

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

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1841.

CHAP. 93.

If no husband,
widow, nor kin-
dred.
1821, 38, § 19.

Debt due from
an heir, to be a
lien on the
heir's share.

Proceedings in
such case.

SECT. 20. If there be no husband, widow nor kindred of the intestate, the whole shall escheat to the state.

SECT. 21. When any person shall die intestate, whose estate shall not be insolvent, and any heir, to whom a share of such estate, whether real or personal, by law descends; was indebted to the intestate at the time of his decease, in such case the debt, so due, shall be and remain a lien upon such share until the debt shall be paid; which lien shall have priority to any attachment on said share.

SECT. 22. The administrator on such estate may realize the benefit of such lien on the descended share of such heir, by an attachment of the same in a suit, brought within two years after the grant of administration, for the recovery of the debt; and a levy and satisfaction of the execution issued on the judgment in such suit, within thirty days after such judgment; and, in such action, if the heir has any claim against the estate, he shall file the same by way of set off; or, if the heir should claim to be a creditor of the estate, and shall bring his action for the recovery of the same against the administrator within said two years, then the administrator may file the claim of the intestate against such heir, by way of set off; and in this manner both claims shall be settled, and the balance be established.

CHAPTER 94.

OF TITLE TO REAL ESTATE TAKEN BY EXECUTION.

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| <p>SECT. 1, 2. What interests in real estate may be levied upon.</p> <p>3. Exception of burying ground.</p> <p>4, 5, 6. Levy of execution, and appraisal.</p> <p>7. Appraisers' certificate to describe the estate.</p> <p>8. How appraised, if in several parcels.</p> <p>9. Majority of appraisers to decide.</p> <p>10. What shall pass by the levy.</p> <p>11. Levy on property held in common.</p> <p>12. Levy on land, which cannot be set off by metes and bounds.</p> <p>13. Levy on mills and privileges.</p> <p>14. Levy on a life estate.</p> <p>15. Levy on land under a lease.</p> <p>16. Levy on part of a reversion.</p> <p>17. Delivery of seizin and possession.</p> <p>18. Same, when levy is on a right of entry. Proceedings, when the debt has been assigned.</p> <p>19. Return, and record of execution and levy.</p> <p>20, 21. Effect, if not recorded.</p> | <p>SECT. 22. When creditor may waive the levy.</p> <p>23. Creditor may have scire' facias, if title fail.</p> <p>24. Form of officer's return.</p> <p>25. When debtor may redeem.</p> <p>26. Mode of deciding the sum due.</p> <p>27. Remedy, if creditor will not release.</p> <p>28. Equity process, to adjust claims.</p> <p>29. Costs in such cases.</p> <p>30. Proceedings, when levy is on rents and profits.</p> <p>31. Mode of setting off land under mortgage.</p> <p>32. Remedy, if mortgage was larger than was estimated.</p> <p>33. Time of redemption. Remedy, if debtor pay the mortgage.</p> <p>34. Mortgages, and lands of banks and other corporations, may be sold on execution.</p> <p>35. No conveyance or assignment by the corporation, to be valid, after seizure.</p> <p>36. Sale of possessory interests, or equities of redemption.</p> |
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SECT. 37. Notices of sale.

- 38. Sale may be adjourned.
- 39. Proceedings at sale, and deed.
- 40. Time of seizure on execution.
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- 46. Levy of executions on estates of deceased persons.
- 47. Effect of redemption thereof by heirs.
- 48. Right of dower not affected by levy.
- 49. Levy of executions in favor of the state.

SECTION 1. All the real estate of a debtor, in possession, reversion or remainder, or fraudulently conveyed, or of which he had been colorably or fraudulently disseized, for the purpose of defrauding his creditors, and all rights of entry into land, and rights of redeeming land mortgaged, may be taken in execution for his debts, in the manner mentioned in this chapter.

Interests in real estate, liable to be levied upon. 1821, 52, § 1. 14 Mass. 20.

SECT. 2. All estates tail may be taken in execution for the debts of the tenants in tail, in the same manner as estates in fee simple; and the person, lawfully holding such premises under the execution, shall have an estate in fee simple.

Same subject. 1821, 52, § 1.

SECT. 3. The preceding sections shall not be construed to include any piece of land, not exceeding half an acre, appropriated by any number of individuals, as a place of burial, constantly inclosed with a fence, and not used for the purposes of cultivation; a description of which, under the hands of the individuals, who appropriated the same, attested by two disinterested witnesses, shall have been recorded in the registry of deeds in the county, or registry district, where the land lies.

