

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

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.

Sec. 2. No action on contract of minor, unless ratified in writing; contracts to further higher education.

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 all persons of full age.

Provided that any minor 16 years of age or over, who for the purpose of furthering his higher education in the professional, educational, scientific or literary fields, shall have full legal capacity to act in his own behalf in the matter of making notes, contracts and other transactions, and with respect to such acts done, 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. 1961, c. 188.)

I. GENERAL CONSIDERATION.

Effect of amendments.—The 1957 amendment added the next to last paragraph in this section.

The 1961 amendment added the last paragraph.

As the first paragraph of the section was not affected by the amendments, it is not set out.

This section is modified by c. 166, § 35, in suits brought against a married person under the age of twenty-one years, in those cases in which the infant may make legal binding contracts by virtue of the provi-

sions of § 35. *Uhl v. Oakdale Auto Co.*, 157 Me. 263, 170 A. (2d) 914.

And is not applicable to action, etc.

In accord with 1st paragraph in original. See *Uhl v. Oakdale Auto Co.*, 157 Me. 263, 170 A. (2d) 914.

III. RATIFICATION.

Wife as "some persons lawfully authorized" 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.—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. When so made and signed, whether said agreement is called a note, lease, conditional sale, purchase on installments 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 or a memorandum thereof is recorded in the office of the clerk of the municipality in which the purchaser resides at the time of the purchase, within 20 days from the date of sale stated therein, or, when not so stated, then from the date of execution and delivery of the same. When all the purchasers reside without the state, the agreement or a memorandum thereof shall be so recorded in the office of the register of deeds in the registry district where the property is when the sale is made; but if a part of the purchasers reside in the state, then in the municipalities in which such purchasers reside when the sale is made. If any purchaser resides in an unorganized place, the agreement or a memorandum thereof shall be so recorded in the office of the register of deeds for the registry district in which such unincorporated place is located. An agreement or a memorandum thereof made by a domestic corporation shall be recorded in the municipality which the corporation has designated in its certificate of organization as the location of the corporation; and, that of a foreign corporation shall be recorded in the municipality designated by the corporation in its certificate of foreign corporation as its usual place of business in this state. If a municipality in this state is not designated by

the corporation as its location, or the location designated is in an unorganized place in this state, then in the office of the register of deeds for the registry district in which such property is when the agreement is made. 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 chapter 114, section 50, but the title may be foreclosed in the same manner as is provided for mortgages of personal property.

If repossession is made or the instrument or a memorandum thereof is recorded subsequent to the said 20-day period, it shall be valid against mortgages, assignments and bills of sale executed and delivered subsequent to the recording, and also against attachments made subsequent thereto, based upon causes of action arising subsequent thereto, and also against trustees in bankruptcy and common law assignees, so far as relates to claims accruing subsequent thereto.

A statement signed by the party to be bound, describing the parties and the personal property bargained and delivered and stating the date of the sale, the amount remaining unpaid, the terms of payment and that it is a memorandum of an agreement that personal property bargained and delivered to another shall remain the property of the seller until paid for, shall constitute a memorandum within the meaning of this section. The recording of such a memorandum shall make effective all the terms of the agreement as effectively as if said agreement had been recorded in full.

Such agreement or memorandum as provided in the preceding paragraphs shall be binding upon a husband only when signed by him. Any person who permits a wife to sign her husband's name to any such agreement or memorandum without his written authority to do so, when such person is acting as the other party thereto or as his agent, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

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. 1961, c. 312, §§ 1, 2.)

I. GENERAL CONSIDERATION.

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

The 1961 amendment divided the first sentence of this section into two sentences, deleted "or is" preceding "called" near the beginning of the present second sentence, substituted "municipality" for "city, town

or plantation organized for any purpose" in that sentence, deleted a former provision at the end of that sentence as to recording in the county where the seller resides when the purchasers are nonresidents or reside in an unorganized place, added "within 20 days from the date of sale stated therein, or, when not so stated, then from the date of execution and delivery of the

same" at the end of that sentence, inserted the present third, fourth, fifth and sixth sentences in the first paragraph and added the present second paragraph.

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 encumbrances 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 im-

portance 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.

Contracts for Sale of Real Estate.

Sec. 14. Specific performance of a contract to convey real estate after death of contractor.—If a person, who has contracted in writing to convey real estate, dies before making the conveyance, the other party may file a complaint 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 written notice of the existence of the contract is given to the executor or administrator within one year after the grant of administration. (R. S. c. 106, § 13. 1961, c. 317, § 415.)

Effect of amendment.—The 1961 amendment substituted "file a complaint in the superior court" for "have a bill in equity in

the supreme judicial court or in the superior court" and deleted "that" preceding "written notice" in this section.

Sec. 16. Enforcement of decree.—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. (R. S. c. 106, § 15. 1961, c. 317, § 416.)

Effect of amendment.—The 1961 amendment deleted "according to chancery proceedings" at the end of this section.

Sec. 17. Provision, in case of death of obligee, before conveyance.—If the person entitled to such conveyance dies before bringing his action, 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 action, and shall be entitled to the conveyance or seizin and possession in like manner as the obligee. (R. S. c. 106, § 16. 1961, c. 317, § 417.)

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

Sec. 18. Administrator may petition for authority to make conveyance.—If the party to whom any such conveyance was to be made or those claiming under him do not commence an action as 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 complaint 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. 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. (R. S. c. 106, § 17. 1961, c. 317, § 418.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted “an action as” for “a suit as before” and “complaint in the superior court” for “bill in equity in the supreme judicial court or in the superior court” in the present first sentence.