

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
PUBLISHED BY BAILEY & NOYES.

## CHAPTER 76.

## TITLE TO REAL ESTATE BY LEVY OF EXECUTION.

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LEVY BY APPRAISEMENT.

What real estate may be levied on. Levy by appraisal; appointment of appraisers. R. S. c. 76, § 1.

SEC. 1. Real estate attachable, including the right to cut timber and grass as described in chapter eighty-one, may be taken to 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 allow him a reasonable time therefor, and if he neglects, appoint one for him. (a)

Appraisers, how to be sworn; certificate thereof. View of the land. R. S. c. 76, § 2. 23 Me. 335. 34 Me. 463. 26 Me. 411.

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,

(a) 4 Me. 372; 6 Me. 162; 7 Me. 146; 8 Me. 207; 16 Me. 151; 19 Me. 278; 20 Me. 223; 23 Me. 335; 26 Me. 277; 31 Me. 546; 33 Me. 187; 34 Me. 566; 37 Me. 21; 52 Me. 220; 56 Me. 222.

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.

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. (a)

SEC. 6. Estates tail are to be taken, appraised, and held, as estates in fee simple.

SEC. 7. All the debtor's estate, interest or share in the premises, whether held in tail, reversion, remainder, joint tenancy or in common, for life, years or otherwise, shall pass by a levy, unless it is larger than the estate mentioned in the appraisers' return. (b)

SEC. 8. When the estate cannot be described as provided in the third section, 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, turn him out and give possession to the creditor.

SEC. 9. 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.

(a) 6 Me. 106; 7 Me. 14, 146; 10 Me. 100; 15 Me. 73, 153; 23 Me. 538; 29 Me. 266; 41 Me. 475; 42 Me. 414; 45 Me. 351; 46 Me. 467; 48 Me. 389; 49 Me. 358; 50 Me. 437; 51 Me. 14, 407, 568; 52 Me. 220; 53 Me. 427, 542; 54 Me. 301, 384, 426; 55 Me. 504.

(b) 18 Me. 229; 23 Me. 538; 34 Me. 201, 566; 38 Me. 223; 49 Me. 455; 50 Me. 437; 55 Me. 53; 56 Me. 222.

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51 Me. 14.  
52 Me. 138.  
Value and description of estate to be made in return.  
R. S. c. 76, § 3.  
1863, c. 165.  
24 Me. 308.  
28 Me. 188.  
31 Me. 439.  
25 Me. 192.  
43 Me. 242.  
50 Me. 437.  
51 Me. 233.  
52 Me. 220, 261.  
53 Me. 542.  
54 Me. 426.  
55 Me. 53.

How appraised when several parcels are taken.

R. S. c. 76, § 4.  
27 Me. 129.

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R. S. c. 76, § 5.

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R. S. c. 76, § 6.  
21 Me. 160, 414.  
34 Me. 89, 139.  
38 Me. 210.

All Debtor's interest passes by levy, unless it is greater than stated in the return.  
R. S. c. 76, §§ 6, 7.

On rents and profits, how made.  
R. S. c. 76, § 8.  
18 Me. 397.  
24 Me. 93, 308.  
41 Me. 539.

When part cannot be taken without damage to whole; how made.  
R. S. c. 76, § 9.  
51 Me. 14, 233.

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On an estate for life, how made.  
R. S. c. 76, § 10.  
5 Me. 479.  
10 Me. 100.

SEC. 10. 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 appraisal 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; disposition of rent.  
R. S. c. 76, § 11.

SEC. 11. 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.

R. S. c. 76, § 11.

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. 405.  
54 Me. 301.

SEC. 12. 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 of which debtor has been disseized.

R. S. c. 76, § 13.  
30 Me. 40.  
51 Me. 114.  
52 Me. 355.  
55 Me. 523.

SEC. 13. A levy may be made on land fraudulently conveyed by a debtor, or of which he has been disseized and unto 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.

When debt assigned, estate held in trust for assignee.

R. S. c. 76, § 14.  
29 Me. 62.  
49 Me. 167.  
55 Me. 108.

SEC. 14. 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.

Execution to be returned and recorded in three months.

R. S. c. 76, § 15.  
5 Me. 197.  
13 Me. 137.  
22 Me. 105.  
38 Me. 353.  
52 Me. 220.

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

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

R. S. c. 76, § 16.  
17 Me. 249.  
28 Me. 218.  
52 Me. 133, 220.

SEC. 16. 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.

When levy may be waived or held void.

R. S. c. 76, § 17.  
2 Me. 232.  
48 Me. 369.

SEC. 17. 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. 18. 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. 19. 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.

SEC. 20. 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.

SEC. 21. 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 appraisal 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, 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

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When title fails after record, proceedings for an alias execution; debtor may convey title by deed.  
R. S. c. 76, § 18.  
25 Me. 427.  
48 Me. 369.  
55 Me. 30.

Levy commences when appraisers are sworn.  
R. S. c. 76, § 19.  
53 Me. 427.

When levy made for too much, valid; remedy against officer or creditor.  
R. S. c. 76, § 20.  
35 Me. 90.  
37 Me. 423.  
48 Me. 369.  
54 Me. 384.

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

CHAP. 76. 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.

