

MAINE STATE LEGISLATURE

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CHAPTER 106.

PREVENTION OF FRAUDS AND PERJURIES IN CONTRACTS, AND ACTIONS FOUNDED THEREON.

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Statute of Frauds

Sec. 1. Cases in which promise must be in writing; consideration need not be expressed therein. R. S. c. 123, § 1. 1935, c. 150, § 1. No action shall be maintained in any of the following cases:

129 Me. 94; 130 Me. 267; 136 Me. 381.

I. To charge an executor or administrator upon any special promise to answer damages out of his own estate;

II. To charge any person upon any special promise to answer for the debt, default, or misdoings of another;

7 Me. 360; 21 Me. 412, 550; 22 Me. 397; 26 Me. 349; 36 Me. 114; 41 Me. 559; 46 Me. 143; 58 Me. 442; 62 Me. 245; 69 Me. 101, 154; 74 Me. 505; 87 Me. 82; 89 Me. 476; 92 Me. 554; 93 Me. 262; 112 Me. 278; *115 Me. 11; *121 Me. 478; 122 Me. 514; 124 Me. 32, 411; 130 Me. 406, 418.

III. To charge any person upon an agreement made in consideration of marriage;

121 Me. 420; 125 Me. 292; 139 Me. 245.

IV. Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them;

12 Me. 509; 15 Me. 16, 63, 203; 16 Me. 214; 18 Me. 18; 22 Me. 397; 23 Me. 134; 35 Me. 220; 38 Me. 240; 41 Me. 301; 48 Me. 345; 53 Me. 147, 394; 54 Me. 199, 407; 55 Me. 106; 63 Me. 584; 64 Me. 193; 68 Me. 374; 70 Me. 31; 71 Me. 484, 532; 92 Me. 27; 98 Me. 373; 107 Me. 129; *115 Me. 262; 121 Me. 474; 122 Me. 83; *123 Me. 288; 134 Me. 352; 139 Me. 77, 245.

V. Upon any agreement that is not to be performed within 1 year from the making thereof;

10 Me. 35; 15 Me. 204; 20 Me. 121; 31 Me. 556; 46 Me. 157; 56 Me. 193, 380; 65 Me. 306; 71 Me. 508; 74 Me. 400; 102 Me. 243; 117 Me. 519.

VI. (1935, c. 150, § 1) Upon any contract to pay a debt after a discharge therefrom under the bankrupt laws of the United States, or assignment or insolvent laws of this state;

See c. 171, § 4; 3 Me. 415; 4 Me. 9, 263; 53 Me. 24; *66 Me. 343; *73 Me. 195; 80 Me. 243; 96 Me. 309; 133 Me. 465; 134 Me. 495.

VII. (1935, c. 150, § 1) Upon any agreement to give, bequeath, or devise by will to another, any property, real, personal, or mixed; unless the promise, contract, or agreement on which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto lawfully authorized; but the consideration thereof need not be expressed therein, and may be proved otherwise; provided that the provisions of this subsection shall not apply to any such agreement made prior to July 1, 1935.

137 Me. 30.

Sec. 2. No action on a contract of a minor, unless ratified in writing. R. S. c. 123, § 2. No action shall be maintained on any contract made by a minor, unless he, or some person lawfully authorized, ratified it in writing after he arrived at the age of 21 years, except for necessaries, or real estate of which he has received the title and retains the benefit.

79 Me. 530; 86 Me. 194; 92 Me. 164; 101 Me. 582; *123 Me. 1; 124 Me. 13; 124 Me. 414; 126 Me. 70.

Sec. 3. Representation of another's credit must be in writing. R. S. c. 123, § 3. No action shall be maintained to charge any person by reason of any representation or assurance, concerning the character, conduct, credit, ability, trade, or dealings of another, unless made in writing, and signed by the party to be charged thereby or by some person by him legally authorized.

84 Me. 281.

Sec. 4. Acceptance of bill, draft, or written order, also waiver of demand and notice, must be in writing. R. S. c. 123, § 4. No person shall be charged as acceptor of a bill of exchange, draft, or written order, unless his acceptance is in writing, signed by him or his lawful agent; and no waiver of demand and notice, by an indorser of a promissory note or bill of exchange, is valid unless it is in writing and signed in like manner.

69 Me. 91; 83 Me. 243, *290, 579; 85 Me. 493; 87 Me. 307; 130 Me. 392.

Sec. 5. Certain contracts for sale of goods must be in writing. R. S. c. 123, § 5. No contract for the sale of goods, wares, or merchandise, for \$30 or more, made prior to July 6th, 1923, shall be valid, unless the purchaser has accepted and has received part of the goods, or has given something in earnest to bind the bargain, or in part payment thereof, or some note or memorandum thereof was made and signed by the party to be charged thereby, or by his agent.