Exception of burying ground. 1835, 148, § 1.

SECT. 4. Whenever a creditor thinks proper to have his execution levied on the real estate of the debtor, the officer, holding the execution, and empowered to serve it, shall cause such estate to be appraised by three discreet and disinterested men, one to be chosen by the creditor, one by the debtor, and the third by such officer; or, if the debtor shall neglect to appoint one, after notice given to him by the officer, if the debtor or his attorney be living in the county, where the land lies, the officer shall appoint one for him; and such appraisers shall be sworn before a justice of the peace, faithfully and impartially to appraise such real estate, as shall be shown to them, to be taken by said execution; and such justice shall make his certificate on the back of said execution, of his having administered such oath.

Levy of execution, and appraisal. 1821, 60, § 27. 7 Mass. 71. 8 Mass. 113. 4 Greenl. 372. 7 Greenl. 146. 16 Maine, 209. 2 Pick. 382, 510. 4 Pick. 243. 9 Pick. 35. 12 Pick. 47. 18 Pick. 495.

SECT. 5. After the officer has taken land in execution, and given notice to the debtor thereof, if he or his attorney be residing in the same county, and allowed him a reasonable, specified time, within which to appoint an appraiser, as mentioned in the preceding section, he shall then proceed, without unnecessary delay, to have the estate appraised, and the levy completed; and it shall be considered as made, when the land is taken in execution; and the subsequent proceedings and return shall be valid, though made and done after the return day, or after the removal or other disability of the officer.

Same subject. 6 Greenl. 162. 8 Greenl. 207. 16 Maine, 151.

SECT. 6. The appraisers shall proceed, with the officer, to view

Same subject. 1821, 60, § 27.

CHAP. 94.

8 Mass. 411.
6 Greenl. 162.
2 Pick. 331, 443,
564.
7 Pick. 49.

Appraisers' certificate to describe the estate.
1821, 60, § 27.
9 Mass. 92.

How appraised, if in several parcels.
7 Mass. 71.

Majority of appraisers to decide.
8 Mass. 284.
14 Mass. 143.

What shall pass by the levy.

Levy on property, held in common.
1821, 60, § 27.
12 Mass. 348.
21 Pick. 293.

Levy on land, which cannot be set off by metes and bounds.
1821, 60, § 23.

Levy on mills and privileges.
1821, 60, § 29.

Levy on a life estate.
14 Mass. 378.
17 Mass. 459.
5 Greenl. 479.
15 Pick. 23.

and examine the land, so far as may be necessary to a just estimate of its value; and the description and appraisement of the land shall be indorsed on the execution, and signed by them.

SECT. 7. The nature of the estate appraised, whether in severally or undivided, a fee simple or less estate, in possession, reversion or remainder, shall be described either by metes and bounds, or such other mode, that the same may be distinctly known and identified; and this description may be referred to and adopted by the officer, as a part of his return.

SECT. 8. The appraisers may appraise several parcels of land separately, or the whole together: and where several pieces of land are taken at different times, there may be distinct sets of appraisers, if more convenient for those concerned.

SECT. 9. The levy of the execution shall be valid, though the certificate of appraisement be signed by only two of the appraisers, if it appear by the return that the third was sworn, and acted with the others under the appointment.

SECT. 10. All the debtor's interest in the premises shall pass by the levy, unless it be larger than the estate, mentioned in the appraisers' description.

SECT. 11. When the debtor's estate is held in joint tenancy, or in common with others, the whole estate must be described by the appraisers, and the debtor's share or part thereof, so held, be so stated by them; and the whole, or such part of the debtor's interest, as may be necessary to satisfy the execution, may be taken, and thereafter held in common with the cotenants.

SECT. 12. When the estate, levied upon, cannot be set out by metes and bounds, or the description before mentioned, the execution shall be extended on the rents of such estate, and the officer shall give seizin thereof to the creditor, and cause the person in possession to attorn and become tenant to such creditor, and pay the rent to him accordingly; or, on his refusal so to do, the officer shall turn him out of possession, and give seizin and possession to the creditor, until redeemed by such debtor, in the manner hereinafter provided.

SECT. 13. When the premises, to be levied on, consist of a mill, mill privilege, or other real estate, which cannot be divided without damage to the whole, and which is more than sufficient to satisfy the execution, it may be levied in the manner, prescribed in the preceding section, or upon such individual part of the whole, as may be sufficient to satisfy the execution; and, in the certificate of the appraisers, the whole of the property must be described, of which the undivided portion is taken.

