

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

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CHAPTER 91.

MORTGAGES OF PERSONAL PROPERTY. LIENS AND THEIR ENFORCEMENT.

MORTGAGES OF PERSONAL PROPERTY.

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9. Attachments preserved till thirty days after judgment in all suits; disposition of property.
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11. Power and duties of commissioner. Court may extend time for hearing cases. One day's attendance only allowed. Claim may be contested. Report of commissioner to be prima facie evidence.
12. Vessel may be sold, proceedings. Officer to deliver proceeds of sale to commissioner. Penalty for neglect.
13. Proceeds of sale, how to be applied.
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LIENS ON BUILDINGS AND LOTS.

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LIENS ON LOGS AND LUMBER.

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20. Boomage to be paid by attaching officer. Lien not defeated by taking note. Notice to owner.

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24. Petition to be filed; contents of it.
 25. Service on owners within the state.
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 27. When owner appears, proceedings.
 28. When owner appears, may be required to give bond.
 29. Court may order property to be sold.
 30. Disposition of the proceeds.
 31. Liens less than twenty dollars enforced by justices of the peace. Either party may appeal.

MORTGAGES OF PERSONAL PROPERTY.

SEC. 1. No mortgage of personal property, made to secure payment of more than thirty dollars, shall be valid against any other person than the parties thereto, unless possession of such property is delivered to and retained by the mortgagee, or the mortgage is recorded by the clerk of the town in which the mortgager resides. (a) When a corporation makes a mortgage, it shall be recorded in the town where it has its established place of business. When the mortgager resides in an unincorporated place, the mortgage shall be recorded in the oldest adjoining town in the county.

Mortgages not valid except between the parties, unless recorded or possession taken.
R. S., c. 125, § 32.
1849, c. 103.
1850, c. 180.
1852, c. 262.
1854, c. 103.

SEC. 2. The clerk, on payment of the same fees allowed to registers of deeds for like services, shall record all such mortgages delivered to him in a book kept for that purpose, noting therein, and on the mortgage, the time when it was received; and it shall be considered as recorded when received.

Clerk records mortgages, noting when received.
19 Maine, 167.
R. S., c. 125, § 33.

SEC. 3. The property may be redeemed by the mortgager, or person claiming under him, within sixty days after breach of the condition, unless it has been sold by virtue of a contract, or on execution against the mortgager. (b)

Redemption within sixty days after breach of condition.
R. S., c. 125, § 30.

SEC. 4. To redeem, the sum due on the mortgage, with reasonable charges incurred, must be paid or tendered; and if the property is not immediately restored, it may be replevied; or damages for withholding it may be recovered in an action on the case.

Sum due to be paid or tendered to redeem, &c.
R. S., c. 125, § 31.

SEC. 5. Nothing in the preceding sections shall defeat a contract of bottomry, respondentia, transfer, assignment, or hypothecation, of a vessel or goods at sea or abroad, if possession is taken as soon as may be after their arrival within the state.

Liens on vessels or goods abroad, not defeated.
19 Maine, 9.
R. S., c. 125, § 34.

LIENS ON VESSELS.

SEC. 6. A person, who furnishes labor or materials for a vessel building, shall have a lien on such vessel therefor, which may be enforced by an attachment of the vessel within four days after she is launched. And a person, who does so after she is launched, or for repair of a vessel, shall have a lien on her

Lien on vessel building or repairing, for labor, &c., how enforced.
33 Maine, 479.
36 Maine, 384.
R. S., c. 125, § 35.

(a) 19 Maine, 167; 22 Maine, 560; 24 Maine, 555; 25 Maine, 419; 31 Maine, 73; 32 Maine, 233; 34 Maine, 208; 37 Maine, 181, 543.

(b) 24 Maine, 131; 29 Maine, 429; 31 Maine, 104, 501; 36 Maine, 47; 82 Maine, 174; 39 Maine, 448.

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Officer attaching to file with town clerk, and deliver to owner or master workman copy of return. 1848, c. 78, § 1.

Service of writ must be made by a sheriff, deputy or coroner, &c. 1848, c. 78, § 2, 3.

Attachments preserved until thirty days after judgment in all suits, &c. 1848, c. 78, § 4.

Commissioner may be appointed to examine lien claims; to give bond. 1857, c. 51, § 1.

