

MAINE STATE LEGISLATURE

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CHAPTER 509

EXECUTIONS

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§ 4651. Issue and return

Executions may be issued on a judgment of the Superior Court after 24 hours from the time the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, unless the court has pursuant to rule ordered execution at an earlier time, and shall be returnable within 3 months after issuance.

R.S.1954, c. 113, § 181; 1959, c. 317, § 203.

§ 4652. One-year limit; exception

No first execution shall be issued after one year from the time the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, except in cases provided for by section 4701 in which the first execution may be issued within not less than one year nor more than 2 years from the time of judgment.

R.S.1954, c. 113, § 182; 1959, c. 317, § 204.

§ 4653. Renewal in 10 years

An alias or pluries execution may be issued within 10 years after the day of the return of the preceding execution and not afterwards.

R.S.1954, c. 113, § 183.

§ 4654. Execution not timely; motion against debtor

When execution is not issued within the times prescribed by sections 4652 and 4653, motion against the debtor may be made to show cause why execution on the judgment should not be issued, and if no sufficient cause is shown, execution may be issued thereon.

R.S.1954, c. 113, § 184; 1959, c. 317, § 205.

§ 4655. Interest on judgments

On executions issued on judgments interest shall be collected from the time of judgment.

R.S.1954, c. 113, § 185.

§ 4656. New execution on proof of loss

A justice of the court in which the judgment was rendered, upon proof by affidavit or otherwise of the loss or destruction of an execution unsatisfied in whole or in part, may order a new execution to be issued for what remains unsatisfied.

R.S.1954, c. 113, § 186.

§ 4657. Execution on award to creditor by commissioners on solvent estate

When the report of commissioners appointed by the probate court to decide upon exorbitant, unjust or illegal claims against a solvent estate has been returned and finally accepted in favor of a creditor, and the amount allowed him is not paid within 30 days thereafter, he may file a certified copy of such report in the office of the clerk of courts and apply in writing to a Justice of the Superior Court for an execution. Such justice shall order a hearing thereon, with or without notice to the adverse party. The application shall be entered on the docket. If no sufficient cause is shown to the contrary, the justice shall direct an execution to be issued for the amount allowed the creditor by such report with interest from its return to the probate court, and costs allowed by

the probate court, if any, \$3 for clerk's fees, and travel and attendance and expense of copies and service of notices, as in civil actions.

R.S.1954, c. 113, § 187; 1959, c. 317, § 206; 1961, c. 317, § 385.

§ 4658. Executions directed into other counties

When a debtor removes or is out of the county in which judgment is rendered against him by a Judge of a District Court, such judge may issue execution against him, directed to the proper officers in the county where he is supposed to be, and it has the same force as if issued by a court in the latter county.

R.S.1954, c. 111, § 8; 1963, c. 402, § 153.

§ 4659. Actions and executions; when directed into other counties

In actions against bail, indorsers for costs, and proceedings after judgment against executors or administrators, and in all actions against 2 or more defendants before a Judge of a District Court, where the defendant or trustee resides out of the county where the proceedings are had, the judge may direct the summons, writ or execution to any proper officer of the county where such defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him.

R.S.1954, c. 111, § 9; 1963, c. 402, § 154.

SUBCHAPTER II

BONDS

Sec.

4701. Execution stayed one year unless bond given.

4702. Bond left with clerk.

4703. Executions on default judgment without bond, valid after one year.

§ 4701. Execution stayed one year unless bond given

Execution shall not issue upon a judgment by default against an absent defendant in a personal action who has no actual notice thereof until one year after entry of the judgment unless the plaintiff first gives bond to the defendant with one or more sure-

ties in double the amount of damages and costs, conditioned to repay to the defendant the amount of the judgment or any part thereof from which he may ultimately be relieved as a result of motion therefor. If a bond is given, any attachment of real or personal property or attachment on trustee process shall continue for 60 days after the bond is filed with the court. If a bond is not given, any such attachment shall continue for one year and 60 days after entry of the default judgment. If the defaulted defendant files within one year of the default judgment a motion for relief therefrom, any such attachment shall continue until 60 days after denial of the motion, if it is denied, and if the motion is granted in whole or in part, shall continue for the same period as the attachment would have continued if the default judgment had not been entered.

