

MAINE STATE LEGISLATURE

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county, either of said officers may arrest him there and bring him before said magistrate.

See c. 100, § 125, re penalty for refusal to answer; 16 Me. 256; 22 Me. 358; *68 Me. 219.

Sec. 30. Appointment of stenographers as commissioners to take depositions; powers. R. S. c. 121, § 30. The governor, with the advice and consent of the council, may, upon the written recommendation of any justice of the superior court, appoint competent stenographers as commissioners to take depositions in all cases and disclosures of trustees, who shall hold office for 4 years. They may act throughout the state and shall have and exercise the same powers in taking depositions and disclosures of trustees as are exercised and possessed by justices of the peace.

Sec. 31. Depositions and disclosures, how taken. R. S. c. 121, § 31. Depositions and disclosures of trustees may be taken by such commissioners stenographically by the consent of the parties to the suit or proceeding, and their notes shall be transcribed in full by questions and answers, and read to the deponent or trustee and signed by him. If the deponent or trustee in writing waives such reading, the transcript shall be admissible as his deposition or disclosure without his signature. No change of or addition to the transcript shall be made by the deponent or trustee except in the presence of the counsel who attested the taking of the deposition. The commissioner shall state the facts in his certificate as to reading, signature, or waiver, and what, if any, changes or additions were made.

Sec. 32. Fees. R. S. c. 121, § 32. Commissioners shall receive the same fees for travel, swearing witnesses, and notifying parties and deponents as are received by justices of the peace, and in addition thereto, 20c a page for their transcripts.

See c. 97, § 22, re fees of trial justices and justices of the peace; c. 154, § 35, re depositions to prove copy of lost deed; c. 154, § 26, re taking of depositions out of the state before commissioners appointed by governor.

CHAPTER 105.

LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

Sec. 1. Goods which may be sold on execution. R. S. c. 98, § 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. 98, § 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. 98, § 3. Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor, for 4 days at least after the day on which they were taken, exclusive of Sunday; and they shall be sold within 14 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.

Sec. 4. Notice of sale. R. S. c. 98, § 4. The officer shall post public notice of the time and place of sale, at least 48 hours before the time thereof, in two or more public places in the town or place of sale.

60 Me. 206.

Sec. 5. Adjournment of sale; time. R. S. c. 98, § 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 6 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. 98, § 6. For good reason, and for the purpose of obtaining a better price for the goods, the officer 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. 98, § 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. 98, § 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 10 days, giving due notice of the 2nd sale; and account for what he receives on the 2nd 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. 98, § 9. The officer 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 5 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. 98, § 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 22.

Sec. 11. Buildings on leased land may be sold for land rent; redemption. R. S. c. 98, § 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 6 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 1 year, as land levied upon by appraisement may be; and the remedies and rights of the parties are the same as those of mortgagor and mortgagee, except the rate of interest, which shall be 10% a year.

See c. 164, § 51, re lien on buildings for land rent.

Sec. 12. Shares in incorporated companies, how to be sold. R. S. c. 98, § 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. 98, § 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 16.

Sec. 14. Officers of corporations to certify number of debtor's shares, under penalty. R. S. c. 98, § 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 28 of chapter 99.

Sec. 15. Shares sold to be transferred; new certificate to purchaser; dividends. R. S. c. 98, § 15. Within 14 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. 98, § 16. 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 2 adjoining towns, if there are so many, 30 days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for 3 weeks successively before the day of sale in some 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. 98, § 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 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 30 days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted for 3 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 4 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. 98, § 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. 98, § 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. 98, § 20. The corporation, at any time within 3 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 12% 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. 98, § 21. The provisions of the 4 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 30 days at least before the day of sale, and by causing an advertisement to be inserted for 3 weeks successively in at least 1 newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least 4 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 not less than 30 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. 157, § 43, re sale of railroad franchises on execution.

Sec. 22. Proceeds of property sold, how applied. R. S. c. 98, § 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.

See § 10; *67 Me. 31; 76 Me. 298; *93 Me. 31; *107 Me. 188; 134 Me. 64.

Sec. 23. Notice of second attachment to be given to the first attaching officer. R. S. c. 98, § 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. 98, § 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 30 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. 98, § 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 5 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. 98, § 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 30 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 then first seized thereon, although the return day of the execution has passed.

Sec. 27. Set off of executions. R. S. c. 98, § 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 to do so, 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 not to be set off. R. S. c. 98, § 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. 98, § 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. 98, § 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. 49, § 132, re property of inhabitants of counties, towns, etc., may be taken for debts; 47 Me. 141; *49 Me. 328; 68 Me. 307; 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. 98, § 31. The officer shall advertise in the state paper, and in one of the newspapers printed in the county where the lands lie, if any, for 3 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 3 months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day to day not exceeding 3 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. 49, § 132; 69 Me. 469; 83 Me. 294.

Sec. 32. Remedy of owner of the property so sold. R. S. c. 98, § 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 12% 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. 81, § 138; c. 49, § 132; 69 Me. 468; 74 Me. 43.