

# MAINE STATE LEGISLATURE

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# L A W S

OF THE

## STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....  
VOL. I.  
.....

Published according to a resolve of the State, passed  
March 8, 1821.

BRUNSWICK.

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.....  
1821.

tion thereof, shall be as effectually barred, to all intents and purposes, by the deed or deeds of the tenant of the freehold, and of the remainder man, as the same could be barred by the suffering such common recovery; and the person or persons, to whom such deed or deeds shall be so made shall hold the lands and tenements so conveyed, to such uses, as may be therein expressed, in the same manner as though such uses had been so expressed in the deeds made, declaring the uses for which such common recovery might have been suffered: *Provided*, That such deed or deeds made for the purposes aforesaid, be duly executed, acknowledged and recorded as provided in this Act.

if executed as before mentioned.

SEC. 6. *Be it further enacted*, That all lands, tenements or hereditaments, in this State held, or that may be held in fee tail, general or special, shall be and are hereby declared to be liable and subject to the payment of the debts of the tenant in tail, in the same way and manner as other real estates are liable and subject, as well after the decease, as in the life time of such tenant in tail.

All lands held in fee tail liable to debts of tenant, as lands in fee simple.

SEC. 7. *Be it further enacted*, That all pews and rights in houses of public worship, shall be hereafter considered and deemed in law, to be real estate; but nothing in this Act shall be construed to affect in any manner the titles to any such pews and rights heretofore considered or acquired, as of personal estate.

Pews in meeting houses—real estate.

SEC. 8. *Be it further enacted*, That all deeds and conveyances of, and executions extended on such pews and rights may be recorded by the Clerk of the town or plantation wherein the same is situated; and being so recorded shall have the same effect in law, as if the same had been recorded in the Registry of Deeds.

Deeds of pews may be recorded by the town clerk.

[Approved February 20, 1821.]

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## CHAPTER XXXVII.

An Act for the Partition of Lands or other Real Estate.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all persons having or holding, or that hereafter shall have or hold any lands,

Tenants in common, &c. may sue for

partition at  
common law.

tènements, or hereditaments, as tenants in common, joint tenants, or coparceners, may be compelled by writ of partition at the common law, to divide the same: and whereas the partition of lands and other real estate among the persons interested, though much desired and of great advantage, is often hindered and delayed by reason that infants are interested, or that the parties concerned are numerous and live remote from each other, and sometimes in parts beyond seas, and are some of them unknown:

Persons interested in common, &c. may petition Courts for partition—

SEC. 2. *Be it therefore enacted,* That any person or persons interested with others in any lot, tract of land, or other real estate, making application (either by themselves or their agents, attornies, or guardians,) to the Supreme Judicial Court or Circuit Court of Common Pleas of the county in which such land or other real estate lies; the said Courts are severally authorized and empowered to cause partition to be made of such lands or other real estate, and the share or shares of the party or parties applying for the same, to be set off and divided from the rest. The partition to be made by five or three freeholders under oath, to be appointed by the said Court, who shall order the partition, and a return of such partition, to be made into the Clerk's office of the said Court; and the partition or division so made being accepted by the said Court, which ordered the division to be made, and there recorded, and also recorded in the Registry of Deeds, in the county where such estate lies, shall be valid and effectual to all intents and purposes.

to be made by  
3 or 5 free-  
holders—

accepted and  
recorded—ef-  
fect thereof.

SEC. 3. *Be it further enacted,* That neither of the said Courts shall proceed to order such partition, until it shall appear to them respectively, that the several persons interested in such estate and living within the State, or the attornies of such as are absent, and have attornies residing in the State, have been duly notified of such petition, (by being personally served with a copy thereof or a copy left at their dwelling house, or last place of abode, or that the substance of the petition shall have been inserted three weeks successively in one or more of the public newspapers) and have had an opportunity to make their exception to the granting the same.

Notice to be  
given before  
partition is or-  
dered.

SEC. 4. *Be it further enacted,* That when the facts alleged, in any petition for partition hereafter to be preferred, are controverted by any of the tenants in common, the answer or objection to the petition, shall be made in writing, in the form of a plea, to which the petitioner may reply or demur; to the end the matter in dispute may be reduced to an issue in law or fact, and receive a determination by the Court or a Jury, in the manner other issues are determined: And in case the issue be determined in favour of the petitioner, judgment shall be entered up by the Court, that partition be made by disinterested freeholders, and proceed to appoint them accordingly: And also that the petitioner recover against the adverse party the costs attending the trial, and may issue execution for said costs in the form prescribed by law as in other cases. But if on such pleading it be determined that the petitioner holds a less share or proportion in common and undivided than he has in his petition alleged, the adverse party shall recover against the petitioner his reasonable cost; notwithstanding judgment may be rendered in favour of the petitioner to have an assignment of such part of the real estate in severalty, as he in fact holds in common and undivided.