R.S.1954, c. 113, § 5; 1959, c. 317, § 157.

§ 4702. Bond left with clerk

The bond shall be deposited with the clerk, who shall decide upon the sufficiency of the sureties, subject to an appeal to a justice of the court.

R.S.1954, c. 113, § 6; 1959, c. 317, § 158.

§ 4703. Executions on default judgment without bond, valid after one year

Whenever through accident, inadvertence or mistake an execution has been issued by the clerk or judge of any court in any county upon a judgment rendered on default of an absent defendant in a personal action, within one year after the rendition of such judgment, without deposit of the bond specified in sections 4701 and 4702, all proceedings upon or by virtue of such execution or judgment shall, after one year from the rendition of such judgment, have the same effect and validity as if the bond had been duly given, deposited and approved unless relief from the judgment has been sought within said year. If such relief from the judgment is denied, all such proceedings shall be valid as aforesaid after such dismissal.

R.S.1954, c. 113, § 7; 1959, c. 317, § 159; 1963, c. 402, § 172.

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SALES ON EXECUTION

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ARTICLE 1. GENERAL PROVISIONS

§ 4751. Goods sold on execution

All chattels, real and personal liable at common law to attachment and not exempted therefrom by statute, may be taken and sold on execution as prescribed in this subchapter and subchapter IV.

R.S.1954, c. 118, § 1.

§ 4752. Time of sale

Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor for 4 days at least after the day on which they were taken, exclusive of Sunday. They shall be sold within 14 days after the day of seizure, except as otherwise provided, unless before the time of sale the debtor redeems them by otherwise satisfying the execution.

R.S.1954, c. 118, § 3.

§ 4753. Notice of sale

The officer shall post public notice of the time and place of sale, at least 48 hours before the time thereof, in 2 or more public places in the town or place of sale.

R.S.1954, c. 118, § 4.

§ 4754. Adjournment of sale; time

If at the time so appointed the officer is prevented by sickness or other casualty from attending at such place or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding 6 days after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment as required in section 4753.

R.S.1954, c. 118, § 5.

§ 4755. —Place

For good reason and for the purpose of obtaining a better price for the goods, the officer may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town.

R.S.1954, c. 118, § 6.

§ 4756. Indemnity may be required

When there is reasonable doubt as to the ownership of goods or their liability to be taken on execution, the officer may require sufficient indemnity.

R.S.1954, c. 118, § 7.

§ 4757. Buyer's refusal; penalty

If the highest bidder at such sale refuses to take and pay for an article, the officer shall sell it again at auction at any time within 10 days, giving due notice of the 2nd sale; and account for what he receives on the 2nd sale, and for any damages that he recovers of the first bidder for a loss on the resale, as for so much received on the execution.

R.S.1954, c. 118, § 8.

§ 4758. Return of sale; fraud in sale or 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.1954, c. 118, § 9; 1961, c. 317, § 410.

§ 4759. Disposal of proceeds

The money arising from the sale of any property on execution shall be applied to pay the charges and satisfy the execution. The residue, if any, shall be returned to the debtor on demand or otherwise applied as provided in section 5001.

R.S.1954, c. 118, § 10.

§ 4760. Buildings on leased land sold for land rent; redemption

When a lessor of lands, leased for the purpose of erecting a building thereon, commences an action against the lessee, attaches the buildings within 6 months after the rent becomes due and recovers such rent, he may on execution cause the rents and profits of such buildings to be sold for a term sufficient to pay the debt and costs or cause such building to be sold like any other personal estate. In all cases, any mill or building seized and sold on execution as a chattel personal may be redeemed within one

year, as land levied upon by appraisalment may be. The remedies and rights of the parties are the same as those of mortgagor and mortgagee, except the rate of interest, which shall be 10% a year.

R.S.1954, c. 118, § 11.

§ 4761. Warrant against turnpike and other corporations taking toll

When damages are assessed in favor of a person by the county commissioners, by a committee or by verdict of a jury for an injury sustained by him through the acts of any corporation authorized to demand and receive toll, and they are not paid within 30 days after order or the acceptance of such verdict or report of the committee, he may have a warrant of distress against such corporation for such damages, interest and costs. The officer holding such warrant may adjourn the vendue, as in the sale of goods on execution. All proceedings respecting the attachment and sale on execution of the franchise of such corporation and sales on warrant of distress may be had in the county in which the creditor, the president, clerk, treasurer or a director of said corporation, if there is any such officer, if not, a stockholder, resides.

