

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1963 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 4

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**Discard Previous Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1963

**C.** The value of residue of the estate real and personal, at the date of death over and above the value of  $\frac{1}{3}$  the real estate, the amount necessary to pay the debts of the deceased, funeral charges and charges of administration and widow's allowance. Such decree of determination shall include a finding as to what part of decedent's estate passes to the widow and shall be binding upon all parties.

Within 30 days after such determination by the probate court, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated, an attested copy of such decree, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills.

If additional property is later discovered, the right or title to the estate covered by such decree shall not be affected thereby, but the court may make such further orders and decrees as are necessary to effect the distribution provided for in section 20. (1957, c. 290, § 3.)

**Effective date.**—The act inserting this section became effective on its approval, May 17, 1957.

**Sec. 21. Life insurance.**

Applied in *Old Colony Trust Co. v. McGowan*, 156 Me. 138, 163 A. (2d) 538.

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## Chapter 171.

### Title to Real Estate by Levy of Execution.

#### Levy by Appraisement.

**Sec. 15. When debt assigned, estate held in trust for assignee.**—When the debt has been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it in trust for his assignee, who is entitled to a conveyance thereof, which may be enforced by a civil action. (R. S. c. 157, § 15. 1961, c. 317, § 563.)

**Effect of amendment.**—The 1961 amendment substituted "civil action" for "bill in equity" at the end of this section.

**Sec. 19. When title fails after record, alias execution; debtor may convey title by deed.**—When the execution has been recorded and the estate levied on does not pass by the levy for causes named in section 18, the creditor may by motion in the court issuing the execution require the debtor to show cause why an alias execution should not be issued on the same judgment. If the debtor does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the action. The judgment shall be satisfied for the amount of the levy. (R. S. c. 157, § 19. 1959, c. 317, § 302.)

**Effect of amendment.**—The 1959 amendment divided this section into three sentences, substituted "section 18" for "the preceding section" and "by motion in the court issuing the execution require" for "sue out of the office of the clerk issuing

the execution, a writ of scire facias, requiring" in the first sentence, deleted "after being duly summoned" following "debtor" near the beginning of the second sentence, and substituted "action" for "suit" at the end of the second sentence.

**Effective date and applicability of Public Laws 1959, c. 317.**—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

**Sec. 20. Assignee of judgment may bring action, if estate does not pass by levy.**—When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may bring an action in the court issuing the execution, setting forth the facts aforesaid therein, and requiring the debtor to show cause why another execution should not issue on the same judgment, in the name and for the benefit of said assignee. If the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside; and the court from which said execution issued may order and issue another execution on the same judgment, for the amount of the original debt, interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form, with necessary charges. (R. S. c. 157, § 20. 1959, c. 317, § 303.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences and substituted "bring an action in the court issuing the execution" for "sue out of the office of the clerk issuing such

execution, a writ of scire facias" and "said assignee" for "the plaintiff in scire facias" in the first sentence.

**Effective date of 1959 amendment.**—See note to § 19.

**Sec. 21. Assignee may bring action in own name.**—In all cases where a judgment has been assigned as provided for in section 20 and is not discharged, the assignee may bring a civil action thereon in his own name. Upon averment and proof of the facts aforesaid, the court may render judgment and execution thereon in his favor, subject to any legal defense which the debtor might have if the action were instituted by the original creditor. (R. S. c. 157, § 21. 1961, c. 317, § 564.)

**Effect of amendment.**—The 1961 amendment divided this section into two sentences, substituted "section 20" for "the preceding section" and "a civil action" for

"an action of debt" in the present first sentence and made minor changes in the present second sentence.

**Sec. 23. Levy made for too much valid, if not over 1% ; remedy against officer or creditor.**—When, by any error of the officer, the amount for which the levy was made exceeds the amount of debt or damage, costs, interests and costs of levy, by a sum not greater than 1% thereof, it is valid if otherwise legally made. The debtor or owner of the estate may maintain a civil action against such officer or his principal to recover all damages occasioned thereby, or a civil action against the creditor to have such error corrected, and the court may correct it, in any just and equitable manner, or it may decree a pecuniary compensation for the injury. (R. S. c. 157, § 23. 1961, c. 317, § 565.)

**Effect of amendment.**—The 1961 amendment divided this section into two sentences and substituted "a civil action" for

"an action" and "civil action" for "bill in equity" in the present second sentence.