SECT. 14. When an execution is levied on a life estate, the value thereof may be estimated by the appraisers, and the same may be taken and set off to the creditor, like other real estate; or the execution may be levied on the rents and profits, at the creditor's election; in which latter case, the appraisers shall estimate the rents and profits, for such length of time, as shall be sufficient to satisfy the execution; and for such term of time, the premises shall be set off to the creditor, if the life shall so long continue; computing interest on the sum due on the execution, and deducting the rents and profits, as so much paid, from time to time, when the

rents and profits fall due; and if the life estate shall expire before the end of the term fixed by the appraisers, the creditor may have a new action on the judgment to recover the balance due.

SECT. 15. When the premises levied on are under lease to a third person, and the reversion of the whole is taken on any execution, the lessee shall pay the rent to the creditor from the time of the levy.

Levy on land under a lease.*

SECT. 16. When the reversion of a part only of the premises is taken, the appraisers shall determine what proportion of the whole annual rent shall be paid to the creditors; and the lessee shall be bound to pay the same to him accordingly.

Levy on part of a reversion.

SECT. 17. The officer, serving the execution, shall deliver seizin and possession of the premises taken, to the creditor or his attorney, so far as the nature of the estate taken, and the title of the debtor will admit; where a remainder, reversion or right of redemption is taken, the officer shall not oust the debtor, who is in possession, but only assign to the creditor the debtor's right therein, and may make his return accordingly.

Delivery of seizin and possession.
1821, 60, § 27.
4 Mass. 402.
13 Mass. 361.

SECT. 18. When an execution is levied on land, into which the debtor has, or is supposed to have, a right of entry, and of which any other person is then seized, the officer shall deliver to the creditor a momentary seizin and possession of the land, so far as to enable the creditor to maintain an action therefor, in his own name and on his own seizin; but he shall not actually expel and keep out the tenant then in possession, against his will. If, previously to the levy of any execution on real estate, the nominal execution creditor shall have assigned the debt, upon which the judgment was recovered, to a third person for a good and valuable consideration, the nominal creditor shall be deemed to hold the real estate, levied upon, in trust for the assignee, who shall be entitled to a conveyance of the same from the nominal creditor, to be enforced by the supreme judicial court, on a bill in equity.

Same, when levy is on a right of entry.

Proceedings, when the debt has been assigned.

SECT. 19. The officer shall return the execution with a certificate of his doings indorsed thereon, into the clerk's office, to which it is returnable; and shall also, within three months after the completion of the levy, cause the execution and return thereon to be recorded in the registry of deeds for the county, wherein the land lies.

Return, and record of execution and levy.
1821, 60, § 27.
1825, 309.
15 Mass. 200.
5 Greenl. 197.
3 Pick. 331.
5 Pick. 170.
13 Pick. 477.

SECT. 20. If the execution and levy are not recorded, as prescribed in the preceding section, it shall be void against any creditor, who shall have attached or taken in execution the same premises, without notice of such levy; or against any person who shall have purchased them in good faith, and for a valuable consideration, without such notice; but, if the levy is recorded, though after the expiration of said three months, it shall be valid and effectual against any conveyance, attachment or levy, made after such recording.

Effect, if not recorded.
3 Mass. 313.
8 Mass. 284.

SECT. 21. The levy of an execution and delivery of possession, though neither returned nor recorded, as aforesaid, shall be so far valid against the creditor, that he shall not be permitted to waive the levy, and to have a new execution of his judgment, except as provided in the following section.

Same subject.
15 Mass. 137.
17 Mass. 433.
2 Greenl. 232.

CHAP. 94.

When creditor
may waive the
levy.
14 Mass. 378.

SECT. 22. If, before the execution is returned or recorded, it should appear, that there is any error or defect in the proceedings, which would render the levy void, or that the estate levied upon was not the property of the debtor, or not liable to be seized on execution, or that, for any reason, it cannot be held thereby, the creditor may waive the levy; and it shall be considered null and void, and he may resort to any other remedy for satisfaction of the judgment.

Creditor may
have scire fa-
cias, if title fail.
1823, 210.
14 Mass. 57.
5 Greenl. 103.
3 Fairf. 303.