REDEMPTION OF LEVIES BY APPRAISEMENT.

Land levied on may be redeemed in a year.  
R. S. c. 76, § 22.  
1 Me. 257.  
5 Me. 390.  
6 Me. 142.  
26 Me. 36.  
40 Me. 589.

SEC. 22. Real estate levied on may be redeemed within one year thereafter, by paying or 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 thereupon by his deed, prepared at the expense of the debtor, to release to him all his title to the premises.

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

SEC. 23. 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.

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

SEC. 24. 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.

Or debtor may have amount due determined by bill in equity.  
R. S. c. 76, § 25.  
30 Me. 361.

SEC. 25. 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.

Costs regulated; provisions applicable to redemption of estates for life.  
R. S. c. 76, § 26.

SEC. 26. Costs may be awarded to either party, except not against the creditor, unless he has, on request, unreasonably 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.



## LEVIES ON EQUITIES OF REDEMPTION.

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SEC. 27. 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 may be made on lands mortgaged, and amount due on mortgage deducted; remedy for errors, or when mortgage not known.  
R. S. c. 76, § 27.  
17 Me. 313.  
38 Me. 210.  
50 Me. 130.  
55 Me. 30, 252.

## LEVIES ON EQUITIES, HOW REDEEMED.

SEC. 28. 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.

May be redeemed in a year. Debtor paying on mortgage after levy, and not redeeming, may recover sum paid of creditor.  
R. S. c. 76, § 28.

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

SEC. 29. 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.

Rights and interests, which may be sold at auction.  
R. S. c. 76, § 29.  
R. S. c. 81, § 28.  
43 Me. 242.  
50 Me. 130.  
51 Me. 21.  
54 Me. 160.

SEC. 30. 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.

Notice of sale, how to be given.  
R. S. c. 76, § 30.  
7 Me. 376.  
50 Me. 171.

SEC. 31. 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

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

**CHAP. 76.** 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.

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

**SEC. 32.** 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, authorized for taking a deposition in perpetuum.

Officer to sell at auction, and convey by deed, debtor's interest.  
R. S. c. 76, § 33.  
8 Me. 246.  
30 Me. 40.

**SEC. 33.** 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 endorsed on the execution, unless satisfied, and then paid to the debtor.

Officer may adjourn sale, another officer may complete it.  
R. S. c. 76, § 34.  
1859, c. 61.

**SEC. 34.** 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.

Seizure made on day of notice of sale; proceedings after return day, valid.  
R. S. c. 76, § 35.  
16 Me. 151.

**SEC. 35.** The seizure on execution is considered as made on the day when notice of the sale is given, and the right or interest seized within that time is held, if the sale be not 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.

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

Rights and interests may be redeemed.  
R. S. c. 76, § 36.  
1 Me. 297.  
2 Me. 339.  
10 Me. 161.  
52 Me. 405.

**SEC. 36.** Rights and interests so sold may be redeemed within one year, as land levied on by appraisalment may be; and the rights and remedies of the parties are the same for this purpose, as those of mortgager and mortgagee.

Rights to redeem from levies and sales may be attached and sold.  
R. S. c. 76, § 37.  
54 Me. 160.

**SEC. 37.** The right of a debtor to redeem from a sale or from a levy by appraisalment, 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. CHAP. 76.

SEC. 38. 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 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.

A creditor seizing the right of redemption, may redeem the property same as debtor could, and be repaid from proceeds of sale. 1861, c. 35.

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

SEC. 39. The lands of banks or manufacturing corporations, and their titles as mortgagees of lands, may be seized on execution 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.

Lands of banks and manufacturing corporations, and their titles as mortgagees, may be sold at auction; proceedings. R. S. c. 76, § 38.

SEC. 40. 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.

No transfer of such property after notice of seizure, is valid. R. S. c. 76, § 39.

CORPORATION MAY REDEEM.

SEC. 41. 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, § 40.

MISCELLANEOUS PROVISIONS.

SEC. 42. 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.

Expenses part of execution. R. S. c. 76, § 41.

## CHAP. 76.

Whatever is to be done by creditor or debtor, may be done by his legal representatives.

R. S. c. 76, § 42.  
When real estate of a deceased person may be taken by execution.  
R. S. c. 76, § 43.  
1869, c. 37, § § 1, 2.  
Sec. c. 81, § 64.  
Sec. c. 103, § 6.  
55 Me. 523.

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

Attachment of right to have conveyance, to take effect on premises.  
R. S. c. 76, § 46.

When deed has been given to assignee, right should be sold; and purchaser same remedy on contract as debtor had.  
R. S. c. 76, § 47.  
14 Me. 34.  
15 Me. 157.  
35 Me. 520.

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

SEC. 43. 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. 44. 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. 45. 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 the thirtieth section 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. 46. 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. 47. 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-fulfilment, 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. 48. 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.

REDEMPTION OF LANDS OF DEFAULTED DEFENDANTS LIVING OUT THE STATE.

CHAP. 76.

SEC. 49. A defendant living out 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; 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.

Defendant living out the state, defaulted without appearance, may within three months after judgment in review, redeem his real estate levied on or sold. 1863, c. 200, §§ 1, 2, 3,

SEC. 50. 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. 1863, c. 200, § 4.