

# MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

PASSED AUGUST 5, 1930, AND TAKING  
EFFECT NOVEMBER 10, 1930



By the Authority of the Legislature

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## Remedies on Other Probate Bonds.

**Sec. 20. Like proceedings on other bonds. R. S. c. 77, § 20.** When not otherwise expressly provided by law, like proceedings, judgment, and execution, so far as applicable, shall be had on the bonds given to any judge by executors, special administrators, guardians, testamentary trustees, surviving partners, assignees of insolvent debtors, and others, as are provided in this chapter in reference to bonds of administrators.

See c. 48, § 7.

**Sec. 21. Surety on probate bond may cite trust officers for an accounting. 1923, c. 148.** Whenever any surety on any probate bond has reason to believe that the trust officer has depleted, or is wasting or mismanaging the estate, such surety may cite such trust officer before the judge of probate in the same manner as trust officers may be cited by the provisions of sections sixty-nine to seventy-one inclusive of chapter seventy-six; and if upon hearing the judge of probate is satisfied that the estate held in trust by such officer has been depleted, wasted, or mismanaged, he may remove said trust officer and appoint another in his stead.

## CHAPTER 87.

## Conveyances by Deed, Their Form and Construction. Trusts.

**Sec. 1. Conveyance by deed; what passes as realty. R. S. c. 78, § 1.** A person owning real estate and having a right of entry into it, whether seized of it or not, may convey it or all his interest in it, by a deed to be acknowledged and recorded as hereinafter provided. Down trees lying on land at the time of conveyance, are real estate and pass by the deed; but such down trees as are cut into wood, logs, or other lumber, and hemlock bark peeled are personal property, and the owner may remove them in a reasonable time thereafter. Carpets and carpeting, stoves and funnels belonging thereto, are not real estate and do not pass by a deed thereof.

13 Me. 284; 56 Me. 46, 127; \*72 Me. 302; 73 Me. 228; 106 Me. 90; 109 Me. 75;  
124 Me. 345.

**Sec. 2. Rights of aliens. R. S. c. 78, § 2.** An alien may take, hold, convey, and devise real estate or any interest therein. All conveyances and devises of such estate or interest, already made by or to an alien are valid.

**Sec. 3. Contingent estates may be conveyed. R. S. c. 78, § 3.** When a contingent remainder, executory devise, or estate in expectancy, is so limited to a person, that it will, in case of his death before the happening of such contingency, descend in fee simple to his heirs, he may, before it happens, convey or devise it subject to the contingency.

\*45 Me. 101; 68 Me. 141; 125 Me. 312.

**Sec. 4. Real estate subject to contingent remainders may be sold or mortgaged; proceedings. R. S. c. 78, § 4. 1917, c. 11, § 1.** When real estate is subject to a contingent remainder, executory devise, or power of appointment, the superior court, or the probate court, for the county in which such real estate is situated, may, upon the petition of any person who has an estate in possession in such real estate, which petition shall set forth the nature of the petitioner's title to said real estate, the source from which the title was derived, the names and addresses of all persons known to be interested in said real estate,

and such other facts as may be necessary for a full understanding of the matter, and after notice and other proceedings as hereinafter required, appoint one or more trustees, and authorize him or them to sell and convey such estate or any part thereof in fee simple, if such sale and conveyance appears to the court to be necessary or expedient; to mortgage the same, either with or without power of sale, for such an amount, on such terms, and for such purposes, as may seem to the court judicious or expedient; and such conveyance or mortgage shall be valid and binding upon all parties.

118 Me. 228.

**Sec. 5. Notice; appointment of next friend of minors, etc.** R. S. c. 78, § 5. 1917, c. 11, § 2. Notice of any such petition shall be given in such manner as the court may order, to all persons who are or may become interested in the real estate to which the petition relates, and to all persons whose issue, not in being, may become interested therein; provided that if persons interested in said real estate do not consent in writing to a sale thereof, personal notice of the time and place of the hearing on said petition shall be given to all persons known to be interested therein. Said personal notice may be given in any manner provided by law, or by the clerk of courts or the register of probate sending a copy of said petition and order of court thereon by registered mail, return receipt requested, in time to give each party at least fourteen days' notice of said hearing. The written statements of said clerk and register, with the return receipt, shall be proof of said service. The court shall in every case appoint a suitable person to appear and act therein as the next friend of all minors, persons not ascertained, and persons not in being, who are or may become interested in such real estate; and the cost of the appearance and services of such next friend, including the compensation of his counsel, to be determined by the court, shall be paid, as the court may order, either out of the proceeds of the sale or mortgage or by the petitioner, in which latter case execution therefor may issue in the name of the next friend.

