

# 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.

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PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

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BANGOR:  
WHEELER & LYNDE.

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1857.

## CHAP. 87.

When action does not accrue within four years; proceedings. 39 Maine, 498. R. S., c. 120, § 25.

Estate remains liable to such claims; how suits maintained. R. S., c. 120, § 26, 27, 28.

If such claim is not filed, remedy against heirs or devisees. 6 Greenl. 127. R. S., c. 120, § 30.

Time within which actions can be brought against administrators de bonis non. R. S., c. 120, § 32, 33.

Limitation of actions against an administrator de bonis non, &c. R. S., c. 120, § 34, 35.

Actions for legacies not affected, &c. R. S., c. 120, § 29, 31.

SEC. 13. And when an action, on a covenant or contract, does not accrue within said four years, the claimant may file such demand in the probate office within that time, and the judge of probate shall direct that sufficient assets, if such there be, shall be retained by the executor or administrator, unless the heirs or devisees of the estate give bond, with one or more sureties, approved by the judge of probate, to the executor or administrator to respond the same.

SEC. 14. When a bond is so given, no assets shall be retained; but the estate shall be liable in the hands of heirs or devisees, or those claiming under them, to answer such demand; and an action may be brought on such bond, or when no bond is given, against the executor or administrator, and if any thing is found due, the claimant shall have judgment therefor and for his costs.

SEC. 15. When such claim has not been filed in the probate office within said four years, the claimant may have remedy against the heirs or devisees of the estate within one year after it becomes due, and not against the executor or administrator.

SEC. 16. Upon the appointment of an administrator de bonis non, the time within which actions may be brought is extended as follows; to such a portion of the four years as remained unexpired before a vacancy, shall be added so much time after the new appointment as will make five years; and every new administrator shall in all cases be liable to actions of creditors for two years after notice given of his appointment, although the whole time may be extended beyond five years.

SEC. 17. When an executor or administrator does not give legal notice of his appointment, actions may be commenced against a new administrator within four years after notice of his appointment; and if he fails to give legal notice of it, he can have no benefit of the limitations contained in this chapter.

SEC. 18. An action, for the recovery of a legacy, shall not be affected by the provisions of this chapter. When an executor or administrator is guilty of unfaithful administration, he shall be liable on his administration bond for all damages occasioned thereby.

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 CHAPTER 88.

## PARTITION OF REAL ESTATE.

- SEC. 1. Partition may be made by writ at common law.
2. Partition may be made by petition; what must be stated in it.
3. Petition may be filed in vacation, if all co-tenants are named.
4. Petition may be presented in any county, if all are not named, and notice ordered.
5. When persons not fully notified may appear; pleadings how made.
6. Plaintiff or petitioner may reply.
7. Guardians for infants and insane persons, and agents for persons out of the state, to be appointed.

- SEC. 8. Division of time, for occupation of saw mills, may be made.
9. Respondent having no interest, pays costs.
  10. Petitioner owning a less share than claimed, pays costs; proceedings.
  11. Petitioner dying or conveying, his heirs, devisees or grantees may be admitted to proceed.
  12. Respondent dying, his heirs or devisees may be cited to appear.
  13. Commissioners to be appointed to set off shares together or separately.
  14. Commissioners to be sworn and certificate of oath made on warrant.
  15. Commissioners to give notice of time and place for partition; majority may decide, but all must be present.
  16. Commissioners to assign shares so as to include exclusive possessions. Value of improvements to be considered.
  17. Commissioners may assign to one a parcel greater than his share, on his payment of award to the others; report not to be accepted until award is paid.
  18. Court to determine share of expenses to be paid by each, and may issue execution therefor.
  19. When a share too large, or of too much value, is set off, a new division may be had on application to court within three years.
  20. How a new division shall be made.
  21. Report of commissioners confirmed, recommitted, or set aside. When confirmed, to be recorded.
  22. Judgment conclusive of all rights, except as after provided.
  23. When an unequal share is left for one out of the state, proceedings.
  24. Person not a party, claiming in severalty, not precluded.
  25. Person claiming a share assigned or left, not precluded.
  26. Person owning, to whom no share assigned or left, not precluded.
  27. Person evicted of his share, to have a new partition.
  28. Mortgages, attachments and liens, remain in force on a share set out.
  29. Lots reserved for public uses, to be first set off.

