

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED \_\_\_\_\_, 1883;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX AND REFERENCE INDEX.

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PORTLAND:  
PRINTED BY WILLIAM M. MARKS.

# TITLE SEVEN.

## Titles to Property.

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- 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.
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## CHAPTER 73.

### CONVEYANCES BY DEED, THEIR FORM AND CONSTRUCTION. TRUSTS.

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 2. Real estate conveyed and purchased by an alien.  
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25. How a deed, lost before recording, may be effectually recorded.
26. How a deed, conveying land in more than one county, and lost before being recorded in all, may be recorded in the others.
27. How holder of unrecorded deed, may be compelled to have it recorded.
28. Register to certify on deed, time when received, and enter it, with names of parties, on book open to inspection.
29. Pews are real estate. Record of deeds and levies may be made by town clerk.

SEC. 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 hereinafter provided. Down trees lying on land at the time of conveyance, are real estate and pass by the deed; but if they are peeled, or cut into wood, logs or other lumber, they are personal property, and the owner may remove them in a reasonable time thereafter. Carpets and carpeting, stoves and funnels belonging thereto, are not real estate and do not pass by a deed thereof.

Conveyance by deed.  
What passes as realty, and what not.  
R.S., c. 73, § 1.  
13 Me., 284.  
47 Me., 593.  
56 Me., 46, 127.  
72 Me., 302.

SEC. 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.

An alien may hold and convey real estate.  
R.S., c. 73, § 2.

SEC. 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.

Contingent estates may be conveyed.  
R.S., c. 73, § 3.  
45 Me., 101.  
68 Me., 141

SEC. 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 bar the estate tail and all remainders and reversions expectant thereon.

Entailments may be barred by conveyance in fee simple.  
R.S., c. 73, § 4.

SEC. 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.

Conveyance of a greater estate, conveys what is owned.  
R.S., c. 73, § 5.

SEC. 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.

Conveyance or devise for life and to one's heirs.  
R.S., c. 73, § 6.  
60 Me., 479.  
68 Me., 141.

**CHAP. 73.** **SEC. 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.

Conveyances to two or more.

R.S., c. 73, § 7.

24 Me., 484.

46 Me., 260.

Not effectual against

others, unless record-

ed.

R.S., c. 73, § 8.

**SEC. 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 is recorded as herein provided. (a)

Absolute deed not

defeated by

defeasance

not re-

corded.

R.S., c. 73, § 9.

**SEC. 9.** A deed, purporting to convey an absolute estate in land, cannot be defeated by an instrument intended as defeasance, as against any other person than the maker, his heirs, and devisees, unless such instrument is recorded in the registry where the deed is recorded.

No estate in

lands greater

than tenancy

at will, unless

by writing.

R.S., c. 73, § 10.

**SEC. 10.** There can be no estate created in lands greater than a tenancy at will, and no estate in them can be granted, assigned or rendered, unless by some writing signed by the grantor, or maker, or his attorney. (b)

No trust in

lands unless

by writing,

or resulting.

R.S., c. 73, § 11.

Titles not de-

feated by

trusts with-

out notice or

record.

R.S., c. 73, § 12.

18 Me., 223.

46 Me., 265.

71 Me., 302.

**SEC. 11.** There can be no trust concerning lands, except trusts arising or resulting by implication of law, unless created or declared by some writing signed by the party or his attorney. (c)

**SEC. 12.** The title of a purchaser for a valuable consideration, or a title derived from levy of an execution, cannot be defeated by a trust, however declared or implied by law, unless the purchaser or creditor had notice thereof. When the instrument, creating or declaring it, is recorded in the registry where the land lies, that is to be regarded as such notice.

Trustees in

mortgage

hold in joint

tenancy.

1881, c. 46.

Survivors

may convey.

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

Personal

property

held with

real estate.

(a) 7 Me., 199, 465; 19 Me., 277; 23 Me., 169, 172, 247; 26 Me., 489; 29 Me., 144; 32 Me., 289; 40 Me., 572; 43 Me., 529, 577; 57 Me., 508; 65 Me., 491; 66 Me., 434; 69 Me., 533.

(b) 9 Me., 66; 13 Me., 214; 16 Me., 214; 20 Me., 19; 56 Me., 127; 65 Me., 229; 68 Me., 387; 71 Me., 532.

(c) 11 Me., 23; 16 Me., 274; 22 Me., 411; 23 Me., 270; 28 Me., 360; 29 Me., 412; 30 Me., 126; 33 Me., 534; 35 Me., 49; 57 Me., 508; 58 Me., 266; 60 Me., 188; 65 Me., 181, 401, 505; 68 Me., 92.

SEC. 14. A deed of release or quitclaim of the usual form will convey the estate, which the grantor has and can convey by a deed of any other form. A joint deed of husband and wife will convey her estate, in which the husband has an interest. (a)

SEC. 15. Deeds and contracts, executed by an authorized agent of an individual or corporation in the name of his principal, or in his own name for his principal, are to be regarded as the deeds and contracts of such principal. (b)

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

SEC. 17. Deeds are to be acknowledged by the grantors, or one of them, or by their attorney executing the same, before a justice of the peace, or any notary public, or woman otherwise eligible under the constitution and appointed for the purpose by the governor with consent of council, in *this* [the] state, or any justice of the peace, magistrate, or notary public within any of the United States, or before any minister or consul of the United States, or notary public in any foreign country. All acknowledgments of deeds heretofore made in this state before a notary public duly commissioned and qualified, are declared legal and valid.

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

SEC. 19. When the witnesses are dead or out of the state, the hand writing of the grantor and subscribing witness may be proved by other testimony.

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

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

## CHAP. 73.

Release conveys interest of grantor. Husband and wife. R.S., c. 73, §14. Deeds, &c., by agent bind principal. R.S., c. 73, §15.

Conveyances for use of county, how effectual. R.S., c. 73, §16.

Deeds before whom to be acknowledged. R.S., c. 73, §17. 1880, c. 201, §1. 1875, c. 56. 17 Me., 419. 20 Me., 420. 37 Me., 428. Former acknowledgments valid. 1880, c. 201, §2.

When grantor dead or out of state, execution may be proved. R.S., c. 73, §18. 69 Me., 583.

How proved, when witness dead or out of state. R.S., c. 73, §19. 69 Me., 583.

If grantor refuses to acknowledge, copy may be left with register. R.S., c. 73, §20. 69 Me., 583.

Grantor may be summoned before a justice and execution proved. R.S., c. 73, §21. 69 Me., 583.

(a) 43 Me., 436; 45 Me., 71; 67 Me., 561.

(b) 1 Me., 234, 342; 23 Me., 69; 59 Me., 175, 486; 61 Me., 122; 68 Me., 92; 72 Me., 41.

## CHAP. 73.

Justice may  
certify on  
deed that it  
has been  
proved.

R.S., c. 73, § 22.  
69 Me., 583.

Certificate  
to be put on  
deed, or it  
cannot be  
recorded.

R.S., c. 73, § 23.

Certificate  
after com-  
mission ex-  
pired, valid.  
R.S., c. 73, § 24.  
37 Me., 428.

