

# MAINE STATE LEGISLATURE

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REPORTS  
OF  
THE COMMISSIONER  
AND  
THE LEGISLATIVE COMMISSION  
SUBMITTING THE FINAL DRAFT OF THE  
SIXTH REVISION  
OF THE  
PUBLIC LAWS  
OF THE  
STATE OF MAINE  
UNDER RESOLVE OF MARCH 25, 1915

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## TITLE SEVEN.

### Titles to Property.

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## CHAPTER 78.

### Conveyances by Deed, Their Form and Construction. Trusts.

**Sec. 1. Conveyance by deed; what passes as realty. R. S. c. 75, § 1. 1907, c. 80.** A person owning real estate and having a right of entry into it, whether seized of it or not, may convey it or all his interest in it, by a deed to be acknowledged and recorded as hereinafter provided. Down trees lying on land at the time of conveyance, are real estate and pass by the deed; but such down trees as are cut into wood, logs or other lumber, and hemlock bark peeled are personal property, and the owner may remove them in a reasonable time thereafter. Carpets and carpeting, stoves and funnels belonging thereto, are not real estate and do not pass by a deed thereof.

13 Me. 284; 56 Me. 46, 127; 72 Me. 302; 73 Me. 228; 106 Me. 90; 109 Me. 75.

**Sec. 2. Rights of aliens. R. S. c. 75, § 2.** An alien may take, hold, convey and devise real estate or any interest therein. All conveyances and devises of such estate or interest, already made by or to an alien are valid.

**Sec. 3. Contingent estates may be conveyed. R. S. c. 75, § 3.** When a contingent remainder, executory devise, or estate in expectancy, is so limited to a person, that it will, in case of his death before the happening of such contingency, descend in fee simple to his heirs, he may, before it happens, convey or devise it subject to the contingency.

45 Me. 101; 68 Me. 141.

**Sec. 4. Real estate subject to contingent remainders may be sold or mortgaged; proceedings. R. S. c. 75, § 4.** When real estate is subject to a contingent remainder, executory devise, or power of appointment, the supreme judicial court, or the probate court, for the county in which such real estate is situated, may, upon the petition of any person who has an estate in possession in such real estate, and after notice and other proceedings as hereinafter required, appoint one or more trustees, and authorize him or them to sell and convey such estate or any part thereof in fee simple, if such sale and conveyance appears to the court to be necessary or expedient; to mortgage the same, either with or without power of sale, for such an amount, on such terms, and for such purposes, as may seem to the court judicious

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or expedient; and such conveyance or mortgage shall be valid and binding upon all parties.

**Sec. 5. Notice; appointment of next friend of minors, etc. R. S. c. 75, § 5.** Notice of any such petition shall be given in such manner as the court may order, to all persons who are or may become interested in the real estate to which the petition relates, and to all persons, whose issue, not in being, may become interested therein; and the court shall in every case appoint a suitable person to appear and act therein as the next friend of all minors, persons not ascertained, and persons not in being, who are or may become interested in such real estate; and the cost of the appearance and services of such next friend, including the compensation of his counsel, to be determined by the court, shall be paid, as the court may order, either out of the proceeds of the sale or mortgage or by the petitioner, in which latter case execution therefor may issue in the name of the next friend.

**Sec. 6. Trustees shall give bond; disposal of proceeds of sale. R. S. c. 75, § 6.** Every trustee appointed under section four shall give bond in such form and for such an amount as the court appointing him may order, and he shall receive and hold, invest or apply the proceeds of any sale or mortgage made by him, for the benefit of the persons who would have been entitled to the real estate, if such sale or mortgage had not been made, and the probate court for the county in which such real estate or the greater part thereof, is situated shall have jurisdiction of all matters thereafter arising in relation to such trust.

**Sec. 7. On application of the owners of certain interests in woodlands, court may grant leave to sell trees; proceedings. R. S. c. 111, §§ 1, 2.** Any person seized of a freehold estate, or of a remainder or reversion in fee simple, or fee tail, in a tract of woodland or timber-land, on which the trees are of a growth and age fit to be cut, may apply to the supreme judicial court in any county for leave to cut and dispose of such trees, and invest the proceeds for the use of the persons interested therein; and the court, after due notice to all persons interested, and a hearing of the parties, if any appear, may appoint one or more persons to examine the land and report to the court, and the court may thereupon order the whole or a part of such trees to be cut and sold, and the proceeds brought into court, subject to further orders. The court shall appoint one or more commissioners to superintend the cutting and sale of such trees, who shall account for the proceeds to the court, and be under bond to the clerk for the faithful performance of their trust.

**Sec. 8. Proceeds, how invested; income, how appropriated. R. S. c. 111, § 3.** The court may cause the net proceeds of sale to be invested in other real estate in the state, or in public stocks, to the same uses and under the same limitations as the land; the income thereof to be paid to the persons entitled to the income of the land, or apportioned among the persons interested in the estate, according to their interests.

**Sec. 9. Appointment of trustees of such funds; bond. R. S. c. 111, § 4.** The court may appoint one or more trustees, removable at its pleasure, to hold such estates or stocks for said uses, who shall give bond, with sufficient sureties, to said clerk, for the faithful discharge of their duty.

**Sec. 10. Entailments may be barred by conveyance in fee simple. R. S. c. 75, § 7.** A person seized of land as a tenant in tail may convey it in fee simple. When a minor is so seized of land, his guardian, duly licensed to sell it for his support and education, or to invest the proceeds for his benefit, may convey it in fee simple. When land is owned by one person for life with a vested remainder in tail in another, they may by a joint deed convey the same in fee simple. Such conveyances bar the estate tail and all remainders and reversions expectant thereon.

60 Me. 177; 80 Me. 592; 92 Me. 515.

**Sec. 11. Conveyance of a greater estate, conveys what is owned. R. S. c. 75, § 8.** A conveyance of a greater estate than he can lawfully convey, made by a tenant for life or years, will pass what estate he has, and will not work a forfeiture, and no expectant estate can be defeated by any act of the owner of the precedent estate or by any destruction of it, except as provided in the preceding section.

76 Me. 350; 109 Me. 72.

**Sec. 12. Conveyance or devise for life and to one's heirs. R. S. c. 75, § 9.** A conveyance or devise of land to a person for life and to his heirs in fee, or by words to that effect, shall be construed to vest an estate for life only in the first taker, and a fee simple in his heirs.

60 Me. 479; 68 Me. 141; 75 Me. 589; 76 Me. 350; 78 Me. 226, 227.

**Sec. 13. Conveyances to two or more. R. S. c. 75, § 10.** Conveyances not in mortgage, and devises of land to two or more persons, create estates in common, unless otherwise expressed. Estates vested in survivors upon the principle of joint tenancy shall be so held.

24 Me. 484; 46 Me. 260; 76 Me. 350; 82 Me. 230; 84 Me. 370; 110 Me. 36.

**Sec. 14. Not effectual against others, unless recorded; releases. R. S. c. 75, § 11.** No conveyance of an estate in fee simple, fee tail or for life, or lease for more than seven years, is effectual against any person, except the grantor, his heirs and devisees, and persons having actual notice thereof, unless the deed is recorded as herein provided. Conveyances of the right, title or interest of the grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title.

7 Me. 199, 465; 19 Me. 277; 23 Me. 169, 172, 247; 26 Me. 489; 29 Me. 144; 32 Me. 289; 40 Me. 572; 43 Me. 526, 577; 65 Me. 491; 66 Me. 434; 69 Me. 583; 74 Me. 593; 76 Me. 316; 77 Me. 50; 78 Me. 182; 79 Me. 202; 84 Me. 413; 85 Me. 435; 95 Me. 316; 96 Me. 500; 100 Me. 555; 101 Me. 468; 109 Me. 73.

**Sec. 15. Absolute deed is not defeated by defeasance not recorded. R. S. c. 75, § 12.** A deed, purporting to convey an absolute estate in land, cannot be defeated by an instrument intended as a defeasance, as against any other person than the maker, his heirs and devisees, unless such instrument is recorded in the registry where the deed is recorded.

77 Me. 554.

**Sec. 16. No estate in lands greater than tenancy at will, unless by writing. R. S. c. 75, § 13.** There can be no estate created in lands greater than a tenancy at will, and no estate in them can be granted, assigned or surrendered, unless by some writing signed by the grantor, or maker, or his attorney.

9 Me. 66; 13 Me. 214; 16 Me. 214; 20 Me. 19; 56 Me. 127; 65 Me. 229; 68 Me. 92, 387; 71 Me. 532; 74 Me. 560; 84 Me. 532; 100 Me. 144; 108 Me. 186; 112 Me. 479.

