned to his widow by law and by the judge of  
3 probate, is to be applied first to the payment of his debts  
4 funeral charges and charges of settlement, the residue is to  
5 be distributed or escheat by the rules provided for the dis-  
6 tribution of real estate subject to the following provisions.

SECT. 9. If he leaves a widow and issue, the widow takes  
2 one third, if no issue one half, and if no kindred the whole.

(b) 37, Me. 333, "or" has been substituted for "and" to make the sense plain, and free the section from the difficulties presented in the case cited. If not satisfactory, the word "or" should be erased and the word "and" restored.

SECT. 10. A sum of money received for insurance on his  
 2 life deducting the premium paid therefor within three years  
 3 with interest does not constitute a part of his estate for pay-  
 4 ment of debts or purposes specified in the first section of  
 5 chapter sixty-six, when the intestate leaves a widow or issue,  
 6 but descends one third to his widow and the remainder to  
 7 his issue; if no issue the whole to the widow, and if no  
 8 widow the whole to the issue. It may be disposed of by  
 9 will though the estate be insolvent. (a)

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Disposition of  
money received  
for insurance on  
life.1844, c. 114,  
§ 1, 2, 3.

SECT. 11. When an estate is solvent and a person, to  
 2 whom a share of it descends, is indebted to the intestate  
 3 at the time of his decease, that debt creates a lien on his  
 4 share having priority to any attachment of it; and such lien  
 5 may be enforced by suit and attachment of the share within  
 6 two years after administration granted, and by levy within  
 7 thirty days after judgment. In such action or in one brought  
 8 by the heir all claims between the intestate and heir may be  
 9 set off and adjusted and the balance due be established.

When heir is  
indebted to the  
estate a lien on  
his share is  
created; how  
enforced.

Idem, § 21, 22

## Chapter 76.

### TITLE TO REAL ESTATE BY LEVY OF EXECUTION.

#### LEVY BY APPRAISEMENT.

- Sect. 1. Levy how made by appraisement; appointment of appraisers.  
 2. Appraisers sworn, certificate of it, view land.  
 3. They make return, contents of it.  
 4. Parcels may be appraised together, return good, when signed by two, then acting.  
 5. Officer's return, what it must state, when to be completed.  
 6. Estates tail taken as estates in fee; debtor's interest passes, if not greater.  
 7. Levy on estate in common how made.  
 8. Levy on rents and profits when and how made.  
 9. Levy on estate when part cannot be taken without damage to whole.  
 10. Levy on estate for life, how made.  
 11. Levy on estate under lease; disposition of rent.  
 12. Seizin and possession how delivered.  
 13. Levy on land fraudulently conveyed, or of which debtor not seized.  
 14. When debt assigned, estate taken held in trust.  
 15. Execution and return recorded in registry within three months.  
 16. Without record not valid against a purchaser without notice.  
 17. When levy may be waived or held void.  
 18. When title proves bad after record, proceedings.  
 19. Levy commences, when appraisers sworn.  
 20. Levy made for too much valid, remedy of debtor.  
 21. Levies sustained by two preceding sections may be redeemed.

#### REDEMPTION OF LEVIES BY APPRAISEMENT.

22. Lands levied on may be redeemed within one year.  
 23. Amount due ascertained by three justices of the peace.

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- Sect.* 24. When not released after payment or tender, may be recovered.  
 25. Amount due may be determined by bill in equity.  
 26. Costs regulated, provisions for redemption of estates for life.

## LEVIES ON EQUITIES OF REDEMPTION.

27. Levies on lands mortgaged and amount due deducted; remedy for errors, or when mortgage not known.

## LEVIES ON EQUITIES HOW REDEEMED.

28. Levies on equities may be redeemed as other levies.

## RIGHTS OF REDEMPTION, RIGHTS BY CONTRACT, AND INTERESTS BY POSSESSION AND IMPROVEMENT, MAY BE SOLD.

29. Rights and interests which may be sold at auction.  
 30. Notice of sale how given.  
 31. Mortgagee to disclose amount due.  
 32. May be compelled to do it by taking his deposition.  
 33. Officer to sell at auction and convey debtor's interest.  
 34. Officer may adjourn sale.  
 35. Seizure made on day of notice of sale.

