

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.

CHAP. 83.

Justice whose
commission
has expired,
&c.

35 Maine, 137.
R. S., c. 116,
§ 28.

Justice not to
be of counsel.
R. S., c. 103,
§ 9.
R. S., c. 116,
§ 15.

Where justice
may hold
courts, &c.
R. S., c. 116,
§ 29, 30.
1842, c. 35.

tice, with an affidavit thereon made by the plaintiff or his attorney, that it is not satisfied, or satisfied in part only, as the case may be.

SEC. 21. Any justice, whose commission expires and is not renewed, may, during two years thereafter, certify copies of judgments rendered by him while in commission, and issue and renew executions thereon, which shall be obeyed by the officer, as if the commission of the justice had not expired.

SEC. 22. No justice shall be of counsel for or give advice to either party, in a suit before him, or be subsequently employed as counsel or attorney in any case tried before him; nor hear or determine any civil action commenced by himself; and every action so commenced shall abate.

SEC. 23. Any justice may try cases at his dwellinghouse, office, or other suitable place, and the writ shall be made returnable accordingly; except where the title to real estate is in question, the defendant shall plead the general issue and need not file any brief statement; and when an action, in which the defendant does not appear, is continued at the request of the plaintiff, only one travel and attendance shall be taxed for him, unless the defendant agrees, in writing, to such continuance.

CHAPTER 84.

LEVY ON EXECUTIONS ON PERSONAL PROPERTY.

- SEC. 1. Execution; what goods may be sold on.
2. Execution; coin and bank notes, how levied on.
3. Execution; goods, in what time sold on.
4. Execution; how advertised.
5. Execution; adjournment of sale, time.
6. Execution; adjournment of sale, place.
7. Indemnity; officer may require.
8. Re-sale, if purchaser refuses to take; officer to account for proceeds, and for damages paid by such purchaser.
9. Return of sale on execution, how made. Penalty for fraud in sale or return.
10. Proceeds of sale, how disposed of.
11. Rents of buildings, how sale is to be made of.
12. Shares in incorporated companies, how sold.
13. Notice of seizure of, how given, if not attached.
14. If attached, mode of procedure.
15. Officers of the corporations to certify the number of shares, &c. Shares sold to be transferred; new certificates to purchaser.
16. Notice of sale, how given.
17. Franchise of corporation, how sold; notice of sale of, how given.
18. Mode of sale. Possession, what and how given to purchaser.
19. Rights and duties of the purchaser.
20. Rights of redemption by the corporation.
21. Proceeds of sales applied in order of attachment.
22. Notice of second attachment to be given to the first attaching officer.
23. Warrant against turnpike corporation for damages. Sale of the franchise thereon may be adjourned. In what county sale may be had.

SEC. 24. In case of a prior attachment, how the lien by seizure on execution may be preserved.

25. Proceedings when such attachment is removed.
26. Executions to be set off against each other.
27. Cases in which it may not be done.
28. Proceeds of, how applied. Sale without tender.
29. Executions and warrants of distress against towns, how issued and enforced.
How levied on real estate.
30. Notice and incidents of the sale.
31. Remedy of owner of property sold.
32. Payment before levy, provision for and effect of.
33. Protection from subsequent claims.
34. Proportion to be paid, how ascertained.

SEC. 1. All chattels real and personal liable at common law to attachment, and not exempted therefrom by statute, are liable to be taken and sold on execution as prescribed in this chapter.

SEC. 2. Current gold or silver coin may be taken on execution and paid to the creditor as money collected; and bank notes and all other evidences of debts, issued by any moneyed corporation and circulated as money, may be taken on execution, and paid to the creditor at their par value, if he will accept them; otherwise, they may be sold like other chattels.

SEC. 3. Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor, for the space of four days at least next after the day on which they were taken, exclusive of Sunday; and they shall be sold within fourteen days next after the day of seizure, except as hereinafter provided, unless before the time of sale the debtor redeems them by otherwise satisfying the execution.

SEC. 4. The officer shall post up public notice of the time and place of sale, at least forty-eight hours before the time of sale, in two or more public places in the town or place of sale.

SEC. 5. If at the time so appointed, the officer is prevented by sickness or other casualty from attending at such place, or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding six days next after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment as required in the preceding section.

SEC. 6. For good reason, and for the purpose of obtaining a better price for the goods to be sold, he may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town.

SEC. 7. Where there is reasonable doubt as to the ownership of goods, or their liability to be taken in execution, the officer may require sufficient indemnity.

SEC. 8. If the highest bidder at such sale refuses to take and pay for an article, the officer shall sell it again at auction at any time within ten days, giving due notice of the second sale; and account for what he receives on the second sale, and for any damages he recovers of the first bidder for a loss on the re-sale, as for so much received on the execution.

