

MAINE STATE LEGISLATURE

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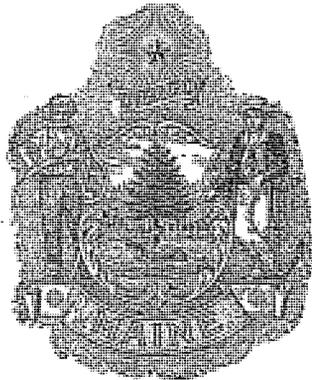
SIXTH REVISION

THE
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OF THE

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in any case tried before him; nor hear or determine any civil action commenced by himself; and every action so commenced shall abate.

91 Me. 201.

Sec. 33. Judge shall not act in cases within jurisdiction of his court. R. S. c. 85, § 32. No judge of any municipal or police court shall give counsel or accept any retainer in relation to any cause, the subject matter of which shall be within the jurisdiction of the court over which he presides, nor in any manner become voluntarily interested, directly or indirectly, in any such cause.

Justices of the Peace.

Sec. 34. Ex officio, justices of the peace. R. S. c. 85, § 33. Trial justices and judges of municipal and police courts are, ex officio, justices of the peace and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices and judges of municipal and police courts, are of equal effect.

66 Me. 271.

Sec. 35. Commissioned for the state. R. S. c. 85, § 34. Justices of the peace shall exercise their powers and duties, and shall be commissioned to act, within and for every county.

77 Me. 589.

CHAPTER 89.

Levy of Executions on Personal Property.

Sec. 1. Goods which may be sold on execution. R. S. c. 86, § 1. All chattels, real and personal, liable at common law to attachment, and not exempted therefrom by statute, may be taken and sold on execution as prescribed in this chapter.

24 Me. 399; 51 Me. 557.

Sec. 2. Coin and bank-notes, how levied on. R. S. c. 86, § 2. Current gold or silver coin may be taken on execution and paid to the creditor as money collected; and bank-notes and all other evidences of debts, issued by any moneyed corporation and circulated as money, may be taken on execution, and paid to the creditor at their par value, if he will accept them; otherwise, they may be sold like other chattels.

57 Me. 414.

Sec. 3. Goods, when to be sold on execution. R. S. c. 86, § 3. Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor, for four days at least after the day on which they were taken, exclusive of Sunday; and they shall be sold within fourteen days after the day of seizure, except as hereinafter provided, unless before the time of sale the debtor redeems them by otherwise satisfying the execution.

24 Me. 398; 61 Me. 531; 75 Me. 394.

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Sec. 4. Notice of sale. R. S. c. 86, § 4. The officer shall post public notice of the time and place of sale, at least forty-eight hours before the time thereof, in two or more public places in the town or place of sale.

60 Me. 206.

Sec. 5. Adjournments of sale; time. R. S. c. 86, § 5. If at the time so appointed, the officer is prevented by sickness or other casualty from attending at such place, or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding six days after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment as required in the preceding section.

11 Me. 374; 34 Me. 442; 60 Me. 206.

Sec. 6. Adjournment of sale to another place. R. S. c. 86, § 6. For good reason, and for the purpose of obtaining a better price for the goods, he may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town.

11 Me. 374; 74 Me. 553.

Sec. 7. Indemnity, officer may require. R. S. c. 86, § 7. When there is reasonable doubt as to the ownership of goods, or their liability to be taken on execution, the officer may require sufficient indemnity.

Sec. 8. Buyer refusing to take; proceedings. R. S. c. 86, § 8. If the highest bidder, at such sale refuses to take and pay for an article, the officer shall sell it again at auction at any time within ten days, giving due notice of the second sale; and account for what he receives on the second sale, and for any damages that he recovers of the first bidder for a loss on the resale, as for so much received on the execution.

110 Me. 222.

Sec. 9. Return of sale, how to be made; penalty for fraud, in sale or in return. R. S. c. 86, § 9. He shall, in his return on the execution, particularly describe each article or lot of goods sold, and the price at which it was sold; and if he commits any fraud in the sale or return, he forfeits to the debtor, five times the sum of which he defrauds him to be recovered in an action on the case.

110 Me. 221.

Sec. 10. Proceeds of sale, how disposed of. R. S. c. 86, § 10. The money arising from the sale of any property on execution, shall be applied to pay the charges and satisfy the execution; and the residue, if any, shall be returned to the debtor on demand, or otherwise applied as provided in section twenty-two.

