

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

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1841.

TITLE SEVENTH.

Of acquisition of titles to real and personal estate.

- CHAPTER 91. Of conveyances by deed; their form, acknowledgment, proof, registry, operation and construction.
92. Of wills, testaments and devises.
 93. Of title by descent.
 94. Of title to real estate, taken by execution.
 95. Of estates in dower, by curtesy and at will.

CHAPTER 91.

OF CONVEYANCES BY DEED; THEIR FORM, ACKNOWLEDGMENT, PROOF, REGISTRY, OPERATION AND CONSTRUCTION.

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| <p>SECT. 1. What interests in land will pass by deed.</p> <ol style="list-style-type: none"> 2. Lands purchased by aliens. 3. Lands purchased from aliens, before January 1, 1834. 4. Contingent remainders, and other limited estates. 5. Conveyances by married women. 6. Conveyance by tenant in tail. 7. Life estate, with a vested remainder. 8. Quitclaim deed. 9. Conveyance of a greater estate than grantor possesses. 10. Expectant estate, not defeasible by tenant of precedent estate. 11. Construction of the two preceding sections. 12. Grant to one for life, and to his right heirs after his death. 13. Tenancy in common, how created. 14. Deeds made by an agent or attorney. 15. Conveyances to counties. 16. Acknowledgment of deeds. 17. Before whom made. 18. Proof of deed not acknowledged, after death of grantor. | <p>SECT. 19. How proveable, without subscribing witnesses.</p> <ol style="list-style-type: none"> 20, 21, 22. Proceedings, if grantor refuse to acknowledge. 23. Not proveable, having no subscribing witness. 24. Proof of deed to be indorsed thereon. 25. Register to certify the time, when he receives a deed. 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. |
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SECTION 1. When any person shall make a deed of any lands or other 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 the execution and delivery of the deed he is seized, or not seized, of such lands, or estate, but to or for which he has a right of entry, such lands or estate, or all the title or interest, which the grantor has in or to the same, shall pass by such deed of conveyance, as effectually as if the grantor was, at the time of the conveyance, seized of the same.

SECT. 2. Any person, who has purchased real estate during alienage, and afterwards become naturalized, shall have power, and

What interests in land will pass by deed. 1821, 36, § 1, 5. 6 Mass. 24. 13 Mass. 371.

Lands purchased by aliens. 1834, 105, § 1.

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be entitled, to hold the same in fee simple, and to convey or devise the same, in like manner, as if he had been a native born citizen.

Lands purchas-
ed from aliens,
before January
1, 1834.
1834, 105, § 3.

SECT. 3. No title or claim of any citizen of the state, who was in actual possession of lands, on or before the first of January, eighteen hundred and thirty four, shall escheat or be defeated on account of the alienage of any person, through or from whom his title to such lands was derived; but he may sell and dispose of the same.

Contingent re-
mainders, and
other limited
estates.

SECT. 4. When any contingent remainder or executory devise, or other estate in expectancy, has been so granted or limited to *such* [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.

Conveyances
by married wo-
men.

SECT. 5. The joint deed of husband and wife shall be effectual to convey her real estate, but not to bind her to any covenant, or estoppel therein.

Conveyance by
tenant in tail.
1821, 36, § 4.
4 Mass. 189.
9 Mass. 161.

SECT. 6. 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.

Life estate,
with a vested
remainder.
1821, 36, § 5.

SECT. 7. When lands are held by one person for life, with a vested remainder in tail to another, the tenant for life and remainder man may convey the same, in fee simple, by their joint deed, and such conveyance shall bar the estate tail, and all the remainders and reversions expectant thereon.

Quitclaim deed.
7 Mass. 381.

SECT. 8. A deed of release or quitclaim, of the usual form in this state, shall pass all the estate which the grantor had and could convey, by a deed of bargain and sale.

Conveyance of
a greater estate,
than grantor
possesses.

SECT. 9. A conveyance by a tenant for life or years, of a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate, which the tenant could lawfully convey.

Expectant es-
tate, not defea-
sible by tenant
of precedent
estate.

SECT. 10. No expectant estate shall be defeated or barred, by any alienation or other act of the owner of the precedent estate; nor by any destruction of such precedent estate by disseizin, or the forfeiture, surrender or merger thereof.

Construction
of the two pre-
ceding sections.

SECT. 11. The two preceding sections shall not be construed, to control or affect the provisions in the sixth and seventh sections, of this chapter, as to estates tail.

Grant to one for
life, and to his
right heirs after
his death.
1821, 38, § 3.
4 Pick. 198.