## THESE RIGHTS AND INTERESTS MAY BE REDEEMED FROM SALES AND MAY BE SOLD AS WELL AS RIGHTS TO REDEEM FROM LEVIES.

36. Rights and interests may be redeemed as other levies.  
 37. These rights to redeem may be attached and sold.

## LANDS OF BANKS AND MANUFACTURING CORPORATIONS MAY BE SOLD.

38. Lands of banks and manufacturing corporations and their titles as mortgagers may be sold; proceedings.  
 39. No transfer made after notice of seizure valid.

## CORPORATION MAY REDEEM.

40. Corporation may redeem, and its right to do so be attached and sold.

## MISCELLANEOUS PROVISIONS.

41. Expenses to be reckoned as part of execution.  
 42. Whatever is to be done by creditor or debtor may by those representing the interest.  
 43. Real estate of a deceased person may be taken by execution.  
 44. Widow not deprived of dower by levies or sales.  
 45. Lands of a debtor to the state may be sold on execution.  
 46. An attachment on right to have a conveyance may be effectual on premises.  
 47. Purchaser of such right same remedies as the debtor.  
 48. When an assignment is alleged and contested, proceedings.

*Levy by appraisement.*

- SECT. 1. Real estate attachable may be taken to satisfy  
 2 an execution by causing it to be appraised by three disin-  
 3 terested men, one chosen by the creditor, one by the debtor,  
 4 and the other by the officer having the execution for service,  
 5 who shall give notice to the debtor or his attorney residing  
 6 in the county, where the land lies, to choose an appraiser  
 7 and allow him a reasonable time therefor, and if he neglects,  
 8 appoint one for him. (a)

Levy, how made  
 by appraisal,  
 appointment of  
 appraisers.

R. S., c. 94,  
 § 1, 2, 3, 4, 5.

(a) Appraisers where resident, 37, Me. 21. Disinterested, 31, Me. 54. 33, Me. 187. Time for appointment of appraiser, 34, Me. 566. 6, Me. 163.

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SECT. 2. The appraisers may be sworn by the officer with-  
 2 out fee or by a justice of the peace faithfully and impar-  
 3 tially to appraise the real estate to be taken, and a certifi-  
 4 cate of the oath shall be made stating the date of its admin-  
 5 istration on the back of the execution by the person, who  
 6 administered it; they are then to proceed with the officer  
 7 to view and examine the land so far as necessary for a just  
 8 estimate of its value. (a)

Appraisers to be sworn; form of oath, certificate, &c.

Idem, § 4, 6.  
 1843, c. 13.  
 1847, c. 3.

SECT. 3. They are in a return made and signed by them  
 2 on the back of the execution to state the nature of the  
 3 estate and its value, and whether it is in severalty or in  
 4 common, a fee simple or less estate, in possession reversion  
 5 or remainder, and describe it by metes and bounds, or in  
 6 such other manner, that it may be distinctly known and iden-  
 7 tified. (b)

Make return; contents of it.

Idem, § 6, 7.

SECT. 4. When several parcels of land are taken, they  
 2 may be appraised separately or together. When taken at  
 3 different times there may be different sets of appraisers. A  
 4 levy will be valid when the return is signed by two of the  
 5 appraisers the other appearing to have been sworn and to  
 6 have acted. (c)

Parcels may be appraised together, taken at different times by different appraisers, &c.  
 Idem, § 8, 9.

SECT. 5. The officer shall in his return on the execution  
 2 state substantially; the time when the land was taken in  
 3 execution; how the appraisers were appointed; that they  
 4 were duly sworn; that they appraised and set off the prem-  
 5 ises, after viewing the same at the price specified; that he  
 6 delivered seizin and possession to the creditor or his attor-  
 7 ney, or assigned the same to him as in case of remainder or  
 8 other incorporeal estate; the description of the premises  
 9 by himself or by reference to the return of the appraisers;  
 10 if the appraisers' return is signed by two only he must state  
 11 whether all were present and acted. He may refer to and  
 12 adopt in his return the return of the appraisers, and the  
 13 subsequent proceedings will be valid though made after the  
 14 return day of the execution or after the removal or disabil-  
 15 ity of the officer. (d)

Officer's return, what it must state; when it may be completed.

