

MAINE STATE LEGISLATURE

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SIXTH REVISION

THE
REVISED STATUTES

OF THE

STATE OF MAINE

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solvent, such disposition by will shall be limited to the distribution of such money among the widow or widower, and issue in such proportions as the testator or testatrix may designate.

See c. 52, § 114; c. 53, §§ 143, 169; c. 54, § 17; c. 68, § 50, ¶ iv; 58 Me. 434; 61 Me. 471; 66 Me. 518; 73 Me. 548; 79 Me. 234; 81 Me. 180; 82 Me. 208; 83 Me. 295; 84 Me. 523; 87 Me. 68; 97 Me. 441, 584.

Note. Title by descent to settler's lot of wild land purchased of state, c. 8, § 12. Descent of shares, or money received for shares, in loan and building association, c. 52, § 114.

CHAPTER 81.

Title to Real Estate by Levy of Execution.

- Sections 1-24 Levy by Appraisement.
- Sections 25-29 Redemption of Levies by Appraisement.
- Sections 30-31 Levies on Equities of Redemption.
- Sections 32-40 Levy by Sale.
- Sections 41-43 Redemption from Sale.
- Section 44 Sale of Railroad Franchises.
- Sections 45-51 Miscellaneous Provisions.
- Sections 52-53 Redemption of Lands of Defaulted Non-Resident Defendants.

Levy by Appraisement.

Sec. 1. What real estate may be levied on; levy by appraisal; appointment of appraisers. R. S. c. 78, § 1. Real estate attachable, including the right to cut timber and grass as described in chapter eighty-six, 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 shall allow him a reasonable time therefor, and if he neglects, appoint one for him.

See c. 86, § 57; 4 Me. 373; 6 Me. 164; 7 Me. 147; 8 Me. 210; 19 Me. 279; 20 Me. 227; 23 Me. 336; 26 Me. 291; 31 Me. 548; 33 Me. 190; 34 Me. 573; 37 Me. 24; 53 Me. 542; 56 Me. 224; 63 Me. 251; 64 Me. 454, 540; 67 Me. 593; 68 Me. 294; 111 Me. 93.

Sec. 2. Appraisers, how sworn; certificate; view of land. R. S. c. 78, § 2. The appraisers may be sworn by the officer without fee, or by a justice of the peace, faithfully and impartially to appraise the real estate to be taken, and a certificate of the oath shall be made, stating the date of its administration, on the back of the execution, by the person who administered it; they shall then proceed with the officer to view and examine the land so far as is necessary for a just estimate of its value.

23 Me. 337; 26 Me. 421; 34 Me. 467; 51 Me. 19; 52 Me. 139; 74 Me. 179.

Sec. 3. Value and description of estate, to be made in return. R. S. c. 78, § 3. They shall in a return made and signed by them on the back of the execution, or annexed thereto, state the value of the estate appraised,

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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.

24 Me. 309; 25 Me. 195; 28 Me. 189; 31 Me. 441; 43 Me. 251; 50 Me. 442;
51 Me. 243, 569; 52 Me. 226, 264; 54 Me. 434; 55 Me. 54; 59 Me. 352; 71 Me.
193; 74 Me. 180; 78 Me. 365.

Sec. 4. Appraisal, when several parcels are taken. R. S. c. 78, § 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 is valid when the return is signed by two of the appraisers, the other appearing to have been sworn and to have acted.

27 Me. 131; 77 Me. 583.

Sec. 5. Officer's return, contents; when it may be completed. R. S. c. 78, § 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; and 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.

6 Me. 108; 7 Me. 18, 147; 10 Me. 105; 15 Me. 77, 154; 23 Me. 542; 29 Me.
268; 41 Me. 481; 42 Me. 427; 45 Me. 355; 46 Me. 469; 48 Me. 393; 49 Me. 359;
50 Me. 439; 51 Me. 18, 569; 52 Me. 227; 53 Me. 542; 54 Me. 306, 386, 435; 55
Me. 505; 58 Me. 333; 64 Me. 453; 71 Me. 193; 75 Me. 35; 80 Me. 269.

Sec. 6. Estates tail. R. S. c. 78, § 6. Estates tail shall be taken, appraised and held, as estates in fee simple.

Sec. 7. Estate held in joint tenancy may be taken on execution. R. S. c. 78, § 7. The whole or part of an estate held in joint tenancy or in common, may be taken to satisfy an execution, in the same manner as other real estate is now taken, and held in common, but the whole estate must be described, and the share owned by the debtor must be stated.

