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Chapter 118.

Levy of Executions on Personal Property.

Failure to conform to all requirements.—A sale of goods, made by an officer on execution, must be regarded as a legal transfer of the property, although he may not have conformed to the requirements of the statute in making the sale. Tuttle v. Gates, 24 Me. 395.

Sale subject to contingencies of other suits.—There is no provision of this chapter which authorizes the sale of property on execution subject to the contingencies arising from other suits. Fuller v. Field, 39 Me. 297.

Sec. 1. Goods sold on execution.—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. (R. S. c. 105, § 1.)

Sec. 2. Coin and bank notes.—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. (R. S. c. 105, § 2.)

Stated in part in Butman v. Holbrook, 27 Me. 419.

Cited in Gooch v. Holmes, 41 Me. 523; Spaulding v. Fisher, 57 Me. 411.

Sec. 3. Goods, when sold on execution. — 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. (R. S. c. 105, § 3.)

The Lord's day is not to be reckoned as one of the four days during which an officer must keep goods after seizure on execution before the sale. Tuttle v. Gates, 24 Me. 395.

Four days' notice of the sale, including the day of taking, Sunday, and the day of sale, did not comply with the requirement of this section as to keeping the property, and the officer had no authority to sell it on the day designated therefor. Sawyer v. Wilson, 61 Me. 529.

Title of owner of personal property seized on execution is not divested till same is sold. He holds it, as before the seizure, subject only to the claim of the officer, by virtue of the seizure. Plaisted v. Hoar, 45 Me. 380.

And officer's claim is extinguished at end of fourteen days.—The officer's claim, by virtue of the seizure, is extinguished at the expiration of the fourteen days, unless the case falls within the exceptions referred to. Plaisted v. Hoar, 45 Me. 380.

If the officer voluntarily surrenders the property and takes an accountable receipt for the same, at the time of the surrender, containing a promise to keep the property beyond the term of fourteen days from the day the seizure was made, without the authority of the creditor, and in consideration of the surrender, the act of the officer is unlawful, and the contract of the receipter cannot be enforced. Plaisted v. Hoar, 45 Me. 380.

Stated in part in Cressey v. Parks, 75 Me. 387.

Sec. 4. Notice of sale.—The officer shall post public notice of the time and place of sale, at least 48 hours before the time thereof, in 2 or more public places in the town or place of sale. (R. S. c. 105, § 4.)

Cross reference.—See note to § 5, re notice of adjournments.

Stated in Wilton Mfg. Co. v. Butler, 34 Me. 431.

Sec. 5. Adjournment of sale; time. — 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. (R. S. c. 105, § 5.)

Omission of the officer to give notice of adjournments of the sale is fatal and he becomes a trespasser ab initio. Hayes v. Buzzell, 60 Me. 205.

Adjournment prior to statutory provision therefor.—See Russell v. Richards, 11 Me. 371.

Stated in Wilton Mfg. Co. v. Butler, 34 Me. 431.

Sec. 6. Adjournment of sale to another place.—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. (R. S. c. 105, § 6.)

Cited in Phillips v. Brown, 74 Me. 549.

Sec. 7. Indemnity officer may require.—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. (R. S. c. 105, § 7.)

Sec. 8. Buyer refusing to take.—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. (R. S. c. 105, § 8.)

Cited in Spiller v. Bechard, 110 Me. 221, 85 A. 752.

Sec. 9. Return of sale; fraud, in sale or in return.—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. (R. S. c. 105, § 9.)

The fraud must be proved. It is not to be merely surmised. Spiller v. Bechard, 110 Me. 221, 85 A. 752.

Quoted in part in May v. Thomas, 48 Me. 397.

Sec. 10. Proceeds of sale. — 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. (R. S. c. 105, § 10.)

Sec. 11. Buildings on leased land sold for land rent; redemption. —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. (R. S. c. 105, § 11.)

See c. 178, § 51, re lien on buildings for land rent.

Sec. 12. Shares in incorporated companies, how sold. — 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, any-

thing in the charter of such company to the contrary notwithstanding. (R. S. c. 105, § 12.)

Sec. 13. Notice of seizure.—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 provided in section 16. (R. S. c. 105, § 13.)

Sec. 14. Officers of corporations to certify number of debtor's shares.—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 112. (R. S. c. 105, § 14.)