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**Sec. 17. No trust in lands unless by writing; exception. R. S. c. 75, § 14.** There can be no trust concerning lands, except trusts arising or resulting by implication of law, unless created or declared by some writing signed by the party or his attorney.

11 Me. 23; 16 Me. 274; 22 Me. 411; 23 Me. 270; 28 Me. 360; 29 Me. 412; 30 Me. 126; 33 Me. 534; 35 Me. 49; 42 Me. 512; 57 Me. 508; 58 Me. 266; 60 Me. 188; 65 Me. 181, 401, 504; 68 Me. 92; 79 Me. 325; 81 Me. 149; 88 Me. 125; 89 Me. 167; 94 Me. 313; 107 Me. 112.

**Sec. 18. Titles not defeated by trusts without notice or record. R. S. c. 75, § 15.** The title of a purchaser for a valuable consideration, or a title derived from levy of an execution, cannot be defeated by a trust, however declared or implied by law, unless the purchaser or creditor had notice thereof. When the instrument, creating or declaring it, is recorded in the registry where the land lies, that is to be regarded as such notice.

18 Me. 223; 42 Me. 516; 46 Me. 265; 71 Me. 302; 74 Me. 595; 79 Me. 202, 250; 94 Me. 307.

**Sec. 19. Trustees in mortgage hold in joint tenancy; survivors may convey real and personal property. R. S. c. 75, § 16.** When real estate is conveyed in mortgage or in trust to two or more persons, with power to appoint a successor to one deceased, it is held in joint tenancy unless otherwise expressed. When one or more of the trustees, by death or otherwise, is divested of his interest, those remaining may convey such interest upon the same trusts, without impairing the joint tenancy, to trustees by them appointed, who shall hold the title, have the rights, and be subject to the liabilities of the other trustees. Personal property, with real estate and upon the same trusts, is held as the real estate is; and it may be conveyed by the remaining trustees with the real estate and held in like manner.

**Sec. 20. Release conveys interest of grantor; husband and wife. R. S. c. 75, § 17.** A deed of release or quitclaim of the usual form conveys the estate, which the grantor has and can convey by a deed of any other form. A joint deed of husband and wife conveys her estate, in which the husband has an interest.

43 Me. 436; 45 Me. 71; 67 Me. 561; 75 Me. 90; 83 Me. 567; 84 Me. 150.

**Sec. 21. Deeds, and contracts by agent bind principal. R. S. c. 75, § 18.** Deeds and contracts, executed by an authorized agent of a person or corporation in the name of his principal, or in his own name for his principal, are in law the deeds and contracts of such principal.

1 Me. 234, 342; 23 Me. 59; 59 Me. 175, 486; 61 Me. 122; 68 Me. 92; 72 Me. 41; 75 Me. 502; 76 Me. 204; 96 Me. 526.

**Sec. 22. Conveyances for use of county, how effectual. R. S. c. 75, § 19.** Conveyances, in whatever form, made to the inhabitants of a county, or to its treasurer, or to a person or committee for its benefit, are as effectual as if made in the corporate name of the county.

**Sec. 23. Deeds, before whom to be acknowledged. R. S. c. 75, § 20. 1909, c. 41.** Deeds shall be acknowledged by the grantors, or one of them, or by their attorney executing the same, before a justice of the peace, or notary public having a seal, or women otherwise eligible under the constitution and appointed for the purpose by the governor with the advice and consent of the council, in the state; or any clerk of a court of record having a seal, notary public, justice of the peace, or commissioner appointed

by the governor of this state for the purpose, within the United States; or before a minister or consul of the United States or notary public in any foreign country. The seal of such court or the official seal of such notary if he have one, shall be affixed to the certificate of acknowledgment, but if such acknowledgment is taken outside the State of Maine before a justice of the peace, or notary public not having a seal, a certificate under seal from the secretary of state, or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking such acknowledgment, and the genuineness of his signature, must be annexed thereto.

See c. 2, § 42; 17 Me. 419; 20 Me. 420; 37 Me. 428; 62 Me. 596, 607; 80 Me. 36.

**Sec. 24. Appointment of commissioners; their power to authenticate deeds.** R. S. c. 112, § 1. The governor may appoint one or more commissioners in any other of the United States, and in any foreign country, who shall continue in office during his pleasure; and have authority to take the acknowledgment and proof of the execution of any deed, other conveyance or lease of lands lying in this state; and of any contract, letter of attorney, or any other writing, under seal or not, to be used or recorded in this state.

72 Me. 548.

**Sec. 25. Legal effect of their official acts.** R. S. c. 112, § 2. Such acknowledgment or proof, taken according to the laws of this state, and certified by any such commissioner under his seal of office, annexed to or indorsed on such instrument, shall have the same force and effect, as if done by an officer authorized to perform such acts within this state.

**Sec. 26. May administer oaths and take depositions.** R. S. c. 112, § 3. Every commissioner thus appointed may administer any oath, lawfully required in this state, to any person willing to take it; and take and duly certify all depositions, to be used in any of the courts in this state, in conformity to the laws thereof, on interrogatories proposed under commission from a court of this state, by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified, according to law, by a magistrate in this state.

**Sec. 27. Qualification and seal.** R. S. c. 112, § 4. Every such commissioner, before performing any duty or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation, before a judge or clerk of one of the superior courts of the state or country in which he resides, well and faithfully to execute and perform all his official duties under the laws of Maine; which oath, and a description of his seal of office, shall be filed in the office of the secretary of this state.

**Sec. 28. Grantor dead, or out of state, how execution may be proved.** R. S. c. 75, § 21. When a grantor or lessor dies, or departs from the state without acknowledging his deed, its execution may be proved by a subscribing witness before any court of record in the state. No deed without one subscribing witness can, for this purpose, be proved before any court of justice.

69 Me. 583.

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**Sec. 29. How proved, if witness is dead or absent.** R. S. c. 75, § 22. When the witnesses are dead or out of the state, the handwriting of the grantor and subscribing witness may be proved by other testimony.

**Sec. 30. If grantor refuses to acknowledge, proceedings.** R. S. c. 75, § 23. When a grantor refuses to acknowledge his deed, the grantee or person claiming under him may leave a true copy of it with the register of deeds, and it shall have the same effect for forty days as a record of the deed.

69 Me. 583.

**Sec. 31. Grantor may be summoned before a justice, and execution proved.** R. S. c. 75, § 24. In such case, a justice of the peace or notary public where the grantor resides, or where his land lies, upon application of the grantee or person claiming under him, may summon the grantor to appear before him at a time and place named, to hear the testimony of the subscribing witnesses. The date of the deed, the names of the parties, and of the subscribing witnesses to it, must be stated in the summons, which must be served seven days before the time for proving the deed.

69 Me. 583.

**Sec. 32. Justice may certify on deed that it has been proved.** R. S. c. 75, § 25. When the justice or notary at such hearing is satisfied by the testimony of witnesses, that they saw the deed duly executed by the grantor, he shall certify the same thereon, and state, in his certificate, the presence or absence of the grantor.

**Sec. 33. Certificate to be put on deed or it cannot be recorded.** R. S. c. 75, § 26. A certificate of acknowledgment, or proof of execution as aforesaid, must be indorsed on or annexed to the deed, and then the deed and certificate may be recorded in the registry of deeds. No deed can be recorded without such certificate.

17 Me. 419; 19 Me. 277; 37 Me. 427; 89 Me. 380; 104 Me. 432.

**Sec. 34. Certificate after commission expired, valid.** R. S. c. 75, § 27. When a person, authorized to take acknowledgments, takes and certifies one in good faith after the expiration of his commission, not being aware of it, such acknowledgment is as valid as if done before such expiration.

37 Me. 428.

**Sec. 35. How a deed, lost before recording, may be effectually recorded.** R. S. c. 75, § 28. If a deed, duly executed and delivered, is lost or destroyed before being recorded, the grantee or person claiming under him, may file a copy of it in the registry of deeds in the county where the land lies; and it shall have the same effect as a record for ninety days; and he may thereupon proceed to have the depositions of the subscribing witnesses and others knowing the facts, taken as depositions are taken in perpetuum; but if any person supposed to have an adverse interest lives out of the state in an unknown place, a justice of the supreme judicial court in session or vacation, may order notice of the taking of such depositions by publication as he deems proper; and the filing and recording of such depositions and copy within said ninety days, shall have the same effect as if the deed itself had been recorded when said copy was first filed; and certified copies thereof are evidence when the original would be.

