

# MAINE STATE LEGISLATURE

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NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

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FIRST ANNOTATED REVISION

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IN FIVE VOLUMES

VOLUME 4



THE MICHIE COMPANY  
CHARLOTTESVILLE VIRGINIA

## Chapter 181.

### Principals. Agents. Factors. Partnerships.

Sections 1-11. Factors and Agents.

Sections 12-16. Publicity of Mercantile Partnerships.

Sections 17-26. Limited Partnerships.

**Cross Reference.**—See c. 161, re estates of deceased partners.

#### Factors and Agents.

**Sec. 1. How far shipper, factor or agent considered owner of goods under his control.**—Every person in whose name merchandise is forwarded, every factor or agent entrusted with the possession of any bill of lading, custom-house permit or warehouse keeper's receipt for the delivery of such merchandise, and every such factor or agent not having the documentary evidence of title who is entrusted with the possession of merchandise for the purpose of sale or as security for advances to be made thereon, shall be deemed the true owner thereof, so far as to give validity to any lien or contract made by such shipper or agent with any other person for the sale or disposal of the whole or any part of such merchandise, money advanced or negotiable instrument or other obligation in writing, given by such person upon the faith thereof. (R. S. c. 167, § 1.)

See c. 185, § 28, re uniform sales act as to negotiation documents by delivery.

**Sec. 2. Title does not extend to prior demands against agent.**—No person taking such merchandise in deposit from such agent as security for an antecedent demand shall thereby acquire or enforce any right or interest therein other than such agent could then enforce. (R. S. c. 167, § 2.)

Quoted in part in *Lee v. Kimball*, 45 Me. 172.

**Sec. 3. Rights of true owner.**—The true owner of such merchandise, upon repayment of the money so advanced, restoration of the security so given or satisfaction of all legal liens, may demand and receive his property or recover the balance remaining as the proceeds of the legal sale thereof, after deducting all proper claims and expenses thereon. (R. S. c. 167, § 3.)

**Sec. 4. Factors' liens.**—If so provided by any written agreement, all factors shall have a continuing general lien upon all materials, goods in process and merchandise from time to time consigned to or pledged with them, whether in their constructive, actual or exclusive occupancy or possession or not, and upon the proceeds resulting from the sale or other disposition of such materials, goods in process and merchandise, for all their loans and advances to or for the account of the person creating the lien, hereinafter called the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower and for the amounts due or owing upon any notes or other obligations given to or received by them for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses, and such lien shall be valid from the time of filing the notice hereinafter referred to, whether such materials, goods in process or merchandise shall be in existence at the time of the agreement creating the lien or at the time of filing such notice or shall come into existence subsequently thereto or shall subsequently thereto be acquired by the borrower; provided that there shall be placed and maintained on the door of, or in a conspicuous place at one of the principal entrances of the place of business or other premises in or at which such materials, goods in process and

merchandise shall be located, kept or stored, the name of the factor in legible lettering and a designation of said factor as factor; and provided, further, that a notice of the lien is filed stating:

**I.** The name and address of the factor, the name under which the factor does business, if an assumed name; the principal place of business of the factor within the state, or if he has no place of business within the state, his principal place of business outside of this state; and if the factor is a partnership or association, the name of the partners, and if a corporation, the state under whose laws it was organized.

**II.** The name of the borrower and the interest of such person in the materials, goods in process and merchandise, as far as known to the factor.

**III.** The general character of materials, goods in process and merchandise subject to the lien or which may become subject thereto, and the period of time during which such loans or advances may be made under the terms of the agreement providing for such loans or advances and for such lien. Amendments of the notice may be filed from time to time to record any changes in the information contained in the original, subsequent or amended notices. (1945, c. 79.)

**Sec. 5. Recording.**—Such notice must be verified by the factor or his agent, to the effect that the statements therein contained are true to the best of his knowledge. It must be recorded in the same manner as to the place of recording, as is provided by law for the recording of chattel mortgages; and also if the factor has an office or principal place of business in the state, it shall be likewise recorded in the office of the town or city clerk where such principal office or place of business of the factor within the state is located. Such officers shall record every such notice presented to them for that purpose and shall endorse thereon the time of its receipt. Such officers at the time of recording such notice shall upon request issue to the person recording the same a receipt in writing setting forth the recording data. Such officers shall be entitled to receive for their services hereunder fees at the same rates as they are entitled to receive for the recording of chattel mortgages. (1945, c. 79.)