Execution; what goods may be sold on.
R. S., c. 117,
§ 2.

Coin and bank notes, how levied on.
R. S., c. 117,
§ 3.

Goods, in what time sold on.
24 Maine, 395.
R. S. c. 117,
§ 4.

How advertised.
R. S., c. 117,
§ 5.

Adjournment of sale, time.
34 Maine, 413.
R. S., c. 117,
§ 6.

Adjournment of sale, place.
11 Maine, 371.
R. S., c. 117,
§ 7.

Indemnity; officer may require.
R. S., c. 117,
§ 8.

Re-sale, if purchaser refuses to take, &c.
R. S., c. 117,
§ 9.

CHAP. 84.

Return of sale
how made, &c.
R. S., c. 117,
§ 10.

Proceeds of
sale, how
disposed of.
R. S., c. 117,
§ 11.

Rents of build-
ings, how sale
made of.
R. S., c. 117,
§ 12.

Shares in
incorporated
companies,
how sold.
R. S., c. 117,
§ 13, 29.

Notice of seiz-
ure of; how
given, if not
attached.
R. S., c. 117,
§ 14, 15,
1841, c. 1, § 20.

If attached,
mode of pro-
cedure.
R. S., c. 117,
§ 16.

Officers of the
corporations to
certify the
number of
shares, &c.
Shares sold to
be transferred,
&c.
R. S., c. 117,
§ 17, 18.

Notice of sale,
how given.
R. S., c. 117,
§ 19.

SEC. 9. He shall, in his return on the execution, particularly describe each article or lot of goods sold, and the price at which it was sold; and if he is guilty of any fraud in the sale or return, he shall pay to the debtor in an action on the case five times the sum of which he is defrauded.

SEC. 10. The money, arising from the sale of any property on execution, shall be applied to pay the charges and satisfy the execution; and the residue, if any, shall be returned to the debtor on demand, or otherwise legally applied as provided in section twenty-one.

SEC. 11. When a lessor of lands leased for the purpose of erecting a building thereon commences an action against the lessee, attaches the buildings within six months after the rent becomes due, and recovers such rent, he may, on execution, cause the rents and profits of such buildings to be sold for a term of time sufficient to pay the debt and costs; or cause such building to be sold like any other personal estate; and in the latter case, the debtor may redeem it within one year, by paying to the purchaser the full amount paid by him and interest thereon.

SEC. 12. Any share or interest of a stockholder or proprietor in an incorporated company may be taken on execution and sold in the following manner, and in no other manner, notwithstanding any thing in the charter of such company to the contrary.

SEC. 13. If the property was not attached on mesne process in the same suit, the officer shall leave a copy of the execution with the treasurer, cashier, clerk, or other recording officer of the company, and the property shall be considered as seized on execution when the copy is so left. If it was so attached and remains attached, the officer shall proceed in seizing and selling it on execution as in section sixteen.

SEC. 14. The officer of the company having the care of the records or account of shares, or interest of the stockholders, shall, on the exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor, or of the amount of his interest, under the penalty provided in chapter eighty-one, section forty-two.

SEC. 15. Within fourteen days after the day of sale, the officer shall leave an attested copy of the execution and of the return thereon with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, on paying the fees therefor, and for recording the transfers; and if such shares or interest were attached in the suit in which the execution issued, he shall have all dividends which accrued after the attachment.

SEC. 16. In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving it at his last and usual place of abode, if within the county where the officer dwells; and public notice thereof by posting it up in one or more public places in the town where the sale is to be made, and in two ad-

joining towns, if there are so many, thirty days at least before the day of sale; and shall publish an advertisement of the same import, and naming the judgment debtor, three weeks successively before the day of sale, in some public newspaper printed in the county, if any, if not, in the state paper; and if the debtor never lived in the county, posting the notification and publishing the advertisement as aforesaid shall be sufficient.

CHAP. 84.

SEC. 17. When judgment is recovered against a bridge, canal, or other incorporated company with power to receive toll, its franchise may be sold on execution at public auction, by giving notice of the time and place of sale by posting a notification in any town, in which the treasurer, clerk, or any officer of the company, if there are any officers, if not, where any stockholder resides, thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted three weeks successively in a newspaper printed in a county where either of said officers, or if without officers any stockholder resides, four days before the day of sale; and if there is no newspaper printed in any such county, then in the state paper.

Franchise of corporation, how sold, &c. R. S., c. 117, § 20.

SEC. 18. In the sale of such franchise, whoever will pay and satisfy such execution, all fees, and incidental expenses, in consideration of being entitled to receive to his own use all such toll as the corporation is entitled to receive, for the shortest period of time, shall be deemed the highest bidder, and the purchaser for such period of time; and immediately after such sale, the officer shall deliver to him possession of the toll houses and gates, in whatever county situated, and state his doings therein in his return.

