

# MAINE STATE LEGISLATURE

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REPORT

OF THE

COMMISSIONERS

APPOINTED TO

REVISE THE PUBLIC LAWS

OF THE

STATE OF MAINE.

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**TITLE VII.**  
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AUGUSTA:

STEVENS & BLAINE, PRINTERS TO THE STATE.

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1855.



# TITLE SEVENTH.

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## ACQUISITION OF TITLES TO REAL AND PERSONAL ESTATE.

*Chap. 73.* Conveyance by deed; and the form, acknowledgment, proof, registry, operation and construction of deeds.

74. Wills, testaments and devises.

75. Title by descent.

76. Title to real estate taken on execution.

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### Chapter 73.

#### CONVEYANCES BY DEED; AND THE FORM, ACKNOWLEDGMENT, PROOF, REGISTRY, OPERATION AND CONSTRUCTION OF DEEDS.

*Sect. 1.* What interests in lands will pass by deed.

2. Lands purchased by or from aliens. Distinction between aliens and citizens as to holding and disposing of lands, abolished.
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11. Grant to one for life, and to his heirs after his death.
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13. Deeds made by an agent or attorney.
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- 19, 20, 21. Proceedings if grantor refuse to acknowledge.
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23. Proof of deed to be endorsed thereon.
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26. No deed effectual, without registry, against persons having no notice.

27. Bond of defeasance not effectual unless recorded.

28. Pews declared real estate.

29. Record of deeds thereof and levies thereon.

30. Estates greater than at will must be conveyed by writing.

31. Trusts not created but by writing.

32. No trust to defeat the title of a bona fide purchaser without notice.

33. Record of trust equivalent to notice.

SECTION 1. When any person makes a deed of any real estate, owned by him in severalty or in common with others, acknowledged and recorded in the manner prescribed in this chapter, whether at the time of its execution and delivery he is seized or not seized of such estate, but to which he has a right of entry, such estate, or all the title or interest which the grantor has in the same, shall pass by such deed as effectually as if the grantor was, at the time of the conveyance, seized thereof.

R. S., c. 91, § 1.

SECT. 2. All conveyances and devises of real estate, heretofore made by or to any alien, are declared to be valid to all intents and purposes, the same as if made by or to a citizen, except in cases where lawful proceedings have been instituted to set aside or annul the same; and all distinction in respect to holding and disposing of such estate between an alien and a citizen is abolished.

R. S., c. 91, § 2, 3. 1854, c. 64.

SECT. 3. When any contingent remainder or executory devise, or other estate in expectancy, is so granted or limited to any person, that in case of his death before the happening of the contingency, the estate would descend to his heirs in fee simple, such person may, before the happening of the contingency, sell, assign or devise the premises, subject to such contingency.

R. S., c. 91, § 4.

SECT. 4. The joint deed of husband and wife shall be effectual to convey her real estate in which the husband has any interest.

R. S., c. 91, § 5.

SECT. 5. Any person actually seized of lands, as tenant in tail, may convey the same in fee simple; and such conveyance shall bar the estate tail, and all the remainders and reversions expectant thereon. And the same effect shall follow the convey-

5 ance in fee of an estate held by a minor as tenant in tail, when  
6 it is made by his guardian, under license duly granted by the  
7 probate court, for the purpose of meeting the expenses of his  
8 support and education, or of investing the proceeds on interest,  
9 for his benefit. R. S., c. 91, § 6. 1855, c. 126.

SECT. 6. When lands are held by one person for life, with a  
2 vested remainder in tail to another, the tenant for life and  
3 remainder man may convey the same in fee simple by their  
4 joint deed, and such conveyance shall bar the estate tail, and all  
5 the remainders and reversions expectant thereon.

R. S., c. 91, § 7.

SECT. 7. A deed of release or quitclaim, of the usual form in  
2 this state, shall pass all the estate which the grantor had and  
3 could convey, by a deed of bargain and sale.

R. S., c. 91, § 8.

SECT. 8. A conveyance by a tenant for life or years, of a  
2 greater estate than he possessed or could lawfully convey, shall  
3 not work a forfeiture of his estate, but pass to the grantee all  
4 the estate which the tenant could lawfully convey.

R. S., c. 91, § 9.

SECT. 9. No expectant estate shall be defeated or barred, by  
2 any alienation or other act of the owner of the precedent estate;  
3 nor by any destruction of such precedent estate by disseizin, or  
4 the forfeiture, surrender or merger thereof.

R. S., c. 91, § 10.

SECT. 10. The two preceding sections shall not be construed  
2 to control or affect the provisions of the seventh and eighth sec-  
3 tions of this chapter, as to estates tail. R. S., c. 91, § 11.

SECT. 11. When lands are given, by deed or will, to any  
2 person for life, and after his death to his heirs in fee, or by  
3 words to that effect, the conveyance or devise shall be construed  
4 to vest an estate for life only in such first person, and a remain-  
5 der in fee simple in his heirs. R. S., c. 91, § 12.

SECT. 12. All conveyances and devises of land made to two  
2 or more persons, except conveyances in mortgage, shall be  
3 construed to create estates in common, unless it is expressed  
4 therein that the grantee or devisees shall take the lands jointly,  
5 or as joint tenants, or in joint tenancy, or to them and the sur-

6 vivors of them; but, where any estate has vested in the survivor  
7 or survivors on the principle of joint tenancy, it shall be so held.

R. S., c. 91, § 13.

SECT. 13. All deeds and contracts executed by an authorized  
2 agent for an individual or corporation, either in the name of the  
3 principal by such agent, or in the name of such agent for the  
4 principal, shall be considered as the deed or contract of such  
5 principal.

R. S., c. 91, § 14.

SECT. 14. All conveyances or grants to the inhabitants of a  
2 county, their successors and assigns forever, or to such inhabit-  
3 ants, their treasurer, committee, or other person, by any form of  
4 conveyance, for the use and benefit of such county, shall be as  
5 valid as though made to such inhabitants by their corporate  
6 name.

R. S., c. 91, § 15.

SECT. 15. The acknowledgment of deeds shall be by the  
2 grantors, or by one of them, or by the attorney executing the  
3 same.

R. S., c. 91, § 16.

SECT. 16. It may be made before any justice of the peace in  
2 this state, or any justice of the peace, magistrate or notary  
3 public within the United States, or any commissioner appointed  
4 for that purpose by the governor of this state, or before any  
5 minister or consul of the United States, or notary public in any  
6 foreign country.

R. S., c. 91, § 17.

SECT. 17. When any grantor or lessor dies or departs from  
2 this state, without acknowledging his deed, the execution thereof  
3 may be proved by any subscribing witness, before any court of  
4 record in this state.

R. S., c. 91, § 18.

SECT. 18. When any such witnesses are dead, or out of the  
2 state, the handwriting of the grantor and such subscribing wit-  
3 nesses may be proved by the testimony of one or more witnesses.

R. S., c. 91, § 19.

SECT. 19. If any grantor refuses to acknowledge his deed,  
2 the grantee, or person claiming under him, may leave with the  
3 register of deeds a true copy thereof; and it shall be a caution  
4 to all persons for forty days, and during that time have the same  
5 effect as recording said deed.

R. S., c. 91, § 20.

SECT. 20. Any such grantee, or person claiming under him,  
2 may apply to a justice of the peace of the county where the land

3 lies, or where the grantor resides, who may summon the grantor  
4 to appear, at a certain time and place, before him, to hear the  
5 testimony of the subscribing witnesses; and such summons shall  
6 state the date of the deed, the names of the parties thereto, and of  
7 the subscribing witnesses, and be served seven days before  
8 the time assigned for proving the deed. R. S., c. 91, § 21.