SEC. 1. Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common, joint tenants, or co-partners, may be compelled to divide the same by writ of partition at common law. (a)

Partition by writ at common law.  
R. S., c. 121, § 1.

SEC. 2. Persons so entitled, and those in possession or having a right of entry for a term of years, as tenants in common, may present a petition addressed to the supreme judicial court held in the county where such estate is, clearly describing it, and stating whether it is a fee simple, for life, or for years, and the proportion claimed by him, the other tenants in common, and their places of residence, if known, and whether any or all of them are unknown.

Partition by petition.  
What must be stated in it.  
5 Greenl. 458.  
12 Maine, 142, 320.  
16 Maine, 388.  
17 Maine, 423.  
R. S., c. 121, § 2, 3, 4.

SEC. 3. The petition may be filed in the clerk's office in vacation, if all the co-tenants are named in it. A copy thereof, attested by the clerk, left with each or at his last and usual place of abode, twenty days before the session of the court to which it is addressed, shall be sufficient service.

All co-tenants named, petition may be filed, &c.  
R. S., c. 121, § 5.

SEC. 4. When the co-tenants are not all named in the petition, it may be presented to the court in that, or in any other county, returnable in the county where the estate is, and such notice shall be given to the other co-tenants, as the court orders; and in case of non-compliance therewith, or other imperfection of notice, the court may order further notice to be given.

When not all named, it may be presented in any county, &c.  
5 Greenl. 458.  
R. S., c. 121, § 6, 7, 8.

(a) 12 Maine, 142, 320, 398; 16 Maine, 388; 17 Maine, 423; 21 Maine, 47; 31 Maine, 486; 35 Maine, 107.

## CHAP. 88.

When persons not notified may appear. Pleadings, how made.

34 Maine, 35.  
35 Maine, 456.  
36 Maine, 16.  
R. S., c. 121,  
§ 9, 11, 15.

Petitioner may reply, &c.  
22 Maine, 321.  
R. S., c. 121,  
§ 12, 15.

Guardian for infant or insane, and agent for those out of the state to be appointed.  
R. S., c. 121,  
§ 10, 22.

Division of time for occupation of saw mills may be made.  
1848, c. 56.

Respondent having no interest, &c.  
R. S., c. 121,  
§ 13.

When petitioner owns less share than claimed, &c.  
5 Greenl. 458.  
R. S., c. 121,  
§ 14, 17.

When petitioner dies or conveys, heirs, devisees or grantees may proceed.  
R. S., c. 121,  
§ 16.  
1842, c. 31, § 14.

Death of a respondent, heirs or devisees may be cited in.  
1854, c. 97.

Commissioners to set off shares, &c.  
15 Maine, 365.  
R. S., c. 121,  
§ 19, 20.

To be sworn; certificate, &c.  
R. S., c. 121,  
§ 21.

SEC. 5. A person interested and not named in the petition, or out of the state, and not so notified as to enable him to appear earlier, may be permitted to appear and defend at any time before final judgment. And any person, defendant in an action at law, or respondent in a petition for partition, may jointly with others, or separately, by brief statement, without a plea of the general issue, allege any matter tending to show that partition ought not to be made as prayed for.

SEC. 6. The plaintiff or petitioner may reply by counter brief statement, alleging that the defendant or respondent has no interest in the premises, or other matter to show the insufficiency of the defence.

SEC. 7. When an infant, or insane person, living in the state, has no guardian, and appears to be interested, the court shall appoint a guardian ad litem for him, and an agent for persons interested who had been out of the state one year before the petition was presented, and do not return before judgment for the partition is to be made.

SEC. 8. Tenants in common of a saw mill, may have a division of the time, during which each may occupy according to his interest, as partition is made of an estate; and the court may make all necessary decrees in relation thereto.

SEC. 9. When it appears on trial that the respondent has no interest in the estate, he shall no further be heard, and the petitioner shall recover of him the costs of the trial.

SEC. 10. When a petitioner is found to own a less share than is claimed in his petition, he shall have partition of such share, but the respondent shall recover costs. When found entitled to have partition of the share claimed, he shall recover costs of the respondent. In such cases, or on default, a judgment that partition be made shall be entered.

SEC. 11. The owners may join or sever in their petitions. When they join, and one dies or conveys his share, or when a several petitioner dies or conveys his share, the petition, by leave of court, may be amended by erasing his name and inserting the names of his heirs, devisees, or grantees, and they may proceed with the process for their respective shares.