How a deed,  
lost before  
recording,  
may be ef-  
fectually  
recorded.

R.S., c. 73, § 25.

Deed of  
lands in sev-  
eral counties,  
lost before  
record in all,  
how record-  
ed in others.  
R.S., c. 73, § 26.

How a per-  
son holding  
an unrecord-  
ed deed,  
may be com-  
pelled to  
have it  
recorded.

R.S., c. 73, § 27.

Register to  
certify on  
deed when  
rec'd, in book

SEC. 22. When the justice at such hearing is satisfied by the testimony of witnesses, that they saw the deed duly executed by the grantor, he shall certify the same thereon, and state, in his certificate, the presence or absence of the grantor.

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

SEC. 24. When a person, authorized to take acknowledgments, takes and certifies 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.

SEC. 25. If a deed, duly executed and delivered, is lost or destroyed before being recorded, the grantee or person claiming under him, may file a copy of it in the registry of deeds in the county where the land lies; and it shall have the same effect as a record for ninety days; and he may thereupon proceed to have the depositions of the subscribing witnesses and others knowing the facts, taken as depositions are taken in perpetuum; but if any person supposed to have an adverse interest lives out of the state in an unknown place, a justice of the supreme judicial court in session or vacation, may order notice of the taking of such depositions by publication as he deems proper; and the filing and recording of such depositions and copy within said ninety days, shall have the same effect as if the deed itself had been recorded when said copy was first filed; and certified copies thereof shall be evidence when the original would be.

SEC. 26. If a deed conveying lands in more than one county is lost before recorded in all, a certified copy from the registry where it has been recorded, may be recorded in any other county, and have the same effect as a record of the original.

SEC. 27. A person having an interest in real estate of which any prior grantee has an unrecorded deed or other evidence of title, may give the latter personal notice in writing to have the same recorded, and tender to him, or leave with the register, the legal fees therefor; and if he neglects to have it so recorded for thirty days, a justice of the supreme judicial court in session or vacation, on complaint, may cause said grantee or his heirs to be brought before him for examination, and unless sufficient cause is shown for such neglect, may order such deed or other evidence of title to be recorded, and the cost paid by the respondent.

SEC. 28. The register shall certify, on each deed by him recorded, the time when it was received, and it shall be consid-

(a) 17 Me., 419; 19 Me., 277; 37 Me., 428.

ered 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.

CHAP. 74.  
open to all.  
R.S., c. 73, § 28.  
12 Me., 502.  
17 Me., 394.

SEC. 29. 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, real estate.  
Deeds, &c., may be recorded in town clerk's office.  
R.S., c. 73, § 29.

## CHAPTER 74.

### WILLS, THEIR EXECUTION AND DEVISES.

#### WILLS AND DEVISES.

- SEC. 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, although testator is not seized or is disseized.
5. Lands subsequently acquired, pass.
6. Property taken from a devisee for payment of debts, loss to be borne equally.
7. Assets, how marshalled for payment of debts.
8. Posthumous child takes a share of estate.
9. Child or issue of deceased child, having no devise, takes; exception.
10. When devisee dies before testator, his lineal heirs take the devise.
11. Who contributes to loss of a devisee.
12. When one cannot pay, loss equally borne.
13. Real estate not devised, first applied to pay debts. Exceptions.
14. Cases of contribution, how determined.
15. Will not effectual unless proved and allowed in probate court. Proof there, conclusive.
16. Devise of land construed to convey all the estate of devisor.
17. When executors are directed to pay legacy on conditions, and no time stated in will, reasonable time to be allowed, not exceeding five years; if condition is not performed, how administered.

#### NUNCUPATIVE WILLS.

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

#### WILLS AND DEVISES.

SEC. 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,

Will, by whom and how made.



CHAP. 74. signed by him, or by some person for him at his request, and in  
 R.S., c. 74, § 1. his presence, and subscribed in his presence by three credible attest-  
 ing witnesses, not beneficially interested under said will. (a)

Competency  
 of witnesses.  
 Property not  
 willed, dis-  
 tributed.  
 R.S., c. 74, § 2.  
 22 Me., 441.

Will, how  
 rendered in-  
 valid, or  
 revoked.  
 R.S., c. 74, § 3.  
 4 Me., 341.  
 22 Me., 425.  
 57 Me., 454-5.

What lands  
 of testator  
 pass by will.  
 R.S., c. 74, § 4.

Lands sub-  
 sequently  
 acquired,  
 pass by will.  
 R.S., c. 74, § 5.  
 69 Me., 309.

Property  
 taken from a  
 devisee for  
 payment of  
 debts, loss  
 to be borne  
 equally.  
 R.S., c. 74, § 6.

Assets for  
 payment of  
 debts, how  
 marshalled.  
 R.S., c. 74, § 7.  
 61 Me., 472.  
 67 Me., 503.

Posthumous  
 child takes  
 share of es-  
 tate as if no  
 will; how  
 taken.  
 R.S., c. 74, § 8.  
 63 Me., 159,  
 160.

SEC. 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will, is to be distributed as the estate of an intestate.

SEC. 3. A will so executed is valid, until destroyed, altered, or revoked by being intentionally burnt, cancelled, torn, or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil, or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

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

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

SEC. 6. When property is taken by execution from a devisee or legatee of it, or sold by order of court for payment of debts, all the other devisees, legatees, and heirs are to pay to him their proportion thereof, so as to make the loss fall equally on all, according to the value of the property received by each from the testator, except as provided in the following section.

SEC. 7. If the testator has made a specific bequest, so that, by operation of law, it is exempted from liability to contribute for payment of debts, or if he has required an application of his estate for that purpose different from the provisions of the preceding section, the estate is to be appropriated according to the provisions of the will. No part of the estate can be exempt from liability for payment of debts, if required.

SEC. 8. A child of the testator, born after his death and not provided for in his will, takes the same share of his estate, as he would if his father had died intestate, to be assigned by the judge of probate and taken from all the devisees in proportion to the value of what they respectively receive under the will, unless, by a specific devise or some other provision of the will, a different apportionment is necessary to give effect to the intention of the testator respecting that portion of his estate which passes by the will.

(a) 21 Me., 463; 22 Me., 440; 34 Me., 162; 42 Me., 74; 45 Me., 585; 46 Me., 174, 244; 47 Me., 476; 48 Me., 194; 52 Me., 172; 57 Me., 573; 70 Me., 548.

SEC. 9. A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate, which he would [have taken] if no will had been made, unless it appears that such omission was intentional, or not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator.

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

SEC. 11. When a share of the testator's estate descends as provided in sections eight and nine, the person taking it is liable to contribute, and may claim contribution, as provided in section six.

SEC. 12. When a person, liable to contribute as provided in section six, cannot pay his proportion, the others bear the loss, each in proportion to the value of the property received by him. If any one liable to contribute dies without having paid his proportion, his executor or administrator is liable therefor as for the debt of the deceased.