Sec. 11. Buildings on leased land, may be sold for land rent; redemption. R. S. c. 86, § 11. When a lessor of lands leased for the purpose of erecting a building thereon commences an action against the lessee, attaches the buildings within six months after the rent becomes due, and recovers such rent, he may, on execution, cause the rents and profits of such buildings to be sold for a term sufficient to pay the debt and costs; or cause such building to be sold like any other personal estate. In all cases, any mill or building seized and sold on execution as a chattel personal, may be redeemed within one year, as land levied upon by appraisement may be; and the remedies and rights of the parties are the same as those of mort-

gagor and mortgagee, except the rate of interest, which shall be ten per cent a year.

See c. 96, § 46.

Sec. 12. Shares in incorporated companies, how to be sold. R. S. c. 86, § 12. Any share or interest of a stockholder or proprietor in an incorporated company, may be taken on execution and sold in the following manner, and not otherwise, anything in the charter of such company to the contrary notwithstanding.

Sec. 13. Notice of seizure. R. S. c. 86, § 13. If the property was not attached on mesne process in the same suit, the officer shall leave a copy of the execution with the treasurer, cashier, clerk or other recording officer of the company, and the property shall be considered as seized on execution when the copy is so left. If it was so attached and remains attached, the officer shall proceed in seizing and selling it on execution as in section sixteen.

Sec. 14. Officers of corporations, shall certify number of debtor's shares, under penalty. R. S. c. 86, § 14. The officer of the company having the care of the records or account of shares, or interest of the stockholders, shall, on exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor, or of the amount of his interest, under the penalty provided in section twenty-eight of chapter eighty-six.

Sec. 15. Shares sold, to be transferred; new certificate to purchaser; dividends. R. S. c. 86, § 15. Within fourteen days after the sale, the officer shall leave an attested copy of the execution and of the return thereon, with the officer of the company whose duty it is to record transfers of shares; and the purchaser is thereupon entitled to a certificate or certificates of the shares bought by him, on paying the fees therefor, and for recording the transfers; and if such shares or interest were attached in the suit in which the execution issued, he shall have all dividends which accrued after the attachment.

63 Me. 514.

Sec. 16. Notice of sale, how to be given. R. S. c. 86, § 16. 1911, c. 132. In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving it at his last and usual place of abode, if within the county where the officer dwells, otherwise by forwarding it to him by mail, if his residence is known to such officer, postage paid, whether within or without the state; and public notice thereof by posting it in one or more public places in the town where the sale is to be made, and in two adjoining towns, if there are so many, thirty days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for three weeks successively before the day of sale, in some public newspaper printed in the county, if any, if not, in the state paper.

74 Me. 20.

Sec. 17. Franchise of corporation, notice of sale. R. S. c. 86, § 17. When judgment is recovered against a bridge, canal or other incorporated company with power to receive toll, its franchise may be sold on execution

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at public auction, by giving notice of the time and place of sale by posting a notification in any town, in which the treasurer, clerk or any officer thereof, if there are any officers, and if not, where any stockholder resides, for thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted for three weeks successively in a newspaper printed in a county where either of said officers, or, if the company is without officers, where any stockholder resides, the last publication being at least four days before the day of sale; and if there is no newspaper printed in any such county, then in the state paper.

Sec. 18. **Mode of sale; possession, how given.** R. S. c. 86, § 18. In the sale of such franchise, whoever will pay and satisfy such execution, all fees and incidental expenses, in consideration of being entitled to receive to his own use all such toll as the corporation is entitled to receive, for the shortest period of time, is the highest bidder, and the purchaser for such period; and immediately after such sale, the officer shall deliver to him possession of the tollhouses and gates, in whatever county situated, and state his doings therein in his return.

Sec. 19. **Rights and duties of the purchaser.** R. S. c. 86, § 19. The purchaser of such franchise, and those claiming under him, may receive to their own use the tolls accruing within the time limited in the purchase, and shall have all the powers of the corporation necessary for the convenient use of the property, be subject to the same duties and penalties during the term of said purchase, and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence.