**Sec. 36. Deed of lands in several counties, lost before record in all, how recorded in others. R. S. c. 75, § 29.** If a deed conveying lands in more than one county is lost before being recorded in all, or if a deed is recorded in the wrong county or registry district and lost, a certified copy from a registry where it has been recorded, may be recorded in another county, or registry district, with the same effect as a record of the original.

**Sec. 37. Person holding an unrecorded deed, may be compelled to have it recorded. R. S. c. 75, § 30.** A person having an interest in real estate of which any prior grantee has an unrecorded deed or other evidence of title, may give the latter personal notice in writing to have the same recorded; and if he neglects to have it so recorded for thirty days, a justice of the supreme judicial court, in session or vacation, on complaint, may cause said grantee or his heirs to be brought before him for examination, and unless sufficient cause is shown for such neglect, may order such deed or other evidence of title to be recorded, and the cost paid by the respondent, together with the legal fees of the register for recording such deed or other evidence of title.

**Sec. 38. Pews, real estate; deeds and levies, where recorded. R. S. c. 75, § 31.** Pews and rights in houses of public worship are real estate. Deeds of them, and levies by execution upon them may be recorded by the clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds.

**Sec. 39. Agreement that building on land of another shall be personal property not effectual unless recorded. R. S. c. 75, § 32.** No agreement that a building erected with the consent of the landowner, by one not the owner of the land upon which it is erected, shall be and remain personal property, shall be effectual against any person, except the owner of such land, his heirs, devisees and persons having actual notice thereof, unless such agreement is in writing and signed by such landowner, or by some one duly authorized for that purpose, and acknowledged and recorded as deeds are required to be acknowledged and recorded under this chapter; provided, that this section shall not apply to agreements entered into prior to the twenty-eighth day of April, nineteen hundred and three, and then outstanding.

## CHAPTER 79.

### Wills.

**Sec. 1. Will, by whom and how to be made.** R. S. c. 76, § 1. A person of sound mind, and of the age of twenty-one years, may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will.

11 Cush. 532; 12 Cush. 332; 7 Gray 42; 144 Mass. 167; 21 Me. 463; 22 Me. 440; 27 Me. 24; 34 Me. 162; 42 Me. 74; 45 Me. 585; 46 Me. 244; 47 Me. 476; 48 Me. 194; 57 Me. 573; 66 Me. 294; 70 Me. 548; 79 Me. 45; 80 Me. 53; 82 Me. 208; 102 Me. 87; 108 Me. 458.

**Sec. 2. Competency of witnesses; property not willed, distributed.** R. S. c. 76, § 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will shall be distributed as the estate of an intestate.

22 Me. 441; 91 Me. 422.

**Sec. 3. Will, how rendered invalid, or revoked.** R. S. c. 76, § 3. A will so executed is valid, until it is destroyed, altered or revoked by being intentionally burnt, canceled, torn or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

4 Me. 341; 22 Me. 426; 57 Me. 453; 73 Me. 597; 79 Me. 342; 81 Me. 277; 86 Me. 288; 106 Me. 58.

**Sec. 4. What lands of testator pass by will.** R. S. c. 76, § 4. Lands into which the testator, at the time, has a right of entry although not seized of them, and lands of which he is subsequently disseized, pass by his will, as they would, if not devised, have descended to his heirs; and his devisee has the same remedy for their recovery, as his heirs would have had.

**Sec. 5. After-acquired lands pass.** R. S. c. 76, § 5. Real estate owned by the testator, the title to which was acquired after the will was executed, will pass by it, when such appears to have been his intention.

69 Me. 309; 84 Me. 71.

**Sec. 6. Property taken from a devisee for payment of debts, loss borne equally.** R. S. c. 76, § 6. When property is taken by execution from a devisee or legatee thereof, or is sold by order of court for payment of debts, all the other devisees, legatees and heirs shall pay him their proportion thereof, so as to make the loss fall equally on all, according to the value of the property received by each from the testator, except as provided in the following section.

**Sec. 7. Marshaling of assets for payment of debts.** R. S. c. 76, § 7. If the testator has made a specific bequest, so that, by operation of law, it is exempted from liability to contribute for payment of debts, or if he has

required an application of his estate for that purpose different from the provisions of the preceding section, the estate shall be appropriated according to the will. No part of the estate can be exempted from liability for payment of debts, if required therefor.

61 Me. 472; 67 Me. 503; 82 Me. 208.

**Sec. 8. Posthumous child takes share of estate, as if no will.** R. S. c. 76, § 8. A child of the testator, born after his death and not provided for in his will, takes the same share of his estate, as he would if his father had died intestate, to be assigned by the judge of probate and taken from all the devisees in proportion to the value of what they respectively receive under the will, unless, by a specific devise or some other provision thereof, a different apportionment is necessary to give effect to the intention of the testator respecting that portion of his estate which passes by the will.

63 Me. 159.

**Sec. 9. A child or his issue, having no devise, takes as an heir.** R. S. c. 76, § 9. A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate, which he would have taken if no will had been made, unless it appears that such omission was intentional, or was not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator.

32 Me. 269; 70 Me. 550; 80 Me. 299; 86 Me. 134.

**Sec. 10. When devisee dies before testator, lineal heirs take devise.** R. S. c. 76, § 10. When a relative of the testator, having a devise of real or personal estate, dies before the testator, leaving lineal descendants, they take such estate as would have been taken by such deceased relative if he had survived.

49 Me. 164; 64 Me. 498; 80 Me. 294; 81 Me. 271; 82 Me. 230; 83 Me. 205; 84 Me. 188, 369, 487; 86 Me. 577; 102 Me. 302; 103 Me. 217.

**Sec. 11. Contribution to loss of devisee.** R. S. c. 76, § 11. When a share of the testator's estate descends as provided in sections eight and nine, the person taking it is liable to contribute, and may claim contribution, as provided in section six.

**Sec. 12. When one cannot contribute, loss borne by others.** R. S. c. 76, § 12. When a person, liable to contribute as provided in section six, cannot pay his proportion, the others bear the loss, each in proportion to the value of the property received by him. If any one liable to contribute dies without having paid his proportion, his executor or administrator is liable therefor as for a debt of the deceased.

**Sec. 13. Real estate not devised, applied to pay debts, before that devised.** R. S. c. 76, § 13. When a part of the real estate of a testator is not disposed of by his will, and the personal estate is not sufficient to pay his debts, such undevised real estate shall be applied for that purpose in exoneration of the real estate devised, unless it appears that a different arrangement was made in the will for that purpose, and then the assets shall be applied according to its provisions.

82 Me. 231.

**Sec. 14. Cases of contribution, determination.** R. S. c. 76, § 14. All cases of contribution, arising under this chapter, may be determined in an

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action at law, if the case will allow it, or in the probate court subject to appeal, or in the supreme judicial court by a bill in equity.

75 Me. 40.

**Sec. 15. Will must be proved, and allowed.** R. S. c. 76, § 15. No will is effectual to pass real or personal estate, unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution.

90 Me. 416.

**Sec. 16. Construction of devise.** R. S. c. 76, § 16. A devise of land conveys all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate.

36 Me. 216; 59 Me. 482; 69 Me. 491; 75 Me. 511; 77 Me. 425; 78 Me. 146;  
79 Me. 179, 248; 80 Me. 594; 84 Me. 479; 89 Me. 355; 108 Me. 420.

**Sec. 17. Legacy payable on condition, and no time stated, payment.** R. S. c. 76, § 17. When executors or trustees are directed to pay a legacy to a person or a corporation, on conditions precedent, and no time is stated in the will, or in the charter or by-laws of the corporation for their performance, a reasonable time is allowed therefor, not exceeding five years from the probate of a will; and if not so performed, it shall be administered as undivided estate, unless otherwise disposed of by the will.

72 Me. 167.

#### Nuncupative Wills.

**Sec. 18. Nuncupative wills.** R. S. c. 76, § 18. A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to this chapter.

See c. 68, § 17; 2 Me. 299; 8 Me. 168; 53 Me. 569.

**Sec. 19. Proved within six months; exception.** R. S. c. 76, § 19. No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time when they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken.

See c. 68, § 17.

**Sec. 20. Limitation as to property affected.** R. S. c. 76, § 20. No nuncupative will is effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will:

See c. 68, § 17; 2 Me. 299.