SEC. 13. When a part of the real estate of a testator is not disposed of by his will, and the personal estate is not sufficient to pay his debts, such undevised real estate is to be applied for that purpose in exoneration of the real estate devised, unless it appears that a different arrangement was made in the will for that purpose, and then the assets are to be applied according to its provisions.

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

SEC. 15. No will is effectual to pass real or personal estate, unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution.

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

SEC. 17. When executors or trustees are directed to pay a legacy to a person or a corporation, on conditions precedent, and no time is stated in the will, or in the charter or by-laws of the corporation for their performance, a reasonable time is allowed therefor, not exceeding five years from the probate of a will; and if not so performed, it shall be administered as undivided estate, unless otherwise disposed of by the will.

## CHAP. 74.

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

Exceptions. R.S., c. 74, § 9. 32 Me., 269. 70 Me., 550.

When a devisee dies before testator, lineal heirs take devise.

R.S., c. 74, § 10. 49 Me., 164. 64 Me., 498.

Who contributes to loss of devisee.

R.S., c. 74, § 11.

When one cannot contribute, loss borne equally.

R.S., c. 74, § 12.

Real estate not devised, applied to pay debts, before what is devised; exception. R.S., c. 74, § 13.

Cases of contribution, how determined. R.S., c. 74, § 14.

Will, must be proved, &c., in probate court. R.S., c. 74, § 15.

Devise of land conveys all devisor's estate.

R.S., c. 74, § 16.

Legacy payable on condition, and no time stated, how administered. R.S., c. 74, § 17.

72 Me., 167.

## CHAP. 75.

## NUNCUPATIVE WILLS.

Nuncupative wills, where and when made.

R.S., c. 74, § 18.

2 Me., 299.

8 Me., 168.

53 Me., 569.

SEC. 18. A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to the provisions of this chapter.

Must be proved within six months; exception.

R.S., c. 74, § 19.

SEC. 19. No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken.

Cannot dispose of property over \$100, unless three witnesses present.

R.S., c. 74, § 20.

2 Me., 299.

SEC. 20. No nuncupative will can be effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will.

## CHAPTER 75.

## TITLE BY DESCENT.

## DESCENT OF REAL ESTATE.

SEC. 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 to operate on distribution; not to be refunded.

7. Advancements when one receiving dies; proceedings.

## DESCENT OF PERSONAL ESTATE.

SEC. 8. Personal estate, distributed as real estate is; exceptions.

9. Widow's share of it.

10. Disposal of money received for insurance on life.

11. When an heir owes the estate, a lien is created; how enforced.

## DESCENT OF REAL ESTATE.

Rules of descent.

R.S., c. 75, § 1.

58 Me., 260.

61 Me., 472.

SEC. 1. The real estate of a person deceased intestate, being subject to the payment of debts, descends according to the following rules :

*First.*—In equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child [is] living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation. CHAP. 75.  
To children and lineal descendants.  
53 Me., 495.

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

*Third.*—If no such issue or father, it descends in equal shares to his mother, brothers, and sisters, and when a brother or sister has deceased, to his or her children or grand children by right of representation. Mother, brothers and sisters.  
14 Me., 310.  
57 Me., 352.

*Fourth.*—If no such issue, father, brother, or sister, it descends to his mother to the exclusion of the issue of deceased brothers and sisters. Mother.

*Fifth.*—If no such issue, father, mother, brother, or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer [ancestor], in preference to those claiming through an ancestor more remote. Next of kin.  
53 Me., 495.  
67 Me., 583.

*Sixth.*—When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent, and the issue of those deceased; in equal shares, if all are of the same degree of kindred; otherwise according to the right of representation. Unmarried minor.  
60 Me., 162-3.

*Seventh.*—If the intestate leaves no kindred, it descends to the surviving husband or wife, if any; otherwise it escheats to the state. If no kindred to husband or wife, if any; else, to state.

SEC. 2. The degrees of kindred are computed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree. Degrees of kindred.  
R.S., c. 75, § 2.  
32 Me., 311,  
and 312 note.

SEC. 3. An illegitimate child born after March twenty-fourth eighteen hundred and sixty-four, is the heir of parents who intermarry; and such child, born at any time, is the heir of his mother, and of a person who acknowledges himself to be his father in a writing signed in the presence of and attested by a competent witness; and if his parents intermarry and have other children before his death, or his father so acknowledges him, or adopts him into his family, he shall inherit from his lineal and collateral kindred and they from him as if legitimate; but not otherwise. Heirship of an illegitimate child.  
R.S., c. 75, § 3.  
37 Me., 336.  
38 Me., 160.  
55 Me., 472.

SEC. 4. If an illegitimate child dies intestate without lawful issue, his estate descends to his mother, and if she has deceased, to her heirs at law, unless such child leaves a husband or widow, who then inherits an equal share with the mother or with her children. Descent of illegitimate child's estate.  
R.S., c. 75, § 4.

SEC. 5. Gifts and grants of real or personal estate to a child or grandchild, are deemed an advancement, when so expressed therein, or charged as such by the intestate, or acknowledged in writing to be such. For purposes of descent and distribution, Advancements, how established.  
R.S., c. 75, § 5.  
51 Me., 379.

CHAP. 75. they are to be regarded as part of the estate of the intestate, and as taken towards a share of it.

How it operates on a distribution; not to be refunded.  
R.S., c. 75, § 6.

SEC. 6. When the value of an advancement is determined by the intestate in his gift or charge, or is acknowledged in writing, it is to be allowed in the distribution; if not, the value is to be estimated at the time when given. When it exceeds his share, he is excluded from any further portion; when less, he is to receive sufficient to make it an equal share. He *does* [is] not [to] refund any part of an advancement.

Proceedings, when one receiving an advancement, dies.  
R.S., c. 75, § 7.  
61 Me., 472.

SEC. 7. When an advancement is made in real [estate], it is to be regarded as part of the real [estate], and when in personal as part of the personal, estate. If it exceeds his share of the real or personal [estate], he receives so much less of the other, as will make his whole share equal. If such child or grandchild dies before the intestate, leaving issue, the advancement made to him is to be regarded as made to such issue, and distribution is to be made accordingly.

#### DESCENT OF PERSONAL ESTATE.

Personal estate, how distributed.  
R.S., c. 75, § 8.  
See R.S., 1841, c. 93, § 15.  
61 Me., 472.  
67 Me., 583.

SEC. 8. The personal estate of an intestate, except that portion assigned to his widow by law and by the judge of probate, is to be applied first to the payment of his debts, funeral charges, and charges of settlement; the residue is to be distributed or [to] escheat by the rules provided for the distribution of real estate, subject to the following provisions.

Widows and widower's shares.  
R.S., c. 75, § 9.  
45 Me., 262.  
50 Me., 237.

SEC. 9. If he leaves a widow and issue, the widow takes one third, if no issue one half, and if no kindred the whole; and the widower shall have the same share in his wife's estate.

Disposal of money received for insurance on life.  
R.S., c. 75, § 10.  
See c. 49, § 94.  
58 Me., 434.  
61 Me., 471.  
66 Me., 518.