**Sec. 6. Trustees to give bond; disposal of proceeds of sale.** R. S. c. 78, § 6. Every trustee appointed under section four shall give bond in such form and for such an amount as the court appointing him may order, and he shall receive and hold, invest, or apply the proceeds of any sale or mortgage made by him, for the benefit of the persons who would have been entitled to the real estate, if such sale or mortgage had not been made, and the probate court for the county in which such real estate or the greater part thereof, is situated shall have jurisdiction of all matters thereafter arising in relation to such trust.

**Sec. 7. On application of the owners of certain interests in woodlands, court may grant leave to sell trees; proceedings.** R. S. c. 78, § 7. Any person seized of a freehold estate, or of a remainder or reversion in fee simple, or fee tail, in a tract of woodland or timber-land, on which the trees are of a growth and age fit to be cut, may apply to the superior court in any county for leave to cut and dispose of such trees, and invest the proceeds for the use of the persons interested therein; and the court, after due notice to all persons interested, and a hearing of the parties, if any appear, may appoint one or more persons to examine the land and report to the court, and the court may thereupon order the whole or a part of such trees to be cut and sold, and the proceeds brought into court, subject to further orders. The court shall appoint one or more commissioners to superintend the cutting and sale of such trees, who shall account for the proceeds to the court, and be under bond to the clerk for the faithful performance of their trust.

**Sec. 8. Proceeds, how invested; income, how appropriated.** R. S. c. 78, § 8. The court may cause the net proceeds of sale to be invested in other real estate in the state, or in public stocks, to the same uses and under the same limitations as the land; the income thereof to be paid to the persons entitled to the income of the land, or apportioned among the persons interested in the estate, according to their interests.

**Sec. 9. Appointment of trustees of such funds; bond.** R. S. c. 78, § 9. The court may appoint one or more trustees, removable at its pleasure, to hold such estates or stocks for said uses, who shall give bond, with sufficient sureties, to the clerk of said court, for the faithful discharge of their duty.

**Sec. 10. Entailments may be barred by conveyance in fee simple.** R. S. c. 78, § 10. A person seized of land as a tenant in tail may convey it in fee simple. When a minor is so seized of land, his guardian, duly licensed to sell it for his support and education, or to invest the proceeds for his benefit, may convey it in fee simple. When land is owned by one person for life with a vested remainder in tail in another, they may by a joint deed convey the same in fee simple. Such conveyances bar the estate tail and all remainders and reversions expectant thereon.

60 Me. 177; 80 Me. 592; 92 Me. 515; \*116 Me. 440.

**Sec. 11. Conveyance of a greater estate, conveys what is owned.** R. S. c. 78, § 11. A conveyance of a greater estate than he can lawfully convey, made by a tenant for life or years, will pass what estate he has, and will not work a forfeiture, and no expectant estate can be defeated by any act of the owner of the precedent estate or by any destruction of it, except as provided in the preceding section.

76 Me. 350; 109 Me. 72.

**Sec. 12. Conveyance or devise for one's life and to his heirs in fee.** R. S. c. 78, § 12. A conveyance or devise of land to a person for life and to his heirs in fee, or by words to that effect, shall be construed to vest an estate for life only in the first taker, and a fee simple in his heirs.

60 Me. 479; 68 Me. 141; 75 Me. 589; \*76 Me. 350; 78 Me. 226, 227.

**Sec. 13. Conveyances to two or more.** R. S. c. 78, § 13. Conveyances not in mortgage, and devises of land to two or more persons, create estates in common, unless otherwise expressed. Estates vested in survivors upon the principle of joint tenancy shall be so held.

\*24 Me. 484; \*46 Me. 260; 76 Me. 350; 82 Me. 230; \*84 Me. 370; \*110 Me. 36; 120 Me. 427.