## CHAPTER 80.

## Title by Descent.

## Descent of Real Estate.

**Sec. 1. Rules of descent. R. S. c. 77, § 1.** The real estate of a person deceased intestate, being subject to the payment of debts, including a wood-lot or other land used with the farm or dwelling-house although not cleared, and also including wild lands of which he dies seized, but excepting wild lands conveyed by him, though afterwards cleared, descends according to the following rules:

58 Me. 259; 61 Me. 472.

I. If he leaves a widow and issue, one-third to the widow. If no issue, one-half to the widow. And if no kindred, the whole to the widow. And to the widower shall descend the same shares in his wife's real estate. There shall likewise descend to the widow or widower the same share in all such real estate of which the deceased was seized during coverture, and which has not been barred or released as herein provided. In any event, one-third shall descend to the widow or widower free from payment of debts.

See c. 66, §§ 11, 12; 92 Me. 397; 95 Me. 261; 99 Me. 350; 100 Me. 512; 105 Me. 482; 107 Me. 36.

II. The remainder of which he dies seized, and if no widow or widower, the whole, shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation.

14 Me. 310; 81 Me. 158; 95 Me. 277.

III. If no such issue, it descends to his father and mother in equal shares.

IV. If no such issue or father, it descends one-half to his mother. If no such issue or mother, it descends one-half to his father. In either case, the remainder, or, if no such issue, father or mother, the whole, descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

14 Me. 310; 57 Me. 352; 84 Me. 376.

V. If no such issue, father, brother or sister, it descends to his mother. If no such issue, mother, brother or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters.

57 Me. 351; 76 Me. 448, 451.

VI. If no such issue, father, mother, brother or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor, in preference to those claiming through an ancestor more remote.

53 Me. 495; 67 Me. 583; 76 Me. 448, 453; 104 Me. 337.

VII. When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent,

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and the issue of those deceased; in equal shares if all are of the same degree of kindred; otherwise, according to the right of representation.

See c. 72, § 38; 60 Me. 162.

VIII. If the intestate leaves no widower, widow or kindred, it escheats to the state.

**Sec. 2. Degrees of kindred. R. S. c. 77, § 2.** The degrees of kindred are computed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree.

32 Me. 311, note; 76 Me. 456; 88 Me. 353.

**Sec. 3. Heirship of an illegitimate child; descent of estate. R. S. c. 77, § 3.** An illegitimate child born after the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and sixty-four, is the heir of his parents who intermarry. And any such child, born at any time, is the heir of his mother. And if the father of an illegitimate child adopts him or her into his family, or in writing acknowledges before some justice of the peace or notary public, that he is the father, such child is also the heir of his or her father. And in each case such child and its issue shall inherit from its parents respectively, and from their lineal and collateral kindred, and these from such child and its issue the same as if legitimate.

37 Me. 336; 38 Me. 160; 55 Me. 472; 76 Me. 313; 83 Me. 23, 251; 88 Me. 349, 398; 92 Me. 170.

**Sec. 4. Advancements, how established. R. S. c. 77, § 4.** Gifts and grants of real or personal estate to a child or grandchild, are deemed an advancement, when so expressed therein, or charged as such by the intestate, or acknowledged in writing to be such. For purposes of descent and distribution, they shall be regarded as part of the estate of the intestate, and as taken towards a share of it.

51 Me. 379; 59 Me. 216; 103 Me. 97.

**Sec. 5. Value of an advancement on a distribution; not to be refunded. R. S. c. 77, § 5.** When the value of an advancement is determined by the intestate in his gift or charge, or is acknowledged in writing, it shall be allowed in the distribution; if not, the value shall be estimated at the time when it is given. When it exceeds his share, he is excluded from any further portion; when less, he shall receive sufficient to make it an equal share. He shall not refund any part of an advancement.

103 Me. 97.

**Sec. 6. Proceedings, when one having received an advancement, dies. R. S. c. 77, § 6.** When an advancement is made in real estate, it shall be regarded as part of the real estate, and when in personal, as part of the personal estate. If it exceeds his share of the real or personal estate, he receives so much less of the other, as will make his whole share equal. If such child or grandchild dies before the intestate, leaving issue, the advancement made to him shall be regarded as made to such issue, and distribution shall be made accordingly.

103 Me. 97.

**Sec. 7. When heir is indebted to the estate, a lien on his share is created; how enforced. R. S. c. 77, § 7.** When an estate is solvent, and a person, to whom a share of it descends, is indebted to the intestate at the time of his death, such debt creates a lien on his share, having priority to any

attachment of it; and such lien may be enforced by suit and attachment of the share within two years after administration is granted, and by levy within thirty days after judgment. In such action, or in one brought by the heir, all claims between the intestate and heir may be set off and adjusted, and the balance due may be established.

See c. 70, § 20; 68 Me. 60; 75 Me. 419; 107 Me. 105.

### Rights of Surviving Husbands and Wives.

**Sec. 8. Right of dower and tenancy by the curtesy, abolished; shall not affect vested rights; nor antenuptial settlement. R. S. c. 77, § 8.** Except as hereinafter provided, the right of widows to dower in the real estate of their deceased husbands, and the right of widowers as tenant by curtesy in the real estate of their deceased wives are abolished. But this section and the eleven following sections shall not be held to affect, modify, enlarge or limit the rights and interests which any widower or widow married before the first day of May, eighteen hundred and ninety-five has in the estate of a wife or husband deceased prior to the first day of January, eighteen hundred and ninety-seven, nor any of the remedies by which the same may be enforced, nor affect any jointure or antenuptial settlement or pecuniary provision made for such widow by any such husband. Nor shall a widower married before the first day of May, eighteen hundred and ninety-five, have any interest in the real estate of his wife conveyed by her during coverture, prior to the first day of January, eighteen hundred and ninety-seven.

**Sec. 9. Husband or wife may bar the right, by deed, etc. R. S. c. 77, § 9.** A husband or wife of any age, may bar his or her right and interest by descent, in an estate conveyed by the other, by joining in the same, or a subsequent deed, or with the guardian of the other; or by sole deed; but shall not be deprived of such right and interest by levy or sale of the real estate on execution; but may, after the right of redemption has expired, release such right and interest by sole deed.

See c. 66, §§ 8, 11, 12; c. 76, § 10; 95 Me. 77; 100 Me. 512.

**Sec. 10. Right barred by accepting jointure before marriage. R. S. c. 77, § 10.** A woman may be barred of her right and interest by descent in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian.

See c. 66, §§ 8, 11, 12; 21 Me. 369; 69 Me. 534; 95 Me. 77; 96 Me. 533.

**Sec. 11. Or by pecuniary provision. R. S. c. 77, § 11.** A pecuniary provision made for the benefit of an intended wife instead of her right and interest by descent, consented to by her as provided in the preceding section, bars her right and interest by descent in her husband's lands.

61 Me. 398; 69 Me. 534; 95 Me. 77; 96 Me. 533.

**Sec. 12. When widow may waive jointure. R. S. c. 77, § 12.** If such jointure or provision is made before marriage, without the consent of the intended wife, or if it is made after marriage, it bars her right and interest by descent, unless, within six months after the husband's death, she makes

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her election to waive such provision, and files the same in writing in the registry of probate. In case she so makes such election she shall be entitled to her right and interest by descent in her husband's lands.

49 Me. 463; 61 Me. 398; 69 Me. 534; 82 Me. 237; 95 Me. 76, 77; 96 Me. 533.

**Sec. 13. Widow or widower may elect whether to accept provision in will or claim interest by descent. R. S. c. 77, § 13.** When a specific provision is made in a will, for the widow or widower of a testator or testatrix, who was married before the first day of May, eighteen hundred and ninety-five, and died since the first day of January, eighteen hundred and ninety-seven, or who was married on or after said first day of May, such legatee or devisee may within six months after probate of said will and not afterwards, except as hereinafter provided, make election, and file notice thereof in the registry of probate, whether to accept said provision or claim the right and interest by descent, herein provided; but is not entitled to both, unless it appear by the will that the testator or testatrix plainly so intended. If such election is not made within six months after probate of a will, and the estate is thereafter rendered insolvent, and commissioners are appointed by the judge of probate, such election may be made at any time within six months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may recover from such executor or administrator, if not paid within thirty days after demand therefor in writing, one-third of any sums received from real estate sold before such waiver was filed. Whenever the widow or widower is advised that the legal construction of the provisions of the will for her or him is doubtful or uncertain, the time for making such election shall be extended to thirty days after certificate is returned to the probate court in the county where the probate proceedings are had, of the final decision by the supreme judicial court upon a bill in equity, commenced by said legatee or devisee within thirty days after the probate of the will, to obtain the decision of the court as to his or her rights under it, but in no case shall the time for election be less than six months after probate. The clerk of courts for the county in which the proceedings in equity are commenced, within three days after receipt of the decision therein, shall send notice of the same to the widow or widower, or her or his solicitor of record, and transmit a certified copy of the decree to the proper probate court, where it shall be recorded, with the time of its reception.