Powers and duties of commissioner. Court may allow further time. One day's attendance only to be allowed. Claim may be contested. Report of commissioner to be prima facie evidence. 1857, c. 51, § 2.

Vessel may be sold; proceedings. Officer to de-

therefor, which may be enforced by attachment within four days after the work has been completed.

SEC. 7. The officer, making such attachment, shall within twenty-four hours thereafter file with the clerk of the town in which the vessel is, and deliver to some owner or master workman of the vessel, a copy of his return of such attachment, with the value of the property which by the writ he is commanded to attach, the date of the writ, and the names of the parties, which shall be sufficient to preserve the attachment without a keeper.

SEC. 8. Service of such writ must be made by the sheriff or his deputy or a coroner; and all subsequent attachments to enforce a lien, made before the first attachment is dissolved, must be made by the officer who made the first one, unless disqualified, when they may be made by another competent officer, by giving notice thereof to him, as he is required to give notice to the clerk; and such attachment shall secure a share of the proceeds as if made by the first attaching officer.

SEC. 9. All the attachments shall remain in force until thirty days after judgment is rendered in all the suits, when the vessel shall be sold and the net proceeds paid to the creditors, or if not sufficient to pay in full, distributed to them equally in proportion to the amounts of their judgments.

SEC. 10. When, from the number of actions brought in the supreme judicial court to enforce lien claims on a vessel, or for other cause, the judge thinks the interests of all parties will be promoted thereby, on application of any party in such actions, he may appoint a commissioner, who shall give bond to the clerk of the court, with such sureties and in such sum as the court approves, for the faithful discharge of his duties; and all the actions aforesaid shall be submitted to him for the purposes hereinafter provided.

SEC. 11. He shall have the same power as a court to summon before him and compel the attendance of any witnesses, or the parties in such actions, with all their books and papers relating to said claims; to hear all such actions in a summary way, determine the amount due to each attaching creditor, after deducting all equitable set-off, whether filed in court or not; and make report of his doings to the court on the first day of the next term after his appointment. If he has not then heard and decided all the cases, the court may allow a further reasonable time to hear the residue, not beyond the term then next. Only one day's attendance at a term shall be allowed in any such action between the time of his appointment and the time of his final report thereon. Any such creditor may appear at such hearing, and contest the claims of any other creditor. The report of the commissioner shall be prima facie evidence of the amount due to each creditor, but any party aggrieved by the amount allowed on any claim, may have it revised by the court or jury, and show that it is not correct.

SEC. 12. When such vessel, after its attachment, is liable to be injured by the weather, or otherwise greatly reduced in value by keeping, on application of any attaching lien creditor, and

notice to the owner or defendant, the court may order the officer who made the attachments, to sell such vessel in such manner and on such conditions as the judge thinks just; he shall sell accordingly, and immediately deliver over to said commissioner the money and securities thereby received; and if he neglects or refuses so to deliver, he shall forfeit a sum equal to twenty per cent. on the whole amount for which the vessel was sold, to be recovered in an action on the case by the commissioner, and added to the proceeds of the sale, and it shall also be a breach of his and the sheriff's bond.

SEC. 13. The commissioner shall receive such money and securities; safely keep and collect them; retain a reasonable compensation for all his services in the premises, to be allowed by the court; and by order of the court, pay over to the creditors the amount found due to each, and the balance, if any, to the owner of the vessel, or other person entitled to receive it; and a failure to do so shall be a breach of his bond.

SEC. 14. When judgment is rendered in one or more of such actions, and others are still continued, the judge, on application and notice, may order the commissioner to advance to such creditors as have recovered judgments a per cent. thereon, not exceeding what they would each be entitled to on a proportional distribution of the proceeds of said vessel, on all the attaching lien claims.

LIENS ON LIME AND LIME ROCK.

SEC. 15. Any person who digs, hauls, or furnishes rock for the manufacture of lime, shall have a lien thereon, for his personal services, and for the rock so furnished, to take precedence of all other claims, and to continue for thirty days after such rock is manufactured into lime, or until such lime is sold or shipped on board the vessel, and to be enforced by attachment within the time aforesaid, which shall have precedence of all attachments and incumbrances made after said lien attached, and not made to enforce a similar lien, and such suit may be maintained though the employer or debtor is dead and his estate represented insolvent; and in that case his executor or administrator may be summoned in to answer thereto. Any person may discharge such lien by a tender of the sum justly due.

