

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE

1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1959

Sec. 24. Record in registry of deeds.—Any deposition to perpetuate testimony taken before action or pending appeal together with the verified petition therefor and certificate of the officer before whom it was taken shall, within 90 days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or any of them reside. (R. S. c. 104, § 24. 1959, c. 317, § 253.)

Effect of amendment.—The 1959 amendment rewrote this section.

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

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 Repealed by Public Laws 1959, c. 317, § 254.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.

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.

Sec. 2. No action on contract of minor, unless ratified in writing.

Provided that any minor 16 years of age or over, who receives aid and assistance from the New England Higher Education Assistance Foundation for the purpose of furthering his higher education in professional, technical, scientific or literary fields in the form of a loan or loans made or guaranteed in full or in part by said foundation, shall have full legal capacity for such purpose to act

in his own behalf in the matter of notes, contracts and other transactions, and with respect to such acts done by him, he shall have rights, powers and privileges and be subject to the obligations of persons of full age. (R. S. c. 106, § 2. 1957, c. 435.)

I. GENERAL CONSIDERATION.

Effect of amendment.—The 1957 amendment added the last paragraph to this section. As the rest of the section was not affected by the amendment, it is not set out.

III. RATIFICATION.

Wife as "some persons lawfully author-

ized" to ratify contract.—See *Wright v. Bubar*, 151 Me. 85, 115 A. (2d) 722, holding that the evidence warranted a finding that defendant's wife was authorized to write letters ratifying contract made while defendant was an infant.

Conditional Sales.

Sec. 9. Agreement that goods sold and delivered to remain the property of seller; record; husband bound only if he signs.

When property subject to a conditional sales agreement as defined in this section is repossessed and sold by the conditional vendor or his assignee, said vendor or assignee shall, upon request of the vendee made at any time, and within 5 days of said request, deliver or mail to the address stated in the request, a statement in writing under oath setting forth: the total amount due the conditional vendor or assignee; the total amount received from the sale of the property; the total amount of the cost of the repossession and sale; the name and address of the purchaser; and the date of the sale.

In all cases where a power of sale has been reserved in a conditional sales contract, the conditional sales vendee shall be given at least 10 days' written notice, mailed to him either at the address stated in such contract, or at his last known place of abode, of the intention of the holder of such contract to sell said property, which notice shall state the date, time and place of such sale. The conditional sales vendor, or his assignee, may be a purchaser at any such public or private sale.

Whoever willfully violates the provisions of either of the preceding two paragraphs shall be punished by a fine not exceeding \$25. (R. S. c. 106, § 8. 1951, c. 349. 1953, c. 159. 1957, c. 383.)

I. GENERAL CONSIDERATION.

Effect of amendment. — The 1957 amendment added the three paragraphs appearing above at the end of the section.

As the first three paragraphs of the section were not changed by the amendment, they are not set out.

III. RECORDATION.

Sale not valid as to third persons unless properly recorded.

An unrecorded conditional sales contract is not valid against the lawful claims of third persons. *Universal C. I. T. Credit Corp. v. Lewis*, 150 Me. 337, 110 A. (2d) 595.

Purpose of search of the records.—The purpose of a search of the records for conditional sale agreements and chattel mortgages is not to establish a chain of title as in a search of real estate records. Ownership of personal property ordinarily is not evidenced by recorded instruments. The searcher is interested only in recorded en-

cumbrances against the seller or mortgagor. If there are none, he is then satisfied that no one can claim title against him by virtue of a conditional sale or mortgage. *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.

Purpose, etc., of index or entry book.—The index or entry book is not a part of the record, but must be maintained by the clerk under R. S. 1954, c. 178, § 2. It is, however, an essential tool in the search for encumbrances. The principle that errors in the index are at the risk of one who relies on the record does not lessen the importance of an index, and thus the necessity of the disclosure of the names of parties in instruments such as conditional sales. *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.

Purpose of statute not to enable one to ascertain trade name in which person is doing business.—The purpose of the statute is not to enable one dealing with a person to ascertain from the records in what trade

name or names he may be doing business. *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.

A conditional vendor who chooses to name a purchaser under his trade name gives no constructive notice to mortgagees of the reservation of his title, under this section. For example, "Gill's Self Service Mkt." is not the equivalent of "Frank M. Gill" and there is no more reason for the recording officer to index the name "Frank M. Gill" than the name of a corporate vice president who signs for a corporation.

Globe Slicing Machine Co. v. Casco Bank & Trust Co., 154 Me. 59, 142 A. (2d) 30.

Contract held not properly recorded.— A conditional sales contract signed by the purchaser, "Gill's Self Service Mkt. by Frank M. Gill" and recorded and indexed under "Gill's Self Service Mkt." is not effectively recorded under this section so as to bind subsequent mortgagees of Frank M. Gill. *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.