

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

TITLE SEVEN.

Titles to property.

- CHAP. 73. Conveyances by deed, their form and construction. Trusts.
74. Wills, their execution and devises.
75. Title by descent.
76. Title to real estate by levy of execution.

CHAPTER 73.

CONVEYANCES BY DEED, THEIR FORM AND CONSTRUCTION: TRUSTS.

- SEC. 1. Real estate conveyed by deed.
2. Real estate conveyed and purchased by an alien.
3. Contingent estates may be conveyed.
4. Entailments may be barred by conveyance in fee simple.
5. Conveyance of a greater estate conveys what is owned. Expectant estates not defeated.
6. Conveyance or devise to one and his heirs, gives heirs a fee simple.
7. Conveyances to two or more create estates in common.
8. Conveyance not effectual against others than grantors, &c., unless recorded.
9. Conveyance absolute not defeated by defeasance not recorded.
10. No estate in lands unless by writing signed.
11. No trust in lands unless by writing signed, exception.
12. Titles not defeated by trusts without record or notice.
13. Trustees in mortgage hold in joint tenancy. Survivors may convey.
14. Deed of release conveys. Deed of husband and wife conveys her estate.
15. Deeds and contracts of agents, when binding on principal.
16. Conveyances to treasurer or others for benefit of a county, effectual.
17. Deeds to be acknowledged and before whom.
18. When grantor dead or out of state, execution of deed may be proved.
19. Grantor and witnesses dead or out of state, how proved.
20. When grantor refuses to acknowledge, copy may be left with register.
21. When grantor refuses to acknowledge, may be summoned before a justice and execution proved.
22. Justice, if satisfied, to certify on deed that it has been proved.
23. Certificate of acknowledgment or proof endorsed or annexed to deed. No deed recorded without.
24. Certificate made after commission expired, valid.
25. Register to certify on deed, time when received, and enter it, with names of parties, on book open to inspection.
26. Pews deemed real estate. Record of deeds and levies of them may be made by town clerk.

SEC. 1. 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.

Conveyance by deed.
13 Maine, 281.
R. S., c. 91, § 1.

SEC. 2. An alien may take, hold, convey, and devise, real estate or any interest therein. All conveyances and devises of

An alien may hold real estate.

CHAP. 73.

R. S., c. 91,
§ 2, 3.
1854, c. 64.
1856, c. 198.
Contingent
estates may be
conveyed.
R. S., c. 91, § 4.
Entailments
may be barred
by conveyance
in fee simple.
R. S., c. 91,
§ 6, 7.
1855, c. 126.

Conveyance of
a greater
estate conveys
what is owned,
&c.
R. S., c. 91,
§ 9, 10, 11.

Conveyance or
devise to one
for life and to
his heirs.
R. S., c. 91,
§ 12.
Conveyances
to two or more.
24 Maine, 482.
R. S., c. 91,
§ 13.

Not effectual
against others,
&c.
R. S., c. 91,
§ 26.

Absolute deed
not defeated
by defeasance
not recorded.
R. S., c. 91,
§ 27.

No estate in
lands unless
by writing
signed.
R. S., c. 91,
§ 30.

No trust in
lands unless by
writing, &c.
R. S., c. 91,
§ 31.

such estate or interest already made by or to an alien are confirmed and made valid.

SEC. 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.

SEC. 4. A person seized of land as 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.

SEC. 5. 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.

SEC. 6. 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.

SEC. 7. 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 are to be so held.

SEC. 8. No conveyance of an estate in fee simple, fee tail, or for life, or lease for more than seven years, will be 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. (a)

SEC. 9. A deed, purporting to convey an absolute estate in land, cannot be defeated by an instrument intended as 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.

SEC. 10. 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. (b)

SEC. 11. 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. (c)

(a) 19 Maine, 274; 23 Maine, 165, 170, 246; 29 Maine, 140; 7 Greenl. 195, 464; 26 Maine, 484; 32 Maine, 287.

(b) 13 Maine, 209; 16 Maine, 212; 20 Maine, 18; 9 Greenl. 62.

(c) 11 Maine, 9; 16 Maine, 268; 22 Maine, 408; 23 Maine, 269; 28 Maine, 355; 29 Maine, 410; 30 Maine, 121; 33 Maine, 530; 35 Maine, 41.

SEC. 12. 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.