SECT. 23. If, after the execution is returned or recorded, it should appear to the creditor, that the estate levied upon was not the property of the debtor, or not liable to be seized on execution, or that it cannot be held thereby, the creditor may sue out of the clerk's office of the court, from which the execution issued, a writ of scire facias to the debtor, requiring him to shew cause, why an alias execution should not be issued on the same judgment; and if the debtor, after having been duly summoned, shall not shew sufficient cause to the contrary, the levy of the former execution may be set aside, and an alias execution shall be, thereupon, issued for the amount then due on the original judgment, but without interest or further costs; but, if it shall appear to the court, that the creditor had no just cause for such suit, the debtor shall recover his costs.

Form of officer's
return.
1821, 60, § 27.
6 Greenl. 106.
7 Greenl. 14,
146.
1 Fairf. 100.
15 Maine, 73,
153.
4 Pick. 243.
15 Pick. 23.

SECT. 24. The officer shall state in his return, on the execution, substantially the following facts:

First. The time when the land was taken in execution;

Second. How the appraisers were appointed;

Third. That they were duly sworn;

Fourth. That they appraised and set off the premises, after viewing the same, at the price specified;

Fifth. That the officer 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;

Sixth. The description of the premises, unless they are sufficiently described in the certificate of the appraisers;

Seventh. If the appraisement is signed by only two of the appraisers, he must state that all three were present and acted therein.

When debtor
may redeem.
1821, 60, § 30.
1 Greenl. 257.
5 Greenl. 390.

SECT. 25. When lands are taken and set off on execution, the debtor may redeem the same at any time within one year after the levy, by paying or tendering to the creditor the sum, at which they were appraised, and interest from the time of the levy, with the reasonable expenses incurred in improving the same, or in repairs, after deducting the rents and profits received by the creditor, or which he might have received, and with which he is chargeable; and the creditor shall thereupon, by his deed prepared at the debtor's expense, release to said debtor all his right and title to the premises levied on.

Mode of de-
ciding the sum
due.
1821, 60, § 30.

SECT. 26. The amount due for redemption may be ascertained, at the desire of the debtor, by three justices of the peace, chosen thus; one by the debtor, a second by the creditor, if he inclines to choose him, if not, he also may be chosen by the debtor, and the third chosen by the two justices, as aforesaid chosen; and, after a hearing of the case before all three of the justices, they, or any two of

them shall make and sign a certificate of the sum, that shall be adjudged due and payable for the redemption of the premises, which shall be final and conclusive, between the parties; and the debtor may tender that sum, which shall be valid and effectual, though he may have made a tender before, of a different sum.

SECT. 27. If, on tender of the sum due for redemption, whether it has been adjudicated as aforesaid, or not, the creditor shall not release the premises within ten days next following, the debtor may recover the same by writ of entry on his own seizin; but, before entry of judgment, he shall bring into court, for the use of the creditor, the money so tendered.

Remedy, if creditor will not release. 1821, 60, § 30. 5 Greenl. 390.

SECT. 28. Instead of a writ of entry, the debtor may bring a bill in equity for redemption, in the supreme judicial court, at any time within one year after the levy, whether he has made any tender or not; setting forth, in such bill, his offer to pay such sum as may be found due to the said creditor; and the court shall ascertain the amount due, unless the same shall have been adjudged, by three justices of the peace, as before mentioned, and require the debtor to bring such amount into court for the creditor's use; and the debtor thereupon shall be entitled to a decree in his favor, and a writ of possession, for his seizin of the premises.

Equity process, to adjust claims.

SECT. 29. In the preceding case, the court may award costs for either party, as justice may require; excepting, that the creditor shall never be subjected to costs, unless he has unreasonably refused, on request, to render an account of rents and profits received by him, and expenses incurred by him in improvements and repairs, or unless he had refused to execute to the debtor a deed of release of the premises for the term of ten days; on tender of a sufficient sum by him; or excepting also, that if the creditor shall, before the filing of the bill in equity, have tendered such a deed of release to the debtor, and in his answer, shall rely on such tender, and bring the same into court, to be delivered to the debtor, he shall recover his costs.

Costs, in such cases.

SECT. 30. The provisions of the preceding section shall be the rule of proceeding in those cases, where execution may have been levied on the rents and profits of an estate for life, in respect to the redemption of such rents and profits.

Proceedings, when levy is on rents and profits.

SECT. 31. Any right of redeeming mortgaged premises may be taken and set off on execution for the mortgager's debts, in like manner, as though they were not mortgaged, excepting that the appraisers shall deduct the amount of the mortgage debt, when known, from the estimated value of the premises, and the sum so deducted shall be stated in the return on the execution.