**Sec. 6. Effect of recording.**—Such notice may be recorded at any time after the making of the agreement and shall be effectual from the time of the recording thereof as against all claims of unsecured creditors of the borrower and as against subsequent liens of creditors, except that if, pursuant to the laws of this state, a lien should subsequently attach to the materials, goods in process or merchandise in favor of a processor, dyer, mechanic or other artisan, then the lien of the factor on such materials, goods in process or merchandise shall be subject to such subsequent lien. When materials, goods in process or merchandise subject to the lien provided for by sections 4 to 11, inclusive, are sold in the ordinary course of the business of the borrower, such lien, whether or not the purchaser has knowledge of the existence thereof, shall terminate as to the materials, goods in process or merchandise and shall attach to the proceeds of such sale in the hands of the borrower. (1945, c. 79.)

**Sec. 7. Discharge.**—Upon the payment or satisfaction of indebtedness secured by any lien specified in sections 4 to 11, inclusive, the factor or his legal representative, upon the request of any person interested in the said materials, goods in process and merchandise, must sign and acknowledge a certificate setting forth such payment or satisfaction. The officer or officers with whom the notice of lien is recorded must, on receipt of such certificate or a copy thereof certified as required by law, record the same in his office and write the word "Discharged" in the book where the notice of lien is entered, opposite the entry thereof, and the lien is thereby discharged. All notices of liens recorded pursuant to the provisions of sections 4 to 11, inclusive, and not satisfied by filing a certificate setting

forth payment or satisfaction thereof shall be deemed to be and remain in full force and effect under the provisions of sections 4 to 11, inclusive, without further or other recording. (1945, c. 79.)

**Sec. 8. Returned merchandise and allowances.**—Where accounts receivable, arising out of the sale of materials, goods in process or merchandise which has become subject to the lien provided for by sections 4 to 11, inclusive, by compliance with the provisions of section 4, are assigned to a factor, the right to or lien of the factor upon any balance remaining owing on such accounts receivable and his right to or lien upon any other accounts receivable assigned to him by the assignor shall not be invalidated by reason of the fact that the materials, goods in process or merchandise sold, or any part thereof, are returned to or recovered by the assignor from the person owing the account receivable and is thereafter dealt with by him as his own property or by reason of the fact that the assignor grants credits, allowances or adjustments to the person owing an account receivable, irrespective of whether the factor shall have consented to, or acquiesced in, such acts of the assignor. (1945, c. 79.)

**Sec. 9. Common law lien.**—When any factor, or any third party for the account of any such factor, shall have possession of materials, goods in process or merchandise, such factor shall have a continuing general lien, as set forth in section 4, without recording the notice and posting the sign provided for in sections 4 to 11, inclusive. (1945, c. 79.)

**Sec. 10. Definitions.**—The terms “factor” and “factors”, wherever used in sections 4 to 11, inclusive, mean persons, firms, banks and corporations, and their successors in interest, who purchase or lend on the security of materials, goods in process or merchandise, whether or not they are employed to sell such materials, goods in process or merchandise. The term “merchandise” wherever used in sections 4 to 11, inclusive, shall mean any and all goods, wares and materials, raw, wrought or in process. (1945, c. 79.)

**Sec. 11. Construction.**—The provisions of sections 4 to 11, inclusive, are to be construed liberally to secure the beneficial interest and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same. Nothing in sections 4 to 11, inclusive, shall be construed as affecting or limiting any existing or future lien at common law or any rights at common law, or any right given by any other statute, and as to any transaction falling within the provisions both of sections 4 to 11, inclusive, and of any other statute of this state requiring filing, recording, consent, publication, notices or formalities of execution, the factor shall not be required to comply with the provisions of any such other statute. (1945, c. 79.)

See c. 113, § 173, re assignment of accounts receivable.