**Sec. 14. Priority of recorded deeds and leases.** R. S. c. 78, § 14. 1925, c. 136. No conveyance of an estate in fee simple, fee tail, or for life, or lease for more than two years or for an indefinite term is effectual against any person except the grantor, his heirs and devisees, and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds within the county where the land lies, and if the land is in two or more counties then the deed or lease shall be recorded in the registry of deeds of each of such counties, and in counties where there are two or more registry districts then the deed or lease shall be recorded in the district legal for such record. Conveyances of the right, title, or interest of the grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title. Provided, however, that all recorded deeds, leases, or other written instruments regarding real estate take precedence over unrecorded attachments and seizures.

7 Me. 199, 465; 19 Me. 277; 23 Me. 169, 172, 247; 26 Me. 489; \*29 Me. 144; 32 Me. 289; 40 Me. 572; 43 Me. 526, 577; \*65 Me. 491; 66 Me. 434; 69 Me. 583; \*74

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Me. 593; 76 Me. 316; \*77 Me. 50; \*78 Me. 182; \*79 Me. 202; 84 Me. 413; 85 Me. 435; 95 Me. 316; 96 Me. 500; 100 Me. 555; 101 Me. 468; 109 Me. 73; 119 Me. 92; \*121 Me. 27; 127 Me. 328.

**Sec. 15. Absolute deed is not defeated by defeasance not recorded.** R. S. c. 78, § 15. A deed purporting to convey an absolute estate in land cannot be defeated by an instrument intended as a defeasance, as against any other person than the maker, his heirs and devisees, unless such instrument is recorded in the registry where the deed is recorded.

77 Me. 554.

**Sec. 16. No estate in lands greater than tenancy at will, unless by writing.** R. S. c. 78, § 16. There can be no estate created in lands greater than a tenancy at will, and no estate in them can be granted, assigned, or surrendered, unless by some writing signed by the grantor, or maker, or his attorney.

9 Me. 66; \*13 Me. 214; 16 Me. 214; 20 Me. 19; 56 Me. 127; 65 Me. 229; 68 Me. 92, 387; 71 Me. 532; 74 Me. 560; 84 Me. 532; 100 Me. 144; \*108 Me. 186; 112 Me. 479; \*117 Me. 548.

**Sec. 17. No trust in lands unless by writing; exception.** R. S. c. 78, § 17. There can be no trust concerning lands, except trusts arising or resulting by implication of law, unless created or declared by some writing signed by the party or his attorney.

11 Me. 23; 16 Me. 274; 22 Me. 411; 23 Me. 270; 28 Me. 360; 29 Me. 412; \*30 Me. 126; 33 Me. 534; \*35 Me. 49; 42 Me. 512; 57 Me. 508; 58 Me. 266; 60 Me. 188; 65 Me. 181, 401, \*504; 68 Me. 92; 79 Me. 325; 81 Me. 149; \*88 Me. 125; 89 Me. 167; 94 Me. 313; 107 Me. 112; 116 Me. 401; \*123 Me. 139.

**Sec. 18. Titles not defeated by trusts without notice or record.** R. S. c. 78, § 18. The title of a purchaser for a valuable consideration, or a title derived from levy of an execution, cannot be defeated by a trust, however declared or implied by law, unless the purchaser or creditor had notice thereof. When the instrument, creating or declaring it, is recorded in the registry where the land lies, that is to be regarded as such notice.

18 Me. 223; 42 Me. 516; 46 Me. 265; 71 Me. 302; \*74 Me. 595; 79 Me. 202, 250; \*94 Me. 307; \*115 Me. 495.

**Sec. 19. Trustees in mortgage hold in joint tenancy; survivors may convey real and personal property.** R. S. c. 78, § 19. When real estate is conveyed in mortgage or in trust to two or more persons, with power to appoint a successor to one deceased, it is held in joint tenancy unless otherwise expressed. When one or more of the trustees, by death or otherwise, is divested of his interest, those remaining may convey such interest upon the same trusts, without impairing the joint tenancy, to trustees by them appointed, who shall hold the title, have the rights, and be subject to the liabilities of the other trustees. Personal property, with real estate and upon the same trusts, is held as the real estate is; and it may be conveyed by the remaining trustees with the real estate and held in like manner.

**Sec. 20. Release conveys interest of grantor; husband and wife.** R. S. c. 78, § 20. A deed of release or quitclaim of the usual form conveys the estate, which the grantor has and can convey by a deed of any other form. A joint deed of husband and wife conveys her estate, in which the husband has an interest.

\*43 Me. 436; 45 Me. 71; 67 Me. 561; \*75 Me. 90; \*83 Me. 567; 84 Me. 150; 119 Me. 92.