58 Me. 331.

Sec. 8. Debtor's interest passes by levy; exception. R. S. c. 78, § 8. All the debtor's estate, interest or share in the premises, whether held in tail, reversion, remainder, for life, years or otherwise, passes by a levy, unless it is larger than the estate mentioned in the appraisers' return.

18 Me. 230; 23 Me. 542; 34 Me. 142, 201, 573; 38 Me. 211, 226; 49 Me. 456;
50 Me. 440; 55 Me. 55; 56 Me. 227; 58 Me. 331; 71 Me. 194, 303.

Sec. 9. On rents and profits, how made. R. S. c. 78, § 9. When the estate cannot be described as provided in section three, the execution may be levied on its rents and profits, and the officer may give seizin thereof to the creditor, and cause a person in possession to become tenant to him, or, on his refusal, may turn him out and give possession to the creditor.

18 Me. 398; 24 Me. 101, 309; 41 Me. 541.

Sec. 10. When part cannot be taken without damage to whole. R. S. c. 78, § 10. When the premises consist of a mill, mill privilege, or other estate more than sufficient to satisfy the execution, which cannot be divided

by metes and bounds without damage to the whole, an undivided part of it may be taken and the whole described, or it may be levied on as provided in the preceding section.

51 Me. 19, 243; 54 Me. 306; 58 Me. 333.

Sec. 11. On an estate for life, how to be made. R. S. c. 78, § 11. A levy may be made on an estate for life as on other real estate, and its value appraised; or it may be made on its rents and profits, and an appraisement of them made for a term of time, if the life so long continues, computing interest on the execution, and deducting the rents and profits from time to time when due; and when the estate expires before the end of the term for which it was taken, the creditor by an action on the judgment may recover the balance due.

5 Me. 481; 10 Me. 106.

Sec. 12. On an estate under lease; disposal of rent. R. S. c. 78, § 12. When the levy is made on the whole of an estate under lease, the rent shall be paid to the creditor from the time of the levy. When made on part of it, the appraisers shall determine what portion of the rent is to be paid to him, and it shall be paid to him accordingly.

Sec. 13. Seizin and possession, how delivered; when debtor shall not be ousted. R. S. c. 78, § 13. The officer shall 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 admits. When a remainder, reversion or right of redemption is taken, the debtor in possession shall not be ousted, but his right therein shall be assigned to the creditor, and a return made accordingly.

Sec. 14. On land fraudulently conveyed, or in case of disseizin. R. S. c. 78, § 14. A levy may be made on land fraudulently conveyed by a debtor, or of which he has been disseized and into which he has a right of entry. In such case, the tenant in possession shall not be ousted, but the officer shall deliver to the creditor a momentary seizin, sufficient to enable him to maintain an action for its recovery in his own name.

40 Me. 590; 51 Me. 115; 52 Me. 357; 55 Me. 525; 58 Me. 232, 336; 95 Me. 250; 97 Me. 494.

Sec. 15. When debt is assigned, estate to be held in trust for assignee. R. S. c. 78, § 15. When the debt had been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it, in trust for his assignee, who is entitled to a conveyance thereof which may be enforced by a bill in equity.

29 Me. 64; 49 Me. 169; 55 Me. 109.

Sec. 16. Execution to be returned and recorded within three months. R. S. c. 78, § 16. The officer shall return the execution into the clerk's office, where it is 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.

5 Me. 198; 13 Me. 190; 22 Me. 107; 38 Me. 355; 52 Me. 228; 73 Me. 331; 81 Me. 99.

Sec. 17. Levy not recorded, void against purchaser or creditor, without notice. R. S. c. 78, § 17. When not so recorded, the levy is void against a person who has purchased for a valuable consideration, or has attached

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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.

17 Me. 250; 28 Me. 229; 52 Me. 228; 81 Me. 99.

Sec. 18. When a levy may be waived or held void. R. S. c. 78, § 18. A creditor, who has received seizin of a levy not recorded, cannot waive it, unless the estate was not the property of the debtor, or not liable to seizure on execution, or cannot be held by the levy, when it may be considered void, and he may resort to any other remedy for satisfaction of his judgment.

2 Me. 237; 48 Me. 373; 65 Me. 479; 73 Me. 330.

Sec. 19. When title fails after record, proceedings for an alias execution; debtor may convey title by deed. R. S. c. 78, § 19. When the execution has been recorded, and the estate levied on does not pass by the levy for causes named in the preceding section, the creditor may sue out of the office of the clerk issuing the execution, a writ of scire facias, requiring the debtor to show cause why an alias execution should not be issued on the same judgment; and if the debtor, after being duly summoned, does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the suit; and the judgment shall be satisfied for the amount of the levy.