See c. 171, § 4, re provisions regulating enforceability of contracts to sell or sales of goods or choses in action made after July 6, 1923; 9 Me. 81; 12 Me. 476; 13 Me. 427; 19 Me. 139; 26 Me. 399; 39 Me. 101; 41 Me. 69, 527; 48 Me. 211, 380; 53 Me. 510; 54 Me. 110; 57 Me. 163; 60 Me. 273; 62 Me. 355; 64 Me. 449; *66 Me. 341; *73 Me. 194; 94 Me. 462; 98 Me. 166; 105 Me. 513; 106 Me. 519; 108 Me. 200; 109 Me. 507; 122 Me. 188, 418, 511; *123 Me. 90; 138 Me. 135.

Bulk Sales Act

Sec. 6. Sales in bulk of stocks of merchandise, regulated; inventory; written list of creditors; amount of indebtedness; notice to creditors. R. S. c. 123, § 6. The sale in bulk of any part or the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, shall be void as against the creditors of the seller, unless the seller and purchaser, at least 5 days before the sale, make a full, detailed inventory, showing the quantity, and, so far as possible with exercise of reasonable diligence, the cost price to the seller of each article to be included in the sale; and unless the purchaser preserve such inventory for inspection by the creditors, or any of them, for 30 days after the completion of the sale; and unless the purchaser demand and receive from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each and certified by the seller, under oath to be, to the best of his knowledge and belief, a full, accurate, and complete list of his creditors and of his indebtedness; and unless the purchaser, at least 5 days before taking possession of such merchandise or paying therefor, notify personally or by registered mail every creditor whose name and address is stated in said list, of the pro-

posed sale and of the price, terms, and conditions thereof. Provided, however, that the preceding provisions of this section shall not apply if the purchaser, before any such sale of merchandise, shall demand and receive from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each, and certified by the seller under oath to be, to the best of his knowledge and belief, a full, accurate, and complete list of his creditors, and of his indebtedness, and the seller, prior to such sale, shall deliver to the purchaser a certificate signed and sworn to by the seller that he has in good faith given notice of the proposed sale to all of the creditors whose names are stated in such verified list, and shall also deliver to the purchaser a written waiver of the provisions of this section signed by a majority in number of such creditors, and by creditors holding a majority of the total indebtedness shown by such list.

110 Me. 163; 119 Me. 172; 121 Me. 335; 122 Me. 555; *123 Me. 327, 509; 130 Me. 476.

Sec. 7. Corporations, associations, copartnerships, and individuals included; exceptions. R. S. c. 123, § 7. Sellers and purchasers under the preceding section shall include corporations, associations, copartnerships, and individuals, but the provisions of said section shall not apply to sales by executors, administrators, receivers, assignees under voluntary assignments for the benefit of creditors, trustees in bankruptcy, or by any public officer under judicial process, or to mortgages made in good faith for the purpose of security only.

Conditional Sales

Sec. 8. Agreement that goods sold and delivered to remain the property of seller; record. R. S. c. 123, § 8. No agreement, that personal property bargained and delivered to another shall remain the property of the seller till paid for, is valid unless the same is in writing and signed by the person to be bound thereby; and when so made and signed, whether said agreement is, or is called a note, lease, conditional sale, purchase on instalments, or by any other name, and in whatever form it may be, it shall not be valid, except as between the original parties thereto, unless it is recorded in the office of the clerk of the city, town, or plantation organized for any purpose, in which the purchaser resides at the time of the purchase; but if any of the purchasers are not residents of the state, or reside in an unorganized place in the state, then in the registry of deeds in the county where the seller resides at the time of the sale. The fee for recording the same shall be the same as that for recording mortgages of personal property. All such property, whether said agreements are recorded or not, shall be subject to redemption and to trustee process as provided in section 50 of chapter 101, but the title may be foreclosed in the same manner as is provided for mortgages of personal property.

See c. 42, § 101; c. 95, § 4, sub-§ I, re equity power; c. 164, §§ 4, 5, re mortgages of personal property; 59 Me. 394; 62 Me. 254; 65 Me. 491; 70 Me. 59; 73 Me. 90; 74 Me. 539; 76 Me. 26; *80 Me. 273; 82 Me. 147, 200, 421; 86 Me. 459, 547; 87 Me. 205; 91 Me. 248; *92 Me. 70; 95 Me. 85, 148; 97 Me. 362; 101 Me. 220; 102 Me. 495; 105 Me. 351, 354; 111 Me. 565; 113 Me. 64; 114 Me. 390; *117 Me. 95, 150; 127 Me. 172; 128 Me. 139; 129 Me. 485; 130 Me. 167, 227; 134 Me. 247.