**Sec. 21. Deeds, and contracts by agent bind principal.** R. S. c. 78, § 21. Deeds and contracts, executed by an authorized agent of a person or corporation in the name of his principal, or in his own name for his principal, are in law the deeds and contracts of such principal.

1 Me. 234, 342; 23 Me. 59; 59 Me. 175, 486; 61 Me. 122; \*68 Me. 92; 72 Me. 41; 75 Me. 502; 76 Me. 204; 96 Me. 526.

**Sec. 22. Conveyances for use of county, how effectual.** R. S. c. 78, § 22. Conveyances, in whatever form, made to the inhabitants of a county, or to its treasurer, or to a person or committee for its benefit, are as effectual as if made in the corporate name of the county.

**Sec. 23. Deeds and other instruments, before whom to be acknowledged;** when admitted to record. R. S. c. 78, § 23. 1919, cc. 14, 240. 1921, c. 40. 1925, c. 176. 1927, cc. 100, 190. 1929, c. 330. Deeds and all other written instruments before recording in the registries of deeds, except those issued by a court of competent jurisdiction and duly attested by the proper officer thereof, and excepting plans and notices of foreclosure of mortgages, and certain chattel mortgages as provided in section one of chapter one hundred five, shall be acknowledged by the grantors, or by the persons executing any such written instruments, or by one of them, or by their attorney executing the same, or by the lessor in a lease or one of the lessors or his attorney executing the same, before a justice of the peace, or notary public having a seal, in the state; or before any clerk of a court of record having a seal, notary public, justice of the peace, or commissioner appointed by the governor of this state for the purpose or a commissioner authorized in the state where the acknowledgment is taken, within the United States; or before a minister or consul of the United States or notary public in any foreign country. The seal of such court or the official seal of such notary public or commissioner, if he have one, shall be affixed to the certificate of acknowledgment, but if such acknowledgment is taken outside the state of Maine before a justice of the peace, notary public not having a seal, or commissioner, a certificate under seal from the secretary of state, or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking such acknowledgment, and the genuineness of his signature, must be annexed thereto.

Any justice of the peace who is a stockholder, director, officer, or employee of a bank or other corporation, may take the acknowledgment of any party to any written instrument executed to or by such corporation; provided, that such justice of the peace is not a party to such instrument either individually or as a representative of such bank or other corporation.

This section shall not be construed as invalidating any instrument duly executed in accordance with the statutes heretofore in effect, or made valid by any such statute. All such instruments may be admitted to record which at the time of their execution or subsequent validation could be so recorded.

17 Me. 419; 20 Me. 420; \*37 Me. 428; \*80 Me. 36; \*124 Me. 281.

**Sec. 24. Appointment of commissioners; their power to authenticate deeds.** R. S. c. 78, § 24. The governor may appoint one or more commissioners in any other of the United States, and in any foreign country, who shall continue in office during his pleasure; and have authority to take the acknowledgment and proof of the execution of any deed, other conveyance, or lease of lands lying in this state; and of any contract, letter of attorney, or any other writing, under seal or not, to be used or recorded in this state.

72 Me. 548.

**Sec. 25. Legal effect of their official acts.** R. S. c. 78, § 25. Such acknowledgment or proof, taken according to the laws of this state, and certified by any such commissioner under his seal of office, annexed to or indorsed on such instrument, shall have the same force and effect, as if done by an officer authorized to perform such acts within this state.

**Sec. 26. May administer oaths and take depositions.** R. S. c. 78, § 26. Every commissioner thus appointed may administer any oath, lawfully required

in this state, to any person willing to take it; and take and duly certify all depositions, to be used in any of the courts in this state, in conformity to the laws thereof, on interrogatories proposed under commission from a court of this state, by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified, according to law, by a magistrate in this state.

**Sec. 27. Qualification and seal.** R. S. c. 78, § 27. Every such commissioner, before performing any duty or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation, before a judge or clerk of one of the superior courts of the state or country in which he resides, well and faithfully to execute and perform all his official duties under the laws of Maine; which oath, and a description of his seal of office, shall be filed in the office of the secretary of this state.

**Sec. 28. Grantor dead, or out of state, how execution may be proved.** R. S. c. 78, § 28. When a grantor or lessor dies, or departs from the state without acknowledging his deed, its execution may be proved by a subscribing witness before any court of record in the state. No deed without one subscribing witness can, for this purpose, be proved before any court of justice.