R.S.1954, c. 118, § 24.

§ 4762. Proceeds of sale of mortgaged property; sale without tender

After deducting his fees and charges of sale, the officer shall apply the proceeds of the sale of property mortgaged or pledged to the payment of the sum paid or tendered to the mortgagee, pledgee or holder, and the interest thereon from the time of such payment; and the residue of such proceeds shall be applied to the satisfaction of the plaintiff's judgment as provided by law; or the plaintiff may have the property seized and sold on the execution, as in other cases, subject to the rights and interests of such mortgagee, pledgee or holder, without paying or tendering the debt due to him.

R.S.1954, c. 118, § 29.

ARTICLE 2. COIN AND BANK NOTES

§ 4801. Mode of sale

Current gold or silver coin may be taken on execution and paid to the creditor as money collected; and bank notes and all other evidences of debts, issued by any moneyed corporation and circulated as money, may be taken on execution and paid to the creditor at their par value if he will accept them; otherwise, they may be sold like other chattels.

R.S.1954, c. 118, § 2.

ARTICLE 3. CORPORATE FRANCHISES

§ 4851. Notice of sale

When judgment is recovered against a bridge, canal or other incorporated company with power to receive toll, its franchise may be sold on execution at public auction by giving notice of the time and place of sale by posting a notification in any town in which the treasurer, clerk or any officer thereof, if there are any officers, and if not, where any stockholder resides, for 30 days at least before the day of sale, and by causing an advertisement, naming the creditor thereon, to be inserted for 3 weeks successively in a newspaper printed in a county where either of said officers, or, if the company is without officers, where any stockholder resides, the last publication being at least 4 days before the day of sale; and if there is no newspaper printed in any such county, then in the state paper.

R.S.1954, c. 118, § 17.

§ 4852. Mode of sale; possession

In the sale of such franchise, whoever will pay and satisfy such execution, all fees and incidental expenses, in consideration of being entitled to receive to his own use all such toll as the corporation is entitled to receive, for the shortest period of time, is the highest bidder and the purchaser for such period; and immediately after such sale, the officer shall deliver to him possession of the tollhouses and gates, in whatever county situated, and state his doings therein in his return.

R.S.1954, c. 118, § 18.

§ 4853. Rights and duties of purchaser

The purchaser of such franchise and those claiming under him may receive to their own use the tolls accruing within the time limited in the purchase, and shall have all the powers of the corporation necessary for the convenient use of the property, be subject to the same duties and penalties during the term of said purchase and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence.

R.S.1954, c. 118, § 19.

§ 4854. Right of corporation to redeem

The corporation, at any time within 3 months after the day of sale, may redeem said franchise by paying to the purchaser the sum which he paid in satisfaction of the execution, with 12% interest, in addition to the toll received.

R.S.1954, c. 118, § 20.

§ 4855. Application of provisions to railroad franchises in State; notice in interested county; conveyance

Sections 4851 to 4854 apply to the franchises of railroad corporations whose railroads lie wholly within the State, except that notice shall be given of the time and place of such sale by posting a notification thereof at the courthouse in each county through which such railroad runs, either wholly or in part, for 30 days at least before the day of sale and by causing an advertisement to be inserted for 3 weeks successively in at least one newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least 4 days before the day of sale; and if there is no newspaper printed in any one or more of such counties, then in the state paper instead. When the company has an established office in the State, notice of the sale shall also be given by leaving an attested copy thereof at the office of said company not less than 30 days previous to such sale. Notice given in the manner herein provided is sufficient. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.

R.S.1954, c. 118, § 21.

ARTICLE 4. CORPORATE SHARES**§ 4901. Mode of sale**

Any share or interest of a stockholder or proprietor in an incorporated company may be taken on execution and sold in the following manner and not otherwise, anything in the charter of such company to the contrary notwithstanding.

R.S.1954, c. 118, § 12.

§ 4902. 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 4905.

R.S.1954, c. 118, § 13; 1961, c. 317, § 411.