Sec. 20. **Right of redemption by the corporation.** R. S. c. 86, § 20. The corporation, at any time within three months after the day of sale, may redeem said franchise by paying to the purchaser the sum which he paid in satisfaction of the execution, with twelve per cent interest, in addition to the toll received.

Sec. 21. **Application of §§ 17-20 to franchises of railroads lying wholly within the state; notice given in each county interested; conveyance.** R. S. c. 86, § 21. The provisions of the four preceding sections apply to the franchises of railroad corporations whose railroads lie wholly within the state, except that notice shall be given of the time and place of such sale, by posting a notification thereof at the court-house in each county through which such railroad runs, either wholly or in part, for thirty days at least before the day of sale, and by causing an advertisement to be inserted for three weeks successively in at least one newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least four days before the day of sale, and if there is no newspaper printed in any one or more of such counties, then in the state paper instead; and when the company has an established office in the state, notice of the sale shall also be given by leaving an attested copy thereof at the office of said company for not less than thirty days previous to such sale; and notice given in the manner herein provided is sufficient. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.

See c. 81, § 44.

Sec. 22. Proceeds of property sold, how applied. R. S. c. 86, § 22. If goods or other property sold on execution have been attached by other creditors or seized on other executions, by the same or another officer, or if, before payment of the residue to the debtor, any other writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds shall be applied to the discharge of the several judgments in the order in which the writs of attachment or execution were served; and the residue, if any, shall be paid over to the debtor.

67 Me. 31; 76 Me. 298; 93 Me. 31; 107 Me. 188.

Sec. 23. Notice of second attachment shall be given to the first attaching officer. R. S. c. 86, § 23. If a share in a corporation, or other property that may be attached without taking and keeping possession thereof, is attached or taken on execution, and is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure; and if, without such notice, he pays the balance of the proceeds of the sale to the debtor, he is not liable therefor to the person claiming under such subsequent attachment or seizure.

Sec. 24. Warrant against turnpike and other corporations taking toll, may be issued; proceedings thereon. R. S. c. 86, § 24. When damages are assessed in favor of a person by the county commissioners, by a committee or by verdict of a jury, for an injury sustained by him through the acts of any corporation authorized to demand and receive toll, and they are not paid within thirty days after order, or the acceptance of such verdict, or report of the committee, he may have a warrant of distress against such corporation for such damages, interest and costs; and the officer holding such warrant may adjourn the vendue, as in the sale of goods on execution; and all proceedings respecting the attachment and sale on execution of the franchise of such corporation, and sales on warrant of distress as aforesaid, may be had in the county in which the creditor, the president, clerk, treasurer or a director of said corporation, if there is any such officer, if not, a stockholder, resides.

Sec. 25. Preservation of lien, in case of prior attachment. R. S. c. 86, § 25. When real or personal estate is seized on execution, and further service is suspended by a prior attachment thereof, such estate shall be bound by the seizure until it is set off or sold in whole or in part under the prior attachment, or until the attachment is dissolved, if the officer seizing such real estate, within five days thereafter, files in the office of the register of deeds in the county or district where it lies, a copy of his return of the seizure, with the names of the parties, the court at which judgment was recovered, and the date and the amount of the execution; and the register shall file and enter the same of record, as in case of attachment of real estate on writs; and like fees shall be allowed to the officer and register therefor.

76 Me. 297, 329.

Sec. 26. Proceedings, when prior attachment is removed. R. S. c. 86, § 26. If the prior attachment is dissolved, or the estate is set off or sold in part under it, the estate or remaining part thereof continues bound for thirty days thereafter, by such seizure on execution; and the service of the execution may be completed within that time as if the estate had been

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then first seized thereon, although the return day of the execution has passed.

Sec. 27. Set off of executions. R. S. c. 86, § 27. When an officer has in his hands executions, wherein the creditor in one is debtor in the other in the same capacity and trust, he shall cause one execution to satisfy the other so far as it will extend; and if one of such executions is in the hands of the officer, and the creditor in the other tenders his execution to him and requests him so to do, he shall so set off one against the other.

22 Me. 462; 24 Me. 352; 58 Me. 155; 101 Me. 327.

Sec. 28. Cases in which executions shall not be set off. R. S. c. 86, § 28. Executions shall not thus be set off against each other, when the sum due on one of them has been lawfully and in good faith assigned to another person, before the creditor in the other execution became entitled to the sum due thereon; nor when there are several creditors or debtors in one execution, and the sum due on the other is due to or from a part of them only; nor to so much of the first execution as is due to the attorney in the suit for his fees and disbursements therein.