5 Me. 108; 25 Me. 430; 48 Me. 372; 55 Me. 31; 65 Me. 479; 73 Me. 330; 75 Me. 46; 100 Me. 64; 108 Me. 355; 112 Me. 440.

Sec. 20. Assignee of judgment may sue out writ of scire facias, if estate does not pass by levy; proceedings. R. S. c. 78, § 20. When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may sue out of the office of the clerk issuing such execution, a writ of scire facias, setting forth the facts aforesaid therein, and requiring the debtor to show cause why another execution should not issue on the same judgment, in the name and for the benefit of the plaintiff in the scire facias; and if the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside; and the court from which said execution issued, may order and issue another execution on the same judgment, for the amount of the original debt, interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form, with necessary charges.

Sec. 21. Assignee may bring action of debt in his own name. R. S. c. 78, § 21. In all cases where a judgment has been thus assigned and is not discharged, the assignee may bring an action of debt thereon in his own name; and upon averment and proof of the facts aforesaid, the court may render judgment and execution thereon in his favor; subject, however, to any legal defense which the debtor might have if the action were instituted by the original creditor.

66 Me. 544.

Sec. 22. Levy commences when appraisers are sworn. R. S. c. 78, § 22. For the purpose of fixing the amount due on the execution, and the time when the debtor's right to redeem expires, all levies shall be considered to commence 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 until after that day.

53 Me. 428; 94 Me. 438.

Sec. 23. Levy made for too much, is valid, if not over one per cent; remedy against officer or creditor. R. S. c. 78, § 23. When, by an error of the officer, the amount, for which the levy was made, exceeds the amount of debt or damage, costs, interest and costs of levy, by a sum not greater than one per cent thereof, it is 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 all damages occasioned thereby, or a bill in equity against the creditor to have such error corrected, and the court may correct it, in any just and equitable manner, or it may decree a pecuniary compensation for the injury.

35 Me. 91; 37 Me. 437; 54 Me. 385; 62 Me. 431; 84 Me. 539.

Sec. 24. When levies are sustained by two preceding sections, creditor may redeem within six months. R. S. c. 78, § 24. When a levy so made would not, in a suit commenced before the tenth day of April, 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, determine, in writing by them signed, to be due upon the following elements of calculation. The creditor is entitled to the amount of the appraisement with interest annually from the time of the levy; and to receive the just value of the improvements made by him, or persons under him, on such portions of the premises as remained unsold the first day of April, eighteen hundred and fifty-six, and a fair compensation for attending to and taking care of the same. For the appraised value of such portion as he had sold before that day, he shall account; and the debtor, or those holding title under him, shall convey to the creditor or those claiming under him, by a valid deed of quit-claim, the title to the portion so sold.

Redemption of Levies by Appraisement.

Sec. 25. Land levied on, may be redeemed within a year; creditor out of state, or unknown, payment may be made to clerk. R. S. c. 78, § 25. Real estate levied on may be redeemed within one year thereafter, by tendering to the creditor the amount of its appraisement with interest from the time of levy, with reasonable expenses incurred for its improvement or repair, or in saving it from loss by the non-payment of taxes legally assessed thereon prior to the levy, after deducting rents and profits with which he is chargeable; and the creditor shall thereupon by his deed pre-

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pared at the expense of the debtor, release to him all his title to the premises. When the creditor resides out of the state, or his residence is unknown, such payment is sufficient, if made to the clerk of courts in the county where the real estate levied upon is situated, and such payment has the same effect as if made to the creditors.

See c. 95, § 28; 1 Me. 258; 5 Me. 392; 6 Me. 143; 36 Me. 87; 40 Me. 590; 73 Me. 185.

Sec. 26. Amount due, how ascertained. R. S. c. 78, § 26. The debtor may have the amount due ascertained by three justices of the peace, chosen, one by the debtor, one by the creditor, and the other by those two; if after notice the creditor declines, the debtor may choose two, and after a hearing before the three, they or two of them shall make in writing and sign a certificate of the sum found due, which is conclusive; and the debtor may tender that sum, which is effectual to redeem, although he had before tendered a different sum.

Sec. 27. If creditor does not release after tender, debtor may recover land. R. S. c. 78, § 27. If the creditor does not release the premises, within ten days after payment or tender of the amount due, the debtor may recover the same by a writ of entry on his own seizin; but before judgment is entered, he must bring into court, for the creditor, the money tendered.

Sec. 28. Debtor may have amount due determined by bill in equity. R. S. c. 78, § 28. Instead thereof, the debtor, without 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.