### Publicity of Mercantile Partnerships.

**Sec. 12. Persons engaging in mercantile partnerships to file certificate; certificate of withdrawal.**—Whenever 2 or more persons become associated as partners or otherwise for the purpose of engaging in any mercantile enterprise, they shall, before commencing business, deposit in the office of the clerk of the city or town in which the same is to be carried on a certificate signed and sworn to by them, setting forth their names and places of residence, the nature of the business in which they intend to engage and giving the name under which they are to transact business. Whenever any member of such partnership or association withdraws therefrom, he may certify under oath to the fact of such withdrawal, which certificate shall be deposited in the clerk's office where the partnership certificate is recorded; and he shall conclusively be pre-

sumed to be a member of the firm or association to the time of his depositing such certificate. (R. S. c. 167, § 4.)

**Cross reference.**—See § 16, re penalty for neglect to file certificate.

**Section strictly construed.**—This section is penal in its nature and in derogation of the common law. It is to be strictly construed. *Lipman v. Thomas*, 143 Me. 270, 61 A. (2d) 130.

**Section is for protection of public in extending credit.**—The primary purpose of this section is to enable persons dealing with individuals transacting business under a partnership or assumed name to know or be able to ascertain from a public record, the name or names of those with whom they are dealing and the nature of the business in which they are engaged. From this record an investigation of the financial responsibility of the partnership and the individuals composing it may be made, and whether the particular business to be transacted is within the scope of the partnership. The statute seeks to protect the public against fraud and deceit in extending credit. It is not intended to protect those who obtain credit from the partnership. *Lipman v. Thomas*, 143 Me. 270, 61 A. (2d) 130.

**Not for protection of partnership's debtors.**—A debtor cannot escape payment of

an otherwise legal debt because a creditor has failed to comply with this section requiring filing of a partnership certificate. *Lipman v. Thomas*, 143 Me. 270, 61 A. (2d) 130.

**Retired partner is not liable for debts outside actual or apparent scope of business.**—This section does not mean that the retiring partner is conclusively presumed to be liable for every debt that the remaining members of the partnership may thereafter contract. It was not the intention of the legislature to create liability upon the part of a retiring partner for indebtedness incurred following retirement outside of the actual or apparent scope of the partnership business. It means only that one who withdraws from a partnership and does not file a certificate of withdrawal is conclusively presumed, in the absence of estoppel, still to be a member of it when carrying on business within either its actual or apparent scope. *Cumberland County Power & Light Co. v. Gordon*, 136 Me. 213, 7 A. (2d) 619.

**Quoted in part in** *Karahleos v. Dillingham*, 119 Me. 165, 109 A. 815.

**Cited in** *Gass v. Robie*, 138 Me. 348, 25 A. (2d) 487.

**Sec. 13. Sole proprietor to file certificate when adopting any business name or style other than own name.**—Whenever any person intends to engage in such business as sole proprietor thereof, and to adopt any business name, style or designation other than his own name exclusively, he shall, before commencing business, deposit in the office of the clerk of the city or town in which such business is to be carried on a certificate signed and sworn to by him, setting forth his name and place of residence, the name, style or designation under which the business is to be conducted, and stating that he is the sole proprietor. (R. S. c. 167, § 5.)

**Cross reference.**—See § 16, re penalty for neglect to file certificate.

**Cited in** *Gass v. Robie*, 138 Me. 348, 25

A. (2d) 487; *Saco Dairy Co. v. Norton*, 140 Me. 204, 35 A. (2d) 857.

**Sec. 14. Statement cannot be contradicted in judicial proceedings.**—A person signing and making oath to any certificate deposited as provided by the 2 preceding sections shall not be permitted in any judicial proceeding to contradict the statements contained in such certificate. Whoever swears or affirms to any such certificate which is not true in fact shall be deemed guilty of perjury. (R. S. c. 167, § 6.)

**Sec. 15. Record.**—The clerks of the several cities and towns shall record in suitable books, kept exclusively for the purpose, the certificates deposited under the provisions of sections 12 and 13, and such books shall be open to public inspection. (R. S. c. 167, § 7.)

**Sec. 16. Neglect to file certificate.**—Whoever fails to deposit seasonably the certificate required by sections 12 and 13 shall be punished by a fine of \$5 for each day he is in default. (R. S. c. 167, § 8.)