### Redemption of Levies by Appraisement.

**Sec. 26. If creditor does not release after tender, debtor may recover land.**—If the creditor does not release the premises within 10 days after payment or tender of the amount due, the debtor may recover the same by a

real action on his own seizin; but before judgment is entered he must bring into court, for the creditor, the money tendered. (R. S. c. 157, § 26. 1959, c. 317, § 304.)

**Effect of amendment.**—The 1959 amendment substituted the words “real action” for the words “writ of entry.”

**Effective date of 1959 amendment.**—See note to § 19.

**Sec. 27. Debtor may have amount due determined.**—The debtor, without tender, may, within one year and in season to have the amount ascertained and paid or tendered within the year, bring an action the complaint in which shall offer to pay the amount due, and the court shall ascertain it and require the debtor to bring it into court for the creditor, and the debtor thereupon shall be entitled to a decree in his favor, and to a writ of possession for the premises. (R. S. c. 157, § 27. 1959, c. 317, § 305.)

**Effect of amendment.**—The 1959 amendment substituted the words “bring an action the complaint in which shall offer” for the words “file a bill in equity, therein

offering.”

**Effective date of 1959 amendment.**—See note to § 19.

**Sec. 28. Costs regulated; provisions applicable to redemption of estates for life.**—Costs may be awarded to either party, except not against the creditor, unless he has, on request, unreasonably refused to render an account of rents and profits and of expenses for improvements and repairs, or to execute a deed of release as required in this chapter. When he has tendered such deed to the debtor before his action was commenced by the debtor, and in his answer relies up it, and brings the deed into court for the debtor, he shall recover his costs. This section is applicable to the redemption of an estate for life, levied on by taking the rents and profits. (R. S. c. 157, § 28. 1959, c. 317, § 306.)

**Effect of amendment.**—The 1959 amendment substituted the words “action was commenced by the debtor” for the words

“bill was filed” in the second sentence.

**Effective date of 1959 amendment.**—See note to § 19.

**Levies on Equities of Redemption.**

**Sec. 30. Redemption; debtor paying on mortgage after levy, and not redeeming, may recover of creditor.**—Levies made as provided in section 29 may be redeemed within one year, as in other cases. When the debtor pays on the mortgage after the levy, and does not redeem, he may recover of the creditor the amount so paid, in a civil action. (R. S. c. 157, § 30. 1961, c. 317, § 566.)

**Effect of amendment.**—The 1961 amendment substituted “section 29” for “the preceding section” near the beginning of this

section and “a civil action” for “an action for money had and received” at the end thereof.

**Levy by Sale.**

**Sec. 37. Seizure when considered made; proceedings after return day, valid.**—The seizure on execution is considered made on the day when notice of the sale is given, and if the sale is not completed within 60 days after judgment it holds the right or interest seized within that time. The subsequent proceedings and return are valid, if made after the return day of the execution or after removal or disability of the officer. (R. S. c. 157, § 37. 1959, c. 93, § 2.)

**Effect of amendment.**—The 1959 amendment substituted “60” for “30” and divided the section into two sentences.

### Miscellaneous Provisions.

**Sec. 49. When deed given to assignee, right sold; remedy of purchaser.**—When, during the existence of an attachment, a deed has been given to an assignee, the right of the debtor should be sold on the execution. When the right has been sold, and there has been no previous conveyance to the debtor, the purchaser has the same remedies in his own name against the obligor or contractor as the debtor would have had, by an action to recover damages for nonfulfillment, or to compel a specific performance, and when assignment before attachment is alleged, the assignee may be made a party. Upon refusal of the obligor or contractor, on request of the purchaser, to give correct information of the amount due or condition remaining to be performed, the purchaser may maintain his action without previous payment, performance or tender. Upon a hearing, the court may grant and decree such relief, payment or performance, as is equitable. (R. S. c. 157, § 49. 1959, c. 317, § 307.)

**Effect of amendment.**—The 1959 amendment deleted “at law” following “action” and “by bill in equity” following “or” in the second sentence, substituted “action” for “bill” near the end of the third sentence

and substituted “equitable” for “competent in equity” at the end of the fourth sentence.