SECT. 21. At such hearing, if it satisfactorily appears to such  
2 justice, by the testimony of such witnesses, that they saw the  
3 deed duly executed by the grantor, he shall certify the same  
4 thereon, and, in his certificate, state the presence or absence of  
5 the grantor, as the fact may be. R. S., c. 91, § 22.

SECT. 22. No deed, without at least one subscribing witness,  
2 shall be proved as aforesaid before any court or justice.

R. S., c. 91, § 23.

SECT. 23. A certificate of the acknowledgement or proof of  
2 the execution of the deed, in either of the modes before stated,  
3 shall be endorsed on the deed or annexed to it, and such deed  
4 and certificate may then be recorded at length in the registry of  
5 deeds; and no deed shall be recorded without such certificate.

R. S., c. 91, § 24.

SECT. 24. When any person who has been duly authorized to  
2 take and certify the acknowledgment of deeds and other instru-  
3 ments, takes and certifies, or has heretofore taken and certified  
4 any such acknowledgments, in good faith, after the expiration of  
5 his commission, not aware thereof, such acts shall be as valid to  
6 all legal intents as if done before such expiration.

1854, c. 68.

SECT. 25. The register shall certify on every deed recorded  
2 by him, the day and hour when it was received; and every deed  
3 shall be considered as recorded at that time. He shall also,  
4 within one hour after the delivery of any deed to him, enter the  
5 time of its receipt, the names of the grantor and grantee, and  
6 their places of residence, in a book kept for that purpose, and  
7 open to the inspection of any person in business hours.

R. S., c. 91, § 25.

SECT. 26. No conveyance of any estate in fee simple, fee tail,  
2 or for life, and no lease for more than seven years from the  
3 making thereof, shall be good and effectual against any person



4 except the grantor, his heirs and devisees, and persons having  
5 actual notice thereof, unless it is made by a deed recorded, as  
6 provided in this chapter. R. S., c. 91, § 26.

SECT. 27. A deed purporting to convey an absolute estate of  
2 any kind in lands, but intended to be defeasible by any bond or  
3 other instrument of defeasance, shall not be so defeated against  
4 any other than the maker of such defeasance, his heirs and  
5 devisees, unless the instrument of defeasance is duly recorded  
6 in the registry of deeds in which such deed is recorded.

R. S., c. 91, § 27.

SECT. 28. All pews and rights in houses of public worship  
2 shall in law be deemed real estate. R. S., c. 91, § 28.

SECT. 29. All deeds of such pews or rights, and executions  
2 extended thereon, may be recorded by the town clerk where  
3 they are situated, and shall have the same effect as if recorded  
4 in the registry of deeds. R. S., c. 91, § 29.

SECT. 30. No estate or interest in lands, unless created by  
2 some writing, signed by the grantor or his attorney, shall  
3 have any greater force or effect than an estate or lease at will;  
4 and no estate or interest in lands shall be granted, assigned or  
5 surrendered, unless by some writing signed as aforesaid, or by  
6 operation of law. R. S., c. 91, § 30.

SECT. 31. Every trust concerning lands, except those which  
2 arise or result by implication of law, must be created and  
3 manifested by some writing, signed by the party creating and  
4 declaring it, or by his attorney. R. S., c. 91, § 31.

SECT. 32. No such trusts created or declared by the parties,  
2 or implied by law, shall defeat the title of a purchaser for a  
3 valuable consideration, and without notice of the trust; nor pre-  
4 vent a creditor having such notice from attaching the premises  
5 and taking them in execution, the same as if no such trust  
6 existed. R. S., c. 91, § 32.

SECT. 33. When such trust is created or declared by an  
2 instrument in writing, the recording of it in the registry for the  
3 county or district where the land lies, shall be considered equal  
4 to actual notice thereof to all persons claiming under a convey-  
5 ance, attachment or execution, made or levied, after such  
6 recording. R. S., c. 91, § 33.

**Chapter 74.****WILLS, TESTAMENTS AND DEVISES.**

- Sect.* 1. Who may make a will.
2. Form, and mode of execution.
  3. Express revocation.
  4. Implied revocation.
  5. Devise or legacy to a subscribing witness void, in certain cases. Exceptions.
  6. If legacy is paid or refused, legatee may be a witness.
  7. Attestation good, if such witness dies before probate.
  8. If witness is admitted to prove the will, he cannot afterwards claim the legacy.
  9. Nuncupative will.
  10. Wills by soldiers or mariners.
  11. Limitation of proof of such will.
  12. Devise of land, of which testator is disseized.
  13. Devise will pass an estate subsequently acquired.
  14. Contribution, in case property be taken from a devisee.
  15. Restrictions of this provision.
  16. Qualification of the two preceding sections.
  17. Provision for posthumous children.
  18. Effect, if an heir have no provision in a will.
  19. Heir of devisee entitled to the devise.
  20. Such share liable to contribution.
  21. Provision, in case a devisee, liable to contribute, be insolvent.
  22. Undevised property, how appropriated.
  23. Meaning of the words "real estate."
  24. Questions under this chapter, how decided.
  25. Effect of probate of a will.
  26. Construction of devises.

SECT. 1. Every person of twenty-one years of age, of sound mind, lawfully seized of any lands, tenements or hereditaments, or of any right or interest therein in his own right in fee simple or for the life of another person; or the owner of any personal estate, may dispose of the same, by his last will and testament; and all such estate, not so devised or bequeathed by any will, shall be distributed as the estate of an intestate.

R. S., c. 92, § 1.

SECT. 2. All wills of real or personal estate shall be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by three credible witnesses, or they shall be void. If the witnesses are competent at the time of attestation, their subsequent incompetency shall in no case prevent the probate of the will, if it be otherwise satisfactorily proved.

R. S., c. 92, § 2.

SECT. 3. No will in writing of real or personal estate, or any part of it, shall be revoked, except by some subsequent will, codicil or other writing declaring the same revoked; by burning, canceling, tearing or obliterating the same by the testator, or in his presence and by his direction with the intention of revoking; or unless the same is altered by some writing signed by the testator and attested, as in case of a will. R. S., c. 92, § 3.

SECT. 4. Revocations of wills implied by law, from subsequent changes in the condition and circumstances of the testator, shall not be construed to be embraced in the provisions of the preceding section. R. S., c. 92, § 4.

SECT. 5. All bequests to a subscribing witness to a will or codicil shall be void, unless there are three other competent subscribing witnesses to the same, except as provided in sections six and seven; but a mere charge on the lands of the devisor, for the payment of his debts, shall not prevent any of his creditors, whose debt is so charged, from being a competent witness; *nor a bequest to a husband or wife prevent the other from being a competent witness.* R. S., c. 92, § 5.

25 Me. R. 494. (New.)

SECT. 6. But if any such subscribing witness, before he gives his testimony, has been paid, or has accepted, released, or refused to accept any legacy given to him in the will, upon tender thereof, he shall be admitted as a witness to the execution of the will; the credit of such witness being for the consideration of the court or jury trying the cause. R. S., c. 92, § 6.

SECT. 7. When any such subscribing witness dies, not having refused, received or released any such legacy, he shall be deemed a legal witness to the execution of the will.

R. S., c. 92, § 7.

SECT. 8. No person, examined as a witness under the provisions of sections six and seven, shall afterwards receive any benefit from such bequest, or from any person any satisfaction or compensation therefor. R. S., c. 92, § 8.