Mode of setting off land under mortgage. 15 Pick. 23.

SECT. 32. If, after the levy of an execution in the usual form, it should be ascertained that there was a mortgage upon the premises, not known to the creditor at the time of the levy; or if the levy was made in the manner prescribed in the preceding section, but the full amount, due on the mortgage, was not deducted as therein required; still, the creditor shall hold the premises in virtue of the levy, and may recover of the debtor, in a new action, the amount he shall pay on account of such unknown mortgage, or so much thereof as should have been, but was not, deducted or allowed for in the appraisalment.

Remedy, if mortgage was larger than was estimated.

CHAP. 94.

Time of redemption.
Remedy, if debtor pay the mortgage.

SECT. 33. Any estate levied upon in the manner, prescribed in the two preceding sections, may, at any time within one year after the levy, be redeemed, in the same manner, as though the estate had not been under mortgage, at the time of the levy; and, if the debtor shall afterwards pay the amount due on such mortgage, he may recover the same of the creditor levying as aforesaid, in an action for money had and received.

Mortgages and lands of banks and other corporations may be sold on execution.
1821, 60, § 13, 14, 15.
1823, 221, § 2.

SECT. 34. The lands belonging to any manufacturing corporation, and the lands of any bank, and all the title and interest which any manufacturing company or bank has in lands, which have been, or may be, mortgaged for security of any debt due or assigned to such corporation or bank, may be seized and sold on execution at public auction; and the officer, having such execution, shall first give notice of the time and place of sale, fourteen days previous thereto, in two or more public places in the town or place where the lands lie, and also in some newspaper printed in the county, if there be any, otherwise, in the newspaper published by the printer to the state; and such officer may give an effectual deed of conveyance of such lands, titles, and interests; and the debts, secured to such corporation by such mortgage, and then due, shall pass to the purchaser of the mortgaged premises; and he or his legal representatives may, in his or their own name, recover such debt or such premises; and in such action a copy of the mortgage deed, duly certified by the register of deeds, shall be considered prima facie evidence of such deed, and of the note or obligation on which it is founded, and that the same were remaining due and unsatisfied at the time of trial; and the cashier or clerk of such bank or corporation shall, on reasonable request by the officer serving the execution, furnish him with a certified copy of such note or obligation, and a statement of all payments made thereon by such debtor.

No conveyance or assignment by the corporation to be valid, after seizure.
1821, 60, § 16.

SECT. 35. No conveyance or transfer of such mortgage, or of the debt thereby secured, made by such bank or company, after notice filed in the registry of deeds for said county, or otherwise given to the party to be affected thereby, of the seizure thereof on execution by such officer, for the purpose of sale, shall have any force or validity against the purchaser of such lands or interest, at auction as aforesaid.

Sale of possessory interests, or equities of redemption.
1821, 60, § 17, 19.
16 Mass. 402.
3 Pick. 250.

SECT. 36. All the right, title or interest any person owns, holds or claims, in virtue of a possession and improvement of lands, as expressed and described in the chapter on real actions, being chapter, one hundred and forty five, and also all rights of redeeming mortgaged real estate, may, at the election of the creditor, be taken and sold on execution; as hereinafter prescribed, instead of being appraised and set off on execution to the creditor; and the officer shall stand accountable for the surplus of the proceeds of the sale, if any, after satisfying the execution and legal charges.

Notices of sale.
1821, 60, § 17.
9 Mass. 242.
7 Greenl. 376.
1 Pick. 351.

SECT. 37. In such case the officer 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 he is known to be an inhabitant of the state, and shall also cause notifications thereof to be posted in some public place in the town where the land lies, and in two adjoining towns, if there be so many; provided, that

when the land is not within the limits of any incorporated town, notice shall be posted up in two public places in the shire town of the county, in which said land lies, in lieu of the posting aforesaid, all which shall be done thirty days at least before the day of sale; and shall also cause an advertisement of the time and place of sale, to be published three weeks successively before the sale, in some public newspaper, printed in the county where the land lies, if there be any such, if not, then in the state paper; if the execution debtor be not a resident of the county: provided, that if such debtor be not an inhabitant of the county where the land lies, the notice here required to be given to him shall be deemed sufficient, if forwarded to him by mail.

SECT. 38. When the officer shall deem it for the interest of all parties concerned to postpone the auction for want of purchasers, or other sufficient cause, he may adjourn the sale for any time not exceeding seven days, and so from time to time, for like good cause, until the sale shall have been made; giving notice of each adjournment, by public proclamation, made at the same time.