\*69 Me. 583.

**Sec. 29. How proved, if witness is dead or absent.** R. S. c. 78, § 29. When the witnesses are dead or out of the state, the handwriting of the grantor and subscribing witness may be proved by other testimony.

**Sec. 30. If grantor refuses to acknowledge, proceedings.** R. S. c. 78, § 30. When a grantor refuses to acknowledge his deed, the grantee or person claiming under him may leave a true copy of it with the register of deeds, and it shall have the same effect for forty days as a record of the deed.

69 Me. 583.

**Sec. 31. Grantor may be summoned before a justice, and execution proved.** R. S. c. 78, § 31. In such case, a justice of the peace or notary public where the grantor resides, or where his land lies, upon application of the grantee or person claiming under him, may summon the grantor to appear before him at a time and place named, to hear the testimony of the subscribing witnesses. The date of the deed, the names of the parties, and of the subscribing witnesses to it, must be stated in the summons, which must be served seven days before the time for proving the deed.

69 Me. 583.

**Sec. 32. Justice may certify on deed that it has been proved.** R. S. c. 78, § 32. When the justice or notary at such hearing is satisfied by the testimony of witnesses, that they saw the deed duly executed by the grantor, he shall certify the same thereon, and state, in his certificate, the presence or absence of the grantor.

**Sec. 33. Certificate to be put on deed or it cannot be recorded.** R. S. c. 78, § 33. A certificate of acknowledgment, or proof of execution as aforesaid, must be indorsed on or annexed to the deed, and then the deed and certificate may be recorded in the registry of deeds. No deed can be recorded without such certificate.

See § 40; \*17 Me. 419; 19 Me. 277; \*37 Me. 427; \*89 Me. 380; \*104 Me. 432.

**Sec. 34. Certificate after commission expired, valid.** R. S. c. 78, § 34. When a person, authorized to take acknowledgments, takes and certifies one in good faith after the expiration of his commission, not being aware of it, such acknowledgment is as valid as if done before such expiration.

See § 41; 37 Me. 428.

**Sec. 35. How a deed, lost before recording, may be effectually recorded.** R. S. c. 78, § 35. If a deed, duly executed and delivered, is lost or destroyed



before being recorded, the grantee or person claiming under him, may file a copy of it in the registry of deeds in the county where the land lies; and it shall have the same effect as a record for ninety days; and he may thereupon proceed to have the depositions of the subscribing witnesses and others knowing the facts, taken as depositions are taken in perpetuum; but if any person supposed to have an adverse interest lives out of the state in an unknown place, a justice of the superior court in term time or vacation, may order notice of the taking of such depositions by publication as he deems proper; and the filing and recording of such depositions and copy within said ninety days, shall have the same effect as if the deed itself had been recorded when said copy was first filed; and certified copies thereof are evidence when the original would be.

**Sec. 36. Certified copies of recorded deeds may be recorded in other registries.** R. S. c. 78, § 36. If a deed conveying lands in more than one county is lost before being recorded in all, or if a deed is recorded in the wrong county or registry district and lost, a certified copy from a registry where it has been recorded, may be recorded in another county, or registry district, with the same effect as a record of the original.

**Sec. 37. Person holding an unrecorded deed, may be compelled to have it recorded.** R. S. c. 78, § 37. A person having an interest in real estate of which any prior grantee has an unrecorded deed or other evidence of title, may give the latter personal notice in writing to have the same recorded; and if he neglects to have it so recorded for thirty days, a justice of the superior court, in term time or vacation, on complaint, may cause said grantee or his heirs to be brought before him for examination, and unless sufficient cause is shown for such neglect, may order such deed or other evidence of title to be recorded, and the cost paid by the respondent, together with the legal fees of the register for recording such deed or other evidence of title.

**Sec. 38. Pews, real estate; deeds and levies, where recorded.** R. S. c. 78, § 38. Pews and rights in houses of public worship are real estate. Deeds of them, and levies by execution upon them may be recorded by the clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds.

**Sec. 39. Agreement that building on land of another shall be personal property not effectual unless recorded.** R. S. c. 78, § 39. No agreement that a building erected with the consent of the landowner, by one not the owner of the land upon which it is erected, shall be and remain personal property, shall be effectual against any person, except the owner of such land, his heirs, devisees, and persons having actual notice thereof, unless such agreement is in writing and signed by such landowner, or by some one duly authorized for that purpose, and acknowledged and recorded as deeds are required to be acknowledged and recorded under this chapter; provided, that this section shall not apply to agreements entered into prior to the twenty-eighth day of April, nineteen hundred three, and then outstanding.