30 Me. 362.

Sec. 29. Costs regulated; provisions applicable to redemption of estates for life. R. S. c. 78, § 29. 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 such deed 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. This section is applicable to the redemption of an estate for life, levied on by taking the rents and profits.

Levies on Equities of Redemption.

Sec. 30. Levies on lands mortgaged; amount due deducted; remedy for errors. R. S. c. 78, § 30. Levies may be made on lands mortgaged as on lands not mortgaged, and the amount due on the mortgage may be 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 the levy, it shall nevertheless 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.

17 Me. 315; 38 Me. 212; 50 Me. 136; 55 Me. 31; 81 Me. 66, 99.

Sec. 31. Redemption; debtor paying on mortgage after levy, and not redeeming, may recover of creditor. R. S. c. 78, § 31. Levies made as provided in the preceding section, may be redeemed within one year, as in other cases. When the debtor pays on the mortgage after the levy, and does not redeem, he may recover of the creditor the amount so paid, in an action for money had and received.

Levy by Sale.

Sec. 32. Real estate, rights and interests, may be sold. R. S. c. 78, § 32. Real estate attachable and all rights and interests therein, including the right to cut timber and grass, as described in chapter eighty-six, rights of redeeming real estate mortgaged, rights to a conveyance of it by bond or contract, interests by virtue of possession and improvement of lands as described in chapter one hundred and nine, 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-two, of chapter eighty-nine. Such seizure and sale pass to the purchaser, all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution, provided in this chapter.

See c. 51, § 75; c. 86, § 57; c. 109, § 20; 43 Me. 249; 50 Me. 136; 51 Me. 22; 54 Me. 163; 67 Me. 31; 72 Me. 89; 73 Me. 18; 81 Me. 24, 536; 83 Me. 293; 94 Me. 438; 96 Me. 381; 97 Me. 304; 101 Me. 228; 104 Me. 99; 111 Me. 93, 194.

Sec. 33. Notice of sale. R. S. c. 78, § 33. The officer in such case shall give written notice of the time and place of sale, to the debtor in person, or by leaving the same at his last and usual place of abode, if known to be an inhabitant of the state, and cause it to be posted in a public place in the town where the land lies, and in two adjoining towns, if so many adjoin; and if the land is situated in two or more towns, then in each of those towns, and in two towns adjoining 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 for three weeks successively before the day of sale, in a newspaper printed in whole or in part in such county, if any, otherwise in the state paper.

7 Me. 377; 50 Me. 181; 58 Me. 288; 97 Me. 303; 104 Me. 100; 108 Me. 345.

Sec. 34. Mortgagee to disclose amount due. R. S. c. 78, § 34. When a right of redemption has been attached, and judgment recovered, and a sale of it is to be made, the creditor may demand of the mortgagee to disclose, in writing under his hand, the condition of the mortgage and the

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sum due thereon, which shall be furnished within twenty-four hours, and in case of neglect, he shall be liable for damages.

Sec. 35. If disclosure is not made, creditor may compel it by taking deposition. R. S. c. 78, § 35. If such disclosure is not furnished within that time, the 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 may exercise the power to compel attendance and disclosure, which is authorized for taking a deposition in perpetuum.

Sec. 36. Officer shall sell at auction and convey by deed, debtor's interest. R. S. c. 78, § 36. The officer shall sell such right or interest at public auction to the highest bidder, and execute and deliver to the purchaser a sufficient deed thereof, which, being recorded in the registry of deeds where the land lies, within three months after the sale, conveys to him all the title of the debtor in the premises. When such bidder, on demand of the officer, does not pay him the sum for which it was sold, he shall immediately sell it again as before, and if it does not sell for so much as at the first sale, the person to whom it was struck off at the first sale shall be accountable to the officer for the difference, who may recover it, to be indorsed on the execution, unless satisfied, and then paid to the debtor.

30 Me. 43; 60 Me. 185; 67 Me. 35; 73 Me. 331; 81 Me. 99; 93 Me. 29; 108 Me. 345.

Sec. 37. Officer may adjourn sale, and another officer may complete it. R. S. c. 78, § 37. When the officer deems it for the interest of all concerned to postpone the sale, he may adjourn it for any time not exceeding seven days, and so from time to time until a sale is made, giving notice at the time of each adjournment by public proclamation; and when he is unable to attend at the time and place of sale, another officer may adjourn it not exceeding ten days, and if such inability is not then removed, may sell and make his return as the first officer might.

71 Me. 547.

Sec. 38. Seizure when considered made; proceedings after return day, valid. R. S. c. 78, § 38. The seizure on execution is considered made on the day when notice of the sale is given, and it holds the right or interest seized within that time if the sale is not completed within thirty days after judgment; and the subsequent proceedings and return are valid, if made after the return day of the execution, or after removal or disability of the officer.