When facts are contested, a trial to be had in usual form.

If petitioner owns less than he claims, respondent entitled to costs.

SEC. 5. *Be it further enacted,* That either party may appeal from the judgment of the Circuit Court of Common Pleas, that partition shall be made, to the Supreme Judicial Court, before the appointment of freeholders to make partition: But if no appeal is made until after the return of the freeholders, and the judgment of the Court thereon, the judgment that partition shall be made, shall not by such appeal be again called in question. And the Supreme Judicial Court shall upon the complaint of the appellee, (in case the appellant shall fail to enter or prosecute his appeal,) affirm the former judgment, and cause such other proceedings to be had thereon, as to have partition completed in the same way and manner as if the proceedings had been originally commenced in that Court.

Appeal from C. C. Pleas, and effect thereof.

SEC. 6. *Be it further enacted,* That in all actions of partition that shall be hereafter commenced, the same rule and regulations shall take place with respect to an appeal from an interlocutory judgment of the Circuit Court of Common

In actions the appeal, &c. effect; same as in petitions.

Pleas, that partition shall be made, as is herein before prescribed upon the like judgment upon a petition for partition.

Before partition, Court to appoint guardians for minors, and agents for absent persons interested.

SEC. 7. *Be it further enacted,* That before partition be made where any infants, persons *non compos mentis*, or otherwise incapacitated to take care of their estates, are interested, guardians shall be appointed for all such persons by the Court, if they live within this State, and if any person or persons interested in any such estate happen, (at the time when such application shall be made) to have been beyond sea, or out of this State for the space of one year, and not returned; and having no sufficient attorney within the same; in such case the said Court to whom application shall be made for partition, shall appoint some discreet and disinterested person or persons, as agent or agents for such absent party or parties, to be advising on his or their behalf in making such partition; and due notice shall be given by the committee to all concerned, (that are known and within the State,) before such partition be made, that they may be present, (if they see meet) at the time of making the same.

Committee to give notice before proceeding.

New partition to be made, in certain cases, on complaint.

SEC. 8. *Be it further enacted,* That if any partner shall have a larger share set off than is such partner's true and real interest, or if any share set off should be more than equal in value to the proportion it was set off for, then and in every such case upon complaint to the Court which caused such partition to be made, within three years of the making thereof, by any aggrieved partner or partners, who at the time of making such partition were out of the State, and not notified thereof as aforesaid seasonably to be present at the same, the said Court shall cause partition thereof to be made anew. And in such new partition so much and no more shall be taken off from any share as such share shall be adjudged more than the proportion of the whole it was designed for, estimating such lands or real estate as in the state they were in when first divided; and in case any improvements shall be made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made him by the partner or partners to whose share the same shall be added, by the estimation of the freeholders

Mode of making it and adjusting claims.

employed in making such new partition, or the major part of them. And the Justices of the same Court who ordered partition, are also empowered to issue execution for such satisfaction, and for costs in such new partition, the same being first taxed and allowed in the said Court.

SEC. 9. *Be it further enacted*, That when partition shall be made as aforesaid, if any one or more of the interested parties applying, shall neglect or refuse to pay their just proportion of the charges which may attend such division, it shall and may be lawful for the said Court who ordered the partition, to issue an execution against the delinquent or delinquents interested, and applying as aforesaid: *Provided*, an account of such charge be first laid before the said Court who ordered the partition, and the just proportions of the persons interested, settled and allowed, they having been duly notified to be present at such settlement and allowance. And when any messuage, tract of land, or other real estate shall be of greater value than either party's purpart or share in the estate to be divided, and cannot at the same time be subdivided, and part thereof assigned to one, and part to another, without great inconvenience, the same may be settled or assigned to one of the parties, such party to whom the same shall be so assigned, paying such sum or sums of money to such party or parties, as by means thereof have less than their share of the real estate as the committee appointed to make partition, shall award.

Courts may compel petitioners to pay their share of costs.

Special assignment may be to one, in certain cases.

[Approved February 8, 1821.]

## CHAPTER XXXVIII.

An Act respecting Wills and Testaments, and regulating the Descent of Intestate Estates.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That every person of the age of twenty one years, and of sane mind, lawfully seized of any lands, tenements, or hereditaments, within this State, in his or her own right in fee simple, or for the life or lives of any other person or persons, and every person as aforesaid, being the owner of any personal estate, may give, dis-

Persons who may dispose of real and personal estate by will.