\*119 Me. 157.

**Sec. 40. Records of deeds with certain kinds of defective acknowledgments made valid.** 1927, c. 212, § 1. 1929, c. 199. All records of all deeds and other instruments, including powers of attorney, heretofore made for the conveyance of real property in this state, or of any interest therein, and recorded, or written out at length in the books of record, in the registry of deeds of the county in which said real property lies, the acknowledgment of which was not completed, or was erroneously taken, or was taken by a person not having authority to take such acknowledgment, or where the authority

of the person taking such acknowledgment was not completely stated, or was erroneously stated, or where it does not appear whether the authority taking such acknowledgment acted as a notary public, a justice of the peace, or other duly authorized authority for the taking of such acknowledgment, or where no acknowledgment of such deed or other instrument was taken, or where the authority taking such acknowledgment had not signed the same but had attached or had affixed or had stamped thereon his seal of authority, or where the acknowledgment was taken by the grantor or grantee, or by the husband or wife of the grantor or grantee, or the acknowledgment was taken by a magistrate who was a minor, or an interested party or whose term of office had expired at the time of such acknowledgment, or an acknowledgment of which was taken by a proper officer but outside of the territory in which he was authorized to act, or was taken before any person who, at the time of such acknowledgment had received an appointment, election, or permission authorizing him to take such acknowledgment, but had not qualified, but who has since such time duly qualified, or where the grantor was acting as a duly authorized agent or in a fiduciary or representative capacity, or was acting as an officer of a corporation and acknowledged said instrument individually, or where the acknowledgment was taken without the state before any person authorized to take acknowledgments, and using the form of acknowledgment prescribed by the laws of the state or country in which such instrument was executed, or such person has failed to affix to such instrument a proper certificate, showing his authority to act as such magistrate; or where such acknowledgment was not signed by a magistrate of this state or any other state or territory of the United States, or any foreign country, authorized to take such acknowledgment, but such acknowledgment was signed by an ambassador, minister, charge d'affaires, consul, vice-consul, deputy consul, consul-general, vice-consul-general, consular agent, vice-consular-agent, commercial agent or vice-commercial agent of the United States in any foreign country, who was not qualified to take such acknowledgment, but has since become qualified by law so to do, but which acknowledgment was complete in every other respect; or where the acknowledgment was signed by a proper magistrate but there has been omitted therefrom, his official seal, if he had one, or the names of the grantors, the date and place of acknowledgment, or the words, "personally appeared before me," or a statement that it was acknowledged as the grantor's "free act and deed"; or such certificate of acknowledgment is in the form of an oath, or states merely that the said instrument was subscribed in his presence, or is otherwise informal or incomplete, if signed by a proper magistrate; and all records in any such registry of instruments relating to the title to real property which fail to disclose the date when received for record or the record of which has not been signed by the register of deeds for said county or other duly authorized recording officer, such records are validated. If any portion of this section is held to be unconstitutional such decision shall not invalidate the portions unaffected thereby.

**Sec. 41. Deeds lacking statement of consideration or seals validated; informal discharges, deeds of irregularly formed corporations, deeds executed by attorney but no record of power of attorney, validated; etc., etc. 1927, c. 212, § 2. 1929, c. 199.** All deeds and other instruments, including powers of attorney, heretofore made for the conveyance of real property in this state, or any interest therein, and otherwise valid except that the same omitted to state any consideration therefor, or that the same were not sealed by the grantors or any of them are validated. Every duly recorded satisfaction piece or instrument