16 Me. 154; 84 Me. 540; 92 Me. 381; 94 Me. 438.

Sec. 39. Titles of banks and corporations, as mortgagees, may be sold; proceedings. R. S. c. 78, § 39. The titles of banks or corporations, as mortgagees of land, may be taken on execution and sold as real estate and interests therein, are taken and sold. The officer 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, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable

request of the officer, shall furnish him with a certified copy of such contract, and of all payments made thereon.

Sec. 40. No transfer of such property, after notice of seizure, is valid. R. S. c. 78, § 40. No transfer of such mortgage, or of the debt secured thereby, made by such corporation after notice of the seizure thereof on execution has been filed in the registry where the land lies, or given to the party to be affected thereby, has any validity against the purchaser at such sale.

Redemption of Real Estate, Rights and Interest.

Sec. 41. Rights and interests, may be redeemed. R. S. c. 78, § 41. Real estate, and rights and interests therein, and mortgages and debts so sold, may be redeemed within one year, as land levied on by appraisement may be; and the rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee.

See c. 95, § 28; 1 Me. 299; 2 Me. 340; 10 Me. 164; 52 Me. 406.

Sec. 42. Rights to redeem, may be attached and sold. R. S. c. 78, § 42. The right of a debtor to redeem from a sale or from a levy by appraisement, may be attached and sold on execution, as an equity of redemption may be, and the parties have the same rights and remedies. Attachments of such estate or equity of redemption, made before such levy or sale, are 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.

See c. 95, § 28; 54 Me. 163.

Sec. 43. Creditor, seizing right of redemption, may redeem property, and be repaid from the proceeds of sale. R. S. c. 78, § 43. When a creditor has seized on execution a right that would expire within sixty days, to redeem from a mortgage, sale or levy on execution, he may pay or tender to the person entitled thereto the amount which the debtor would have to pay to redeem the same; and the officer selling such right shall first pay from the proceeds of sale the amount so paid by the creditor with interest, unless the debtor has paid it; and the residue, if any, shall be applied in satisfaction of the execution.

Sale of Railroad Franchises.

Sec. 44. Franchises of railroads may be sold on execution. R. S. c. 78, § 44. The franchises of railroads may be sold on execution as provided in section twenty-one of chapter eighty-nine, and the officer may convey the same by deed, which shall be recorded in the registry of deeds of each county in which any part of such railroad lies; and the debtor has the same right of redemption from such sale as from sales of real estate under section thirty-two.

Miscellaneous Provisions.

Sec. 45. Expenses, part of execution. R. S. c. 78, § 45. The expenses of levy in any of the modes aforesaid in a levy, sale or redemption are part of the execution.

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Sec. 46. Creditor or debtor may act by representatives. R. S. c. 78, § 46. Everything, which a creditor or debtor is required in this chapter to do, may be done by his executors or administrators, or by any person lawfully claiming under him.

Sec. 47. Real estate of deceased person may be taken by execution. R. S. c. 78, § 47. 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, dissolves 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.

See c. 86, § 69; c. 80, § 9; 55 Me. 525; 85 Me. 459.

Sec. 48. Lands of debtor to the state may be sold on execution; proceedings. R. S. c. 78, § 48. When an execution is issued in the name of or for the use of the state, the debtor's real estate may be taken thereby and sold at auction, notice thereof being given as provided in section thirty-three, 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 deed of the estate sold; and the debtor has the same right to redeem as to redeem lands levied on by appraisalment.

Sec. 49. Attachment of right to a conveyance, takes effect on premises. R. S. c. 78, § 49. 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 takes effect upon the premises, which may be levied on as in other cases.

Sec. 50. When deed has been given to assignee, right should be sold; remedy of purchaser. R. S. c. 78, § 50. 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.

14 Me. 36; 15 Me. 158; 35 Me. 524.

Sec. 51. When assignment is alleged and contested; proceedings. R. S. c. 78, § 51. 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 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 invalid.

Redemption of Lands of Defaulted Defendants Living Out
of the State.

Sec. 52. Defendant living out of state, defaulted, may after judgment in review, redeem his real estate. R. S. c. 78, § 52. A defendant living out of the state, defaulted in an action without an appearance or other service than a newspaper publication, may, within six months after the levy of an execution on his real estate or the sale of a right of redemption, petition for a review of such action, 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 a 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.

See c. 94, § 1, ¶ vi; 72 Me. 338, 342.

Sec. 53. Waste not permitted; remedy. R. S. c. 78, § 53. 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.