SEC. 10. A sum of money received for insurance on his life, deducting the premium paid therefor within three years with interest, does not constitute a part of his estate for payment of debts, or [for] purposes specified in the first section of chapter sixty-six, when the intestate leaves a widow or issue, but descends one third to his widow, and the remainder to his issue; if no issue, the whole to the widow, and if no widow, the whole to the issue. It may be disposed of by will, though the estate is insolvent.

When heir is indebted to estate, a lien on his share is created; how enforced.  
R.S., c. 75, § 11.  
68 Me., 60.

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

## CHAPTER 76.

## TITLE TO REAL ESTATE BY LEVY OF EXECUTION.

## LEVY BY APPRAISEMENT.

- SEC. 1. What real estate may be levied on. Levy how made by appraisement; appointment of appraisers.
2. Appraisers sworn; form of oath, certificate of it; view of land.
  3. Value and description of estate to be made in return.
  4. Parcels may be appraised together; return good, when signed by two, the other appearing to have been sworn, and to have acted.
  5. Officer's return, what it must state; when to be completed.
  6. Estates tail, to be taken, appraised and held as estates in fee.
  7. Estate held in joint tenancy may be taken on execution.
  8. All debtor's interest passes by levy unless greater than stated in appraisers' return.
  9. Levy on rents and profits, when and how made.
  10. Levy on estate when part cannot be taken without damage to whole.
  11. Levy on estate for life, how made.
  12. Levy on estate under lease; disposal of rent.
  13. Seizin and possession, how delivered. When debtor not to be ousted.
  14. Levy on land fraudulently conveyed by debtor, or of which debtor has been disseized.
  15. When debt assigned, estate taken and held in trust for assignee.
  16. Execution to be returned, and recorded within three months.
  17. Without record, levy not valid against purchaser without notice.
  18. When levy may be waived, or held void.
  19. When title proves bad after record, proceedings for an alias.
  20. Assignee of judgment may sue out writ of scire facias, if estate does not pass by levy. Levy may be set aside. Another execution to issue.
  21. Assignee may bring action of debt in his own name.
  22. Levy commences, when appraisers sworn.
  23. Levy if not over one per cent. too much, valid; remedy of debtor.
  24. Levies sustained by two preceding sections may be redeemed.

## REDEMPTION OF LEVIES BY APPRAISEMENT.

- SEC. 25. Lands levied on may be redeemed within one year. If creditor is out of the state, payment may be made to clerk.
26. Amount due ascertained by three justices of the peace.
  27. When not released after payment or tender, land may be recovered.
  28. Amount due may be determined by bill in equity.
  29. Costs regulated; provisions for redemption of estates for life.

## LEVIES ON EQUITIES OF REDEMPTION.

- SEC. 30. Levies may be made on lands mortgaged, and amount due deducted; remedy for errors, or when mortgage is not known.

## LEVIES ON EQUITIES, HOW REDEEMED.

- SEC. 31. Levies on equities may be redeemed as other levies. Debtor, paying on mortgage after levy and not redeeming, may recover sum paid, of creditor.

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

- SEC. 32. Rights and interests which may be sold at auction.  
 33. Notice of sale, how given.  
 34. Mortgagee to disclose amount due, on request.  
 35. May be compelled to do it by taking his deposition.  
 36. Officer to sell at auction and convey debtor's interest.  
 37. Officer may adjourn sale. Another officer may complete it.  
 38. Seizure to be considered as made on day of notice of sale. Further proceedings after return day, valid.

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

- SEC. 39. Foregoing rights and interests may be redeemed as other levies.  
 40. Such rights to redeem may be attached and sold.  
 41. A creditor seizing right of redemption, may redeem the property the same as debtor could; and be repaid from proceeds of sale.

## ANY REAL ESTATE MAY BE SOLD ON EXECUTION.

- SEC. 42. Real estate and right to cut timber grass may be taken and sold on execution, subject to redemption.

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

- SEC. 43. Lands of banks and manufacturing corporations, and their titles as mortgagors, may be sold at auction; proceedings.  
 44. No transfer of such property made after notice of seizure, is valid.

## CORPORATIONS MAY REDEEM.

- SEC. 45. Corporations may redeem, and their right to redeem may be attached and sold.

## SALE OF RAILROAD FRANCHISES AND RIGHTS OF REDEMPTION.

- SEC. 46. Railroad franchises and rights of redemption may be sold on execution.

## MISCELLANEOUS PROVISIONS.

- SEC. 47. Expenses to be reckoned as part of execution.  
 48. Whatever is required of creditor or debtor, may be done by those representing his interest.  
 49. When real estate of a deceased person may be taken by execution.  
 50. Lands of a debtor to the state may be sold on execution, and how.  
 51. An attachment of the right to have a conveyance may take effect on premises.  
 52. When deed has been given to assignee, right should be sold, and purchaser has same remedy on contract as debtor had.  
 53. When an assignment is alleged and contested, proceedings.

## REDEMPTION OF LANDS OF DEFAULTED DEFENDANTS, LIVING OUT OF THE STATE.

- SEC. 54. Defendant living out of state, defaulted without appearance, may within three months after judgment in review, redeem real estate levied on or sold.  
 55. No waste to be made and owner to have bill in equity to redeem.

## LEVY BY APPRAISEMENT.

- SEC. 1. Real estate attachable, *including the right to cut timber and grass as described in chapter eighty-one,\** may be taken to

What real estate may be levied on.

\* [See note to c. 81, § 56.]

satisfy an execution, by causing it to be appraised by three disinterested men, one chosen by the creditor, one by the debtor, and the other by the officer having the execution for service, who shall give notice to the debtor or his attorney, residing in the county where the land lies, to choose an appraiser, and [shall] allow him a reasonable time therefor, and if he neglects, appoint one for him. (*a*)

SEC. 2. The appraisers may be sworn by the officer without fee, or by a justice of the peace, faithfully and impartially to appraise the real estate to be taken, and a certificate of the oath shall be made, stating the date of its administration, on the back of the execution, by the person who administered it; they are then to proceed with the officer to view and examine the land so far as necessary for a just estimate of its value.

SEC. 3. They are in a return made and signed by them on the back, or annexed to the execution, to state the value of the estate appraised, and describe it by metes and bounds, or in such other manner that it may be distinctly known and identified, whatever the nature of the estate may be. (*b*)

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

SEC. 5. The officer shall, in his return on the execution, state substantially; the time when the land was taken in execution; how the appraisers were appointed; that they were duly sworn; that they appraised and set off the premises, after viewing the same, at the price specified; that he delivered seizin and possession to the creditor or his attorney, or assigned the same to him as in case of remainder or other incorporeal estate; the description of the premises by himself or by reference to the return of the appraisers; if the appraisers' return is signed by two only, he must state whether all were present and acted. He may refer to and adopt, in his return, the return of the appraisers, and the subsequent proceedings will be valid, though made after the return day of the execution, or after the removal or disability of the officer. (*c*)

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Levy by appraisal; appointment of appraisers. R.S., c. 76, § 1.

Appraisers, how sworn; certificate. View of land. R.S., c. 76, § 2. 23 Me., 337. 26 Me., 421. 34 Me., 467. 51 Me., 19. 52 Me., 139.