SEC. 13. When real estate is conveyed in mortgage and in trust to two or more persons, with power to appoint a successor to one deceased, it is to be considered as 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 will 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 to be considered as 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. 14. A deed of release or quitclaim of the usual form will convey the estate, which the grantor has and can convey by a deed of any other form. A joint deed of husband and wife will convey her estate, in which the husband has an interest.

SEC. 15. Deeds and contracts, executed by an authorized agent of an individual or corporation in the name of his principal, or in his own name for his principal, are to be regarded as the deeds and contracts of such principal.

SEC. 16. Conveyances, in whatever form, made to the inhabitants of a county, or to their treasurer, or to a person or committee for its benefit, are as effectual as if made in the corporate name of the county.

SEC. 17. Deeds are to be acknowledged by the grantors, or one of them, or by their attorney executing the same, before a justice of the peace in this state, or any justice of the peace, magistrate, or notary public within any of the United States, or before any minister or consul of the United States, or notary public in any foreign country.

SEC. 18. 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 this state. No deed without one subscribing witness can, for this purpose, be proved before any court or justice.

SEC. 19. When the witnesses are dead or out of the state, the hand writing of the grantor and subscribing witness may be proved by other testimony.

SEC. 20. 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.

SEC. 21. In such case, a justice of the peace 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

CHAP. 73.

Titles to estates not defeated by trusts, &c.
18 Maine, 220.
R. S., c. 91,
§ 32, 33.

Trustees in mortgage hold in joint tenancy, &c.
1856, c. 237.

Deed of release conveys, &c.
R. S., c. 91,
§ 5, 8.

Deeds and contracts by agent, &c.
1 Greenl. 231,
339.
23 Maine, 55.
R. S., c. 91,
§ 14.

Conveyances for benefit of county.
R. S., c. 91,
§ 15.

Deeds to be acknowledged.
17 Maine, 418.
37 Maine, 423.
20 Maine, 413.
R. S., c. 91,
§ 16, 17.

When grantor dead or out of state, execution may be proved.
R. S., c. 91,
§ 18, 23.

Execution how proved, &c.
R. S., c. 91,
§ 19.

When grantor refuses to acknowledge, &c.
R. S., c. 91,
§ 20.

Grantor may be summoned before a justice and execution proved.

CHAP. 73.

R. S., c. 91,
§ 21.

Justice, if satisfied, to certify, &c.

R. S., c. 91,
§ 22.

Certificate of acknowledgment, &c.

17 Maine, 418.

19 Maine, 274.

37 Maine, 423.

R. S., c. 91,
§ 24.

Certificate made after commission expired, valid.

37 Maine, 423.

1854, c. 68.

Register to certify time when received, &c.

12 Maine, 499.

17 Maine, 391.

R. S., c. 91,
§ 25.

Pews deemed real estate.

Record, &c.,

by town clerk.

R. S., c. 91,
§ 28, 29.

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.

SEC. 22. When the justice 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. 23. A certificate of acknowledgment, or proof of execution as aforesaid, must be endorsed 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.

SEC. 24. 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 shall be as valid as if done before such expiration.

SEC. 25. The register shall certify, on each deed by him recorded, the time when it was received, and it shall be considered as recorded at that time. Within one hour after its delivery to him, he shall enter such time, the names of the grantor and grantee, and their places of residence, in a book for that purpose, and open to inspection in business hours.

SEC. 26. Pews and rights in houses of public worship are deemed to be real estate. Deeds of them, and levies by execution upon them, may be recorded by the town clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds.

CHAPTER 74.

WILLS, THEIR EXECUTION AND DEVISES.

- SEC. 1. Will, by whom and how made.
2. Witnesses competent at time, sufficient. Property not disposed of, distributed.
3. Will, how rendered invalid, or revoked.
4. What lands pass by will, not seized and disseized.
5. Lands subsequently acquired, pass.
6. Property taken from a devisee, loss to be borne equally.
7. Assets, how marshaled for payment of debts.
8. Posthumous child takes a share of estate.
9. A child or issue of a deceased child, having no devise, takes; exception.
10. Lineal descendants of a relative take the share devised to him.
11. Who contribute to loss of a devisee.
12. When one cannot pay, loss equally borne.
13. Real estate not devised, first applied to pay debts.
14. Cases of contribution, how determined.
15. Will not effectual unless proved and allowed in probate court.
16. Devise of land construed to convey all the estate of devisor.
17. When executors are directed to pay legacy on conditions, and no time stated in will, reasonable time to be allowed, not exceeding five years from probate of will; if condition is not performed, how to be administered.