SECT. 9. No nuncupative will shall be valid when the property bequeathed thereby exceeds the value of one hundred dollars, unless it is proved by the oath of three witnesses, who were present at the making thereof, and were requested by the

5 testator to bear witness that such was his will. Such will must  
6 be made in the last sickness of the testator at his home, or the  
7 place where he resided at least ten days before the making of  
8 the will, except the testator is suddenly taken sick from home,  
9 and dies before returning to it. R. S., c. 92, § 9.

SECT. 10. But any soldier in actual military service, and  
2 any mariner at sea, may dispose of his personal estate and  
3 wages without regard to the provisions of this chapter.

R. S., c. 92, § 10.

SECT. 11. No testimony shall be received to prove any testa-  
2 mentary words, as a nuncupative will, after the lapse of six  
3 months from the time they were spoken, unless the words or the  
4 substance of them were reduced to writing within six days after  
5 they were spoken. R. S., c. 92, § 11.

SECT. 12. When any person devises lands of which he is not  
2 then seized, but into which he has any right of entry, or when,  
3 after the making of any devise, the deviser is disseized or ousted  
4 of the devised premises, they shall nevertheless pass to the  
5 devisee in like manner as they would have descended to the  
6 heirs of the deviser, if he had died intestate: and the devisee  
7 shall have the like remedy for the recovery thereof, by entry or  
8 action, as the heirs might have had. R. S., c. 92, § 12.

SECT. 13. Any estate, right or interest in lands acquired by  
2 the testator, after the making of his will, and of which he died  
3 seized as aforesaid, shall pass thereby, in like manner as if  
4 owned by him at the time of making the will, if such clearly  
5 appears by the will to be the testator's intention.

R. S., c. 92, § 13.

SECT. 14. When any bequeathed real or personal estate is  
2 taken from the devisee or legatee by execution, or sold by order  
3 of court for payment of the testator's debts, all the other lega-  
4 tees, devisees and heirs shall refund their average proportion of  
5 such loss to the person from whom such estate is taken, so as to  
6 make the loss fall equally on such devisees, legatees and heirs,  
7 according to the value of the property received by each; subject  
8 to the exception in the following section. R. S., c. 92, § 14.

SECT. 15. If in such case the divisor, by making a specific  
2 bequest, has virtually exempted any devisee or legatee from his

3 liability to contribute with the others for the payment of the  
4 debts; or if by any provisions in his will he has prescribed or  
5 required any appropriation of his estate for the payment of his  
6 debts, different from that in the preceding section, the estate  
7 shall be appropriated in conformity to the will.

R. S., c. 92, § 15.

SECT. 16. Nothing in the two preceding sections shall impair  
2 or affect the liability of the whole estate of the testator, for the  
3 payment of all his debts; but the provision in these sections shall  
4 apply only to the marshaling of the assets, as between those  
5 holding and claiming under the will. R. S. c. 92, § 16.

SECT. 17. When any child of a testator, born after his death,  
2 has no provision made in his will, he shall take the same share  
3 of his father's estate as he would have been entitled to if his  
4 father had died intestate; and the same shall be assigned him  
5 by the judge of probate, as in case of intestate estates, and  
6 taken equally from all the devisees and legatees, in proportion  
7 to the value of what they respectively receive under the will;  
8 unless in consequence of a specific bequest or some other pro-  
9 visions in the will, a different apportionment among the devisees  
10 and legatees is found necessary to give effect to the intention of  
11 the testator, as to that part of his estate which passes by the  
12 will. R. S., c. 92, § 17.

SECT. 18. Any child, or the issue of any deceased child, not  
2 having any devise or legacy to him in the will, shall have the  
3 same share of the testator's estate as he would have been entitled  
4 to if no will had been made; unless it appears that such omission  
5 was intentional, or not occasioned by any mistake, or unless such  
6 child or grandchild has had his due proportion of the estate  
7 bestowed on him during the life of the testator.

R. S., c. 92, § 18.

SECT. 19. If any child or other relative of a testator, having  
2 a bequest of real or personal estate made to him in the will,  
3 dies before the testator, leaving lineal descendants, they shall  
4 take the estate devised, in like manner as such devisee would  
5 have taken it if he had survived the testator.

R. S., c. 92, § 19.

SECT. 20. When any part of the estate of a testator descends  
2 to a child or other descendant, by reason of his having no  
3 provision made for him in the will, or when it descends to a  
4 posthumous child, such child shall be bound to contribute with  
5 the devisees and legatees, as provided in section fourteen, and  
6 shall be entitled to claim contribution from them accordingly.

R. S., c. 92, § 20.

SECT. 21. When any person liable to contribute toward the  
2 discharge of a debt of the testator according to the provisions of  
3 the fourteenth section, is insolvent or unable to pay his just  
4 proportion thereof, the others shall be severally liable for the  
5 loss occasioned by such insolvency, each one in proportion to the  
6 value of the property received by him from the estate of the  
7 deceased; and if any of the persons so liable dies without having  
8 paid his proportion of such debt, his executors and adminis-  
9 trators shall be liable therefor, in like manner as though it had  
10 been his proper debt.

R. S., c. 92, § 21.

SECT. 22. When any part of the real estate of a testator  
2 descends to his heirs, not disposed of by his will, and his  
3 personal estate is insufficient for the payment of his debts,  
4 the undivided real estate shall be first chargeable with the  
5 debts, in exoneration, as far as it will go, of the real estate  
6 devised, unless it appears from the will that a different arrange-  
7 ment of his assets for the payment of his debts was made by  
8 the testator; in which case, such assets shall be applied for the  
9 purpose according to the provisions of the will.

R. S., c. 92, § 22.

SECT. 23. The words "real estate," as used in this chapter,  
2 include lands, tenements and hereditaments, and all rights to,  
3 and interests therein, which by law are devisable.

R. S., c. 92, § 23.

SECT. 24. All cases arising under this chapter in which  
2 devisees or legatees are required to contribute, to make up the  
3 share of any child of the testator, or of the issue of any such  
4 child, or in which contribution is to be made among devisees,  
5 legatees and heirs, or any of them, may be decided in an action  
6 at law, when the case is such as to allow it; heard and deter-  
7 mined in the probate court, allowing an appeal to the supreme

8 court of probate, as in other cases; or originally brought and  
 9 finally determined in the supreme judicial court, as a court of  
 10 equity jurisdiction. R. S., c. 92, § 24.

SECT. 25. No will shall be effectual to pass real or personal  
 2 estate, unless it is duly proved and allowed in the probate  
 3 court; and the probate of such will shall be conclusive as to the  
 4 due execution thereof. R. S., c. 92, § 25.

SECT. 26. Every devise of land shall be construed to convey  
 2 all the estate of the devisor therein, which he could lawfully  
 3 devise, unless it clearly appears by the will that the devisor  
 4 intended to convey a less estate. R. S., c. 92, § 26.

## Chapter 75.

### TITLE BY DESCENT.

#### *Descent of real estate.*

- Sect. 1.* How lands of intestate descend.
2. Degrees, how computed.
  3. Heirship of an illegitimate child.
  4. Descent of his property.
  5. What is an advancement.
  - 6, 7. To be considered part of the estate.
  8. Effect, if it exceeds the child's share.
  9. Effect upon distribution of real or personal estate.
  10. If such heir dies, how such advancement to be reckoned.
  11. Tenancy by curtesy or dower, how affected.

#### *Descent of personal estate.*

12. How personal estate shall descend.
13. Personal estate of a married woman.
14. How if intestate leaves widow and issue. How if no issue; if no kindred; or if no husband, widow or kindred.
15. Money due from life insurance of deceased not to be any part of the estate, but to descend to widow and children.
16. Debt due from an heir to be a lien on his share.
17. Proceedings in such case.

