

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

Secs. 25-28. Repealed by Public Laws 1959, c. 317, § 254.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Commissioners to Take Depositions.

Sec. 31. Depositions and disclosures taken.—Depositions and disclosures of trustees may be taken by such commissioners stenographically by the consent of the parties to the action 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. (R. S. c. 104, § 31. 1961, c. 317, § 409.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in the first sentence of this section.

Chapter 118.

Levy of Executions on Personal Property.

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. 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 a civil action. (R. S. c. 105, § 9. 1961, c. 317, § 410.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “a civil action” for “an ac- tion on the case” at the end of the present second sentence.

Sec. 13. Notice of seizure.—If the property was not attached on mesne process in the same action, 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. 1961, c. 317, § 411.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in this section.

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. 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. If such shares or interest were attached in the action in which the execution issued, he shall have all dividends which accrue after the attachment. (R. S. c. 105, § 15. 1961, c. 317, § 412.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted “action” for “suit” in the present third sentence.

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 creditor 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 action for his fees and disbursements therein. (R. S. c. 105, § 28. 1961, c. 317, § 413.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” near the end of this section.

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 a civil action, the full value thereof with interest at the rate of 12% yearly, with costs of the action; and may prove and recover the real value thereof, whatever was the price at which it was sold. (R. S. c. 105, § 32. 1961, c. 317, § 414.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of assumpsit” and substituted “the action” for “suit” in this section.

Chapter 119.

Statute of Frauds. Bulk Sales Act. Conditional Sales. Assignment of Wages. Contracts for Sale of Real Estate.

Statute of Frauds.

Sec. 1. Cases in which promise must be in writing; consideration need not be expressed therein.

I. GENERAL CONSIDERATION.

Raising defense by demurrer.—The law is clear in this state that the defense of the statute of frauds may be raised by a demurrer in those cases in which an agreement required by the statute to be in writing is shown by the declaration to have been oral. *Marshall v. Lowd*, 154 Me. 296, 147 A. (2d) 667.

II. PROMISE TO ANSWER FOR DEBT, ETC., OF ANOTHER.

B. Original and Collateral Promises.

1. In General.

And in ascertaining to whom credit was extended, etc.

In accord with original. See *Delaware Feed Stores v. First Auburn Trust Co.*, 151 Me. 372, 120 A. (2d) 223.

Manner in which account charged, etc.

In accord with original. See *Delaware Feed Stores v. First Auburn Trust Co.*, 151 Me. 372, 120 A. (2d) 223.

IV. CONTRACTS RELATING TO LAND.

C. Applicability of Statute to Particular Contracts.

1. In General.

Contract for sale of timber not within statute.

In accord with original. See *Marshall v. Lowd*, 154 Me. 296, 147 A. (2d) 667.

E. Part Performance.

2. Sufficiency of Acts of Performance.

Illustrative case.—The plaintiff having entered upon the premises under what he claims to be a contract for the purchase of the property, and having met all the terms thereof is entitled to a conveyance, even though that contract was oral. *Bell v. Bell*, 151 Me. 207, 116 A. (2d) 921.

V. AGREEMENTS NOT TO BE PERFORMED WITHIN YEAR.

A contract providing that the vendees shall “have three (3) years from date . . . to remove timber and pulp” is not necessarily a contract “not to be performed within a year.” *Marshall v. Lowd*, 154 Me. 296, 147 A. (2d) 667.