Assignment of Wages

Sec. 9. Assignment of wages, not valid unless recorded. R. S. c. 123, § 9. No assignment of wages is valid against any other person than the parties thereto unless such assignment is recorded by the clerk in the town where the

assignor is employed while earning such wages; provided that if said assignor is employed in an unorganized place while earning such wages, said assignment to be valid against any other person than the parties thereto shall be recorded in the office of the register of deeds for the registry district in which said unincorporated place is located. No such assignment of wages shall be valid against the employer unless he has actual notice thereof.

See c. 55, § 201, re assignments of wages to secure loans; 68 Me. 428; 71 Me. 512; 74 Me. 496; 76 Me. 415; 80 Me. 370; 82 Me. 415; *83 Me. 290; 85 Me. 105, 125; 96 Me. 297; 99 Me. 75; *104 Me. 319; 129 Me. 108.

Public Accounts

Sec. 10. Accounts and claims against state and municipalities, how verified.

R. S. c. 123, § 10. A person, presenting an account or claim against any town, village corporation, city, county, or the state for services rendered, articles furnished, or expenses incurred, shall cause said account or claim to be verified by oath, if required by any person whose duty it is to audit the same; and if said claimant refuses so to verify, his claim shall be rejected.

Sec. 11. Expense accounts of state and county officers. R. S. c. 123, § 11.

Every state and county officer whenever required by law to render a bill of expenses shall itemize the same and make oath, before presenting it for auditing or payment, that it includes only actual cash outlay while in the performance of his official duties.

Contracts for Sale of Real Estate

Sec. 12. Contracts for sale of real estate, when to terminate. R. S. c. 123,

§ 12. All contracts entered into for the sale or transfer of real estate and all contracts whereby a person, company, or corporation becomes an agent for the sale or transfer of real estate shall become void in 1 year from the date such contract is entered into unless the time for the termination thereof is definitely stated.

See § 1, sub-§ IV; 112 Me. 90; *123 Me. 33; 135 Me. 138, 229.

Sec. 13. Specific performance of a contract to convey real estate after death of contractor. R. S. c. 123, § 13. If a person, who has contracted in writing to convey real estate, dies before making the conveyance, the other party may have a bill in equity in the supreme judicial court or in the superior court to enforce specific performance thereof against his heirs, devisees, executors, or administrators, if commenced within 3 years from the grant of administration, or from the time when he is entitled to such conveyance, but not exceeding 4 years after the grant of administration, provided that written notice of the existence of the contract is given to the executor or administrator within 1 year after the grant of administration.

63 Me. 402; *77 Me. 141; 97 Me. 400.

Sec. 14. Decree; effect. R. S. c. 123, § 14. If it appears that the plaintiff is entitled to a conveyance, the court may authorize and require the executor or administrator to convey the estate as the deceased ought to have done; and if any of the heirs or devisees are in the state and competent to act, the court may direct them, instead of the executor or administrator, to convey the estate or join with either in such conveyance; which conveyance shall pass the estate as fully as if made by the contractor.

Sec. 15. Enforcement of decree. R. S. c. 123, § 15. If the defendant neglects or refuses to convey according to the decree, the court may render judgment for the plaintiff for possession of the land, to hold according to the terms of the intended conveyance, and may issue a writ of seizin as in a real action, under which the plaintiff, having obtained possession, shall hold the premises as effectually as if conveyed in pursuance of the decree; or the court may enforce its decree by any other process according to chancery proceedings.

Sec. 16. Provision, in case of death of obligee, before conveyance. R. S. c. 123, § 16. If the person entitled to such conveyance dies before bringing his suit, or before the conveyance is completed, or such seizin and possession are obtained, his heir, devisee, or other person entitled to the estate under him, may bring and prosecute such suit, and shall be entitled to the conveyance, or seizin and possession, in like manner as the obligee.

123 Me. 509.

Sec. 17. Administrator may petition for authority to make conveyance. R. S. c. 123, § 17. If the party to whom any such conveyance was to be made, or those claiming under him, does not commence a suit as before provided, and the heirs of the deceased party are under age, or otherwise incompetent to convey the lands contracted for, the executor or administrator of the deceased may file a bill in equity in the supreme judicial court or in the superior court, setting forth the contract and circumstances of the case; whereupon the court by its decree may authorize such executor or administrator to convey the estate as the deceased should have done; and such conveyance shall be deemed a performance of the contract on the part of the deceased, so as to entitle his heirs, executors, or administrators to demand a performance thereof on the part of the other party.

See c. 79, § 242, re recording officer not to draft any instrument which he is by law required to record.