#### *Descent of real estate.*

SECT. 1. When any person dies seized of any lands, tene-  
 2 ments or hereditaments, or any right thereto, or entitled to any  
 3 interest therein, in fee simple or for the life of another, not

4 lawfully devised, the same shall descend, subject to his debts, in  
5 the following manner :

*First*—In equal shares to his children, and to the lawful issue  
7 of any deceased child, by right of representation; and, when  
8 there is no child of the intestate at the time of his death, his  
9 estate shall descend to all his lineal descendants; and if they  
10 are all in the same degree of kindred to the intestate, they shall  
11 share the estate equally, otherwise they shall take according to  
12 the right of representation.

*Secondly*—If he has no issue, his estate shall descend to his  
14 father.

*Thirdly*—If he leaves no issue or father, his estate shall  
16 descend in equal shares to his brothers and sisters, and by right  
17 of representation to the children and grandchildren of any  
18 deceased brother or sister, the parent of such grandchildren,  
19 through whom they claim, being dead; but if he leaves a mother,  
20 she shall take an equal share with his brothers and sisters.

1852, c. 295, § 2, 3.

*Fourthly*—If the intestate leaves no issue, father, brother or  
22 sister, living at his death, his estate shall descend to his mother,  
23 to the exclusion of the issue, if any, of deceased brothers and  
24 sisters.

*Fifthly*—If the intestate leaves no issue, father, mother,  
26 brother or sister, his estate shall descend to his next of kin in  
27 equal degree; except when there are two or more collateral  
28 kindred in equal degree, but claiming through different ances-  
29 tors, those who claim through the nearest ancestor shall be  
30 preferred to those claiming under an ancestor more remote.

*Sixthly*—If any person dies leaving several children, or leav-  
32 ing one child, and the issue of one or more deceased children,  
33 and any such surviving child dies under age, not having been  
34 married, all the estate which came to him by inheritance from  
35 such deceased parent, shall descend in equal shares to the  
36 other children of the same parent, and to the issue of such  
37 deceased children, by right of representation; and when the issue  
38 or next of kin to the intestate child, to whom the estate came by  
39 inheritance from his father, as above stated, are all in the same  
40 degree of kindred, they shall share the said estate equally;



41 otherwise they shall take according to the right of representa-  
42 tion.

*Seventhly*—If the intestate leaves no heirs, his estate shall  
44 descend to his wife, and if he leaves no kindred or wife, his  
45 estate shall escheat to the state.

R. S., c. 93, § 1.  
1852, c. 295, § 1.

SECT. 2. The degrees of kindred shall be computed according  
2 to the rules of the civil law; and the kindred of the half blood  
3 shall inherit equally with those of the whole blood in the same  
4 degree.

R. S., c. 93, § 2.

SECT. 3. Every illegitimate child shall be considered an heir  
2 of the person who in writing, signed in the presence of a  
3 competent witness, acknowledges himself to be his father, and  
4 shall in all cases be considered an heir of his mother, and  
5 shall inherit the estate of either, in whole or in part, as the case  
6 may be, in the same manner as if he had been born in lawful  
7 wedlock; but he shall not be allowed to claim, as representing  
8 his father or mother, any part of the estate of their kindred,  
9 either lineal or collateral, unless before his death his parents  
10 intermarry and have other children, and his father after such  
11 marriage acknowledges him as aforesaid, or adopts him into  
12 his family; in which case such child shall be deemed legitimate  
13 to all intents and purposes, so far as descent and distribution of  
14 estates is concerned.

R. S., c. 93, § 3. 1852, c. 266.

SECT. 4. If any illegitimate child, *not acknowledged or*  
2 *adopted as aforesaid*, dies intestate, without lawful issue, his  
3 estate shall descend to his mother, or if she is dead, to her heirs  
4 at law.

R. S., c. 93, § 4. 1850, c. 200.

SECT. 5. All gifts and grants of real or personal estate shall  
2 be deemed made in advancement to a child or grandchild, if they  
3 are expressed in such gift or grant to be so made, or charged by  
4 the intestate in writing as an advancement, or acknowledged in  
5 writing to be such by the child or grandchild. R. S., c. 93, § 8.

SECT. 6. Any real or personal estate thus given by way of  
2 advancement to a child or grandchild, shall be considered as a  
3 part of the intestate's estate, so far as it regards the division  
4 and distribution thereof, and taken by such child towards his  
5 share of the intestate's estate.

R. S., c. 93, § 9.

SECT. 7. The value of the estate advanced, if expressed by  
2 the intestate in his gift or charge, or in the acknowledgment of  
3 the child or grandchild, shall be considered the value to be allowed  
4 in the distribution of the estate; if no value is so expressed,  
5 it shall be estimated according to its value when given.

R. S., c. 93, § 10.

SECT. 8. If the amount of the advancement exceeds the share  
2 of such child or grandchild, he shall be excluded from any fur-  
3 ther portion in the division and distribution of the estate, but  
4 not required to refund any part of such advancement; and if the  
5 amount so received is less than his share, he shall be entitled to  
6 as much more as will make all the shares equal.

R. S., c. 93, § 11.

SECT. 9. If any such advancement is made in real estate,  
2 the value thereof shall, for the purposes of the preceding section,  
3 be considered as part of the real estate to be divided; and if in  
4 personal estate, it shall be considered as part of the personal  
5 estate; and if in either case it exceeds the share of real or per-  
6 sonal estate that would come to such party, he shall not refund  
7 any part of it, but receive so much less out of the other  
8 part of the estate as will make his whole share equal to those of  
9 the other heirs in the same degree with him.

R. S., c. 93, § 12.

SECT. 10. If any such child or grandchild dies before the  
2 intestate, leaving issue, the advancement shall be taken into  
3 consideration in the division and distribution of the estate; and  
4 the amount thereof allowed accordingly by his representatives  
5 as so much received towards their share of the estate, in like  
6 manner as if the advancement had been made directly to  
7 them.

R. S., c. 93, § 13.

SECT. 11. Nothing contained in this chapter shall affect the  
2 title of a husband, as tenant by curtesy, nor that of the widow,  
3 as tenant in dower.

R. S., c. 93, § 14.

### *Descent of personal estate.*

SECT. 12. When any person dies possessed of any personal  
2 estate, right or interest therein, not lawfully disposed of by his  
3 will, the same, except the wearing apparel and ornaments of the

4 widow, and such further allowance as the judge of probate is  
5 authorized by law to make to her, shall first be applied to the  
6 payment of the debts of the intestate, his funeral charges, and  
7 settlement of his estate; and the residue shall be distributed to  
8 the same persons to whom real estate descends, and in the  
9 same proportions, subject to the following provisions.

R. S., c. 93, § 15.

SECT. 13. If the intestate was a married woman, her heirs  
2 shall be entitled to the whole of such residue.

R. S., c. 93, § 16. 1848, c. 73, § 3.

SECT. 14. If the intestate leaves a widow and issue, the  
2 widow shall be entitled to one-third, if no issue, to one-half, and  
3 if no kindred, to the whole of said residue. If there is no hus-  
4 band, widow or kindred, the whole shall escheat to the state.