LIENS ON BUILDINGS AND LOTS.

SEC. 16. A person who performs or furnishes labor or materials for erecting, altering, or repairing a house, building, or appurtenances, by virtue of a contract with the owner thereof, shall have a lien thereon, and on the lot of land on which it stands, or on any interest such owner has in the land, or on the equity of redemption if under mortgage, to secure payment thereof, which shall continue ninety days after payment becomes due, and be enforced by attachment; and if a levy is made thereon, the appraisers may set out to the creditor a suitable lot

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liver proceeds to commissioner. Penalty for neglect.

1857, c. 51, § 3.

Proceeds of sale, how applied.

1857, c. 51, § 4.

Advance on claims after judgment.

1857, c. 51, § 5.

Lien on lime rock. To take precedence.

To continue thirty days. How enforced. Attachments to have precedence.

May be discharged by tender.

1857, c. 47, § 1, 2, 3.

Lien on buildings and lots for labor, &c., how enforced.

If levy is made, lot may be set out for buildings.

R. S., c. 125, § 37, 38.

1850, c. 159, § 1.

1857, c. 15.

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for such building, if they think the whole not needed therefor. (a)

When owner dies before suit, &c.
1850, c. 159, § 2.

SEC. 17. When the owner dies within the ninety days and before commencement of a suit, it may be commenced within sixty days after notice given of the appointment of an executor or administrator, and the lien shall be extended accordingly.

Lien on buildings placed on land leased, for rent, how enforced.
R. S., c. 125, § 40.

SEC. 18. When a lease of land, with a rent payable, is made for the purpose of erecting a mill or other buildings thereon, such buildings and all the interest of the lessee shall be subject to a lien and liable to be attached for the rent due. Such attachment, made within six months after the rent becomes due, shall be effectual against any transfer of the property by the lessee.

LIENS ON LOGS AND LUMBER.

Lien on lumber for labor for sixty days after arrival at destination.
1848, c. 72, § 1.
1851, c. 216, § 1.

SEC. 19. A person who labors at cutting, hauling, or driving logs, or lumber, shall have a lien thereon for the amount due for his personal services, which shall take precedence of all other claims, except liens reserved to the states of Maine and Massachusetts; to continue for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture; and be enforced by attachment. (b)

Boomage may be paid by officer. Lien not defeated by taking a note. Notice to owner.
1848, c. 72, § 1, 2.
1855, c. 144.

SEC. 20. The officer making such attachment may pay the boomage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ, which shall be included in the damages recovered. The action or lien shall not be defeated by taking a note, unless it was taken in discharge of the amount due and of the lien. Notice of the suit, such as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it.

GENERAL PROVISIONS FOR ENFORCEMENT OR DISCHARGE.

Attachments to have precedence of other incumbrances, &c.
37 Maine, 350.
1850, c. 159, § 1.
1851, c. 216, § 1.

SEC. 21. Suits to enforce any of the liens before named in this chapter shall have precedence of all attachments and incumbrances made after the lien attached, and not made to enforce a lien, and may be maintained although the employer or debtor is deceased and his estate represented insolvent; and his executor or administrator may be summoned and held to answer to an action brought or pending to enforce the lien.

Tender discharges lien.
R. S., c. 125, § 36, 39.

SEC. 22. All liens named in this chapter may be discharged by tender of a sum sufficient to pay all that is justly due, made by the debtor or owner of the property, or their agents.

LIENS HOW ENFORCED ON GOODS IN POSSESSION.

Lien on goods in possession, enforced by sale.
1856, c. 273, § 1.

SEC. 23. Any person, having a lien on any article in his possession, may enforce it by a sale thereof, as hereinafter provided.

(a) 16 Maine, 268; 33 Maine, 141, 370; 35 Maine, 73, 291, 481.

(b) 33 Maine, 283, 430; 34 Maine, 273, 286; 36 Maine, 536, 542; 38 Maine, 80, 130.

SEC. 24. The person claiming the lien may file, in the supreme judicial court in the county where he resides, or in the office of the clerk thereof, a petition briefly setting forth the nature and amount of his claim, a description of the article possessed, and the name and residence of its owners, if known to him, and a prayer for process to enforce his lien.

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Petition to be filed, contents of it.
1856, c. 273, § 2.