1 Me. 150; 32 Me. 133; 36 Me. 215; 69 Me. 534; 82 Me. 237; 83 Me. 554.

**Sec. 14. Share of estate to which widow or widower waiving provisions of will, or when no provision is made in will, is entitled. R. S. c. 77, § 13. 1909, c. 260.** When a provision is made in a will for the widow of a testator who died after the twenty-sixth day of April, eighteen hundred and ninety-seven, or for the widower of a testatrix, who died after the first day of June, nineteen hundred and three, and such provision is waived as aforesaid, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates.

When no provision is made for his widow in the will of a testator who died after the twenty-sixth day of April, eighteen hundred and ninety-seven, or for her widower in the will of a testatrix who died after the first day of June, nineteen hundred and three, such widow or widower shall likewise have and receive the same share of the real estate and the same distributive share of the personal estate of such testator or testatrix as is provided by law in intestate estates, provided such widow or widower shall within six months after the probate of such will, file in the registry of probate written notice that she or he claims such share of the real and personal estate of such testator or testatrix. Any notice filed under the provisions of this or the preceding section shall be recorded by the register of probate in the record books of the probate court where such notice is filed, but a failure to record such notice shall not in any way affect the rights of any widow or widower.

99 Me. 67; 100 Me. 513; 105 Me. 482; 110 Me. 63.

**Sec. 15. Copy of notice shall be filed in registry of deeds. 1915, c. 281.** Within thirty days after any notice provided for in the three preceding sections is filed in the registry of probate, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated, an attested copy of such notice, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills.

**Sec. 16. Release of dower or curtesy, how construed. R. S. c. 77, § 14.** All releases of rights to dower or curtesy in any manner heretofore or hereafter made, in estates conveyed or mortgaged by husbands or wives, shall be deemed to include and shall be construed to include all rights and interests by descent.

**Sec. 17. Wife entitled to right in property mortgaged before marriage. R. S. c. 77, § 15.** If the wife has heretofore released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person, or by himself before their marriage, she shall be entitled to her right and interest by descent, as herein provided, in the mortgaged premises, as against every person except the mortgagee and those claiming under him. And if the heirs of the husband, or other person claiming under him, redeem the mortgage, she shall repay such proportion of the money paid by him as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to her right and interest by descent only according to the value of the estate, after deducting the money paid for its redemption.

**Sec. 18. Wife who has not released her right of dower in land conveyed or mortgaged, shall be entitled to same as against grantee or mortgagee. R. S. c. 77, § 16.** If the wife of the grantor or mortgagor of lands conveyed or mortgaged prior to the first day of May, eighteen hundred and ninety-five, or in case of persons then married, prior to the first day of January, eighteen hundred and ninety-seven, has not released or barred her right of dower in the same, she shall be entitled, as against the grantee or mortgagee and those claiming under him, to her right of dower only, as then

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existing. The wife of an insolvent debtor, married prior to the first day of May, eighteen hundred and ninety-five, decreed to be insolvent under the provisions of chapter seventy-five, prior to the first day of January, eighteen hundred and ninety-seven, shall be entitled, as against the assignee, and those claiming under him, to her right of dower only, as aforesaid.

**Sec. 19. Proceedings if husband or wife refuses to release interest in real estate which owner has contracted to sell. R. S. c. 77, § 17. 1915, § 81.** If the owner of real estate contracts to sell the same, and the husband or wife of the owner refuses to release his or her interest and right by descent, or if the owner is a non-resident and the husband or wife is incapacitated and has no guardian in this state, the owner may apply to a justice of the supreme judicial court or superior court, who, after such notice to the other party as he may order, and hearing, may, in his discretion, approve the sale and price, and order the owner to pay to the clerk of court, for such husband or wife of the owner, such sum as would amount to one-third of the price approved, if the owner has issue, and one-half if he has no issue, at the expiration of the owner's expectancy of life, computed at three per cent, compound interest. The clerk shall give a certificate of such approval by the court, and of the fact that said money has been paid as aforesaid, to be filed with the register of deeds in the county or registry district where the land lies, with the owner's deed thereof, and such register shall record the same; and thereafter such interest or right by descent in such real estate, shall be barred. An assignee for the benefit of creditors, or in insolvency, or a trustee in bankruptcy, or any person holding title by levy or sale on execution may make application for proceedings under this section in relation to any real estate held by him in such capacity, to bar the interest and right by descent therein, of the husband or wife of the assignor, insolvent or bankrupt, or the interest and right by descent therein of the husband or wife of the judgment debtor.

98 Me. 510.

### Descent of Personal Property.

**Sec. 20. Personal estate, how distributed. R. S. c. 77, § 18.** The personal estate of an intestate, except that portion assigned to his widow by law and by the judge of probate, shall be applied first to the payment of his debts, funeral charges, and charges of settlement; and the residue shall be distributed or shall escheat by the rules provided for the distribution of real estate.

See R. S. 1841, c. 93, § 15; 50 Me. 237; 61 Me. 472; 63 Me. 376, 381; 67 Me. 583; 78 Me. 463; 95 Me. 277; 99 Me. 67; 105 Me. 482; 107 Me. 248; 110 Me. 67.

**Sec. 21. Life insurance, disposal of. R. S. c. 77, § 19. 1905, c. 74.** Money received for insurance on the life of any person dying intestate, deducting the premium paid therefor within three years with interest, does not constitute a part of the estate of such person for the payment of debts, or for purposes specified in section one of chapter seventy-one, when the intestate leaves a widow, or widower, or issue, but descends, one-third to the widow or widower, and the remainder to the issue; if no issue, the whole to the widow or widower, and if no widow or widower, the whole to the issue. It may be disposed of by will; but in case the estate is in-

solvent, such disposition by will shall be limited to the distribution of such money among the widow or widower, and issue in such proportions as the testator or testatrix may designate.

See c. 52, § 114; c. 53, §§ 143, 169; c. 54, § 17; c. 68, § 50, ¶ iv; 58 Me. 434; 61 Me. 471; 66 Me. 518; 73 Me. 548; 79 Me. 234; 81 Me. 180; 82 Me. 208; 83 Me. 295; 84 Me. 523; 87 Me. 68; 97 Me. 441, 584.

Note. Title by descent to settler's lot of wild land purchased of state, c. 8, § 12. Descent of shares, or money received for shares, in loan and building association, c. 52, § 114.

## CHAPTER 81.

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

- Sections 1-24 Levy by Appraisement.
- Sections 25-29 Redemption of Levies by Appraisement.
- Sections 30-31 Levies on Equities of Redemption.
- Sections 32-40 Levy by Sale.
- Sections 41-43 Redemption from Sale.
- Section 44 Sale of Railroad Franchises.
- Sections 45-51 Miscellaneous Provisions.
- Sections 52-53 Redemption of Lands of Defaulted Non-Resident Defendants.

#### Levy by Appraisement.

**Sec. 1. What real estate may be levied on; levy by appraisal; appointment of appraisers.** R. S. c. 78, § 1. Real estate attachable, including the right to cut timber and grass as described in chapter eighty-six, may be taken to satisfy an execution, by causing it to be appraised by three disinterested men, one chosen by the creditor, one by the debtor, and the other by the officer having the execution for service, who shall give notice to the debtor or his attorney, residing in the county where the land lies, to choose an appraiser, and shall allow him a reasonable time therefor, and if he neglects, appoint one for him.

See c. 86, § 57; 4 Me. 373; 6 Me. 164; 7 Me. 147; 8 Me. 210; 19 Me. 279; 20 Me. 227; 23 Me. 336; 26 Me. 291; 31 Me. 548; 33 Me. 190; 34 Me. 573; 37 Me. 24; 53 Me. 542; 56 Me. 224; 63 Me. 251; 64 Me. 454, 540; 67 Me. 593; 68 Me. 294; 111 Me. 93.

**Sec. 2. Appraisers, how sworn; certificate; view of land.** R. S. c. 78, § 2. The appraisers may be sworn by the officer without fee, or by a justice of the peace, faithfully and impartially to appraise the real estate to be taken, and a certificate of the oath shall be made, stating the date of its administration, on the back of the execution, by the person who administered it; they shall then proceed with the officer to view and examine the land so far as is necessary for a just estimate of its value.

23 Me. 337; 26 Me. 421; 34 Me. 467; 51 Me. 19; 52 Me. 139; 74 Me. 179.

**Sec. 3. Value and description of estate, to be made in return.** R. S. c. 78, § 3. They shall in a return made and signed by them on the back of the execution, or annexed thereto, state the value of the estate appraised,

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and describe it by metes and bounds, or in such other manner that it may be distinctly known and identified, whatever the nature of the estate may be.