R. S., c. 93, § 17, 18, 19, 20.

SECT. 15. Any sum of money becoming due on the death of  
2 any person leaving a widow or issue, from an insurance effected  
3 by him on his life, after deducting the amount of premium paid  
4 therefor within three years with interest, shall not constitute any  
5 part of his estate for the payment of debts or other purposes  
6 specified in section eighteen of chapter sixty-six; but if the de-  
7 ceased died intestate, leaving a widow and issue, one-third shall  
8 descend to his widow, and the remainder to his issue, in equal  
9 proportions; if no issue, the whole to the widow, and if no  
10 widow, the whole to the issue; or such person may dispose of  
11 such sum by will to his widow and issue in any other propor-  
12 tions, and such disposition shall be carried into full effect, not-  
13 withstanding the insolvency of his state.

1844, c. 114, § 1, 2, 3.

SECT. 16. When any person dies intestate whose estate is  
2 solvent, and any heir, to whom a share of such estate, real or  
3 personal, by law descends, is indebted to the intestate at the  
4 time of his decease, the debt so due shall be a lien on his share  
5 until the debt is paid, and shall have priority to any attachment  
6 thereof.

R. S., c. 93, § 21.

SECT. 17. The administrator on such estate may enforce such  
2 lien by an attachment of such share in a suit brought within  
3 two years after the grant of administration for the recovery of

4 the debt, and a levy thereon of the execution within thirty days  
5 after the judgment; and in such action, if the heir has any  
6 claim against the estate, he shall file it in set off; or if the heir  
7 claims to be a creditor of the estate, and brings his action for his  
8 claim within said two years, the administrator may file the claim  
9 of the intestate against such heir in set off; and in this manner  
10 both claims shall be settled, and the balance established.

R. S., c. 93, § 22.

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## Chapter 76.

### TITLE TO REAL ESTATE TAKEN BY EXECUTION.

*Sect. 1.* What interests in real estate may be levied upon.

- 2, 3, 4. Levy of execution and appraisal.
5. Appraisers' certificate to describe the estate.
6. How appraised, if in several parcels.
7. Majority of appraisers to decide.
8. What shall pass by the levy.
9. Levy on property held in common.
10. Levy on land which cannot be set off by metes and bounds.
11. Levy on mills and privileges.
12. Levy on a life estate.
13. Levy on land under a lease.
14. Levy on part of a reversion.
15. Delivery of seizin and possession.
16. Same when levy is on right of entry.
17. Proceedings when the debt has been assigned.
18. Return and record of execution and levy.
- 19, 20. Effect if not recorded.
21. When creditor may waive the levy.
22. Levy not to be avoided for excess of appraisal, unless it exceeds one dollar.
23. Creditor may have seire facias if title fails.
24. Form of officer's return.
25. When debtor may redeem.
26. Mode of deciding the sum due.
27. Remedy if creditor will not release.
28. Equity process to adjust claims.
29. Costs in such cases.
30. Proceedings when levy is on rents and profits.
31. Mode of setting off land under a mortgage.
32. Remedy if mortgage is larger than was estimated.
33. Time of redemption. Remedy if debtor pays the mortgage, or any part of it, after the levy.

*Sect. 34.* Mortgages and lands of manufacturing corporations and banks may be sold on execution.

35. Such corporations to have the same right of redemption as in other cases of sale on execution.
36. No conveyance or assignment by such corporations valid after the seizure.
37. Sale of possessory interests, or equity of redemption.
38. Notices of sale.
39. Sale may be adjourned.
40. Proceedings at sale, and deed.
41. Time of seizure on execution.
42. Right of redemption.
43. Remedy if purchaser will not release.
44. Right of redeeming an equity may be sold.
45. Charges of levy to be added to the execution.
46. Rights of heirs and legal representatives.
47. Levy of executions on estates of deceased persons.
48. Effect of redemption thereof by heirs.
49. Right of dower not affected by levy.
50. Levy of executions in favor of the state.
51. Right to real estate by bond may be sold on execution.
52. If a conveyance has been made to the debtor during the existence of the attachment, the execution may be levied on the premises.
53. If the bond has been assigned, and a conveyance made to the assignee, the right of the debtor may be sold on the execution, and the purchaser shall be entitled to a bill in equity.
54. If there has been no assignment or conveyance, the debtor's right may be sold on execution; and the purchaser shall have all the rights of the debtor against the obligor.

SECT. 1. All the real estate of a debtor which is attachable  
2 on mesne process by the provisions of law, may be taken in  
3 execution in the manner provided in this chapter. [See chapter  
4 eighty-one, as to exemption of homestead and burying grounds.]

R. S., c. 94, § 1, 2.

SECT. 2. When a creditor thinks proper to have his execution  
2 levied on the real estate of the debtor, the officer holding the  
3 same, and empowered to serve it, shall cause such estate to be  
4 appraised by three discreet and disinterested men, one to be  
5 chosen by the creditor, one by the debtor, and the third by such  
6 officer; or if the debtor neglects to appoint one, the officer shall  
7 appoint one for him, but not until after notice given by him to  
8 the debtor or his attorney, if living in the county where the land  
9 lies; and such appraisers shall be sworn before a justice of the  
10 peace, or before the officer holding the execution, and if before  
11 the officer without any additional fee, faithfully and impartially

12 to appraise such real estate as may be shown to them, to be  
 13 taken by said execution; and such justice or officer shall make  
 14 his certificate on the back of said execution, of his having ad-  
 15 ministered such oath. R. S., c. 94, § 4. 1843, c. 13.

1847, c. 3.

SECT. 3. After the officer has taken land in execution, and  
 2 given notice to the debtor or his attorney if residing in the same  
 3 county, and allowed him a reasonable, specified time, within  
 4 which to appoint an appraiser, as mentioned in the preceding  
 5 section, he shall then proceed, without unnecessary delay, to  
 6 have the estate appraised and the levy completed, and it shall  
 7 be considered as made, when the land is taken in execution; and  
 8 the subsequent proceedings and return shall be valid, though  
 9 made and done after the return day, or after the removal or  
 10 other disability of the officer. R. S., c. 94, § 5.

SECT. 4. The appraisers shall proceed with the officer to view  
 2 and examine the land, so far as may be necessary to a just esti-  
 3 mate of its value; and its description and appraisement shall be  
 4 indorsed on the execution, and signed by them.

R. S., c. 94, § 6.

SECT. 5. The nature of the estate appraised, whether in sev-  
 2 eralty or undivided, a fee simple or less estate, in possession,  
 3 reversion or remainder, shall be described either by metes and  
 4 bounds, or such other mode, that the same may be distinctly  
 5 known and identified; and this description may be referred to and  
 6 adopted by the officer as a part of his return. R. S., c. 94, § 7.

SECT. 6. The appraisers may appraise several parcels of land  
 2 separately, or the whole together; and when several pieces of  
 3 land are taken at different times, there may be distinct sets of  
 4 appraisers, if more convenient for those concerned.

R. S., c. 94, § 8.

SECT. 7. The levy of the execution shall be valid, though the  
 2 certificate of appraisement is signed by only two of the appraisers,  
 3 if it appears by the return that the third was sworn, and acted  
 4 with the others under the appointment. R. S., c. 94, § 9.

SECT. 8. All the debtor's interest in the premises shall pass  
 2 by the levy, unless it is larger than the estate described in the  
 3 appraisers' return. R. S., c. 94, § 10.

SECT. 9. When the debtor's estate is held in joint tenancy or  
2 in common with others, the whole estate must be described by  
3 the appraisers, and the debtor's share thereof be stated by them,  
4 and the whole, or such part of the debtor's interest as is neces-  
5 sary to satisfy the execution, may be taken, and thereafter held  
6 in common with the cotenants. R. S., c. 94, § 11.