Sec. 15. Shares sold to be transferred; new certificate to purchaser; dividends.—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 accrue after the attachment. (R. S. c. 105, § 15.)

Quoted in part in Hagar v. Union Nat. Bank, 63 Me. 509.

Sec. 16. Notice of sale. — 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. (R. S. c. 105, § 16.)

Sec. 17. Franchise of corporation, notice of sale.—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 thereon, 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. (R. S. c. 105, § 17.)

Stated in Benson v. Smith, 42 Me. 414.

Sec. 18. Mode of sale; possession.—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. (R. S. c. 105, § 18.)

Sec. 19. Rights and duties of purchaser.—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. (R. S. c. 105, § 19.)

Sec. 20. Right of redemption by corporation.—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. (R. S. c. 105, § 20.)

Sec. 21. Application of §§ 17-20 to franchises of railroads lying wholly within state; notice given in each county interested; conveyance.—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 courthouse 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. 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. (R. S. c. 105, § 21.)

See c. 171, § 43, re sale of railroad franchises on execution.

Sec. 22. Proceeds of property sold.—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. (R. S. c. 105, § 22.)

Cross references.—See § 10, re disposal of proceeds of sale; c. 171, § 31, re proceeds of levy by sale of real estate, etc.

A single, joint sale, made on two executions in favor of different parties against the mortgagor, is not such a sale of an equity of redemption as will pass the title. The section looks only to a single and entire sale, for a single price, on a single execution, leaving the proceeds to be appropriated in the mode and on the principles indicated. Chapman v. Androscoggin R. R., 54 Me. 160.

Quoted in part in Hinckley v. Bridgham, 46 Me. 450.

Cited in True v. Emery, 67 Me. 28; Croswell v. Tufts, 76 Me. 295; Hill v. Reynolds, 93 Me. 25, 44 A. 135; Bisbee v. Mt. Battie Mfg. Co., 107 Me. 185, 77 A. 778.

Sec. 23. Notice of 2nd attachment given to first attaching officer.—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. (R. S. c. 105, § 23.)

Sec. 24. Warrant against turnpike and other corporations taking toll.—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. (R. S. c. 105, § 24.)

Sec. 25. Preservation of lien in case of prior attachment. — 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. (R. S. c. 105, § 25.)

Where the officer made no return on the execution of such seizure, suspension of service, and return to the office of the register of deeds, the later attachment was not preserved. Croswell v. Tufts, 76 Me. 295.

Cited in Clark v. Pratt, 55 Me. 546; Somersworth Savings Bank v. Worcester, 76 Me. 327.

Sec. 26. Prior attachment removed. — 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. (R. S. c. 105, § 26.)

Cited in Clark v. Pratt, 55 Me. 546.

Sec. 27. Set off of executions.—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. (R. S. c. 105, § 27.)

Cross reference.—See note to § 28.

Executions on judgments in favor of defendant in his own right could not be set off against execution on judgment against defendant as administrator, since creditor in one is not debtor in the other "in the same capacity and trust." Rich v. Hayes, 101 Me. 324, 64 A. 656.

Set off by court.—See New Haven Copper Co. v. Brown, 46 Me. 418.

If a party has once applied to the discretion of the court, by motion, to set off one judgment against another, which was refused, after a full hearing on the merits, he cannot afterwards maintain an action against the sheriff to whom both executions have been delivered, for refusing to set off the executions in the same manner. Gould v. Parlin, 7 Me. 82.

Sec. 28. Cases in which executions not set off.—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. (R. S. c. 105, § 28.)

I. General Consideration.

II. Attorney's Lien.

I. GENERAL CONSIDERATION.

A liberal construction should be given this section in furtherance of the object. McGlinchy v. Hall, 58 Me. 152.

Purpose of section.—The provisions of this section and § 27 are designed to bring about an equitable adjustment of counterclaims between the same parties, in cases where this fails of being accomplished under the statutes regulating the filing of accounts in setoff. McGlinchy v. Hall, 58 Me. 152.

Assignment must be before creditor in other execution because entitled to sum due to him.—Before the assignee can resist successfully the setoff, it must appear that the assignment to him was before his debtor became entitled to the sum due to him, in his action against the assignor. New Haven Copper Co. v. Brown, 46 Me. 418.