Mode of sale. Possession, what and how given. R. S., c. 117, § 21, 22.

SEC. 19. The purchaser of such franchise, and those claiming under him, may receive to their own use the tolls accruing within the time limited in the purchase, and shall have all the powers of the corporation necessary for the convenient use of the property, and be subject to the same duties and penalties during the term of said purchase, and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence.

Rights and duties of the purchaser. R. S., c. 117, § 23.

SEC. 20. The corporation, at any time within three months after the day of sale, may redeem said franchise by paying to the purchaser the sum he paid in satisfaction of the execution, with twelve per cent. interest thereon, in addition to the toll he has received.

Rights of redemption by the corporation. R. S., c. 117, § 24.

SEC. 21. If goods or other property sold on execution have been attached by other creditors or seized on other executions by the same or another officer, or if before payment of the residue to the debtor, any other writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds shall be applied to the discharge of the several judgments, in the order in which the writs of attachments or execution were served; and the residue, if any, shall be paid over to the debtor.

Proceeds applied in order of attachment. R. S., c. 117, § 25.

CHAP. 84.

Notice of second attachment to be given to the first attaching officer.

R. S., c. 117, § 26.

Warrant against turnpike corporation. Sale of franchise, &c., may be adjourned. In what county sale may be had.

R. S., c. 117, § 30, 31, 32.

In case of a prior attachment, how the lien may be preserved.

R. S., c. 117, § 33, 1842, c. 31, § 11.

Proceedings when attachment is removed.

R. S., c. 117, § 34.

Executions to be set off against each other.

22 Maine, 460.
24 Maine, 351.
R. S., c. 117, § 1.

Cases in which it may not be done.

3 Greenl. 34.
7 Greenl. 82.

SEC. 22. If a share in a corporation or other property, that may be attached without taking and keeping possession thereof, is attached or taken on execution, and is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure; and if, without such notice, he pays the balance of the proceeds of sale to the debtor, he shall not be liable therefor to the person claiming under such subsequent attachment or seizure.

SEC. 23. When damages are assessed in favor of a person by the county commissioners, or by a committee, or verdict of a jury, for an injury sustained by him by the acts of any corporation, authorized to demand and receive toll, and they are not paid in thirty days after order, or the acceptance of such verdict, or report of the committee, he may have a warrant of distress against such corporation for such damages, interest, and costs; and the officer holding such warrant may adjourn the vendue, as in the sale of goods on execution; and all proceedings respecting the attachment and sale on execution of the franchise of such corporation, and sales on warrant of distress as aforesaid, may be had in the county, in which the creditor, the president, clerk, treasurer, or a director of said corporation, if there is any such officer, if not, a stockholder, resides.

SEC. 24. When real or personal estate is seized on execution, and further service thereof is suspended by a prior attachment thereof, such estate shall be bound by seizure until it is set off or sold in whole or in part under the prior attachment, or until it is dissolved, if the officer seizing such real estate, within five days thereafter, files in the office of the register of deeds in the county or district where it lies, a copy of his return of the seizure, with the names of the parties, the court at which judgment was recovered, and the date and amount of the execution; and the register shall file and enter the same of record, as in case of attachment of real estate on writs; and like fees shall be allowed to the officer and register therefor.

SEC. 25. If the prior attachment is dissolved, or the estate is set off or sold in part under it, the estate or remaining part thereof shall continue bound for thirty days thereafter, by such seizure on execution; and the service of the execution may be completed within that time as if the estate had been then first seized thereon, although the return day of the execution has passed.

SEC. 26. When an officer has in his hands executions, where-in the creditor in one is debtor in the other in the same capacity and trust, he shall cause one execution to satisfy the other so far as it will extend; if one of such executions is in the hands of the officer, and the creditor in the other tenders his execution to him and requests him so to do, he shall so set off one against the other.

SEC. 27. Executions shall not thus be set off against each other, when the sum due on one of them has been lawfully and in good faith assigned to another person, before the creditor in the other execution became entitled to the sum due thereon; nor

when there are several creditors or debtors in one execution, and the sum due on the other is due to or from a part of them only; nor as to so much of the first execution as is due to the attorney in the suit for his fees and disbursements therein.

SEC. 28. The officer shall apply the proceeds of the sale of property mortgaged or pledged, after deducting his fees and charges of sale, to the payment of the sum paid or tendered to the mortgagee, pledgee, or holder, and the interest thereon from the time of such payment; and the residue of such proceeds shall be applied to the satisfaction of the plaintiff's judgment as provided by law; or the plaintiff may have the property seized and sold on the execution, as in other cases, subject to the rights and interests of such mortgagee, pledgee, or holder, without paying or tendering the debt due to him.