SECT. 10. When the estate to be levied on cannot be set out  
2 by metes and bounds, or by the description before mentioned,  
3 the execution shall be extended on the rents of such estate, and  
4 the officer shall give seizin thereof to the creditor, and cause the  
5 person in possession to attorn and become tenant to such cred-  
6 itor, and pay the rent to him accordingly, or on his refusal so to  
7 do, the officer shall turn him out of possession, and give seizin  
8 and possession to the creditor, until redeemed by such debtor in  
9 the manner hereinafter provided. R. S., c. 94, § 12.

SECT. 11. When the premises to be levied on consist of a  
2 mill, mill privilege, or other real estate, which cannot be divided  
3 without damage to the whole, and which is more than sufficient  
4 to satisfy the execution, it may be levied in the manner pre-  
5 scribed in the preceding section, or upon such part of the whole  
6 as may be sufficient to satisfy the execution; and in the certifi-  
7 cate of the appraisers, the whole of the property must be  
8 described, of which the undivided portion is taken.

R. S., c. 94, § 13.

SECT. 12. When an execution is levied on a life estate, the  
2 value thereof may be estimated by the appraisers, and the same  
3 may be taken and set off to the creditor, like other real estate;  
4 or the execution may be levied on the rents and profits at the  
5 creditor's election, and in the latter case the appraisers shall  
6 estimate the rents and profits for a length of time, sufficient to  
7 satisfy the execution; and for such term of time the premises  
8 shall be set off to the creditor if the life so long continues, com-  
9 puting interest on the sum due on the execution, and deducting  
10 the rents and profits as so much paid from time to time when  
11 they fall due; and if the life estate expires before the end of the  
12 term fixed by the appraisers, the creditor may have an action  
13 on the judgment to recover the balance due.

R. S., c. 94, § 14.

SECT. 13. When the premises levied on are under lease to a  
2 third person, and the reversion of the whole is taken on any  
3 execution, the lessee shall pay the rent to the creditor from  
4 the time of the levy. R. S., c. 94, § 15.

SECT. 14. When the reversion of a part only of the premises  
2 are taken, the appraisers shall determine what proportion of the  
3 whole annual rent shall be paid to the creditor; and the lessee  
4 shall be bound to pay the same to him accordingly.

R. S., c. 94, § 16.

SECT. 15. The officer serving the execution shall deliver  
2 seizin and possession of the premises taken, to the creditor or  
3 his attorney, so far as the nature of the estate taken and the  
4 title of the debtor will admit; where a remainder, reversion or  
5 right of redemption is taken, the officer shall not oust the debtor  
6 in possession, but only assign to the creditor the debtor's right  
7 therein, and make his return accordingly. R. S., c. 94, § 17.

SECT. 16. When an execution is levied on land, into which  
2 the debtor has or is supposed to have a right of entry, and of  
3 which any other person is then seized, the officer shall deliver to  
4 the creditor a momentary seizin and possession of the land, so  
5 far as to enable the creditor to maintain an action therefor in his  
6 own name and on his own seizin; but he shall not actually expel  
7 and keep out the tenant then in possession against his will.

R. S., c. 94, § 18.

SECT. 17. If before the levy of any execution on real estate,  
2 the nominal execution creditor assigned the debt upon which the  
3 judgment was recovered, to a third person for a good and valua-  
4 ble consideration, he shall be deemed to hold the real estate  
5 levied upon, in trust for the assignee, who shall be entitled to  
6 a conveyance of the same from him, to be enforced by the  
7 supreme judicial court, on a bill in equity.

R. S., c. 94, § 18.

SECT. 18. The officer shall return the execution with a cer-  
2 tificate of his doings indorsed thereon, into the clerk's office, to  
3 which it is returnable; and within three months after the com-  
4 pletion of the levy, shall cause the execution and return thereon  
5 to be recorded in the registry of deeds for the county where the  
6 land lies.

R. S., c. 94, § 19.



SECT. 19. If the levy is not thus recorded, it shall be void  
2 against any creditor attaching or taking in execution the same  
3 premises, without notice of such levy; or against any person  
4 purchasing them in good faith and for a valuable consideration,  
5 without such notice; but if the levy is recorded after the expir-  
6 ation of said three months, it shall be valid and effectual against  
7 any conveyance, attachment or levy, made after such recording.

R. S., c. 94, § 20.

SECT. 20. The levy of an execution and delivery of possession,  
2 though not returned or recorded as aforesaid, shall be so far  
3 valid against the creditor that he shall not waive the levy, and  
4 to have a new execution on his judgment, except as provided in  
5 the following section.

R. S., c. 94, § 21.

SECT. 21. If before the execution is returned or recorded, it  
2 appears that there is any error or defect in the proceedings,  
3 which would render the levy void, that the estate levied upon is  
4 not the property of the debtor, or not liable to be seized on execu-  
5 tion, or that for any reason it cannot be held thereby, the cred-  
6 itor may waive the levy; and it shall be considered null and  
7 void.

R. S., c. 94, § 22.

SECT. 22. *No levy shall be avoided because the value of the*  
2 *land appraised exceeds the amount required to satisfy the*  
3 *execution, interest and fees, unless the excess is more than*  
4 *one dollar; but the officer shall be liable to the debtor, in an*  
5 *action for money had and received, for such excess.*

35 Me. R. 90. (New.)

SECT. 23. If after the execution is returned or recorded, it  
2 appears that the estate levied upon was not the property of the  
3 debtor, not liable to be seized on execution, or that it cannot be  
4 held thereby, the creditor may sue out of the clerk's office of the  
5 court from which the execution issued, a writ of scire facias to  
6 the debtor, requiring him to show cause why an alias execution  
7 should not be issued on the same judgment, and if the debtor,  
8 after having been duly summoned, does not show sufficient cause  
9 to the contrary, the levy of the former execution may be set  
10 aside, and an alias execution issued for the amount then due on  
11 the original judgment; but if it appears to the court that the

12 creditor had no just cause for such suit, the debtor shall recover  
13 his costs. 1853. c. 12.

SECT. 24. The officer shall state in his return on the execu-  
2 tion, substantially the following facts:

*First*—The time when the land was taken in execution.

*Second*—How the appraisers were appointed.

*Third*—That they were duly sworn.

*Fourth*—That they appraised and set off the premises, after  
7 viewing the same, at the price specified.

*Fifth*—That the officer delivered seizin and possession to the  
9 creditor or his attorney, or assigned the same to him, as in case  
10 of remainder or other incorporeal estate.

*Sixth*—The description of the premises, unless they are suffi-  
12 ciently described in the certificate of the appraisers.

*Seventh*—If the appraisement is signed by only two of the  
14 appraisers, he must state that all three were present and acted  
15 therein. R. S., c. 94, § 24.

SECT. 25. When lands are taken and set off on execution, the  
2 debtor may redeem the same at any time within one year after  
3 the levy, by paying or tendering to the creditor the sum at  
4 which they were appraised, and interest from the time of the  
5 levy, with the reasonable expenses incurred in improving the  
6 same, or in repairs, after deducting the rents and profits received  
7 by the creditor, or which he might have received and with which  
8 he is chargeable; and the creditor shall thereupon, by his deed  
9 prepared at the debtor's expense, release to said debtor all his  
10 right and title to the premises. R. S., c. 94, § 25.