Idem, § 5, 7, 24.

SECT. 6. Estates tail are to be taken, appraised, and held,  
 2 as estates in fee simple. All the debtor's interest in the

Estates tail taken as estates in fee. All debtor's interest passes.

(a) Need not enter on land. 34, Me. 463.

(b) Description, 31, Me. 439, on estate in common. 28, Me. 188. 24, Me. 308.

(c) Cause one does not sign need not be stated. 27, Me. 29.

(d) Seizin refused, levy not good. 29, Me. 266.



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Idem, § 2, 10.

Levy on estate  
in common, how  
made.

Idem, § 11.

Levy on rents  
and profits,  
when and how  
made.

Idem, § 12.

Levy, when  
part cannot be  
taken without  
damage to  
whole; how  
made.

Idem, § 13.

Levy on an  
estate for life,  
how made.

Idem, § 14.

Levy on an  
estate under  
lease;  
disposition of  
rent.

Idem, § 15, 16.

Seizin and  
possession, how  
delivered, &c.

3 premises will pass by a levy, unless it be larger than the  
4 estate mentioned in the appraisers' return. (a)

SECT. 7. The whole or a part of an estate held in joint  
2 tenancy or in common may be taken and held in common  
3 but the whole estate must be described, and the share of it  
4 owned by the debtor must be stated. (b)

SECT. 8. When the estate cannot be described as provided  
2 in the third section, the execution may be levied on its rents  
3 and profits, and the officer may give seizin thereof to the  
4 creditor and cause a person in possession to become tenant  
5 to him, or on his refusal turn him out and give possession to  
6 the creditor.

SECT. 9. When the premises consist of a mill, mill privi-  
2 lege or other estate more than sufficient to satisfy the exe-  
3 cution, which cannot be divided by metes and bounds with-  
4 out damage to the whole, an undivided part of it may be  
5 taken and the whole described, or it may be levied on as  
6 provided in the preceding section. (c)

SECT. 10. A levy may be made on an estate for life as on  
2 other real estate and its value appraised, or it may be made  
3 on its rents and profits, and an appraisement of them made  
4 for a term of time, if the life shall so long continue, comput-  
5 ing interest on the execution and deducting the rents and  
6 profits from time to time when due; and when the estate  
7 expires before the end of the term, for which it was taken,  
8 the creditor by an action on the judgment may recover the  
9 balance due. (d)

SECT. 11. When the levy is made on the whole of an es-  
2 tate under lease, the rent is to be paid to the creditor from  
3 the time of the levy. When made on part of it the apprais-  
4 ers are to determine what portion of the rent is to be paid  
5 to him and it shall be paid to him accordingly. (e)

SECT. 12. The officer is to deliver to the creditor or his  
2 attorney seizin and possession of an estate levied on so far  
3 as the nature of the estate and the title of the debtor will

(a) 34, Me., 566. Reserving incumbrances not good. 34, Me. 139. On estate of mortgagee,  
bad. 34, Me. 89.

(b) 34, Me. 201. 23, Me. 538.

(c) 18, Me. 397. 24, Me. 98.

(d) 10, Me. 100.

(e) The word "reversion" contained in the 15th and 16th sections of R. S., has been omitted  
as suited to mislead. If a levy were made on the reversion only, the value of it subject to the  
lease would be paid for by the creditor, and he could not be entitled to any of the rent. If  
made on the whole estate and its value appraised, then the creditor pays for the whole estate  
and becomes entitled to the rent.

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4 admit. When a remainder, reversion, or right of redemp-  
 5 tion is taken, the debtor in possession is not to be ousted,  
 6 but his right therein assigned to the creditor and a return  
 7 made accordingly.

Idem, § 17.

SECT. 13. A levy may be made on land fraudulently con-  
 2 veyed by a debtor, or of which he has been disseized and  
 3 unto which he has a right of entry. In such case the tenant  
 4 in possession is not to be ousted, but the officer shall deliver  
 5 to the creditor a momentary seizin, which shall be sufficient  
 6 to enable him to maintain an action for its recovery in his  
 7 own name.