§ 4903. Certification of shares by corporate officers

The officer of the company having the care of the records or account of shares or interest of the stockholders shall, on exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor or of the amount of his interest, under the penalty provided in section 4155.

R.S.1954, c. 118, § 14.

§ 4904. Shares sold 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.1954, c. 118, § 15; 1961, c. 317, § 412.

§ 4905. Notice of sale

In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving it at his last and usual place of abode if within the county where the officer dwells, otherwise by forwarding it to him by mail if his residence is known to such officer, postage paid, whether within or without the State and public notice thereof by posting it in one or more public places in the town where the sale is to be made and in 2 adjoining towns, if there are so many, 30 days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for 3 weeks successively before the day of sale in some newspaper printed in the county, if any; if not, in the state paper.

R.S.1954, c. 118, § 16.

ARTICLE 5. EXECUTIONS AGAINST TOWNS**§ 4951. Executions and warrants of distress against towns**

All executions or warrants of distress against a town shall be issued against the goods and chattels of the inhabitants thereof and against the real estate situated therein, whether owned by such town or not. The officer executing them shall satisfy them by distress and sale of the goods and chattels of the inhabitants as provided by law. For want thereof, after diligent search, which fact the officer shall certify in his return, he shall levy upon and sell so much of the real estate in said town by lots, as they are owned, occupied or lotted out upon the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

R.S.1954, c. 118, § 30.

§ 4952. Notice and incidents of sale

The officer shall advertise in the state paper and in one of the newspapers printed in the county where the lands lie, if any, for 3 weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress. Where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land and the last publication shall be 3 months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day

to day not exceeding 3 days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale by paying the sum for which it was sold, the necessary charges and interest thereon.

R.S.1954, c. 118, § 31.

§ 4953. Remedy of owner of property 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.1954, c. 118, § 32; 1961, c. 317, § 414.

SUBCHAPTER IV

SUCCESSIVE EXECUTIONS

Sec.

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- 5004. Removal of prior attachment.
- 5005. Setoff of executions.
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§ 5001. Several executions

If goods or other property sold on execution have been attached by other creditors or seized on other executions by the same or another officer, or if, before payment of the residue to the debtor, any other writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds shall be applied to the discharge of the several judgments in the order in which the writs of attachment or execution were served. The residue, if any, shall be paid over to the debtor.

R.S.1954, c. 118, § 22.

§ 5002. Notice of 2nd attachment to first attaching officer

If a share in a corporation or other property that may be attached without taking and keeping possession thereof is attached or taken on execution, and is subsequently attached or taken

on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure. If, without such notice, he pays the balance of the proceeds of the sale to the debtor, he is not liable therefor to the person claiming under such subsequent attachment or seizure.

R.S.1954, c. 118, § 23.

§ 5003. Preservation of lien in case of prior attachment

When real or personal estate is seized on execution and further service is suspended by a prior attachment thereof, such estate shall be bound by the seizure until it is set off or sold in whole or in part under the prior attachment, or until the attachment is dissolved, if the officer seizing such real estate, within 5 days thereafter, files in the office of the register of deeds in the county or district where it lies a copy of his return of the seizure, with the names of the parties, the court at which judgment was recovered, and the date and the amount of the execution. The register shall file and enter the same of record, as in case of attachment of real estate on writs. Like fees shall be allowed to the officer and register therefor.

R.S.1954, c. 118, § 25.

§ 5004. Removal of prior attachment

If the prior attachment is dissolved or the estate is set off or sold in part under it, the estate or remaining part thereof continues bound for 30 days thereafter by such seizure on execution. The service of the execution may be completed within that time as if the estate had been then first seized thereon, although the return day of the execution has passed.

R.S.1954, c. 118, § 26.

§ 5005. Setoff of executions

When an officer has in his hands executions, wherein the creditor in one is debtor in the other in the same capacity and trust, he shall cause one execution to satisfy the other so far as it will extend. If one of such executions is in the hands of the officer, and the creditor in the other tenders his execution to him and requests him to do so, he shall so set off one against the other.

R.S.1954, c. 118, § 27.

§ 5006. No setoff allowed

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 creditors 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.1954, c. 118, § 28; 1961, c. 317, § 413.