Value and description of estate to be made in return. R.S., c. 76, § 3.

How appraised when several parcels are taken. R.S., c. 76, § 4. 27 Me., 131. 71 Me., 193.

Officer's return, what it must state; when it may be completed. R.S., c. 76, § 5.

(*a*) 4 Me., 373; 6 Me., 164; 7 Me., 147; 8 Me., 210; 16 Me., 154; 19 Me., 279; 20 Me., 227; 23 Me., 336; 26 Me., 291; 31 Me., 548; 33 Me., 190; 34 Me., 573; 37 Me., 24; 52 Me., 226; 56 Me., 224; 63 Me., 251; 64 Me., 454; 67 Me., 593.

(*b*) 24 Me., 309; 25 Me., 195; 28 Me., 189; 31 Me., 441; 43 Me., 251; 50 Me., 442; 51 Me., 243; 52 Me., 226, 264; 53 Me., 542; 54 Me., 434; 55 Me., 54; 71 Me., 193.

(*c*) 6 Me., 108; 7 Me., 20, 147; 10 Me., 105; 15 Me., 77, 154; 23 Me., 542; 29 Me., 268; 41 Me., 481; 42 Me., 427; 45 Me., 355; 46 Me., 469; 48 Me., 393; 49 Me., 359; 50 Me., 439; 51 Me., 18, 408, 569; 52 Me., 227; 53 Me., 423, 542; 54 Me., 306, 386, 435; 55 Me., 505; 64 Me., 453; 71 Me., 193.



CHAP. 76. SEC. 6. Estates tail are to be taken, appraised, and held, as estates in fee simple. (a)

Estates tail.  
R.S., c. 76, § 6.  
Estate held  
in joint  
tenancy may  
be taken on  
execution.  
1878, c. 15, § 1.

SEC. 7. The whole or part of an estate held in joint tenancy or in common, may be taken to satisfy an execution, in the same manner as other real estate is now taken, and held in common, but the whole estate must be described, and the share of it owned by the debtor must be stated.

Debtor's in-  
terest passes  
by levy un-  
less larger  
than stated  
in return.  
1878, c. 15, § 2.  
On rents and  
profits, how  
made.  
R.S., c. 76, § 8.  
18 Me., 308.  
24 Me., 101,  
309.  
41 Me., 541.

SEC. 8. All the debtor's estate, interest or share in the premises, whether held in tail, reversion, remainder, for life, years or otherwise, shall pass by a levy, unless it is larger than the estate mentioned in the appraisers' return. (b)

When part  
cannot be  
taken with-  
out damage  
to whole;  
how made.  
R.S., c. 76, § 9.  
51 Me., 19,  
243.

SEC. 9. When the estate cannot be described as provided in section three, the execution may be levied on its rents and profits, and the officer may give seizin thereof to the creditor, and cause a person in possession to become tenant to him, or, on his refusal, [may] turn him out and give possession to the creditor.

On an estate  
for life, how  
made.  
R.S., c. 76, § 10.  
5 Me., 481.  
10 Me., 106.

SEC. 10. When the premises consist of a mill, mill privilege, or other estate more than sufficient to satisfy the execution, which cannot be divided by metes and bounds without damage to the whole, an undivided part of it may be taken and the whole described, or it may be levied on as provided in the preceding section.

SEC. 11. A levy may be made on an estate for life as on other real estate, and its value appraised; or it may be made on its rents and profits, and an appraisement of them made for a term of time, if the life so long continues, computing interest on the execution, and deducting the rents and profits from time to time when due; and when the estate expires before the end of the term for which it was taken, the creditor by an action on the judgment, may recover the balance due.

On an estate  
under lease  
disposal of  
rent.  
R.S., c. 76, § 11.

SEC. 12. When the levy is made on the whole of an estate under lease, the rent is to be paid to the creditor from the time of the levy. When made on part of it, the appraisers are to determine what portion of the rent is to be paid to him, and it shall be paid to him accordingly.

Seizin and  
possession,  
how  
delivered.  
When debtor  
not to be  
ousted.  
R.S., c. 76, § 12.  
18 Me., 406.  
54 Me., 306.

SEC. 13. The officer is to deliver to the creditor, or his attorney, seizin and possession of an estate levied on, so far as the nature of the estate and the title of the debtor will admit. When a remainder, reversion, or right of redemption is taken, the debtor in possession is not to be ousted, but his right therein assigned to the creditor, and a return made accordingly.

On land  
fraudulently  
conveyed, or

SEC. 14. A levy may be made on land fraudulently conveyed by a debtor, or of which he has been disseized and *unto* [into]

(a) 34 Me., 93, 142; 38 Me., 211.

(b) 18 Me., 230; 23 Me., 542; 34 Me., 201, 573; 38 Me., 226; 49 Me., 456; 50 Me., 440; 55 Me., 55; 56 Me., 227; 58 Me., 331; 71 Me., 194, 303.

which he has a right of entry. In such case, the tenant in possession is not to be ousted, but the officer shall deliver to the creditor a momentary seizin, which shall be sufficient to enable him to maintain an action for its recovery in his own name. (a)

SEC. 15. When the debt had been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it, in trust for his assignee, who is entitled to a conveyance thereof which may be enforced by a bill in equity.

SEC. 16. The officer is to return the execution into the clerk's office, where returnable, and within three months after completing the levy, [to] cause it, with the return thereon, to be recorded in the registry of deeds where the land lies. (b)

SEC. 17. When not so recorded, the levy will be void against a person who has purchased for a valuable consideration, or has attached or taken on execution the same premises without actual notice thereof. If the levy is recorded after the three months, it will be valid against a conveyance, attachment, or levy made after such record.

SEC. 18. A creditor, who has received seizin of a levy not recorded, cannot waive it, unless the estate was not the property of the debtor, or not liable to seizure on execution, or cannot be held by the levy, when it may be considered void, and he may resort to any other remedy for the satisfaction of his judgment.

SEC. 19. When the execution has been recorded, and the estate levied on does not pass by the levy for causes named in the preceding section, the creditor may sue out of the office of the clerk, issuing the execution, a writ of scire facias, requiring the debtor to show cause why an alias execution should not be issued on the same judgment; and if the debtor, after being duly summoned, does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the suit; and the judgment shall be satisfied for the amount of the levy.

SEC. 20. When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may sue out of the office of the clerk issuing such execution, a writ of scire facias, setting forth the facts aforesaid therein, and

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of which debtor has been dis-seized.

R.S., c. 76, §13.

When debt assigned, estate held in trust for assignee.

R.S., c. 76, §14.

29 Me., 64.

49 Me., 169.

55 Me., 109.

Execution to be returned and recorded in 3 months.

R.S., c. 76, §15.

Levy not recorded, void v. purchaser or creditor without notice.

R.S., c. 76, §16.

17 Me., 250.

28 Me., 229.

52 Me., 228.

When levy may be waived or held void.

R.S., c. 76, §17.

2 Me., 237.

48 Me., 373.

65 Me., 479.

When title fails after record, proceedings for an alias execution;

debtor may convey title by deed.