Levy on land fraudulently conveyed, or of which debtor has been disseized.

Idem, § 18.

SECT. 14. When the debt had been previously assigned  
 2 for a valuable consideration, the creditor named in the exe-  
 3 cution holds an estate levied on to satisfy it in trust for his  
 4 assignee, who is entitled to a conveyance thereof, which may  
 5 be enforced by a bill in equity. (a)

When debt has been assigned, estate taken is held in trust for assignee.

Idem, § 18.

SECT. 15. The officer is to return the execution into the  
 2 clerk's office when returnable, and within three months after  
 3 completing the levy cause it with the return thereon to be  
 4 recorded in the registry of deeds, where the land lies. (b)

Execution to be returned to clerk's office and recorded, &c. R. S., c. 94, § 19.

SECT. 16. When not so recorded the levy will be void  
 2 against a person, who has purchased for a valuable con-  
 3 sideration, or has attached or taken on execution the same  
 4 premises without *actual* notice thereof. (c) If the levy  
 5 is recorded after the three months, it will be valid against a  
 6 conveyance attachment or levy made after such record.

Levy not recorded, not valid against a purchaser, &c.

Idem, § 20.

SECT. 17. A creditor, who has received seizin of a levy  
 2 not recorded cannot waive it, unless the estate was not the  
 3 property of the debtor, or not liable to seizure on execu-  
 4 tion, or cannot be held by the levy, when it may be con-  
 5 sidered void, and he may resort to any other remedy for the  
 6 satisfaction of his judgment.

When levy may be waived, or held void.

Idem, § 21, 22.

SECT. 18. When the execution has been recorded and the  
 2 estate levied on does not pass by the levy for causes named  
 3 in the preceding section, the creditor may sue out of the  
 4 office of the clerk issuing the execution a writ of scire facias  
 5 requiring the debtor to show cause, why an alias execution  
 6 should not be issued on the same judgment; and if the

When title fails after record, proceedings for an alias; execution; debtor may convey title by deed.

(a) 29, Me. 62.

(b) 13, Me. 187. 23, Me. 105.

(c) When a second conveyance is made without a record or actual notice of the first, it is effectual. When actual notice was required in such cases, the law does not appear to have been changed in other cases seeming equally to require it. This is one. It is not supposed to be desirable to have the very troublesome and often litigated question, how notice should be implied, remain in this case. 17, Me. 249. 28, Me. 118.

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7 debtor after being duly summoned does not show sufficient  
8 cause, the levy may be set aside, and an alias execution  
9 issued for the amount then due on the judgment, unless  
10 during its pendency the debtor tenders in court a deed of  
11 release of the land levied on and makes it appear, that the  
12 land at the time of levy was and still is his property, and  
13 pays the expenses of the levy and the taxable costs of the  
14 suit and the judgment shall be satisfied for the amount of  
15 the levy. (a)

Idem, § 23.  
1856, c. 234.

Levy commences  
when appraisers  
are sworn.

SECT. 19. For the purpose of fixing the amount due on  
2 the execution and the time, when the debtor's right to re-  
3 deem will expire in levies already made or to be made, they  
4 are to be considered as commenced on the day of the date  
5 of the administration of the oath to the appraisers, although  
6 it may appear by the return of the officer, that the estate  
7 was seized on execution before, or that the proceedings  
8 were not completed till after, that day.

1856, c. 278, § 1.

When levy  
made for too  
much, valid;  
remedy against  
officer or  
creditor.

SECT. 20. When by an error of the officer in a levy  
2 already made or to be made the amount, for which it was  
3 made, exceeds the amount of debt or damage, costs, interest,  
4 and costs of levy, by a sum not greater than one per cent.  
5 of said amount, such levy shall be regarded as legal and  
6 valid, if otherwise legally made, and the debtor or owner of  
7 the estate may maintain an action against such officer or his  
8 principal to recover any damages occasioned thereby, or a  
9 bill in equity against the creditor to have such error cor-  
10 rected, and the court may correct it in any manner, that may  
11 be just and equitable, or decree a pecuniary compensation  
12 for the injury. (b)

Idem, § 2.