SECT. 39. The right to redeem shall be sold by the officer, at public auction, to the highest bidder, and he shall execute and deliver to the purchaser a good and sufficient deed thereof; which, being recorded in the registry of deeds for the county where the land lies, within three months of the sale, shall convey to the purchaser all the title, which the debtor had in the premises; and, if the highest bidder at any such sale, shall refuse, or be unable to pay the sum, for which such right in equity was sold, upon the demand of the officer, said officer shall, immediately, set up such right in equity again, and proceed to sell in the same manner, as though no bid had been previously made; and, in case said equity, at such second sale, shall not be sold for so great a sum as that, for which it was stricken off at the first sale, the person, to whom it was so struck off at the first sale, shall be accountable to the officer for the difference; and the officer may sue for and recover such difference; to be indorsed on said execution, or paid over to the debtor in case said execution shall be fully satisfied.

SECT. 40. The seizure of the right, on the execution, shall be considered as made on the day, when the notice of the intended sale was given, as above prescribed, whether to the debtor, or by posting up notice, or by advertising in a newspaper, and hold the estate by force of the attachment, if any had been made thereon, though the levy should not be completed within thirty days next after the judgment; and the subsequent proceedings, and the return shall be valid, although made and done after the return day, or after the removal or other disability of the officer.

SECT. 41. The right of redemption, being so sold, may be redeemed by the debtor from the purchaser, or the person holding under him, at any time within one year after such sale, by paying or tendering the sum for which the same was sold; and on like conditions as to improvements and repairs and rents and profits, as in case of redemption of lands, appraised and set off on execution; and the person holding the right shall release the same to the debtor, the deed to be prepared at the expense of the debtor.

Sale may be
adjourned.
1821, 60, § 17.

Proceedings at
sale, and deed.
1821, 60, § 17.
7 Mass. 138.
9 Mass. 101.
12 Mass. 514.
13 Mass. 493.
8 Greenl. 246.
3 Pick. 250.

Time of seizure
on execution.
16 Maine, 151.

Right of re-
demption.
1821, 60, § 18,
19.
2 Greenl. 339.
1 Fairf. 161.
1 Pick. 485.
3 Pick. 48.

CHAP. 94.

Remedy, if purchaser will not release.

SECT. 42. If the purchaser, or person holding under him, shall not, within ten days after a tender by the debtor, release to him the right of redemption as before provided, or if there has been no tender, the debtor may have the same remedy for recovering his right of redemption, as is provided in like cases for the redemption of land mortgaged.

Right of redeeming an equity may be seized and sold. 1833, 87. 12 Mass. 387.

SECT. 43. The right which any debtor may have of redeeming from the purchaser any equity of redemption, which may have been sold on execution against such debtor, and also the right which any such debtor may have, of redeeming, from a judgment creditor, any real estate, which may have been appraised, and set off on execution against such debtor, may be attached on mesne process, and sold on execution, and the same proceedings shall be had in respect to the sale and conveyance of either of said rights, as in the sale of an equity of redeeming mortgaged estate, and the purchaser shall have and exercise all the rights and remedies, which the debtor might; if no sale of it had been made; provided, however, that the debtor may have the same right of redeeming it, as is allowed by law, of redeeming mortgaged real estate. And the lien created by any attachment of such real estate or equity of redemption, before such sale or setting off on execution, shall continue and have effect upon the right of redeeming the same as aforesaid, in the order in which such attachments have been made, prior to any attachments, which may be made thereon, subsequently to such sale or setting off on execution.

Charges of levy to be added to the execution.

SECT. 44. The lawful charges and fees of levying an execution, in any of the above mentioned modes, shall be added to the amount of the execution, and, in setting off, and the sale, of estates on execution, shall be considered as part thereof, and also in the redemption of the estate.

Rights of heirs and legal representatives.

SECT. 45. Every thing in this chapter, which a creditor or debtor is required to do, or may do, may be done by their respective heirs or assigns, executors or administrators, as the case may be, or by any person lawfully claiming under them, respectively.

Levy of executions on estates of deceased persons. 1821, 52, § 24. 4 Mass. 150.

SECT. 46. The real estate of a deceased testator or intestate may be taken in execution, on a judgment recovered against his lawful executor or administrator, for the proper debt of the deceased; and shall be appraised and set off or sold and redeemed, in like manner as if the same estate had been levied on, in the life time of such testator or intestate.

Effect of redemption thereof by heirs.