R.S., c. 76, §18.

25 Me., 430.

48 Me., 373.

55 Me., 31.

65 Me., 479,

480.

Assignee of judgment may sue out writ of scire facias if estate does not pass by levy.

1876, c. 102.

(a) 30 Me., 42; 51 Me., 115; 52 Me., 357; 55 Me., 525; 58 Me., 232, 336-7.

(b) 5 Me., 198; 13 Me., 190; 22 Me., 107; 38 Me., 355; 52 Me., 228.

CHAP. 76. requiring the debtor to show cause why another execution should not be issued on the same judgment, in the name and for the benefit of the plaintiff in the scire facias ; and if the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside ; and the court from which said execution issued, shall have power to order and issue another execution on the same judgment, for the amount of the original debt, *and* interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form now established by law, with necessary charges.

Levy may be set aside.  
Another execution may issue.

Assignee may bring action of debt in his own name.  
1876, c. 102, § 2.  
66 Me., 544.

SEC. 21. And in all cases where a judgment has been thus assigned and is not discharged, the assignee may bring an action of debt on such judgment in his own name ; and upon averment and proof of the facts aforesaid, the court may render judgment and execution thereon in his favor ; subject, however, to any legal defence which the debtor might have if the action were instituted by the original creditor.

Levy commences when appraisers are sworn.  
R.S., c. 76, § 19.  
53 Me., 428.

SEC. 22. For the purpose of fixing the amount due on the execution, and the time when the debtor's right to redeem will expire in levies already made, or to be made, they are to be considered as commenced on the day of *the date* of the administration of the oath to the appraisers, although it may appear, by the return of the officer, that the estate was seized on execution before, or that the proceedings were not completed till after that day.

When levy made for too much, valid if not over one per cent. ; remedy against officer or creditor.  
R.S., c. 76, § 20.  
35 Me., 91.  
37 Me., 437.  
48 Me., 373.  
54 Me., 385.  
62 Me., 431.

SEC. 23. When, by an error of the officer in a levy already made or to be made, the amount, for which it was made, exceeds the amount of debt or damage, costs, interest, and costs of levy, by a sum not greater than one per cent. of said amount, such levy shall be legal and valid, if otherwise legally made ; and the debtor or owner of the estate may maintain an action against such officer or his principal, to recover any damages occasioned thereby, or a bill in equity against the creditor to have such error corrected, and the court may correct it, in any manner that may be just and equitable, or decree a pecuniary compensation for the injury.

When levies are sustained by two preceding sections, creditor may redeem within six months.  
R.S., c. 76, § 21.

SEC. 24. When a levy so made would not, in a suit commenced before April tenth, eighteen hundred and fifty-six, have been sustained but for the provisions of the two preceding sections, the debtor may redeem, within six months after final judgment in such suit, by paying or tendering to the creditor such sum, as three persons, or a majority of them, appointed by a justice of the supreme judicial court, after giving notice to and affording the parties an opportunity to be heard, shall determine, in writing by them signed, to be due upon the following elements of calculation. The creditor is to be entitled to the amount of the appraisement with interest annually from the time of the levy ; and to receive

the just value of the improvements made by him, or persons under him, on such portions of the premises as remained unsold *on April first*, [one,] eighteen hundred and fifty-six, and a fair compensation for attending to and taking care of the same. For such portion as he had sold before that day, he is to account for the appraised value thereof; and the debtor, or those holding title under him, shall convey to the creditor or those claiming under him, by a valid deed of quitclaim, the title to the portion so sold. CHAP. 76.

#### REDEMPTION OF LEVIES BY APPRAISEMENT.

SEC. 25. Real estate levied on may be redeemed within one year thereafter, by tendering to the creditor the amount of its appraisement with interest from the time of levy, with reasonable expenses incurred for its improvement or repair, or in saving it from loss by the non-payment of taxes legally assessed thereon prior to the levy, after deducting rents and profits with which he is chargeable; and the creditor *is* [shall] thereupon by his deed prepared at the expense of the debtor, to release to him all his title to the premises. When the creditor resides out of the state, or his residence is unknown, such payment shall be sufficient if made to the clerk of the courts in the county where the real estate levied upon is situated; and such payment shall have the same effect as if paid to the creditor.

Land levied on may be redeemed in a year.  
1872, c. 35.  
1 Me., 258.  
5 Me., 392.  
6 Me., 143.  
36 Me., 87.  
40 Me., 590.

Creditor out of state, &c., payment may be made to clerk.

SEC. 26. The debtor may have the amount due ascertained by three justices of the peace, chosen, one by the debtor, one by the creditor, and the other by those two; if after notice the creditor declines, the debtor may choose two, and after a hearing before the three, they or two of them shall make in writing and sign a certificate of the sum found to be due, which shall be conclusive; and the debtor may tender that sum, which shall be effectual to redeem, though he had before tendered a different sum.

Amount due, how ascertained.  
R.S., c. 76, § 23.

SEC. 27. If the creditor does not release the premises, within ten days after payment or tender of the amount due, the debtor may recover the same by a writ of entry on his own seizin; but before judgment is entered, he must bring into court, for the creditor, the money tendered.

If creditor does not release after tender, debtor may recover land.  
R.S., c. 76, § 24.

SEC. 28. Instead thereof, the debtor, without any tender, may, within one year, and in season to have the amount ascertained, and paid or tendered within the year, file a bill in equity, therein offering to pay the amount due, and the court shall ascertain it, and require the debtor to bring it into court for the creditor, and the debtor thereupon shall be entitled to a decree in his favor, and to a writ of possession for the premises.

Or debtor may have amount due determined by bill in equity.  
R.S., c. 76, § 25.  
30 Me., 362.

SEC. 29. Costs may be awarded to either party, except not against the creditor, unless he has, on request, unreasonably

Costs regulated; provisions ap-

**CHAP. 76.** refused to render an account of rents and profits, and of expenses for improvements and repairs, or to execute a deed of release as required in this chapter. When he has tendered a deed of release to the debtor before his bill was filed, and in his answer relies upon it, and brings the deed into court for the debtor, he shall recover his costs. The provisions of this section are applicable for the redemption of an estate for life, levied on by taking the rents and profits.

applicable to redemption of estates for life.  
R.S., c. 76, § 26.

#### LEVIES ON EQUITIES OF REDEMPTION.

Levies may be made on lands mortgaged, and amount due on mortgage deducted; remedy for errors, or when mortgage is not known.  
R.S., c. 76, § 27.  
17 Me., 315.  
38 Me., 212.  
50 Me., 136.  
55 Me., 31,  
255.

**SEC. 30.** Levies may be made on lands mortgaged as on lands not mortgaged, and the amount due on the mortgage deducted by the appraisers from their estimated value, and stated in their return. If the full amount due was not deducted, or if the levy was made in the usual form, and it is ascertained that there was a mortgage on the premises not including other real estate, and not known to the creditor at the time of levy, that shall be valid, and the creditor may recover of the debtor the amount which should have been and was not deducted, or the amount due on such mortgage.