When levies  
are sustained by  
two preceding  
sections, creditor  
may redeem  
within six  
months.

SECT. 21. When a levy so made would not in a suit com-  
2 menced before April tenth eighteen hundred and fifty-six  
3 have been sustained but for the provisions of the two pre-  
4 ceding sections, the debtor may redeem within six months  
5 after final judgment in such suit by paying or tendering to  
6 the creditor such sum, as three persons or a majority of them  
7 appointed by a justice of the supreme judicial court after giv-  
8 ing notice to and affording the parties an opportunity to be  
9 heard shall determine in writing by them signed to be due  
10 upon the following elements of calculation. The creditor is  
11 to be entitled to the amount of the appraisalment with inter-

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(a) The act provides, that the expenses of the levy in such case should be deducted from the judgment, but when the judgment is satisfied by the levy this is obviously impossible. The only way of carrying into effect the intention, is to make the debtor pay them, and the language has been varied accordingly.

(b) 35, Me. 90, 37, Me. 423.

12 est annually from the time of the levy; and to receive the  
 13 just value of the improvements made by him or persons  
 14 under him on such portions of the premises as remained  
 15 unsold on April first eighteen hundred and fifty-six and  
 16 a fair compensation for attending to and taking care of  
 17 the same. For such portion as he had sold before that day  
 18 he is to account for the appraised value thereof; and the  
 19 debtor or those holding title under him shall convey to the  
 20 creditor or those claiming under him by a valid deed of quit-  
 21 claim the title to the portion so sold.

*Idem*, § 2.

*Redemption of levies by appraisalment.*

SECT. 22. Real estate levied on may be redeemed within  
 2 one year thereafter by paying or tendering to the creditor  
 3 the amount of its appraisalment with interest from the time  
 4 of levy with reasonable expenses incurred for its improve-  
 5 ment or repair after deducting rents and profits, with which  
 6 he is chargeable; and the creditor is thereupon by his deed  
 7 prepared at the expense of the debtor to release to him all  
 8 his title to the premises. (*a*)

Land levied on  
 may be  
 redeemed  
 within one  
 year.

R. S., c. 94, § 25.

SECT. 23. The debtor may have the amount due ascer-  
 2 tained by three justices of the peace chosen, one by the  
 3 debtor, one by the creditor, and the other by those two; if  
 4 after notice the creditor declines, the debtor may choose  
 5 two, and after a hearing before the three, they or two of  
 6 them shall make in writing and sign a certificate of the sum  
 7 found to be due, which shall be conclusive; and the debtor  
 8 may tender that sum, which shall be effectual to redeem,  
 9 though he had before tendered a different sum.

Amount due  
 may be ascer-  
 tained by three  
 justices of the  
 peace.

*Idem*, § 26.

SECT. 24. If the creditor does not release the premises,  
 2 within ten days after payment or tender of the amount due,  
 3 the debtor may recover the same by a writ of entry on his  
 4 own seizin; but before judgment is entered he must bring  
 5 into court for the creditor, the money tendered.

If creditor does  
 not release after  
 payment or  
 tender, creditor  
 may recover  
 land.  
*Idem*, § 27.

SECT. 25. Instead thereof the debtor without any tender  
 2 may within one year and in season to have the amount as-  
 3 certained and paid or tendered within the year (*b*) file a bill  
 4 in equity therein offering to pay the amount due, and the  
 5 court shall ascertain it and require the debtor to bring it  
 6 into court for the creditor, and the debtor thereupon shall

Or debtor may  
 have amount  
 due determined  
 by a bill in  
 equity.

(*a*) 35, Me. 86. 5, Me. 395. 6, Me. 142.

(*b*) 20, Me. 361.

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Idem, § 28.

Costs regulated;  
provisions appli-  
cable to redemp-  
tion of estates  
for life.

7 be entitled to a decree in his favor and to a writ of posses-  
8 sion for the premises.