**Applied in** *Lipman v. Thomas*, 143 Me. 270, 61 A. (2d) 130.

**Cited in** *Karahleos v. Dillingham*, 119 Me. 165, 109 A. 815.

**Limited Partnerships.**

**Sec. 17. Organization for mercantile, mechanical or manufacturing business.**— Limited partnerships for the transaction of mercantile, mechanical or manufacturing business, but not for banking or insurance, may be formed upon the following conditions and liabilities, to consist of one or more persons called general partners, who shall be jointly and severally responsible as general partners are by law, and of one or more persons who contribute a specific sum in actual cash payment, as capital, to the common stock, called special partners, who shall not be liable for the debts of the partnership beyond the sum so contributed by each. (R. S. c. 167, § 9.)

See c. 161, § 1 et seq., re estates of deceased partners.

**Sec. 18. Certificate.**—Persons forming such a partnership shall sign a certificate containing the following particulars:

- I. The name of the firm under which the partnership shall be conducted;
- II. The name and place of residence of each of the general and each of the special partners;
- III. The general nature of the business to be transacted and the amount of capital which each of the special partners contributes;
- IV. The time when the partnership shall commence and when it shall cease. (R. S. c. 167, § 10.)

**Sec. 19. Certificate acknowledged and recorded.**— Such partnership shall not be considered as formed until such certificate is acknowledged by all the partners before a justice of the peace and recorded in the registry of deeds for each county or registry district where such partnership is to have an established place of business, in a book kept for that purpose open to public inspection. (R. S. c. 167, § 11.)

**Sec. 20. Liability for any misstatement.**—If any statement is made in such certificate which misleads third persons or is intentionally false, all the persons interested in such partnership are liable for all the engagements thereof, as general partners, to any person thereby deceived or injured. (R. S. c. 167, § 12.)

**Sec. 21. Publication of such partnership and mode of renewing it.**—After such registry, the partners shall cause a copy of the certificate above mentioned to be published in a newspaper printed in the county in which the principal place of business is situated, if any, otherwise in one printed in an adjoining county, or in the state paper, for 6 weeks successively, the first publication to be within 20 days thereafter; and if not so published, or if upon every renewal or continuance of such partnership beyond the time originally fixed for its duration a certificate is not made, signed, acknowledged, recorded and published as aforesaid, it shall be deemed a general one. (R. S. c. 167, § 13.)

**Sec. 22. Special partners not named and not to act.**—The business of the partnership shall be conducted under a firm, in which no names are used but those of the general partners, without the word "company" or any other general term; and the general partners only shall transact business; and if the name of any special partner is used in the firm with his consent and privity, or if he makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed a general partner as to such contract. (R. S. c. 167, § 14.)

**Sec. 23. Capital not reduced below amount stated in certificate.**— During the continuance of such partnership, no part of the capital stock shall

be withdrawn therefrom nor any division of interest or profits be made so as to reduce the capital stock below the sum stated in the certificate above mentioned; and if during the continuance or at the termination of the partnership the property is not sufficient to pay the partnership debts, the special partners shall be severally answerable for all sums by them in any way received, withdrawn or divided, with interest thereon from the time of withdrawal, notwithstanding the provision in the following section. (R. S. c. 167, § 15.)

Stated in part in *Merrill v. Wilson*, 29 Me. 58.

**Sec. 24. Prosecution of suits relating to partnership business.—**

Suits respecting the business of such partnership shall be commenced and prosecuted by and against the general partners only, except in those cases in which provision is hereinbefore made, that special partners shall be deemed general partners, and special partnerships, general partnerships; in which cases all the partners deemed general partners may join or be joined in such suits. (R. S. c. 167, § 16.)

Stated in part in *Merrill v. Wilson*, 29 Me. 58.

**Sec. 25. Voluntary dissolution and notice.—**No voluntary dissolution of such partnerships shall take place before the time specified in the certificate before named, unless a notice thereof is recorded in each registry in which the original certificate or certificate of renewal or continuance is recorded, and published in such paper as is directed in section 21. (R. S. c. 167, § 17.)

**Sec. 26. Limited partners same as general.—**In all cases not otherwise provided for herein, the members of limited partnerships are subject to the liabilities and entitled to the immunities incident to general partnerships, and the supreme judicial court and the superior court may hear and determine, in equity, all questions between copartners in any partnership formed by virtue of this chapter, and between said copartners and any creditors of the firm. (R. S. c. 167, § 18.)