SECT. 47. When the estate of a deceased person has been set off, or sold on execution, and has been redeemed by the heirs or devisee, or the assigns of either, as provided in the preceding section, the same shall not again be taken in execution for any other debts of the deceased, or in any manner be liable therefor.

Right of dower, not affected by levy. 1821, 60, § 27.

SECT. 48. Every widow shall be entitled to dower, in lands taken by execution from her husband, or by execution on a judgment against his executors or administrators, in like manner as though conveyed by the husband.

Levy of executions in favor of the state. 1821, 60, § 33.

SECT. 49. When real estate is taken to satisfy an execution, issued on a judgment in the name, or for the use of the state, for any sum of money, a writ of execution, in common form, shall issue,

and be directed to the proper officer, and the lands of such judgment debtor may be taken on such execution and sold at auction; but, before proceeding to sell, the officer shall give notice of the intended sale, in like manner as is prescribed in the thirty seventh section of this chapter; except, that such notice shall be published also in the newspaper published by the printer to the state, and that the last publication in both newspapers shall be six days before the sale; and the officer, making such sale, shall make and execute to the purchaser a sufficient deed of the land sold; and the debtor shall have the same rights to redeem the same, in like manner, and on the same conditions, as a judgment debtor has, to redeem lands taken and set off on execution.

CHAPTER 95.

OF ESTATES IN DOWER, AND BY CURTESY, AND AT WILL.

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| <p>SECT. 1. Of what lands a woman is dowerable.</p> <p>2. Of what she is not dowerable.</p> <p>3. When judge of probate may assign dower.</p> <p>4. Mode of proceeding.</p> <p>5. Special assignment, in certain cases.</p> <p>6. Rights of widow, before assignment.</p> <p>7. Widow of naturalized alien.</p> <p>8. Proceedings, to recover dower by suit.</p> <p>9, 10, 11. How dower may be barred.</p> <p>12. Widow may waive jointure, in certain cases.</p> | <p>SECT. 13. She may waive provision in her husband's will.</p> <p>14. Remedy, if she be evicted of her dower.</p> <p>15. When dowerable of an equity of redemption.</p> <p>16. Penalty, if she commit waste.</p> <p>17. Right of widow to remain in her husband's house.</p> <p>18. Tenancy by curtesy.</p> <p>19. Notice, to determine tenancy at will.</p> <p>20. Limitation of the preceding section.</p> |
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SECTION 1. Every woman shall be entitled to her dower, at common law, in the lands of her husband, with the exception hereafter mentioned, to be assigned to her after his decease, unless lawfully barred thereof.

Of what lands a woman is dowerable.
1821, 40, § 1.
4 Mass. 566.
10 Mass. 364.
5 Greenl. 479.
22 Pick. 283.

SECT. 2. A widow shall not be endowed of wild lands, of which her husband shall die seized, nor of wild lands conveyed by him, although they should be cleared afterwards; but this shall not bar her right of dower in any wood lot or other land, used with the farm or dwelling house, though such wood lot or other land should have never been cleared.

Of what she is not dowerable.
15 Mass. 164.
1 Pick. 21.
7 Pick. 143.

SECT. 3. The judge of probate for the county, in which the estate of the husband is settled, may assign dower to the widow in the lands of which the husband died seized, in whatever counties they may be, where her right of dower is not disputed by the heirs or devisees.

When judge of probate may assign dower.
9 Mass. 9.

SECT. 4. For the above purpose, the judge of probate may issue his warrant to three discreet and disinterested persons, empowering them to assign the dower by metes and bounds, when it can

Mode of proceeding.
12 Mass. 454.

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

ions in this chapter, nor prevent such bank from paying out the bills of foreign banks, received in its usual course of business, and the circulation of which is not otherwise prohibited by law.

SECT. 80. No person shall issue any drafts, bills or promissory notes or other evidences of debt, payable to bearer or order, as a private banker, for the purpose of loaning them or putting them in circulation, as money.

No person to issue bills as a private banker, to be circulated as money. 1836, 231, § 2. Penalty for violating the three preceding sections. 1821, 147, § 1. 1836, 231, § 3.

SECT. 81. If any body corporate or private company, or individual, shall be guilty of any or either of the offences, described in the three last preceding sections, such offender shall forfeit one thousand dollars, for each and every such offence; to be recovered by indictment for the use of the state, or by action of debt, one half to the use of the state, and the other half to the person who may first sue for the same.