SECT. 26. Costs may be awarded to either party, except  
2 not against the creditor, unless he has on request unreason-  
3 ably refused to render an account of rents and profits and  
4 of expenses for improvements and repairs, or to execute a  
5 deed of release as required in this chapter. When he has  
6 tendered a deed of release to the debtor before his bill was  
7 filed and in his answer relies upon it and brings the deed  
8 into court for the debtor, he shall recover his costs. The  
9 provisions of this section are applicable for the redemption  
10 of an estate for life levied on by taking the rents and  
11 profits.

Idem, § 29, 30.

*Levies on equities of redemption.*

SECT. 27. Levies may be made on lands mortgaged as on  
2 lands not mortgaged, and the amount due on the mortgage  
3 deducted by the appraisers from their estimated value and  
4 stated in their return. If the full amount due was not de-  
5 ducted, or if the levy was made in the usual form, and it is  
6 ascertained, that there was a mortgage on the premises not  
7 including other real estate and not known to the creditor at  
8 the time of levy, that shall be valid, and the creditor may  
9 recover of the debtor the amount, which should have been  
10 and was not deducted, or the amount due on such mort-  
11 gage.

Idem, § 31, 32.

Levies may be  
made on lands  
and amount due  
on mortgage  
deducted, &c.

*Levies on equities, how redeemed.*

SECT. 28. Levies made as provided in the preceding sec-  
2 tion may be redeemed within one year as in other cases.  
3 When the debtor pays on the mortgage after the levy and  
4 does not redeem, he may recover the amount so paid of the  
5 creditor in an action for money had and received.

Idem, § 33.

May be  
redeemed as  
others, &c.

*Rights of redemption, rights by contract, and interests by pos-  
session and improvement may be sold.*

SECT. 29. Rights of redeeming real estate mortgaged,  
2 rights to have a conveyance of it by bond or contract, and  
3 interests by virtue of possession and improvement of lands  
4 as described in chapter one hundred and four may be taken  
5 on execution and sold, and the officer shall account to the  
6 debtor for any surplus of proceeds of the sale to be appro-  
7 priated as provided in section twenty-three of chapter eighty-  
8 four.

Rights and  
interests, which  
may be sold at  
auction.

Idem, § 36.  
R. S., c. 117,  
§ 27.

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Notice of sale,  
how to be given.

SECT. 30. The officer in such case shall give written notice  
2 of the time and place of sale to the debtor in person or by  
3 leaving the same at his last and usual place of abode, if  
4 known to be an inhabitant of the state, and cause it to be  
5 posted in a public place in the town, where the land lies,  
6 and in two adjoining towns, if so many adjoin; and if the  
7 land be situated in two or more towns, then in each of those  
8 towns and in two towns adjoining to each of them, and if  
9 the land be in two or more counties, an officer in either  
10 county may sell the whole right. When the land is not  
11 within any town, the notice shall be posted in two public  
12 places of the shire town of the county, in which the land  
13 lies, instead of the posting aforesaid. When the debtor is  
14 not a resident of such county, the personal notice may be  
15 forwarded to him by mail postage paid; all to be done thirty  
16 days before the day of sale. The notice shall also be pub-  
17 lished three weeks successively before the day of sale in a  
18 newspaper printed in such county, if any, otherwise in the  
19 state paper.

Idem, § 37.  
1852, c. 219.

SECT. 31. When a right of redemption has been attached,  
2 judgment recovered and a sale of it is to be made, the cred-  
3 itor may demand of the mortgagee to disclose in writing  
4 under his hand, the condition of the mortgage and of the  
5 sum due thereon, which shall be furnished within twenty-four  
6 hours, and in case of neglect he shall be liable for damages.

Mortgagee on  
request, to  
disclose amount  
due.

R. S., c. 133,  
§ 41, 42.

SECT. 32. If such disclosure is not furnished within that  
2 time, such creditor may apply to any magistrate authorized  
3 to take depositions in the county, where the land lies or  
4 where the mortgagee resides, who shall take his deposition  
5 in relation to the facts required to be disclosed, and who  
6 may exercise the power to compel attendance and disclosure  
7 authorized for taking a deposition in perpetuum.

If disclosure not  
made, may  
compel it by  
taking his  
deposition.

Idem, § 43.