3 Me. 37; 7 Me. 84; 58 Me. 155.

Sec. 29. Proceeds of sale of property mortgaged, how to be applied; sale without tender. R. S. c. 86, § 29. After deducting his fees and charges of sale, the officer shall apply the proceeds of the sale of property mortgaged or pledged, to the payment of the sum paid or tendered to the mortgagee, pledgee or holder, and the interest thereon from the time of such payment; and the residue of such proceeds shall be applied to the satisfaction of the plaintiff's judgment as provided by law; or the plaintiff may have the property seized and sold on the execution, as in other cases, subject to the rights and interests of such mortgagee, pledgee or holder, without paying or tendering the debt due to him.

24 Me. 110.

Sec. 30. Executions and warrants of distress against towns; issue; levy. R. S. c. 86, § 30. All executions or warrants of distress against a town shall be issued against the goods and chattels of the inhabitants thereof, and against the real estate situated therein, whether owned by such town or not; and the officer executing them shall satisfy them by distress and sale of the goods and chattels of the inhabitants as provided by law; and for want thereof, after diligent search, which fact the officer shall certify in his return, he shall levy upon and sell so much of the real estate in said town by lots, as they are owned, occupied or lotted out upon the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

See c. 51, § 105; 47 Me. 141; 49 Me. 328; 68 Me. 507; 69 Me. 467; 74 Me. 43; 77 Me. 215; 98 Me. 440; 111 Me. 93; 112 Me. 451.

Sec. 31. Notice and incidents of the sale. R. S. c. 86, § 31. He shall advertise in the state paper, and in one of the newspapers printed in the county where the lands lie, if any, for three weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress; and where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land; the last publication shall be three months before the time appointed for the sale. If necessary to complete

the sale, he may adjourn it from day to day not exceeding three days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale by paying the sum for which it was sold, the necessary charges, and interest thereon.

See c. 51, § 105; 69 Me. 469; 83 Me. 294.

Sec. 32. Remedy of owner of the property so sold. R. S. c. 86, § 32. The owner of any real or personal estate so sold, may recover against the town, in an action of assumpsit, the full value thereof with interest at the rate of twelve per cent yearly, with costs of suit; and may prove and recover the real value thereof, whatever was the price at which it was sold.

See c. 11, § 70; c. 51, § 105; 69 Me. 468; 74 Me. 43.

CHAPTER 90.

Bail in Civil Actions.

Sec. 1. Bail-bond; its form; to be returned with writ. R. S. c. 87, § 1. When bail is taken on mesne process, it shall be by bond to the sheriff, if taken by him or his deputy, otherwise to the officer making the arrest, with condition that the defendant will appear and answer to the suit, and abide final judgment thereon and not avoid. The bond shall be returned with the writ, and the clerk shall note on the writ that a bail-bond is so filed.

1 Me. 336; 4 Me. 13; 8 Me. 423; 40 Me. 125; 76 Me. 265; 96 Me. 436.

Sec. 2. Number of sureties. R. S. c. 87, § 2. No officer is obliged to accept a bail-bond unless signed by at least two sureties, having sufficient property in the county in which the principal is arrested or held in custody; and if he takes a bail-bond with only one surety, he is liable to the plaintiff for any deficiency thereof.

2 Me. 48.

Sec. 3. When obligors are held. R. S. c. 87, § 3. A bail-bond binds the obligors although signed by only one surety, or when signed by two or more sureties, when all or any of them had not sufficient property in the county.

Sec. 4. Surrender of principal before entry; proceedings and effect. R. S. c. 87, § 4. Any bail may, before the action is entered, exonerate himself from all liability, by surrendering his principal to the jail in the county where the arrest was made, or in the county where the writ is returnable, and within fifteen days thereafter, leaving with the jailer an attested copy of the writ or process whereby the arrest was made, of the return indorsed thereon, and of the bail-bond, and notifying, in writing, the plaintiff or his attorney of the time and place of the commitment; and the jailer shall receive him into custody as if committed by the officer making the arrest.

2 Me. 383; 76 Me. 266.