24 Me. 309; 25 Me. 195; 28 Me. 189; 31 Me. 441; 43 Me. 251; 50 Me. 442;  
51 Me. 243, 569; 52 Me. 226, 264; 54 Me. 434; 55 Me. 54; 59 Me. 352; 71 Me.  
193; 74 Me. 180; 78 Me. 365.

**Sec. 4. Appraisal, when several parcels are taken. R. S. c. 78, § 4.** When several parcels of land are taken, they may be appraised separately or together. When taken at different times, there may be different sets of appraisers. A levy is valid when the return is signed by two of the appraisers, the other appearing to have been sworn and to have acted.

27 Me. 131; 77 Me. 583.

**Sec. 5. Officer's return, contents; when it may be completed. R. S. c. 78, § 5.** The officer shall, in his return on the execution, state substantially, the time when the land was taken in execution; how the appraisers were appointed; that they were duly sworn; that they appraised and set off the premises, after viewing the same, at the price specified; that he delivered seizin and possession to the creditor or his attorney, or assigned the same to him as in case of remainder or other incorporeal estate; and the description of the premises by himself or by reference to the return of the appraisers. If the appraisers' return is signed by two only, he must state whether all were present and acted. He may refer to and adopt, in his return, the return of the appraisers, and the subsequent proceedings will be valid, though made after the return day of the execution, or after the removal or disability of the officer.

6 Me. 108; 7 Me. 18, 147; 10 Me. 105; 15 Me. 77, 154; 23 Me. 542; 29 Me.  
268; 41 Me. 481; 42 Me. 427; 45 Me. 355; 46 Me. 469; 48 Me. 393; 49 Me. 359;  
50 Me. 439; 51 Me. 18, 569; 52 Me. 227; 53 Me. 542; 54 Me. 306, 386, 435; 55  
Me. 505; 58 Me. 333; 64 Me. 453; 71 Me. 193; 75 Me. 35; 80 Me. 269.

**Sec. 6. Estates tail. R. S. c. 78, § 6.** Estates tail shall be taken, appraised and held, as estates in fee simple.

**Sec. 7. Estate held in joint tenancy may be taken on execution. R. S. c. 78, § 7.** The whole or part of an estate held in joint tenancy or in common, may be taken to satisfy an execution, in the same manner as other real estate is now taken, and held in common, but the whole estate must be described, and the share owned by the debtor must be stated.

58 Me. 331.

**Sec. 8. Debtor's interest passes by levy; exception. R. S. c. 78, § 8.** All the debtor's estate, interest or share in the premises, whether held in tail, reversion, remainder, for life, years or otherwise, passes by a levy, unless it is larger than the estate mentioned in the appraisers' return.

18 Me. 230; 23 Me. 542; 34 Me. 142, 201, 573; 38 Me. 211, 226; 49 Me. 456;  
50 Me. 440; 55 Me. 55; 56 Me. 227; 58 Me. 331; 71 Me. 194, 303.

**Sec. 9. On rents and profits, how made. R. S. c. 78, § 9.** When the estate cannot be described as provided in section three, the execution may be levied on its rents and profits, and the officer may give seizin thereof to the creditor, and cause a person in possession to become tenant to him, or, on his refusal, may turn him out and give possession to the creditor.

18 Me. 398; 24 Me. 101, 309; 41 Me. 541.

**Sec. 10. When part cannot be taken without damage to whole. R. S. c. 78, § 10.** When the premises consist of a mill, mill privilege, or other estate more than sufficient to satisfy the execution, which cannot be divided

by metes and bounds without damage to the whole, an undivided part of it may be taken and the whole described, or it may be levied on as provided in the preceding section.

51 Me. 19, 243; 54 Me. 306; 58 Me. 333.

**Sec. 11. On an estate for life, how to be made. R. S. c. 78, § 11.** A levy may be made on an estate for life as on other real estate, and its value appraised; or it may be made on its rents and profits, and an appraisement of them made for a term of time, if the life so long continues, computing interest on the execution, and deducting the rents and profits from time to time when due; and when the estate expires before the end of the term for which it was taken, the creditor by an action on the judgment may recover the balance due.

5 Me. 481; 10 Me. 106.

**Sec. 12. On an estate under lease; disposal of rent. R. S. c. 78, § 12.** When the levy is made on the whole of an estate under lease, the rent shall be paid to the creditor from the time of the levy. When made on part of it, the appraisers shall determine what portion of the rent is to be paid to him, and it shall be paid to him accordingly.

**Sec. 13. Seizin and possession, how delivered; when debtor shall not be ousted. R. S. c. 78, § 13.** The officer shall deliver to the creditor or his attorney, seizin and possession of an estate levied on, so far as the nature of the estate and the title of the debtor admits. When a remainder, reversion or right of redemption is taken, the debtor in possession shall not be ousted, but his right therein shall be assigned to the creditor, and a return made accordingly.

**Sec. 14. On land fraudulently conveyed, or in case of disseizin. R. S. c. 78, § 14.** A levy may be made on land fraudulently conveyed by a debtor, or of which he has been disseized and into which he has a right of entry. In such case, the tenant in possession shall not be ousted, but the officer shall deliver to the creditor a momentary seizin, sufficient to enable him to maintain an action for its recovery in his own name.

40 Me. 590; 51 Me. 116; 52 Me. 357; 55 Me. 525; 58 Me. 232, 336; 95 Me. 250; 97 Me. 494.

**Sec. 15. When debt is assigned, estate to be held in trust for assignee. R. S. c. 78, § 15.** When the debt had been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it, in trust for his assignee, who is entitled to a conveyance thereof which may be enforced by a bill in equity.

29 Me. 64; 49 Me. 169; 55 Me. 109.

**Sec. 16. Execution to be returned and recorded within three months. R. S. c. 78, § 16.** The officer shall return the execution into the clerk's office, where it is returnable, and within three months after completing the levy, cause it, with the return thereon, to be recorded in the registry of deeds where the land lies.

5 Me. 198; 13 Me. 190; 22 Me. 107; 38 Me. 355; 52 Me. 228; 73 Me. 331; 81 Me. 99.

**Sec. 17. Levy not recorded, void against purchaser or creditor, without notice. R. S. c. 78, § 17.** When not so recorded, the levy is void against a person who has purchased for a valuable consideration, or has attached

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or taken on execution the same premises without actual notice thereof. If the levy is recorded after the three months, it will be valid against a conveyance, attachment or levy made after such record.

17 Me. 250; 28 Me. 229; 52 Me. 228; 81 Me. 99.

**Sec. 18. When a levy may be waived or held void. R. S. c. 78, § 18.** A creditor, who has received seizin of a levy not recorded, cannot waive it, unless the estate was not the property of the debtor, or not liable to seizure on execution, or cannot be held by the levy, when it may be considered void, and he may resort to any other remedy for satisfaction of his judgment.

2 Me. 237; 48 Me. 373; 65 Me. 479; 73 Me. 330.

**Sec. 19. When title fails after record, proceedings for an alias execution; debtor may convey title by deed. R. S. c. 78, § 19.** When the execution has been recorded, and the estate levied on does not pass by the levy for causes named in the preceding section, the creditor may sue out of the office of the clerk issuing the execution, a writ of scire facias, requiring the debtor to show cause why an alias execution should not be issued on the same judgment; and if the debtor, after being duly summoned, does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the suit; and the judgment shall be satisfied for the amount of the levy.

5 Me. 108; 25 Me. 430; 48 Me. 372; 55 Me. 31; 65 Me. 479; 73 Me. 330; 75 Me. 46; 100 Me. 64; 108 Me. 355; 112 Me. 440.

**Sec. 20. Assignee of judgment may sue out writ of scire facias, if estate does not pass by levy; proceedings. R. S. c. 78, § 20.** When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may sue out of the office of the clerk issuing such execution, a writ of scire facias, setting forth the facts aforesaid therein, and requiring the debtor to show cause why another execution should not issue on the same judgment, in the name and for the benefit of the plaintiff in the scire facias; and if the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside; and the court from which said execution issued, may order and issue another execution on the same judgment, for the amount of the original debt, interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form, with necessary charges.

**Sec. 21. Assignee may bring action of debt in his own name. R. S. c. 78, § 21.** In all cases where a judgment has been thus assigned and is not discharged, the assignee may bring an action of debt thereon in his own name; and upon averment and proof of the facts aforesaid, the court may render judgment and execution thereon in his favor; subject, however, to any legal defense which the debtor might have if the action were instituted by the original creditor.