SECT. 26. The amount due for redemption may be ascer-  
2 tained, at the debtor's desire, by three justices of the peace,  
3 chosen thus: one by the debtor, the second by the creditor, or  
4 if after notice he declines, then by the debtor, and the third by  
5 the two so chosen, and after a hearing of the case before all  
6 three of the justices, they, or any two of them, shall make and  
7 sign a certificate of the sum adjudged due and payable for the  
8 redemption of the premises, which shall be final and conclusive  
9 between the parties; and the debtor may tender that sum, and it  
10 shall be valid and effectual, though he may have made a tender  
11 before of a different sum. R. S., c. 94, § 26.

SECT. 27. If on tender of the sum due for redemption, whether adjudicated as aforesaid or not, the creditor does not release the premises within ten days next following, the debtor may recover the same by writ of entry on his own seizin; but before entry of judgment he shall bring into court, for the use of the creditor, the money so tendered. R. S., c. 94, § 27.

SECT. 28. Instead of a writ of entry, the debtor may bring a bill in equity for redemption in the supreme judicial court, at any time within one year after the levy, whether he has made any tender or not; setting forth in such bill his offer to pay such sum as may be found due to the creditor; and the court shall ascertain the amount due, unless it has been adjudged by three justices of the peace as aforesaid, and require the debtor to bring such amount into court for the creditor's use; and the debtor thereupon shall be entitled to a decree in his favor, and a writ of possession for his seizin of the premises. R. S., c. 94, § 28.

SECT. 29. The court may award costs for either party, as justice may require, except that the creditor shall never be subjected to costs, unless he has unreasonably refused, on request, to render an account of rents and profits received by him, and expenses incurred by him in improvements and repairs, or to execute to the debtor a deed of release of the premises for the term of ten days, on tender of a sufficient sum by him; but if the creditor, before the filing of the bill in equity, has tendered such deed of release to the debtor, and in his answer relies on such tender, and brings the deed into court to be delivered to the debtor, he shall recover his costs. R. S., c. 94, § 29.

SECT. 30. The provisions of the preceding section shall be the rule of proceeding for redemption in those cases, where execution is levied on the rents and profits of an estate for life.

R. S., c. 94, § 30.

SECT. 31. Any right of redeeming mortgaged premises may be taken and set off on execution for the mortgager's debts, in like manner as though they were not mortgaged, but the appraisers shall deduct the amount of the mortgage debt, when known, from the estimated value of the premises, and the sum so deducted shall be stated in the return on the execution.

R. S., c. 94, § 31.

SECT. 32. If after the levy of an execution in the usual form, it is ascertained that there was a mortgage upon the same premises, and not including any other, unknown to the creditor at the time of the levy, or if the levy was made in the manner prescribed in the preceding section, but the full amount due on the mortgage was not deducted as therein required, still the creditor shall hold the premises in virtue of the levy, and may recover of the debtor in an action the amount which should have been, but was not deducted in the appraisement, on *account of any such mortgage*. R. S., c. 94, § 32.

SECT. 33. Any estate levied upon in the manner prescribed in the two preceding sections, may at any time within one year after the levy be redeemed, in the same manner as though the estate had not been under mortgage at the time of the levy; but when the debtor does not redeem, he may recover of the creditor, in an action for money had and received, whatever sum he pays on such mortgage after the levy. R. S., c. 94, § 33.

SECT. 34. The lands of banks or manufacturing corporations, and their title and interest in lands mortgaged for the security of any debt due or assigned to them, may be seized and sold on execution at public auction. The officer having such execution shall first give notice of the time and place of sale, fourteen days previous thereto, in two or more public places in the town where the lands lie, and in some newspaper printed in the county, if any, otherwise in the state paper; and may give an effectual deed of conveyance of such lands, titles and interests; and the mortgaged debts then remaining unpaid shall pass to the purchaser of the mortgaged premises; and he may in his own name recover such debt or such premises; and in an action therefor, a copy of the mortgage deed, duly certified by the register of deeds, shall be considered prima facie evidence of such deed, and of the note or obligation on which it is founded, and that the same were remaining due and unsatisfied at the time of trial; and the cashier or clerk of such bank or corporation shall, on reasonable request by the officer serving the execution, furnish him with a certified copy of such note or obligation, and a statement of all payments made thereon by such debtor.

R. S. c. 94, § 34.

SECT. 35. Such corporation shall have the right to redeem  
2 any lands, and, if mortgaged, the debts secured thereby, sold  
3 under the preceding section within the time and in like manner,  
4 and with like remedies to compel a re-conveyance, as are pro-  
5 vided in the forty-second and forty-third sections; and such right  
6 of redeeming shall be liable to attachment on mesne process, and  
7 seizure and sale on execution, as provided in the forty-fourth  
8 section for the attachment and sale of the right of redeeming an  
9 equity of redemption; reserving to the corporation the same  
10 right of redeeming from the purchaser at the second sale.

Act of amendment, 1841, § 10.

SECT. 36. No conveyance or transfer of such mortgage, or of  
2 the debt thereby secured, made by such bank or company, after  
3 notice filed in the registry of deeds for said county, or otherwise  
4 given to the party to be affected thereby, of the seizure thereof  
5 on execution by such officer for the purpose of sale, shall have  
6 any force or validity against the purchaser of such lands or  
7 interest, at auction as aforesaid. R. S., c. 94, § 35.

SECT. 37. All the right, title or interest any person owns, or  
2 claims, in virtue of a possession and improvement of lands, as  
3 expressed and described in the chapter on real actions, and all  
4 rights of redeeming mortgaged real estate, may, at the election  
5 of the creditor, be taken and sold on execution as hereinafter  
6 prescribed, instead of being appraised and set off; and the  
7 officer shall stand accountable for the surplus of the proceeds  
8 of the sale, if any, after satisfying the execution and legal  
9 charges. R. S., c. 94, § 36.

SECT. 38. In such case the officer shall give written notice of  
2 the time and place of sale to the debtor in person, or by leaving  
3 the same at his last and usual place of abode, if he is known to  
4 be an inhabitant of the state, and cause notifications thereof to  
5 be posted in some public place in the town where the land lies,  
6 and in two adjoining towns, if there be so many; but when the  
7 land is not within the limits of any incorporated town, notice  
8 shall be posted up in two public places in the shire town of the  
9 county in which said land lies, in lieu of the posting aforesaid,  
10 all to be done thirty days at least before the day of sale; if the  
11 debtor is not a resident of the county where the land lies, the

12 personal notice required shall be deemed sufficient if forwarded  
13 to him by mail, post paid; and the officer shall cause an adver-  
14 tisement of the time and place of sale, to be published three  
15 weeks successively before the sale, in some public newspaper  
16 printed in the county where the land lies, if any, otherwise in  
17 the state paper; if the mortgaged land is situated in two or more  
18 towns, the notifications shall be posted in some public place in  
19 each, and in two towns adjoining each, if there are such. When  
20 the mortgaged land is situated in two or more counties, the sheriff  
21 or deputy sheriff of either of the counties may sell the whole  
22 right of redemption. R. S., c. 94, § 37. 1852, c. 219.

SECT. 39. When the officer deems it for the interest of all  
2 parties concerned to postpone the auction for want of purchasers,  
3 or other sufficient cause, he may adjourn the sale for any time  
4 not exceeding seven days, and so from time to time, for like good  
5 cause, until a sale is made; giving notice of each adjournment,  
6 by public proclamation, made at the same time.