SEC. 29. All executions or warrants of distress against a town shall be issued against the goods and chattels of the inhabitants thereof, and against the real estate situated therein, whether owned by such town or not; and the officer executing them shall satisfy them by distress and sale of the goods and chattels of the inhabitants as provided by law; and for want thereof, after diligent search, which fact the officer shall certify in his return, he shall levy upon and sell so much of the real estate in said town by lots, as they are owned, occupied, or lotted out on the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

SEC. 30. He shall advertise in the state paper, and in one of the newspapers printed in the county where the lands lie, if any, three weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress; and, where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land; the last publication shall be three months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day to day not exceeding three days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale, by paying the sum for which it was sold, the necessary charges, and interest thereon.

SEC. 31. The owner of any real or personal estate so sold, and any inhabitant who voluntarily pays his due proportion or is compelled to satisfy such warrant in whole or in part, may recover against the town, in an action of assumpsit, the full value thereof with interest at the rate of twelve per cent. yearly, with costs of suit; and may prove and recover the real value thereof, whatever was the price at which it was sold.

SEC. 32. When such warrant of distress or execution is issued against a town, any inhabitant thereof, or proprietor of lands therein, may, before it is levied or the sale made, pay his proportion thereof to the officer having such warrant or execution, or to the creditor therein, to be ascertained by an assessment thereof made by the assessors of the town, which they are re-

CHAP. 84.

R. S., c. 117,
§ 35, 36, 37.

Proceeds of,
how applied.
Sale without
tender.

24 Maine, 110.
R. S., c. 117,
§ 39, 40.
1842, c. 31, § 12.

Executions
and warrants
of distress
against towns,
how issued,
&c.; how
levied on real
estate.

R. S., c. 117,
§ 42, 43.

Notice and
incidents of
the sale.

R. S., c. 117,
§ 44.

Remedy of
owner of pro-
perty sold.

R. S., c. 117,
§ 45.
R. S., c. 99,
§ 22.

Payment be-
fore levy, pro-
vision for and
effect of.

R. S., c. 117,
§ 46, 47.

CHAP. 84.

Protection
from subse-
quent claims.
R. S., c. 117,
§ 48.

quired to make at his request, or on notice from the county commissioners; and his person and property shall be thereby discharged from such warrant or execution.

SEC. 33. If any such warrant or execution is levied on the property of any person, who at the time has not paid his proportion, every person paying his part as aforesaid shall be discharged in person and property from all executions issued on any judgment against the inhabitants of such town on account of said levy.

Proportion
how ascer-
tained.
R. S., c. 117,
§ 49.

SEC. 34. The certificate of a majority of said assessors shall be conclusive evidence of any person's proportion thereof; and when it is delivered to the officer and the amount thereof paid, he shall return the warrant or execution satisfied for that sum with the name of the payer.

CHAPTER 85.

BAIL IN CIVIL ACTIONS.

- SEC. 1. Bail shall be by bond to the sheriff or other officer; bond returned with the writ.
2. What bail he may require.
 3. In what cases the obligors shall be holden.
 4. Surrender of principal before entry; how to be done and effect thereof.
 5. Names of bail to be entered on execution.
 6. Officer to notify bail; his fees to be paid.
 7. Surrender of principal in court.
 8. In case of avoidance, officer's duty, and liability of bail.
 9. Scire facias against bail.
 10. Pleadings and defence by bail.
 11. Surrender of principal on scire facias.
 12. Proceedings when bail is taken in a justice action.
 13. Surrender and commitment of principal in such case.
 14. Officer's fees and duty.
 15. Surrender in such case before judgment. Surrender after judgment.
 16. Remedy of bail against principal.

Bail shall be
by bond to
the officer, &c.
S Greenl. 422.
R. S., c. 114,
§ 95, 98.

SEC. 1. When bail is taken on mesne process, it shall be by bond to the sheriff, if taken by him or his deputy, otherwise to the officer making the arrest, with condition that the defendant will appear and answer to the suit, and abide final judgment thereon and not avoid. The bond shall be returned with the writ, and the clerk shall note on the writ that a bail bond is so filed.

What bail he
may require.
2 Greenl. 46.
R. S., c. 114,
§ 96.

SEC. 2. No officer shall be obliged to accept a bail bond unless signed by two sureties, at least, having sufficient property in the county in which the principal is arrested or held in custody; and if he takes a bail bond with only one surety, he shall be liable to the plaintiff for any deficiency thereof.

In what cases
obligors
holden.
R. S., c. 114,
§ 97.

SEC. 3. A bail bond shall bind the obligors though signed by only one surety, or when signed by two or more sureties, when all or any of them had not sufficient property in the county.