66 Me. 544.

**Sec. 22. Levy commences when appraisers are sworn. R. S. c. 78, § 22.** For the purpose of fixing the amount due on the execution, and the time when the debtor's right to redeem expires, all levies shall be considered to commence on the day of the date of the administration of the oath to the appraisers, although it may appear, by the return of the officer, that the estate was seized on execution before, or that the proceedings were not completed until after that day.

53 Me. 428; 94 Me. 438.

**Sec. 23. Levy made for too much, is valid, if not over one per cent; remedy against officer or creditor. R. S. c. 78, § 23.** When, by an error of the officer, the amount, for which the levy was made, exceeds the amount of debt or damage, costs, interest and costs of levy, by a sum not greater than one per cent thereof, it is valid, if otherwise legally made; and the debtor or owner of the estate may maintain an action against such officer or his principal, to recover all damages occasioned thereby, or a bill in equity against the creditor to have such error corrected, and the court may correct it, in any just and equitable manner, or it may decree a pecuniary compensation for the injury.

35 Me. 91; 37 Me. 437; 54 Me. 385; 62 Me. 431; 84 Me. 539.

**Sec. 24. When levies are sustained by two preceding sections, creditor may redeem within six months. R. S. c. 78, § 24.** When a levy so made would not, in a suit commenced before the tenth day of April, eighteen hundred and fifty-six, have been sustained but for the provisions of the two preceding sections, the debtor may redeem, within six months after final judgment in such suit, by paying or tendering to the creditor such sum, as three persons, or a majority of them, appointed by a justice of the supreme judicial court, after giving notice to and affording the parties an opportunity to be heard, determine, in writing by them signed, to be due upon the following elements of calculation. The creditor is entitled to the amount of the appraisement with interest annually from the time of the levy; and to receive the just value of the improvements made by him, or persons under him, on such portions of the premises as remained unsold the first day of April, eighteen hundred and fifty-six, and a fair compensation for attending to and taking care of the same. For the appraised value of such portion as he had sold before that day, he shall account; and the debtor, or those holding title under him, shall convey to the creditor or those claiming under him, by a valid deed of quit-claim, the title to the portion so sold.

#### Redemption of Levies by Appraisement.

**Sec. 25. Land levied on, may be redeemed within a year; creditor out of state, or unknown, payment may be made to clerk. R. S. c. 78, § 25.** Real estate levied on may be redeemed within one year thereafter, by tendering to the creditor the amount of its appraisement with interest from the time of levy, with reasonable expenses incurred for its improvement or repair, or in saving it from loss by the non-payment of taxes legally assessed thereon prior to the levy, after deducting rents and profits with which he is chargeable; and the creditor shall thereupon by his deed pre-

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pared at the expense of the debtor, release to him all his title to the premises. When the creditor resides out of the state, or his residence is unknown, such payment is sufficient, if made to the clerk of courts in the county where the real estate levied upon is situated, and such payment has the same effect as if made to the creditors.

See c. 95, § 28; 1 Me. 258; 5 Me. 392; 6 Me. 143; 36 Me. 87; 40 Me. 590;  
73 Me. 185.

**Sec. 26. Amount due, how ascertained.** R. S. c. 78, § 26. The debtor may have the amount due ascertained by three justices of the peace, chosen, one by the debtor, one by the creditor, and the other by those two; if after notice the creditor declines, the debtor may choose two, and after a hearing before the three, they or two of them shall make in writing and sign a certificate of the sum found due, which is conclusive; and the debtor may tender that sum, which is effectual to redeem, although he had before tendered a different sum.

**Sec. 27. If creditor does not release after tender, debtor may recover land.** R. S. c. 78, § 27. If the creditor does not release the premises, within ten days after payment or tender of the amount due, the debtor may recover the same by a writ of entry on his own seizin; but before judgment is entered, he must bring into court, for the creditor, the money tendered.

**Sec. 28. Debtor may have amount due determined by bill in equity.** R. S. c. 78, § 28. Instead thereof, the debtor, without tender, may, within one year, and in season to have the amount ascertained, and paid or tendered within the year, file a bill in equity, therein offering to pay the amount due, and the court shall ascertain it, and require the debtor to bring it into court for the creditor, and the debtor thereupon shall be entitled to a decree in his favor, and to a writ of possession for the premises.

30 Me. 362.

**Sec. 29. Costs regulated; provisions applicable to redemption of estates for life.** R. S. c. 78, § 29. Costs may be awarded to either party, except not against the creditor, unless he has, on request, unreasonably refused to render an account of rents and profits, and of expenses for improvements and repairs, or to execute a deed of release as required in this chapter. When he has tendered such deed to the debtor before his bill was filed, and in his answer relies upon it, and brings the deed into court for the debtor, he shall recover his costs. This section is applicable to the redemption of an estate for life, levied on by taking the rents and profits.

#### Levies on Equities of Redemption.

**Sec. 30. Levies on lands mortgaged; amount due deducted; remedy for errors.** R. S. c. 78, § 30. Levies may be made on lands mortgaged as on lands not mortgaged, and the amount due on the mortgage may be deducted by the appraisers from their estimated value, and stated in their return. If the full amount due was not deducted, or if the levy was made in the usual form, and it is ascertained that there was a mortgage on the premises, not including other real estate, and not known to the creditor at the time of the levy, it shall nevertheless be valid, and the creditor may recover of

the debtor the amount which should have been and was not deducted, or the amount due on such mortgage.

17 Me. 315; 38 Me. 212; 50 Me. 136; 55 Me. 31; 81 Me. 66, 99.

**Sec. 31. Redemption; debtor paying on mortgage after levy, and not redeeming, may recover of creditor.** R. S. c. 78, § 31. Levies made as provided in the preceding section, may be redeemed within one year, as in other cases. When the debtor pays on the mortgage after the levy, and does not redeem, he may recover of the creditor the amount so paid, in an action for money had and received.

### Levy by Sale.

**Sec. 32. Real estate, rights and interests, may be sold.** R. S. c. 78, § 32. Real estate attachable and all rights and interests therein, including the right to cut timber and grass, as described in chapter eighty-six, rights of redeeming real estate mortgaged, rights to a conveyance of it by bond or contract, interests by virtue of possession and improvement of lands as described in chapter one hundred and nine, and estates for a term of years, may be taken on execution and sold, and the officer shall account to the debtor for any surplus proceeds of the sale, to be appropriated as provided in section twenty-two, of chapter eighty-nine. Such seizure and sale pass to the purchaser, all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution, provided in this chapter.

See c. 51, § 75; c. 86, § 57; c. 109, § 20; 43 Me. 249; 50 Me. 136; 51 Me. 22; 54 Me. 163; 67 Me. 31; 72 Me. 89; 73 Me. 18; 81 Me. 24, 536; 83 Me. 293; 94 Me. 438; 96 Me. 381; 97 Me. 304; 101 Me. 228; 104 Me. 99; 111 Me. 93, 194.

**Sec. 33. Notice of sale.** R. S. c. 78, § 33. The officer in such case shall give written notice of the time and place of sale, to the debtor in person, or by leaving the same at his last and usual place of abode, if known to be an inhabitant of the state, and cause it to be posted in a public place in the town where the land lies, and in two adjoining towns, if so many adjoin; and if the land is situated in two or more towns, then in each of those towns, and in two towns adjoining each of them; and if the land is in two or more counties, an officer in either county may sell the whole right. When the land is not within any town, the notice shall be posted in two public places of the shire town of the county in which the land lies, instead of the posting aforesaid. When the debtor is not a resident of such county, the personal notice may be forwarded to him by mail, postage paid; all to be done thirty days before the day of sale. The notice shall also be published for three weeks successively before the day of sale, in a newspaper printed in whole or in part in such county, if any, otherwise in the state paper.

7 Me. 377; 50 Me. 181; 58 Me. 288; 97 Me. 303; 104 Me. 100; 108 Me. 345.

**Sec. 34. Mortgagee to disclose amount due.** R. S. c. 78, § 34. When a right of redemption has been attached, and judgment recovered, and a sale of it is to be made, the creditor may demand of the mortgagee to disclose, in writing under his hand, the condition of the mortgage and the

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sum due thereon, which shall be furnished within twenty-four hours, and in case of neglect, he shall be liable for damages.

**Sec. 35. If disclosure is not made, creditor may compel it by taking deposition. R. S. c. 78, § 35.** If such disclosure is not furnished within that time, the creditor may apply to any magistrate authorized to take depositions, in the county where the land lies, or where the mortgagee resides, who shall take his deposition in relation to the facts required to be disclosed, and may exercise the power to compel attendance and disclosure, which is authorized for taking a deposition in perpetuum.