Where the debt due on one judgment accrued before any assignment of the other judgment, such assignment could not defeat the right of setoff. Hooper v. Brundage, 22 Me. 460.

Where both of the demands had existed between the parties long anterior to the assignment, one demand could not be so assigned as to affect the right of setoff on the part of the creditor in the other. Leathers v. Carr, 24 Me. 351.

Creditor in other execution "became entitled" to debt or damages when his cause of action accrued. McGlinchy v. Hall, 58 Me. 152.

But he is not entitled to costs until he obtains judgment for them. McGlinchy v. Hall, 58 Me. 152.

Cited in Bartlett v. Pearson, 29 Me. 9.

II. ATTORNEY'S LIEN.

Whatever lien an attorney has is created by this section. Potter v. Mayo, 3 Me. 34.

Purpose of provision as to attorney's lien.—The provision as to an attorney's lien is for the purpose of protecting that interest which an attorney has in such judgment, or execution, on account of his fees and disbursements, and preventing the judgment creditor from discharging such judgment or execution, or enforcing the collection of the amount due, to the prejudice of such attorney's rights and lien. Potter v. Mayo, 3 Me. 34.

An attorney's lien does not exist until judgment. The lien is upon that, and on the execution issued on such judgment. Potter v. Mayo, 3 Me. 34.

The lien upon the judgment in favor of the attorney in the suit, for his fees and disbursements, does not accrue until judgment is entered. Hobson v. Watson, 34 Me. 20.

The attorney of the creditor, who recovers a judgment, has a lien upon it, and upon the execution, which may issue thereon, for his fees and disbursements in the suit; but such lien does not attach to the claim which is the object of the suit, till it has ripened into final judgment. Gammon v. Chandler, 30 Me. 152.

Where, after the opinion of the court was pronounced in favor of the plaintiff, he forthwith assigned his interest in the judgment, and the defendant, during the term, and before judgment was actually entered, paid the whole amount to the assignee, the attorney's lien was thereby defeated. Potter v. Mayo, 3 Me. 34.

Meaning of "the first execution."—With regard to the provision relating to the attorney's lien, "the first execution" is not necessarily the first in date, or the first in the hands of the officer, but it is the execution issued upon the judgment in the action which was first commenced. McGlinchy v. Hall, 58 Me. 152.

Extent of attorney's lien.—The attorney's lien, by this section, is for "so much of the ..... execution as is due to the attorney for fees and disbursements therein." The fees must be taxed and included in the execution and the disbursements must likewise be for taxable items included therein. But this lien does not extend to professional services other than those taxed and included in the execution. Newbert v. Cunningham, 50 Me. 231.

The attorney's interest in the judgment is a property in it to the extent of such in-

terest, as much so as if the creditor had assigned it to him as collateral security for his fees and disbursements. Hobson v. Watson, 34 Me. 20.

This section does not require that the attorney should give notice of his intention to rely upon his lien in order to retain it against the discharge of the creditor. Gammon v. Chandler, 30 Me. 152; Hobson v. Watson, 34 Me. 20.

Action on poor debtor's relief bond for amount of attorney's lien.—See Hobson v. Watson, 34 Me. 20.

Sec. 29. Proceeds of sale of property mortgaged; sale without tender.—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. (R. S. c. 105, § 29.)

Stated in part in Reggio v. Day, 37 Me. 314.

Cited in Wolfe v. Dorr, 24 Me. 104.

Sec. 30. Executions and warrants of distress against towns. — 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. (R. S. c. 105, § 30.)

Cross reference.—See c. 53, § 136, re property of inhabitants of counties, towns, etc., may be taken for debts.

History of section.—See Eames v. Savage, 77 Me. 212.

This section is constitutional. Eames v. Savage, 77 Me. 212.

It makes all real estate in town liable.—This section makes all the real estate situated in a town or plantation (without regard to its ownership) liable on an execution for its debts, in the absence of goods or chattels of the inhabitants, not exempt. Caldwell v. Blake, 69 Me. 458.

But execution running only against property of inhabitants of town does not authorize sale of real estate belonging to non-residents. Hayford v. Everett, 68 Me. 505; Caldwell v. Blake, 69 Me. 458.