SEC. 25. If the owners are set forth in a petition filed in the clerk's office, and are residents of this state, the clerk may issue an order of notice to such owners, by serving them with a copy of the petition and order thereon, fourteen days before the next term of the court in such county.

Service on owners within the state.
1856, c. 273, § 3.

SEC. 26. If the owners are not known, or not residents in the state, or the petition is filed in court, the court may order reasonable notice to the owners and others interested; which may be returnable at the same or a subsequent term, and be by personal service of a copy of the petition with the order of court thereon, or by publication in a newspaper, or both, as the court directs. But such order shall always allow at least fourteen days from the service or publication, before the time fixed for the appearance of the persons notified.

Service when owners unknown or out of the state.
1856, c. 273, § 4.

SEC. 27. At the time fixed in the notice, any party interested in the article as owner, mortgagee, or otherwise, may appear, and after appearance, the proceedings shall be the same as in an action on the case, in which the petitioner is plaintiff and the party appearing is defendant. Questions of fact, at the instance of either party, shall be submitted to a jury on an issue framed under the direction of the court.

When owner appears, proceedings.
1856, c. 273, § 5.

SEC. 28. If in the opinion of the court the article on which the lien is claimed is not of sufficient value to pay the petitioner's claim, with the probable costs of the suit, the court may order the persons appearing in defence to give bond to the petitioner, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed.

Owner may be required to give bond.
1856, c. 273, § 6.

SEC. 29. After trial and final adjudication in favor of the petitioner, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the petitioner the amount and costs awarded him, and the balance to the person entitled to it, if they are known to the court, otherwise into court.

Court may order property to be sold.
1856, c. 273, § 7.

SEC. 30. Money paid into court, may be paid over to the person legally entitled to it, on petition and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury; and if afterwards the person entitled to it petitions and establishes his claim to it, the court may order the county treasurer to pay it to him.

Disposition of the proceeds.
1856, c. 273, § 8.

SEC. 31. Liens, for less amount than twenty dollars, may be enforced before any justice of the peace for the county where the person having the lien resides, and all the proceedings, rights, and liabilities, shall be the same as hereinbefore provided, as far

Lien less than \$20, justices have jurisdiction.
1856, c. 273, § 9.

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CHAPTER 92.

THE RIGHT OF ERECTING MILLS AND MILL-DAMS, AND OF FLOWING LANDS AND DIVERTING WATER TO SUPPLY MILLS, AND THE MODE OF OBTAINING DAMAGES THEREFOR.

- SEC. 1. Right to erect and maintain mill-dams, and to divert water by a canal for mills.
2. Not to injure a mill or canal previously built.
 3. Restriction as to height of dam and quantity of water.
 4. Damages for flowing, &c., recoverable on complaint.
 5. Form of complaint.
 6. How presented and served.
 7. What may be pleaded in bar.
 8. Mode of trial. Costs for respondent if complainant fails.
 9. Proceedings, if complainant recovers.
 10. Trial by jury. Commissioners' report to be evidence.
 11. Acceptance of commissioners' report.
 12. Verdict or report to bar any future action.
 13. Yearly damages, how fixed.
 14. Security to be given for yearly damages, if required.
 15. Complainant may sue for damages, if unpaid. Lien upon mill and land for damages.
 16. Mill and land may be seized and sold on the execution after thirty days. Effect of such sale.
 17. Right of redemption.
 18. Either party may file a new complaint.
 19. Restriction of this right.
 20. Owner may offer an increased compensation. Consequence.
 21. Injured party may offer to accept a less compensation. Consequence.
 22. Tenants may make such offers as well as owners.
 23. Restriction of suits for damages.
 24. Double damages if dam is raised higher, kept up longer, or more water diverted than allowed by the judgment.
 25. Agreement of parties binding, if recorded.
 26. Judgment no bar to a new complaint.
 27. Tender of damages, and effect thereof.
 28. Complaint not to abate by death of either party.
 29. If complaint abates, rights may be preserved by new complaint within a year.
 30. Provisions of this chapter apply to streams forming the boundary of the state.
 31. Compensation of commissioners. Costs.

Right to erect and maintain mill-dams, and to divert water by a canal for mills.

R. S., c. 126, § 1.
1855, c. 133, § 1.

SEC. 1. Any man may erect and maintain a water mill and dams to raise water for working it, on his own land upon and across any stream, not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any