SECT. 33. The officer shall sell such right or interest at  
2 public auction to the highest bidder, and execute and deliver  
3 to the purchaser a sufficient deed thereof, which being re-  
4 corded in the registry of deeds, where the land lies, within  
5 three months after the sale conveys to him all the title of  
6 the debtor in the premises. When such bidder on demand  
7 of the officer does not pay him the sum, for which it wa-  
8 sold, he shall immediately sell it again as before, and if it,  
9 does not sell for so much as at the first sale, the person to  
10 whom it was struck off at the first sale shall be accountable  
11 to the officer for the difference, who may recover it to be

Officer to sell at  
auction, and  
convey by deed,  
debtor's interest.

CHAP. 76. 12 endorsed on the execution unless satisfied, and then paid to  
 Idem, c. 94, § 39. 13 the debtor.

Sale may be  
 adjourned.

SECT. 34. When the officer deems it for the interest of  
 2 all concerned to postpone the sale, he may adjourn it for any  
 3 time not exceeding seven days, and so from time to time  
 4 until a sale is made giving notice at the time of each adjourn-  
 5 ment by public proclamation.

Idem, § 38.

Seizure made  
 on day of notice  
 of sale; proceed-  
 ings after return  
 day, valid.

SECT. 35. The seizure on execution is considered as made  
 2 on the day, when notice of the sale is given, and the right  
 3 or interest seized within that time is held, if the sale be not  
 4 completed within thirty days after judgment; and the subse-  
 5 quent proceedings and return will be valid, if made after  
 6 the return day of the execution or after a removal or disa-  
 7 bility of the officer.

Idem, § 40.

*Rights and interests may be redeemed from sales, and may be  
 sold, as well as rights to redeem from levies.*

Rights and  
 interests may be  
 redeemed, &c.

SECT. 36. Rights and interests so sold may be redeemed  
 2 within one year as land levied on by appraisement may be;  
 3 and the rights and remedies of the parties are the same for  
 4 this purpose, as those of mortgager and mortgagee. (a)

Idem, § 41, 42.

Rights to redeem  
 from levies and  
 sales may be  
 attached and  
 sold, &c.

SECT. 37. The right of a debtor to redeem from a sale or  
 2 from a levy by appraisement may be attached and sold on  
 3 execution, as an equity of redemption may be, and the parties  
 4 will have the same rights and remedies. Attachments of  
 5 such estate or equity of redemption made before such levy  
 6 or sale will be effectual on such right of redeeming in the  
 7 order, in which they were made, in preference to attachments  
 8 made subsequent to such levy or sale.

Idem, § 43.

*Lands of banks and manufacturing corporations may be sold  
 at auction.*

Lands of banks  
 and manufactur-  
 ing corporations,  
 and their titles  
 as mortgagees  
 may be sold at  
 auction;  
 proceedings.

SECT. 38. The lands of banks or manufacturing corpora-  
 2 tions and their titles as mortgagees of lands may be seized  
 3 on execution and sold at auction. The officer shall give  
 4 notice of the time and place of sale fourteen days previous  
 5 thereto by posting it in two or more public places in the  
 6 town, where the lands lie, and in a newspaper printed in the  
 7 county, if any, otherwise in the state paper; and he may  
 8 by deed convey the same, and a debt secured by such mort-

9 gage and remaining unpaid will pass with the mortgagee's  
 10 title to the purchaser, who may recover the premises or debt  
 11 in his own name. In such action a copy of the mortgage  
 12 attested by the register of deeds shall be received as prima  
 13 facie evidence of such deed and of the contracts secured by  
 14 it as remaining due at the time of trial. The cashier of the  
 15 bank or clerk of the corporation on reasonable request of  
 16 the officer shall furnish him with a certified copy of such  
 17 contract and of all payments made thereon.

*Idem*, § 34.

SECT. 39. No transfer of such mortgage or of the debt  
 2 secured thereby made by such corporation after notice of  
 3 the seizure thereof on execution filed in the registry, where  
 4 the land lies, or given to the party to be affected thereby  
 5 shall have any validity against the purchaser at such sale.

No transfer made after notice of seizure is valid.

*Idem*, § 35.