R. S., c. 94, § 38.

SECT. 40. The right to redeem shall be sold by the officer, at  
2 public auction, to the highest bidder, and he shall execute and  
3 deliver to the purchaser a good and sufficient deed thereof;  
4 which, being recorded in the registry of deeds for the county  
5 where the land lies, within three months of the sale, shall con-  
6 vey to the purchaser all the title which the debtor had in the  
7 premises; and if the highest bidder at any such sale refuses  
8 or is unable to pay the sum for which such right in equity was  
9 sold on the demand of the officer, said officer shall immediately  
10 set up such right in equity again, and proceed to sell in the same  
11 manner as though no bid had been previously made; and in case  
12 said equity is not sold for so great a sum as that for which it  
13 was struck off at the first sale, the person to whom it was so  
14 struck off at the first sale shall be accountable to the officer for  
15 the difference; and the officer may sue for and recover such differ-  
16 ence, to be indorsed on said execution, or paid over to the debtor  
17 in case said execution is fully satisfied. R. S., c. 94, § 39.

SECT. 41. The seizure of the right on the execution shall be  
2 considered as made on the day when the notice of the intended  
3 sale was given as above prescribed, to the debtor, by posting up

4 notice, or by advertising in a newspaper, and shall hold the  
5 estate by force of the attachment, if any had been made thereon,  
6 though the levy should not be completed within thirty days next  
7 after the judgment; and the subsequent proceedings and the  
8 return shall be valid, although made and done after the return  
9 day, or after the removal or other disability of the officer.

R. S., c. 94, § 40.

SECT. 42. The right of redemption thus sold, may be redeemed  
2 by the debtor from the purchaser or the person holding under  
3 him, at any time within one year after such sale, by paying or  
4 tendering the sum for which the same was sold, and on like  
5 conditions as to improvements, repairs, rents and profits, as in  
6 case of redemption of lands set off on execution; and the person  
7 holding the right shall release the same to the debtor, by a deed  
8 prepared at the expense of the debtor. R. S., c. 94, § 41.

SECT. 43. If the purchaser, or person holding under him,  
2 does not, within ten days after a tender by the debtor, release to  
3 him the right of redemption as before provided, or if there has  
4 been no tender, the debtor may have the same remedy for recov-  
5 ering his right of redemption, as is provided in like cases for the  
6 redemption of land mortgaged. R. S., c. 94, § 42.

SECT. 44. The right which any debtor has of redeeming  
2 from the purchaser an equity of redemption sold on execution,  
3 or of redeeming any real estate, appraised and set off on execution,  
4 may be attached on mesne process and sold on execution, and  
5 the same proceedings shall be had in respect to the sale and  
6 conveyance of either of said rights, as in the sale of an equity of  
7 redeeming mortgaged estate, and the purchaser shall have all the  
8 rights and remedies which the debtor might, if no sale of it had  
9 been made; and the debtor may have the same right of redeem-  
10 ing it as is allowed by law of redeeming mortgaged real estate.  
11 And the lien created by any attachment of such real estate or  
12 equity of redemption, before such sale or setting off on execution,  
13 shall continue and have effect upon the right of redeeming the  
14 same as aforesaid, in the order in which such attachments were  
15 made, in preference to any attachments made thereon, subse-  
16 quently to such sale or setting off on execution.

R. S., c. 94, § 43.

SECT. 45. The lawful charges and fees of levying an execution, in any of the above mentioned modes, shall be added to the amount of the execution, and considered as part thereof in the setting off, sale and redemption of estates on execution.

R. S., c. 94, § 44.

SECT. 46. Everything in this chapter, which a creditor or debtor is required to do, or may do, may be done by their heirs or assigns, executors or administrators, as the case may be, or by any person lawfully claiming under them.

R. S., c. 94, § 45.

SECT. 47. The real estate of a deceased person may be taken in execution on a judgment recovered against his lawful executor or administrator, for the proper debt of the deceased; and shall be appraised, set off, sold and redeemed in like manner as if the same estate had been levied on in his lifetime.

R. S., c. 94, § 46.

SECT. 48. When the estate of a deceased person has been set off or sold on execution, and redeemed by the heirs or devisee, or the assigns of either as provided in the preceding section, the same shall not again be taken in execution for any other debts of the deceased, or in any manner be liable therefor.

R. S., c. 94, § 47.

SECT. 49. Every widow shall be entitled to dower in lands taken by execution from her husband, or by execution on a judgment against his executors or administrators, in like manner as though conveyed by her husband.

R. S., c. 94, § 48.

SECT. 50. When real estate is taken to satisfy an execution, issued on a judgment in the name or for the use of the state, for any sum of money, a writ of execution in common form shall issue and be directed to the proper officer, and the lands of such judgment debtor may be taken on such execution and sold at auction; but, before proceeding to sell, the officer shall give notice of the intended sale, as prescribed in the thirty-eighth section of this chapter, except that such notice shall be published also in the state paper, and that the last publication in both newspapers shall be six days before the sale; and the officer making such sale shall make and execute to the purchaser a sufficient deed of the land sold, and the debtor shall have the



13 right to redeem the same in like manner, and on the same con-  
14 ditions as a judgment debtor has, to redeem lands taken and  
15 set off on execution. R. S., c. 94, § 49.

SECT. 51. All the right and title of a debtor to a conveyance  
2 of real estate, by virtue of a bond or contract, and any right and  
3 title which he owns by virtue of a possession and improvement,  
4 may be taken and sold on execution, in the manner prescribed  
5 in the thirty-seventh and four following sections; and may be  
6 redeemed from the purchaser or person holding under him by  
7 like proceedings, on the same conditions and with the same rem-  
8 edies to compel a reconveyance thereof, as are provided in the  
9 forty-second and forty-third sections; and this right to redeem  
10 from the purchaser is liable to attachment on mesne process, and  
11 seizure and sale on execution, as provided in the forty-fourth  
12 section, for the attachment and sale of the right of redeeming  
13 an equity of redemption; and in all cases where a right to  
14 redeem from a former sale or levy has been sold on execution,  
15 the debtor shall have the same right of redeeming it, as is  
16 allowed upon the first sale of rights in equity of redeeming  
17 mortgaged real estate. Act of amendment, 1841, § 10.

SECT. 52. When the right of any debtor, by a bond or con-  
2 tract, to a conveyance of real estate, is attached, and during the  
3 existence of the attachment a deed of the premises is made to  
4 such debtor, the execution may be extended thereon as in other  
5 cases. 1847, c. 21, § 1. 35 Maine 520.

SECT. 53. If during such attachment the debtor assigned such  
2 bond or contract, and the assignee received a deed of the prem-  
3 ises, the right of the debtor shall be sold on execution as  
4 provided in section thirty-seven; and the purchaser shall be  
5 entitled to a bill in equity against such assignee, in which the  
6 court shall adjust the rights of the parties according to their  
7 several interests, and require either of them to release to the  
8 other his interest in such estate, upon the payment of such sum  
9 as they shall determine to be equitable. If such assignee has paid  
10 any portion of the consideration of the bond or contract, but has  
11 not received a deed, the purchaser shall have the same remedy,  
12 and the rights of both parties shall be adjusted on the principles  
13 herein stated. 1847, c. 21, § 2. (New.)

SECT. 54. When there has been no deed or assignment as  
2 aforesaid during the attachment, the purchaser of such right  
3 under a sale on execution, shall have in his own name the same  
4 rights and remedies in all respects on the bond or contract  
5 against the obligor or contractor, as the debtor had at the time  
6 of sale, or might have had if the same had not been attached  
7 and sold, and when the obligor or contractor on request of such  
8 purchaser neglects to give correct information of the amount due,  
9 or the conditions remaining unperformed in such bond or con-  
10 tract, the purchaser may maintain a bill in equity without pre-  
11 vious payment, performance or tender, and offer therein to pay  
12 the sum found due, or perform the condition, as the case may  
13 be. 1847, c. 21, § 3. (New.)

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