SECT. 82. The following offences by officers, stockholders or servants of banks in this state, committed with a fraudulent intent to injure any creditor, stockholder, holder of bank notes issued, or to be issued by such bank or other person, are hereby declared to be high misdemeanors, and the persons guilty thereof, shall, on conviction, be punished by fine, not exceeding five thousand dollars, imprisonment in the county jail, not exceeding one year, confinement in the state prison to hard labor, not exceeding ten years, or any or all of said punishments, according to the aggravation of the offence:

Punishment for frauds and embezzlement. 1825, 315. 1831, 519, § 21.

First. If any such person shall convert to his own use or deliver to any other person, or to his check or order, any funds or evidence of debt or other property, belonging to the bank or deposited therein;

Secondly. If he shall issue, or aid in issuing, any bank notes or other evidence of debt, obligatory on said bank, with the intent that the same shall not be paid;

Thirdly. If he shall become indebted to such bank for a valuable consideration with like intent, or shall aid or abet any other person so doing;

Fourthly. If he, on behalf of the bank, shall loan any money or deliver any valuable property, belonging to such bank or deposited therein, to any stockholder or other person;

Fifthly. If he shall make any dividend of the funds or effects of such bank, amongst the stockholders or any of them, beyond the profits actually accrued to such bank, or aid therein, thereby diminishing the capital of said bank.

SECTION 9. The ninety first chapter shall be amended, in section, four, after the words "limited to," by striking out the word "such," and inserting, instead thereof, the word "any;" so that the said fourth section, as amended, will be as follows:

R. S. ch. 91.

SECT. 4. When any contingent remainder or executory devise, or other estate in expectancy, has been so granted or limited to any person, that, in case of his death before the happening of the contingency, the estate would descend to his heirs in fee simple, such person may, before the happening of the contingency, sell, assign or devise the premises, subject to such contingency.

Owner of a contingent remainder or executory devise may convey it.

SECTION 10. The ninety fourth chapter shall be amended, by inserting, at the end of section thirty four, the following words:

R. S. ch. 94.

Right of redemption, where real estate of banks or manufacturing corporations has been sold on execution. 1838, 332, § 1, 2.

And such corporation shall have the right to redeem any lands, and, if mortgaged; the debts secured thereby, sold by virtue of the provisions of this section, within the time and in like manner, and with like remedies to compel a reconveyance, as are provided in the forty first and forty second sections; and such right of redeeming shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; reserving to the corporation the same right of redeeming from the purchaser at said second sale.

The same chapter shall be further amended, by inserting, at the end thereof, a new section, as follows:

Right, by contract, to a deed of real estate may be sold on execution. Right of redemption of certain interests in real estate. Such right of redemption may be sold on execution. 1829, 431, § 1, 2. 1833, 87.

SECT. 50. All the right and title, to a conveyance of real estate, by virtue of a bond or contract which any debtor may have, may be taken and sold on execution, in the manner prescribed in the thirty sixth and four following sections; and any such right, so sold, and also any right, title and interest, which any person owns, in virtue of a possession and improvement, having been sold on execution, as provided in the said thirty sixth and four following sections, may be redeemed from the purchaser, or person holding under him, by like proceedings, on the same conditions, and with the same remedies to compel a reconveyance thereof, as are provided in the forty first and forty second sections; and this right to redeem from the purchaser shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; and, in all cases, where a right to redeem from a former sale or levy has been sold on execution, the debtor shall have the same right of redeeming it, as is allowed upon the first sale of rights in equity of redeeming mortgaged real estate.

R. S. ch. 96.

SECTION 11. The ninety sixth chapter shall be amended in the seventh section, by inserting, at the close thereof, the following:

Supreme judicial court to control the records and documents of the supreme judicial court of Massachusetts, now remaining in this state. 1820, 54, § 1.

All records and documents of the supreme judicial court of Massachusetts, previous to the separation of Maine, now remaining in the several counties in this state, shall remain under the control and authority of the supreme judicial court of this state, in the same manner and for the same purposes, as the records and documents of their own doings; and the clerks of the same court shall have the like power in relation to the one, as the other of those records and documents.

R. S. ch. 97.

SECTION 12. The ninety seventh chapter shall be amended in the thirteenth section, by inserting, after the word "town," the following, "or in any libel for forfeited goods originally commenced in the district court"; so that the section, as amended, will be as follows:

Appeal in cases of libel for forfeited goods. 1821, 81, § 2.

SECT. 13. Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, or in any libel for forfeited goods, originally commenced in the said court,