*Corporation may redeem.*

SECT. 40. The corporation may redeem such land or mort-  
 2 gage and debt as is provided for the redemption of lands  
 3 levied on by appraisalment; and such right may be attached  
 4 and sold on execution as the right to redeem from the sale  
 5 of an equity of redemption may be, and the corporation  
 6 will have the like right to redeem from such second sale.

Corporation may redeem, &c.

*Idem*, § 34, as amended.

*Miscellaneous provisions.*

SECT. 41. The expenses of levy in any of the modes  
 2 aforesaid are to be considered as part of the execution in a  
 3 levy, sale, or redemption.

Expenses part of execution. *Idem*, § 44.

SECT. 42. Every thing, which a creditor or debtor is re-  
 2 quired in this chapter to do, may be done by their heirs,  
 3 assigns, executors, or administrators, or by any person law-  
 4 fully claiming under them.

Whatever is to be done by creditor or debtor, &c. *Idem*, § 45.

SECT. 43. The real estate of a deceased person may be  
 2 taken for payment of his debts by an execution issued on a  
 3 judgment recovered against his executor or administrator  
 4 and levied on, sold, and redeemed, as if taken in his life-  
 5 time. When so levied on or sold and redeemed by his heirs  
 6 devisees or their assigns, it shall not be again subject to  
 7 levy or sale for debts of the deceased.

Real estate of a deceased person may be taken on execution, &c.

*Idem*, § 46, 47.

SECT. 44. A widow is not deprived of dower by a levy or  
 2 sale on execution of real estate of her husband.

Widow not deprived, &c. *Idem*, § 48.

SECT. 45. When an execution is issued in the name or for  
 2 the use of the state against a debtor, his real estate may be  
 3 taken thereby and sold at auction notice thereof being given

Lands of a debtor to the state may be sold on execution, &c.



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4 as provided in the thirtieth section of this chapter, except  
 5 that notice shall be published in the state paper and the last  
 6 publication in both papers shall be six days before the sale.  
 7 The officer shall make and execute to the purchaser a suffi-  
 8 cient deed of the estate sold; and the debtor has the same  
 9 right to redeem as to redeem lands levied on by appraise-  
 10 ment.

Idem, § 49.

Attachment of a  
 right to have a  
 conveyance, may  
 take effect on  
 promises.

1847, c. 21, § 1.

When deed has  
 been given to an  
 assignee, right  
 should be sold,  
 &c.

SECT. 46. When the right of a debtor to a conveyance of  
 2 real estate by bond or contract is attached and a deed is  
 3 made to the debtor during its existence, the attachment shall  
 4 take effect upon the premises, which may be levied on as in  
 5 other cases.

SECT. 47. When during the attachment a deed has been  
 2 given to an assignee, the right of the debtor should be sold  
 3 on the execution. (a) When the right has been sold and  
 4 there has been no previous conveyance to the debtor, the  
 5 purchaser has the same remedies in his own name against  
 6 the obligor or contractor, as the debtor would have had by  
 7 an action at law to recover damages for nonfulfillment or by  
 8 bill in equity to compel a specific performance, and when  
 9 assignment before attachment is alleged, the assignee may  
 10 be made a party. Upon refusal of the obligor or contractor  
 11 on request of the purchaser to give correct information of  
 12 the amount due or condition remaining to be performed, the  
 13 purchaser may maintain his bill without previous payment,  
 14 performance, or tender. Upon a hearing the court may  
 15 grant and decree such relief, payment, or performance, as is  
 16 competent in equity.

1847, c. 21, § 2.  
 R. S., c. 117,  
 § 50, 51.

When an assign-  
 ment is alleged  
 and contested,  
 jury may find  
 respecting it;  
 assignee may be  
 made a party.

1847, c. 21, § 3.

SECT. 48. When an assignment of the bond or contract is  
 2 alleged and the plaintiff in equity contests it, the alleged  
 3 assignee may be summoned and made a party to the bill and  
 4 an issue may be framed to be tried by a jury, who shall find  
 5 whether such an assignment existed and was valid; and if  
 6 the assignee does not appear, the assignment is to be  
 7 regarded as invalid.

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(a) 35, Me. 520.