heretofore executed with intent to cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage so intended to be canceled and discharged or assigned, but not drawn in formal accordance with statutory requirements, shall be held a valid discharge or assignment of such mortgage and a release or assignment of the mortgaged interest in such real estate. All corporations organized, or attempted to be organized, under and by virtue of any of the statutes of this state more than twenty years prior to April fifteenth, nineteen hundred twenty-seven, and not heretofore declared to be invalid, shall be held to all intents and purposes as if the same had in all respects been properly and rightfully organized and existing as lawful corporations, and the deeds, or other instruments of such corporations organized or attempted to be organized, given in their corporate names, affecting real estate in this state or conveying the same, and heretofore recorded, or written out at length upon the books of record in the registry of deeds in the county in which such real estate lies, shall not be held invalid by reason of any lack of authority or informality for or in their execution or delivery, if taken bona fide from the acting officers of such corporation, or attempted organization as such, which such taking shall be presumed, but such corporations, attempted organizations as such, with such deeds and their records made as aforesaid are validated. Any deed or other instrument made for the purpose of conveying real property in this state or any interest therein, and heretofore recorded or spread at length in the books of record in the registry of deeds for the county in which said real property lies, which said deed or other instrument or said records fail to disclose authority by such corporation for the conveyance of such real estate, or which deed or other instrument fails to bear the corporate seal, or is executed or acknowledged by the person executing such deed in his individual capacity, or which fails to disclose the official capacity of the person executing such deed, or which was not signed by the officer duly authorized to sign such deed, with its record made as aforesaid is validated. All deeds and other instruments heretofore made for the conveyance of real property in this state, or any interest therein and executed by a person or persons purporting to act as the agent or attorney of the grantors, their spouses, or any of them, which such deeds have been recorded or written at length in the books of record in the registry of deeds for the county in which said real property lies more than forty years prior to April fifteenth, nineteen hundred twenty-seven, but no power of attorney authorizing and empowering such agent or attorney to make such conveyance or execute and deliver such deed, appears of record, but such real estate has in the meantime been occupied, claimed, or treated by the grantees and those claiming by, through, or under them as other property of like kind and similarly situated would be held or claimed by the owners thereof, shall be held to all intents and purposes as if executed and delivered under and by virtue of proper power of attorney duly recorded and given for the purpose, and the records thereof are validated. All instruments written or recorded in the books of record in the registry of deeds in the county in which the real estate affected thereby lies, more than forty years prior to April fifteenth, nineteen hundred twenty-seven, signed or executed by any person or persons purporting to act as the agent or attorney of the holder of any mortgage of real estate and purporting to operate as a discharge of such mortgage, shall be held as if executed and delivered under and by virtue of a proper power of attorney given for the purpose, although no power of attorney authorizing such agent or attorney thereto shall appear of record, and the records thereof are validated. In all

cases in which an executor, administrator, guardian, or conservator or trustee, master, or receiver or similar officer has been authorized or ordered by a court of probate or other competent court to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing such sale or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such executor, administrator, guardian, conservator, trustee, master, or receiver or other similar officer, appointed as aforesaid, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts heretofore done are validated. If any portion of this section is held to be unconstitutional such decision shall not invalidate the portions unaffected thereby.

126 Me. 427; 127 Me. 351.

## CHAPTER 88.

### Wills.

**Sec. 1. Will, by whom and how to be made.** R. S. c. 79, § 1. 1917, c. 17. A person of sound mind, and of the age of twenty-one years, and a married woman or widow of any age, may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will.

21 Me. 463; \*22 Me. 440; \*27 Me. 24; \*34 Me. 162; \*42 Me. 74; 45 Me. 585; 46 Me. 244; \*47 Me. 476; \*48 Me. 194; 57 Me. 573; 66 Me. 294; \*70 Me. 548; \*79 Me. 45; \*80 Me. 53; 82 Me. 208; \*102 Me. 87; 108 Me. 458; \*114 Me. 105, 338; \*119 Me. 374; \*126 Me. 256, 267.

**Sec. 2. Competency of witnesses; property not willed, how distributed.** R. S. c. 79, § 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will shall be distributed as the estate of an intestate.

22 Me. 441; \*91 Me. 422.

**Sec. 3. Will, how rendered invalid, or revoked.** R. S. c. 79, § 3. A will so executed is valid, until it is destroyed, altered or revoked by being intentionally burnt, canceled, torn, or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

4 Me. 341; 22 Me. 426; \*57 Me. 453; \*73 Me. 597; 79 Me. 342; \*81 Me. 277; \*86 Me. 288; 106 Me. 58; 116 Me. 473; \*120 Me. 434.

**Sec. 4. What lands of testator pass by will.** R. S. c. 79, § 4. Lands into which the testator, at the time, has a right of entry although not seized of them, and lands of which he is subsequently disseized, pass by his will, as they would, if not devised, have descended to his heirs; and his devisee has the same remedy for their recovery, as his heirs would have had.