SECT. 12. When lands are given, by deed or will, to any person for life, and after his death to his heirs in fee, or by words to that effect, the conveyance or devise shall be construed to vest an estate for life only, in such first person, and a remainder in fee simple in his heirs.

Tenancy in
common, when
created.
1821, 35, § 1.
4 Mass. 566.
7 Mass. 131.
8 Mass. 274.
11 Mass. 469.
16 Mass. 59.
12 Pick. 534.
22 Pick. 556.

SECT. 13. All conveyances and devises of land, made to two or more persons, except conveyances in mortgage, shall be construed to create estates in common, unless it shall be expressed therein, that the grantees or devisees shall take the lands, jointly, or as joint tenants, or in joint tenancy, or to them and the survivors of them; but, where any estate has vested in the survivor or survivors, on the principle of joint tenancy, it shall be so held.

SECT. 14. All deeds and contracts executed by an authorized agent, for an individual or corporation, either in the name of the principal by such agent, or in the name of such agent for the principal, shall be considered as the deed or contract of such principal.

SECT. 15. All conveyances or grants to the inhabitants of a county, their successors and assigns forever, or which have been made to such inhabitants or their treasurer, or committee, or other person, by any form of conveyance, for the use and benefit of such county, shall be construed, as valid, as though made to such inhabitants by their corporate name.

SECT. 16. The acknowledgment of deeds shall be by the grantors, or by one of them, or by the attorney executing the same.

SECT. 17. The acknowledgment may be made before any justice of the peace in this state, or any justice of the peace, magistrate or notary public within the United States, or any commissioner, appointed for that purpose by the governor of this state, or before any minister or consul of the United States, or notary public in any foreign country.

SECT. 18. When any grantor or lessor shall die, or depart from this state, without having acknowledged his deed, the execution thereof may be proved by any subscribing witness, before any court of record in this state.

SECT. 19. When any such witnesses are dead, or out of the state, the hand writing of the grantor and such subscribing witnesses may be proved, by the testimony of one or more witnesses.

SECT. 20. If any grantor shall refuse to acknowledge his deed, the grantee, or person claiming under him, may leave with the register of deeds a true copy thereof; and such copy, so left in his office, shall be a caution to all persons for forty days, and during that time have the same effect, as recording said deed.

SECT. 21. Any such grantees, or person claiming under him, may apply to a justice of the peace of the county, where the land lies, or where the grantor resides, who may summon the grantor to appear, at a certain time and place, before him, to hear the testimony of the subscribing witnesses; which summons shall state the date of the deed, the names of the parties thereto, and of the subscribing witnesses, and shall be served seven days before the time assigned for proving the deed.

SECT. 22. At such hearing, it being made to appear, by the testimony of such witnesses, that they saw such deed duly executed by the grantor, and such being satisfactory to such justice, he shall certify the same thereon, and, in his certificate, shall state the presence or absence of the grantor, as the facts may be.

SECT. 23. No deed, hereafter made, not having at least one subscribing witness, shall be proved as aforesaid before any court or justice.

SECT. 24. A certificate of the acknowledgment or proof of the execution of the deed, in either of the modes before stated, shall be indorsed on the deed or annexed to it, and such deed and certificate may then be recorded at length in the registry of deeds; and no deed shall be recorded without such certificate.

SECT. 25. The register shall certify on every deed recorded by

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Deeds made by an agent or attorney.

1823, 220.
1 Greenl. 231,
339.

Conveyances to counties.

1821, 46, § 2.

Acknowledgment of deeds.

1821, 36, § 1.

Before whom made.

1821, 36, § 1.
6 Pick. 86.

Proof of deed, not acknowledged, after death of grantor.

1821, 36, § 1.

1 Mass. 58.

4 Mass. 541.

How proveable, without subscribing witnesses.

1821, 36, § 1.

Proceedings, if grantor refuse to acknowledge.

1821, 36, § 2.

Same subject.

1821, 36, § 2.

Same subject.

1821, 36, § 2.

Not proveable, having no subscribing witness.

Proof of deed, to be indorsed thereon.

22 Pick. 91.

Register to cer-

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tify the time,
when he re-
ceives a deed.
10 Pick. 72.

No deed effec-
tual, without
registry, against
persons having
no notice.
1821, 36, § 1.
14 Mass. 296.
15 Mass. 439.
7 Greenl. 195,
464.

1 Pick. 164.
14 Pick. 224.
15 Pick. 185.
22 Pick. 295,
540.

Bond of defeas-
ance, not ef-
fectual, unless
recorded.
1821, 36, § 3.

Pews declared,
real estate.
1821, 36, § 7.
10 Mass. 323.