Amendment of execution. — Execution which ran only against the property of the inhabitants of the town was not allowed to be amended in Hayford v. Everett, 68 Me. 505.

Quoted in part in A. L. & E. F. Goss Co. v. Greenleaf, 98 Me. 436, 57 A. 581; Ripley v. Harmony, 111 Me. 91, 88 A. 161.

Cited in Corthell v. Egery, 74 Me. 41; Paul v. Huse, 112 Me. 449, 92 A. 520.

Sec. 31. Notice and incidents of sale. — 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. (R. S. c. 105, § 31.)

All statute requirements must be complied with.—When an execution is extended upon lands, either by sale or levy, the title of the owner will not be divested un-

less all the statute requirements are complied with, and so appear in the return of the officer. Crafts v. Elliotsville, 47 Me. 141.

Number of lot upon plan and names of such proprietors as are known to officer will suffice.—The "names of such proprietors as are known to him" are to be given by way of further identification of the lot, and, perhaps, to call their attention to the notice; but where he does not undertake to sell the lots "as they are owned or occupied," the number of the lot upon the plan of the town or plantation and the names of such proprietors as are known to him will suffice to meet the requirements of the statute. Caldwell v. Blake, 69 Me. 458.

And validity of sale does not depend on extent or accuracy of officer's knowledge of proprietors.—Under this section the officer is to advertise "the names of such proprietors as are known to him of the lands which he proposes to sell," but the validity of the sale, it is evident, is not to depend upon the extent or accuracy of his knowledge of the proprietors, when he seizes, advertises and sells the lots "as lotted on the town plan." Caldwell v. Blake, 69 Me. 458.

Where it was lot four on the plan of the plantation that was advertised, so long as the officer gave the names of such owners as were known to him, errors or omissions in the names would not affect the sale. Caldwell v. Blake, 69 Me. 458.

But failure to publish names of proprietors known to officer is not a compliance.—Where it appeared, from the return of the officer, that he did publish the numbers of lots and ranges, but did not publish the name of any proprietor, and he assigned in his notice, as a reason for not so publishing the names, "that the proprietors thereof were mostly unknown to me;" and in his return averring, "such proprietors' names being so mostly unknown," this was not a sufficient compliance with the statute requirement. The word "mostly" implies, that some were known, and, if any were known, the officer should have inserted the names of such persons, although, as to some of the lots, he did not know the proprietors. Crafts v. Elliotsville, 47 Me. 141.

Adjournment of sale.—Where the return showed that the officer adjourned the sale from the 16th of April, the day named in the advertisement, to the 22d day of April, this was not an adjournment "from day to day," and was for more than three days, so that the sale was illegal. Crafts v. Elliotsville, 47 Me. 141.

The requirement that the officer express the cause of sale in the deed given to the purchaser is somewhat indefinite. The object is, probably, to enable the party whose land is sold to establish his right to redeem by the same instrument that takes away his title, and, perhaps, to direct him to the witnesses and records necessary to prove his claim against the town under § 32. Caldwell v. Blake, 69 Me. 458.

Return of execution to clerk's office or record of deed not essential.—The only notice of sale which the statute requires is that which is given by advertising the time and place of sale three months beforehand in the state paper and in one of the newspapers printed in the county where the land lies, if any, and the statute does not make the return of the execution to the clerk's office, or the record of the officer's deed in the registry of deeds, essential to the validity of the purchaser's title. Caldwell v. Blake, 69 Me. 458.

Purchasers' equity in premises was extinguished when they were seasonably tendered or paid the amount of their purchase money with necessary charges and interest. Morrill v. Everett, 83 Me. 290, 22 A. 172.

Sec. 32. Remedy of owner of property so sold. — 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. (R. S. c. 105, § 32.)

Plaintiff must show that his land has been legally seized and sold, and that the proceedings were such that he had lost his title, which has been transferred to the purchaser at the sheriff's sale. Crafts v. Elliotsville, 47 Me. 141.

Sale was not void because, at the time of the sale, the legal existence of a plantation had ceased, and the owner is therefore deprived of the remedy which he might otherwise have under this section against the plantation to procure a reimbursement. Caldwell v. Blake, 69 Me. 458.

Applied in Spencer v. Brighton, 49 Me. 326.

Cited in Corthell v. Egery, 74 Me. 41.