**Effective date of 1959 amendment.**—See note to § 19.

**Sec. 50. When assignment alleged and contested.**—When an assignment of the bond or contract is alleged and the plaintiff contests it, the alleged assignee shall be made a party to the action, and an issue framed to be tried by a jury, which shall find whether such an assignment existed and was valid. If the assignee does not appear, the assignment is invalid. (R. S. c. 157, § 50. 1959, c. 317, § 308.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences and deleted “in equity” following “plaintiff” and substituted “action” for “bill” in

the first sentence.

**Effective date of 1959 amendment.**—See note to § 19.

### Redemption of Lands of Defaulted Defendants, Living Out of State.

**Sec. 51. Defendant living out of state, defaulted, may after action for relief, redeem real estate.**—A defendant living out of the state, defaulted in an action without an appearance or other service than a newspaper publication, may, within 6 months after the levy of an execution on his real estate or the sale of a right of redemption, bring an action for relief from the judgment in such action, and instead of the year allowed in other cases, he may redeem from such levy or sale at any time within 3 months after the relief is denied, or after final judgment in the action if the relief is granted. If such judgment is in his favor, the amount thereof shall be allowed towards such redemption, notwithstanding a conveyance of such estate by the creditor; and if it is larger than the amount of the levy or sale, and interest, he shall have an execution for the balance. (R. S. c. 157, § 51. 1959, c. 317, § 309.)

**Effect of amendment.**—The 1959 amendment substituted “bring an action for relief from the judgment in such action” for “petition for a review of such action,” “relief” for “review” and “in the action if

the relief is granted” for “on the writ of review” in the first sentence.

**Effective date of 1959 amendment.**—See note to § 19.

**Sec. 52. Waste not permitted; remedy.**—No strip or waste shall be made on such estate before or during the pendency or proceedings under section 51. After final judgment in the action, if relief from the judgment is granted, the plaintiff in such action, besides other remedies, may, within said 3 months, without a tender or demand to account, bring his action, for the redemption of such estate. (R. S. c. 157, § 52. 1959, c. 317, § 310.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences, substituted “section 51” for “the provisions of the preceding section” in the first sentence, and substituted “in the action, if relief from the judgment is granted, the plaintiff in such action” for “in review, the

plaintiff in review” following “judgment” in the second sentence and “action” for “bill in equity” near the end of that sentence.

**Effective date of 1959 amendment.**—See note to § 19.

## Chapter 172.

### Real Actions. Proceedings to Quiet Title.

Sections 48-55. Proceedings to Quiet Title.

#### Real Actions.

**Sec. 1. Recovery of estates by real action.**—Any estate in fee simple, in fee tail, for life or for any term of years may be recovered by a real action. (R. S. c. 158, § 1. 1959, c. 317, § 311.)

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

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the

application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

**Applied** in *Portland Renewal Authority v. Reardon*, 159 Me. 31, 187 A. (2d) 634.

**Cited** in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364; *Williams v. State Highway Comm.*, 157 Me. 324, 172 A. (2d) 625.

**Sec. 2.** Repealed by Public Laws 1959, c. 317, § 312.

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

**Sec. 3.** Repealed by Public Laws 1959, c. 317, § 313.

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

**Sec. 4. Proof of seizin.** The plaintiff need not prove an actual entry under his title; but proof that he is entitled to an estate in the premises and that he has a right of entry therein is sufficient proof of his seizin. (R. S. c. 158, § 4. 1959, c. 317, § 314.)

**Effect of amendment.**—The 1959 amendment substituted “plaintiff” for “demandant”, deleted “such” following “entitled to” and deleted “as he claims” following “premises.”

**Effective date of 1959 amendment.**—See

note to § 1.

**Applied** in *Portland Renewal Authority v. Reardon*, 159 Me. 31, 187 A. (2d) 634.

**Stated** in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

**Sec. 5. Plaintiff must have right of entry.**—No such action shall be maintained unless, at the time of commencing it, the plaintiff had such right of entry. No descent or discontinuance shall defeat any right of entry for the recovery of real estate. (R. S. c. 158, § 5. 1959, c. 317, § 315.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences and substituted “plaintiff” for “demandant” in the first sentence.

**Effective date of 1959 amendment.**—See note to § 1.

**Stated** in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

**Sec. 6. Who considered as disseizor.**—Every person alleged to be in possession of the premises demanded in such action, claiming any freehold