Record of deeds
thereof and lev-
ies thereon.
1821, 36, § 8.

Estates, great-
er than at will,
must be con-
veyed by writ-
ing.
1821, 53, § 2.
9 Greenl. 62.

Trusts not cre-
ated, but by
writing.
1821, 53, § 2.

No trust to de-
feat the title of
a bona fide pur-
chaser, without
notice.

Record of trust,
equivalent to
notice.

him, the day and hour, when it was received; and every deed shall be considered as recorded at the time, when received; and [he] shall also enter in a book, to be kept for that purpose, and to be open, in business hours, to the inspection of any person; the names of the grantor and grantee, their places of residence, and date when received by the register; said entries to be made, within one hour after delivery of the deed to the register.

SECT. 26. No conveyance of any estate in fee simple, fee tail, or for life, and no lease for more than seven years from the making thereof, shall be good and effectual against any person, other than the grantor, his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed recorded, as provided in this chapter.

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

SECT. 28. All pews and rights in houses of public worship shall, in law, be deemed real estate.

SECT. 29. All deeds of, and executions extended on, such pews or rights may be recorded by the town or plantation clerk, where situated, and shall have the same effect, as if recorded in the registry of deeds.

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

SECT. 31. All trusts concerning lands, excepting those which arise or result by implication of law, must be created and manifested by some writing, signed by the party creating and declaring it, or by his attorney.

SECT. 32. No such trusts, whether created or declared by the parties, or implied by law, shall defeat the title of a purchaser for a valuable consideration, and without notice of the trust; nor prevent a creditor, who has no notice of the trust, from attaching the premises, and taking them in execution, in like manner, as if no such trust existed.

SECT. 33. When such a trust is created, or declared by an instrument in writing, the recording of it in the registry for the county or district, where the land lies, shall be considered equal to actual notice thereof to all persons, claiming under a conveyance, attachment or execution, made or levied, after such recording.

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

ions in this chapter, nor prevent such bank from paying out the bills of foreign banks, received in its usual course of business, and the circulation of which is not otherwise prohibited by law.

SECT. 80. No person shall issue any drafts, bills or promissory notes or other evidences of debt, payable to bearer or order, as a private banker, for the purpose of loaning them or putting them in circulation, as money.

No person to issue bills as a private banker, to be circulated as money. 1836, 231, § 2. Penalty for violating the three preceding sections. 1821, 147, § 1. 1836, 231, § 3.

SECT. 81. If any body corporate or private company, or individual, shall be guilty of any or either of the offences, described in the three last preceding sections, such offender shall forfeit one thousand dollars, for each and every such offence; to be recovered by indictment for the use of the state, or by action of debt, one half to the use of the state, and the other half to the person who may first sue for the same.

SECT. 82. The following offences by officers, stockholders or servants of banks in this state, committed with a fraudulent intent to injure any creditor, stockholder, holder of bank notes issued, or to be issued by such bank or other person, are hereby declared to be high misdemeanors, and the persons guilty thereof, shall, on conviction, be punished by fine, not exceeding five thousand dollars, imprisonment in the county jail, not exceeding one year, confinement in the state prison to hard labor, not exceeding ten years, or any or all of said punishments, according to the aggravation of the offence:

Punishment for frauds and embezzlement. 1825, 315. 1831, 519, § 21.

First. If any such person shall convert to his own use or deliver to any other person, or to his check or order, any funds or evidence of debt or other property, belonging to the bank or deposited therein;

Secondly. If he shall issue, or aid in issuing, any bank notes or other evidence of debt, obligatory on said bank, with the intent that the same shall not be paid;

Thirdly. If he shall become indebted to such bank for a valuable consideration with like intent, or shall aid or abet any other person so doing;

Fourthly. If he, on behalf of the bank, shall loan any money or deliver any valuable property, belonging to such bank or deposited therein, to any stockholder or other person;

Fifthly. If he shall make any dividend of the funds or effects of such bank, amongst the stockholders or any of them, beyond the profits actually accrued to such bank, or aid therein, thereby diminishing the capital of said bank.

SECTION 9. The ninety first chapter shall be amended, in section, four, after the words "limited to," by striking out the word "such," and inserting, instead thereof, the word "any;" so that the said fourth section, as amended, will be as follows:

R. S. ch. 91.

SECT. 4. When any contingent remainder or executory devise, or other estate in expectancy, has been 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.

Owner of a contingent remainder or executory devise may convey it.

SECTION 10. The ninety fourth chapter shall be amended, by inserting, at the end of section thirty four, the following words:

R. S. ch. 94.