**Sec. 36. Officer shall sell at auction and convey by deed, debtor's interest. R. S. c. 78, § 36.** The officer shall sell such right or interest at public auction to the highest bidder, and execute and deliver to the purchaser a sufficient deed thereof, which, being recorded in the registry of deeds where the land lies, within three months after the sale, conveys to him all the title of the debtor in the premises. When such bidder, on demand of the officer, does not pay him the sum for which it was sold, he shall immediately sell it again as before, and if it does not sell for so much as at the first sale, the person to whom it was struck off at the first sale shall be accountable to the officer for the difference, who may recover it, to be indorsed on the execution, unless satisfied, and then paid to the debtor.

<sup>30</sup> Me. 43; 60 Me. 185; 67 Me. 35; 73 Me. 331; 81 Me. 99; 93 Me. 29; 108 Me. 345.

**Sec. 37. Officer may adjourn sale, and another officer may complete it. R. S. c. 78, § 37.** When the officer deems it for the interest of all concerned to postpone the sale, he may adjourn it for any time not exceeding seven days, and so from time to time until a sale is made, giving notice at the time of each adjournment by public proclamation; and when he is unable to attend at the time and place of sale, another officer may adjourn it not exceeding ten days, and if such inability is not then removed, may sell and make his return as the first officer might.

<sup>71</sup> Me. 547.

**Sec. 38. Seizure when considered made; proceedings after return day, valid. R. S. c. 78, § 38.** The seizure on execution is considered made on the day when notice of the sale is given, and it holds the right or interest seized within that time if the sale is not completed within thirty days after judgment; and the subsequent proceedings and return are valid, if made after the return day of the execution, or after removal or disability of the officer.

<sup>16</sup> Me. 154; 84 Me. 540; 92 Me. 381; 94 Me. 438.

**Sec. 39. Titles of banks and corporations, as mortgagees, may be sold; proceedings. R. S. c. 78, § 39.** The titles of banks or corporations, as mortgagees of land, may be taken on execution and sold as real estate and interests therein, are taken and sold. The officer may by deed convey the same, and a debt secured by such mortgage and remaining unpaid will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action, a copy of the mortgage, attested by the register of deeds, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable

request of the officer, shall furnish him with a certified copy of such contract, and of all payments made thereon.

**Sec. 40. No transfer of such property, after notice of seizure, is valid.** R. S. c. 78, § 40. No transfer of such mortgage, or of the debt secured thereby, made by such corporation after notice of the seizure thereof on execution has been filed in the registry where the land lies, or given to the party to be affected thereby, has any validity against the purchaser at such sale.

#### Redemption of Real Estate, Rights and Interest.

**Sec. 41. Rights and interests, may be redeemed.** R. S. c. 78, § 41. Real estate, and rights and interests therein, and mortgages and debts so sold, may be redeemed within one year, as land levied on by appraisalment may be; and the rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee.

See c. 95, § 28; 1 Me. 299; 2 Me. 340; 10 Me. 164; 52 Me. 406.

**Sec. 42. Rights to redeem, may be attached and sold.** R. S. c. 78, § 42. The right of a debtor to redeem from a sale or from a levy by appraisalment, may be attached and sold on execution, as an equity of redemption may be, and the parties have the same rights and remedies. Attachments of such estate or equity of redemption, made before such levy or sale, are effectual on such right of redeeming, in the order in which they were made, in preference to attachments made subsequent to such levy or sale.

See c. 95, § 28; 54 Me. 163.

**Sec. 43. Creditor, seizing right of redemption, may redeem property, and be repaid from the proceeds of sale.** R. S. c. 78, § 43. When a creditor has seized on execution a right that would expire within sixty days, to redeem from a mortgage, sale or levy on execution, he may pay or tender to the person entitled thereto the amount which the debtor would have to pay to redeem the same; and the officer selling such right shall first pay from the proceeds of sale the amount so paid by the creditor with interest, unless the debtor has paid it; and the residue, if any, shall be applied in satisfaction of the execution.

#### Sale of Railroad Franchises.

**Sec. 44. Franchises of railroads may be sold on execution.** R. S. c. 78, § 44. The franchises of railroads may be sold on execution as provided in section twenty-one of chapter eighty-nine, and the officer may convey the same by deed, which shall be recorded in the registry of deeds of each county in which any part of such railroad lies; and the debtor has the same right of redemption from such sale as from sales of real estate under section thirty-two.

#### Miscellaneous Provisions.

**Sec. 45. Expenses, part of execution.** R. S. c. 78, § 45. The expenses of levy in any of the modes aforesaid in a levy, sale or redemption are part of the execution.

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**Sec. 46. Creditor or debtor may act by representatives.** R. S. c. 78, § 46. Everything, which a creditor or debtor is required in this chapter to do, may be done by his executors or administrators, or by any person lawfully claiming under him.

**Sec. 47. Real estate of deceased person may be taken by execution.** R. S. c. 78, § 47. The real estate of a deceased person may be taken for payment of his debts by an execution issued on a judgment recovered against his executor or administrator, and levied on, sold and redeemed, as if taken in his lifetime; unless prior thereto his estate is decreed insolvent; but such decree made before levy or satisfaction of the execution, dissolves an attachment of real estate. When so levied on or sold, and redeemed by his heirs, devisees or their assigns, it shall not be again subject to levy or sale for debts of the deceased.

See c. 86, § 69; c. 80, § 9; 55 Me. 525; 85 Me. 459.

**Sec. 48. Lands of debtor to the state may be sold on execution; proceedings.** R. S. c. 78, § 48. When an execution is issued in the name or for the use of the state, the debtor's real estate may be taken thereby and sold at auction, notice thereof being given as provided in section thirty-three, except that notice shall be published in the state paper, and the last publication in both papers shall be six days before the sale. The officer shall make and execute to the purchaser a deed of the estate sold; and the debtor has the same right to redeem as to redeem lands levied on by appraisalment.

**Sec. 49. Attachment of right to a conveyance, takes effect on premises.** R. S. c. 78, § 49. When the right of a debtor to a conveyance of real estate by bond or contract is attached, and a deed is made to the debtor during its existence, the attachment takes effect upon the premises, which may be levied on as in other cases.

**Sec. 50. When deed has been given to assignee, right should be sold; remedy of purchaser.** R. S. c. 78, § 50. When, during the attachment, a deed has been given to an assignee, the right of the debtor should be sold on the execution. When the right has been sold, and there has been no previous conveyance to the debtor, the purchaser has the same remedies in his own name against the obligor or contractor, as the debtor would have had, by an action at law to recover damages for non-fulfilment, or by bill in equity to compel a specific performance, and when assignment before attachment is alleged, the assignee may be made a party. Upon refusal of the obligor or contractor, on request of the purchaser, to give correct information of the amount due, or condition remaining to be performed, the purchaser may maintain his bill without previous payment, performance or tender. Upon a hearing, the court may grant and decree such relief, payment or performance, as is competent in equity.

14 Me. 36; 15 Me. 158; 35 Me. 524.

**Sec. 51. When assignment is alleged and contested; proceedings.** R. S. c. 78, § 51. When an assignment of the bond or contract is alleged, and the plaintiff in equity contests it, the alleged assignee may be summoned and made a party to the bill, and an issue framed to be tried by a jury, who shall find whether such an assignment existed and was valid; and if the assignee does not appear, the assignment is invalid.

**Redemption of Lands of Defaulted Defendants Living Out  
of the State.**

**Sec. 52.** Defendant living out of state, defaulted, may after judgment in review, redeem his real estate. R. S. c. 78, § 52. A defendant living out of the state, defaulted in an action without an appearance or other service than a newspaper publication, may, within six months after the levy of an execution on his real estate or the sale of a right of redemption, petition for a review of such action, and instead of the year allowed in other cases, he may redeem from such levy or sale at any time within three months after the review is denied, or after final judgment on the writ of review. If such judgment is in his favor, the amount thereof shall be allowed towards such redemption, notwithstanding a conveyance of such estate by the creditor; and if it is larger than the amount of the levy or sale, and interest, he shall have an execution for the balance.

See c. 94, § 1, ¶ vi; 72 Me. 338, 342.

**Sec. 53. Waste not permitted; remedy.** R. S. c. 78, § 53. No strip or waste shall be made on such estate before or during the pendency of proceedings under the preceding section; and after final judgment in review, the plaintiff in review, besides other remedies, may, within said three months, without a tender or demand to account, bring his bill in equity for the redemption of such estate.