#### LEVIES ON EQUITIES, HOW REDEEMED.

Redemption. Debtor paying on mortgage after levy, and not redeeming, may recover of creditor.  
R.S., c. 76, § 28.

**SEC. 31.** Levies made as provided in the preceding section, may be redeemed within one year, as in other cases. When the debtor pays on the mortgage after the levy, and does not redeem, he may recover the amount so paid of the creditor, in an action for money had and received.

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

Rights and interests, which may be sold at auction.  
R.S., c. 76, § 29.  
43 Me., 249.  
50 Me., 136.  
51 Me., 22.  
54 Me., 163.  
72 Me., 89.

**SEC. 32.** Rights of redeeming real estate mortgaged, rights to have a conveyance of it by bond or contract, interests by virtue of possession and improvement of lands as described in chapter one hundred and four, and estates for a term of years, may be taken on execution and sold, and the officer shall account to the debtor for any surplus proceeds of the sale, to be appropriated as provided in section twenty-one of chapter eighty-four.

Notice of sale, how to be given.  
R.S., c. 76, § 30.  
7 Me., 377.  
50 Me., 181.

**SEC. 33.** The officer in such case shall give written notice of the time and place of sale, to the debtor in person, or by leaving the same at his last and usual place of abode, if known to be an inhabitant of the state, and cause it to be posted in a public place in the town where the land lies, and in two adjoining towns, if so many adjoin; and if the land is situated in two or more towns, then in each of those towns, and in two towns adjoining to each of them; and if the land is in two or more counties, an officer in

either county may sell the whole right. When the land is not within any town, the notice shall be posted in two public places of the shire town of the county in which the land lies, instead of the posting aforesaid. When the debtor is not a resident of such county, the personal notice may be forwarded to him by mail, postage paid; all to be done thirty days before the day of sale. The notice shall also be published three weeks successively before the day of sale, in a newspaper printed in such county, if any, otherwise in the state paper.

SEC. 34. When a right of redemption has been attached, judgment recovered, and a sale of it is to be made, the creditor may demand of the mortgagee to disclose, in writing under his hand, the condition of the mortgage and the sum due thereon, which shall be furnished within twenty-four hours, and in case of neglect, he shall be liable for damages.

Mortgagee to disclose amount due. R.S., c. 76, § 31.

SEC. 35. If such disclosure is not furnished within that time, such creditor may apply to any magistrate authorized to take depositions, in the county where the land lies, or where the mortgagee resides, who shall take his deposition in relation to the facts required to be disclosed, and who may exercise the power to compel attendance and disclosure, [which is] authorized for taking a deposition in perpetuum.

If disclosure not made, may compel it by taking his deposition. R.S., c. 76, § 32.

SEC. 36. The officer shall sell such right or interest at public auction to the highest bidder, and execute and deliver to the purchaser a sufficient deed thereof, which, being recorded in the registry of deeds where the land lies, within three months after the sale, conveys to him all the title of the debtor in the premises. When such bidder, on demand of the officer, does not pay him the sum for which it was sold, he shall immediately sell it again as before, and if it does not sell for so much as at the first sale, the person to whom it was struck off at the first sale shall be accountable to the officer for the difference, who may recover it, to be indorsed on the execution, unless satisfied, and then paid to the debtor.

Officer to sell at auction and convey by deed, debtor's interest. R.S., c. 76, § 33. 8 Me., 250. 30 Me., 43. 60 Me., 185. 67 Me., 35.

SEC. 37. When the officer deems it for the interest of all concerned to postpone the sale, he may adjourn it for any time not exceeding seven days, and so from time to time until a sale is made, giving notice at the time of each adjournment by public proclamation; and when he is unable to attend at the time and place of sale, another officer may adjourn it not exceeding ten days, and if then such inability is not removed, may sell and make his return the same as the first officer might.

Officer may adjourn sale, another officer may complete it. R.S., c. 76, § 34. 71 Me., 546.

SEC. 38. The seizure on execution is considered as made on the day when notice of the sale is given, and [it shall hold] the right or interest seized within that time is *held* if the sale be not

Seizure made on day of notice of sale; proceedings

**CHAP. 76.** completed within thirty days after judgment ; and the subsequent proceedings and return will be valid, if made after the return day of the execution, or after a removal or disability of the officer.

after return  
day, valid.  
R.S., c. 76, § 35.  
16 Me., 164.

RIGHTS AND INTERESTS MAY BE REDEEMED FROM SALES, AND  
MAY BE SOLD, AS WELL AS RIGHTS TO REDEEM FROM

LEVIES.

Rights, &c.,  
may be re-  
deemed.  
R.S., c. 76, § 36.  
1 Me., 299.  
2 Me., 340.  
10 Me., 165.  
52 Me., 406.

Rights to re-  
deem may  
be attached  
and sold.  
R.S., c. 76, § 37.  
54 Me., 163.

A creditor  
seizing the  
right of re-  
demption,  
may redeem  
the property  
same as  
debtor could,  
and be re-  
paid from  
proceeds  
of sale.  
R.S., c. 76, § 38.

**SEC. 39.** Rights and interests so sold may be redeemed within one year, as land levied on by appraisement may be ; and the rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee.

**SEC. 40.** The right of a debtor to redeem from a sale or from a levy by appraisement, may be attached and sold on execution, as an equity of redemption may be, and the parties will have the same rights and remedies. Attachments of such estate or equity of redemption, made before such levy or sale, will be effectual on such right of redeeming, in the order in which they were made, in preference to attachments made subsequent to such levy or sale.

**SEC. 41.** When a creditor has seized on execution a right that would expire within sixty days, to redeem from a mortgage, sale or levy on execution, he may pay or tender to the person entitled thereto the amount [which] the debtor would have to pay to redeem the same ; and the officer selling such right shall first pay from the proceeds of sale the amount so paid by the creditor with interest, unless the debtor has paid it ; and the residue, if any, shall be applied in satisfaction of the execution.

ANY REAL ESTATE MAY BE SOLD ON EXECUTION.

Real estate  
and right to  
cut timber  
and grass,  
may be tak-  
en on execu-  
tion and  
sold.  
1881, c. 80, § 1.  
Right of  
debtor  
passes to  
purchaser  
subject to  
redemption.  
1881, c. 80, § 2.  
Present  
modes, not  
repealed.  
1881, c. 80, § 3.

**SEC. 42.** Real estate attachable, *including the right to cut timber and grass, as described in chapter eighty-one,\** may be taken on execution and sold, in the same manner as rights of redeeming real estate mortgaged, are taken on execution and sold ; and the debtor shall have the same right of redemption from such sale. Such seizure and sale, if made according to law, shall pass to the purchaser at such sale, all the right, title or interest the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption as provided by law. This section shall not be construed to repeal any other modes of levy of execution, provided in this chapter.

LANDS OF BANKS AND MANUFACTURING CORPORATIONS MAY  
BE SOLD AT AUCTION.

Lands of  
banks and

**SEC. 43.** The lands of banks or manufacturing corporations, and their titles as mortgagees of lands, may be seized on execution

\* [See note to c. 81, § 56.]

and sold at auction. The officer shall give notice of the time and place of sale fourteen days previous thereto, by posting it in two or more public places in the town where the lands lie, and in a newspaper printed in the county, if any, otherwise in the state paper; and he may by deed convey the same, and a debt secured by such mortgage and remaining unpaid, will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action a copy of the mortgage, attested by the register of deeds, shall be received as prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable request of the officer, shall furnish him with a certified copy of such contract, and of all payments made thereon.

SEC. 44. No transfer of such mortgage, or of the debt secured thereby, made by such corporation after notice of the seizure thereof on execution is filed in the registry where the land lies, or given to the party to be affected thereby, shall have any validity against the purchaser at such sale.

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manufacturing corporations, and their titles as mortgagees, may be sold at auction; proceedings.  
R.S., c. 76, §39.

No transfer of such property after notice of seizure, is valid.  
R.S., c. 76, §40.

#### CORPORATIONS MAY REDEEM.

SEC. 45. The corporation may redeem such land, or mortgage and debt, as is provided for the redemption of lands levied on by appraisement; and such right may be attached and sold on execution as the right to redeem from the sale of an equity of redemption may be, and the corporation will have the like right to redeem from such second sale.

Corporation may redeem, and its right to do so, may be attached and sold.  
R.S., c. 76, §41.

#### SALE OF RAILROAD FRANCHISES AND RIGHT OF REDEMPTION.

SEC. 46. The franchises of railroads or their right to redeem mortgages, may, at the option of the creditor be sold as provided in section twenty-one of chapter eighty-four, or may be seized on execution and sold by auction, as is provided for the sale of lands of corporations in sections forty-three, forty-four and forty-five, of this chapter, except that the officer shall give notice of the time and place of sale in the manner provided in section twenty-one of chapter eighty-four, and the officer may convey the same by deed as is provided for in the sale of lands in section forty-three of this chapter, which *said* deed shall be recorded in the registry of deeds of each county in which any part of such railroad lies; and the provisions of said sections forty-three, forty-four, and forty-five, except as *is* [they are] modified hereby, shall apply to such sale of franchise or right to redeem mortgage.

Franchises of railroads or right of redemption, may be sold or seized on execution.  
1880, c. 236, §3.



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## MISCELLANEOUS PROVISIONS.

Expenses,  
part of exe-  
cution.  
R.S., c. 76, § 42.

Creditor  
may act by  
representa-  
tives.  
R.S., c. 76, § 43.

When real  
estate of de-  
ceased per-  
son may be  
taken by  
execution.  
R.S., c. 76, § 44.  
See c. 81, §  
See c. 103, § 6.  
55 Me., 525.

Lands of  
debtor to  
state may be  
sold on exe-  
cution, and  
how.  
R.S., c. 76, § 45.

Attachment  
of right to  
have convey-  
ance, to  
take effect  
on premises.  
R.S., c. 76, § 46.  
When deed  
has been  
given to as-  
signee, right  
should be  
sold; and  
purchaser  
has same  
remedy on  
contract as  
debtor had.  
R.S., c. 76, § 47.  
14 Me., 35.  
15 Me., 153.  
35 Me., 524.

SEC. 47. The expenses of levy in any of the modes aforesaid are to be considered as part of the execution, in a levy, sale, or redemption.

SEC. 48. Every thing, which a creditor or debtor is required in this chapter to do, may be done by their heirs, assigns, executors, or administrators, or by any person lawfully claiming under them.

SEC. 49. The real estate of a deceased person may be taken for payment of his debts by an execution issued on a judgment recovered against his executor or administrator, and levied on, sold and redeemed, as if taken in his lifetime; unless prior thereto his estate is decreed insolvent; but such decree made before levy or satisfaction of the execution, shall dissolve an attachment of real estate. When so levied on or sold, and redeemed by his heirs, devisees, or their assigns, it shall not be again subject to levy or sale for debts of the deceased.

SEC. 50. When an execution is issued in the name or for the use of the state against a debtor, his real estate may be taken thereby and sold at auction, notice thereof being given as provided in section thirty-three, *hereof*, except that notice shall be published in the state paper, and the last publication in both papers shall be six days before the sale. The officer shall make and execute to the purchaser a sufficient deed of the estate sold; and the debtor has the same right to redeem as to redeem lands levied on by appraisement.

SEC. 51. When the right of a debtor to a conveyance of real estate by bond or contract is attached, and a deed is made to the debtor during its existence, the attachment shall take effect upon the premises, which may be levied on as in other cases.

SEC. 52. When, during the attachment, a deed has been given to an assignee, the right of the debtor should be sold on the execution. When the right has been sold, and there has been no previous conveyance to the debtor, the purchaser has the same remedies in his own name against the obligor or contractor, as the debtor would have had, by an action at law to recover damages for non-fulfillment, or by bill in equity to compel a specific performance, and when assignment before attachment is alleged, the assignee may be made a party. Upon refusal of the obligor or contractor, on request of the purchaser, to give correct information of the amount due, or condition remaining to be performed, the purchaser may maintain his bill without previous payment, performance, or tender. Upon a hearing, the court may grant and decree such relief, payment or performance, as is competent in equity.

SEC. 53. When an assignment of the bond or contract is alleged, and the plaintiff in equity contests it, the alleged assignee may be summoned and made a party to the bill, and an issue may be framed to be tried by a jury, who shall find whether such an assignment existed and was valid; and if the assignee does not appear, the assignment is to be regarded as invalid.

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When assignment is alleged and contested, jury may find assignee made a party. R.S., c. 76, § 48.

REDEMPTION OF LANDS OF DEFAULTED DEFENDANTS LIVING  
OUT OF THE STATE.

SEC. 54. A defendant living out [of] the state, defaulted in an action without an appearance or other service than a newspaper publication, may, within six months after the levy of an execution on his real estate or the sale of a right of redemption, petition for a review of such action [in such case, or if he shall within said six months, and within the year limited in section four of chapter eighty-two, bring a writ of review as provided in said section, then\*] *and* instead of the year allowed in other cases, he may redeem from such levy or sale at any time within three months after the review is denied, or after final judgment on the writ of review. If such judgment is in his favor, the amount thereof shall be allowed towards such redemption, notwithstanding any conveyance of such estate by the creditor; and if it is larger than the amount of the levy or sale, and interest, he shall have an execution for the balance.

When defendant living out of state is defaulted, he may within three months after judgment in review, redeem his real estate from levy or sale. R.S., c. 76, § 49. 72 Me., 338, 342.

SEC. 55. No strip or waste shall be made on such estate before or during the pendency of proceedings under the preceding section; and after final judgment in review, the plaintiff in review, besides other remedies, may, within said three months, without a tender or demand to account, bring his bill in equity for the redemption of such estate.

No waste to be made during that time, and owner to have bill in equity to redeem. R.S., c. 76, § 50.

\* [NOTE. This clause seems to be required to give due effect to chapter 82, § 4, for it is the precise case where a writ of review is properly brought without a preliminary petition, as matter of right. The commissioner's attention has been called to this defect in the law by George F. Holmes, Esq., of Portland.]