SEC. 12. The petition is not abated by the death of a party respondent. His heirs or devisees, or if the estate is for a term of years, his executor or administrator may be cited to appear, and upon service on them, they shall become parties to the proceedings; and the court may order such judgment, and with such costs, as the law and facts require.

SEC. 13. After judgment that partition be made, the court shall appoint three or five disinterested persons as commissioners, to make partition and set off to each his share, which shall be expressed in the warrant. Their shares may be set off together, or in one tract, or the share of each may be assigned to him, at his election.

SEC. 14. Before proceeding to discharge their duty, the commissioners shall be sworn to the faithful and impartial performance of it; and the justice of the peace, before whom they are

sworn, shall make his certificate thereof on the back of their warrant.

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SEC. 15. They shall give reasonable notice, of the time and place for making partition, to all concerned who are known and within the state. They must all be present at the performance of their duties, but the report of a majority is valid.

Notice of time and place, &c. 20 Maine, 291. 32 Maine, 136. R. S., c. 121, § 23, 24.

SEC. 16. When one of the tenants in common, by mutual consent, has had the exclusive possession of a part of the estate, and made improvements thereon, his share shall be assigned from or including such part; and the value of the improvements made by a tenant in common shall be considered, and the assignment of shares be made in conformity therewith.

The share of a tenant to be assigned from or to include his exclusive possession, &c.

1855, c. 157.

SEC. 17. When any parcel of the estate to be divided is of greater value than either party's share, and cannot be divided without great inconvenience, it may be assigned to one party by his paying the sum of money awarded to the parties, who have less than their share; but the report shall not be accepted, until the sums so awarded are paid or secured to the satisfaction of the parties entitled thereto.

Parcel of greater value than a share may be assigned to one who pays to others; when.

15 Maine, 365. R. S., c. 121, § 25.

SEC. 18. An account of the charges, attending the partition, shall, on request of a petitioner, be presented to the court, which shall determine, after giving notice to all concerned, the proportion to be paid by each; and execution therefor may be issued against any one neglecting to pay.

Court determines expenses to be paid by each; execution may be issued.

R. S., c. 121, § 26.

SEC. 19. If a share larger than his real interest, or more than equal in value to his proportion, is set off to a part owner, an aggrieved part owner, who at the time of partition was out of the state and not notified in season to prevent it, his heirs, or assigns, may, within three years thereafter, apply to the court that made the partition, and it shall cause a new partition to be made.

When a larger share or one of greater value than his share is set off to a party, &c.

R. S., c. 121, § 27. 1852, c. 235.

SEC. 20. In such new partition, so much and no more shall be taken from a share, as it is considered more than its proportion of the whole, estimated as in the state when divided; and if any improvements have been made on the part taken off, reasonable satisfaction therefor, to be estimated by the commissioners, shall be made to him, who made them, by him to whose share they are added; and the court may issue execution therefor, and for costs of the new partition.

How the new partition shall be made.

R. S., c. 121, § 23.

SEC. 21. Commissioners in all cases shall make and sign a written return of their proceedings, and make return thereof with their warrant to the court from which it issued. Their report may be confirmed, recommitted, or set aside and new proceedings be had as before. When confirmed, judgment shall be entered accordingly, and recorded by the clerk, and by the register of deeds of the district where the estate is.

Report; may be confirmed, recommitted, or set aside.

When confirmed, to be recorded.

20 Maine, 291. 30 Maine, 217. R. S., c. 121, § 29, 30.

SEC. 22. Such judgment shall be conclusive on all rights of property and possession of all parties and privies to the judgment, including all persons, who might have appeared and answered, except as hereinafter provided. (a)

Judgment conclusive of all rights, except &c. R. S., c. 121, § 31.

(a) 29 Maine, 29, 128, 559.

## CHAP. 88.

When an unequal share is left for one out of state, a new partition may be made.

R. S., c. 121,  
§ 32.

Person not a party claiming in severalty not precluded.

33 Maine, 100.  
R. S., c. 121,  
§ 33.

A person claiming a share assigned or left, not precluded.

R. S., c. 121,  
§ 34, 35.

A part owner to whom no share was assigned or left, not precluded, &c.

R. S., c. 121,  
§ 36.

A person evicted to have a new partition.

R. S., c. 121,  
§ 37.

A mortgage, attachment or lien on a share in common holds the share set out.

R. S., c. 121,  
§ 38.

Lots reserved for public uses to be first set off.

17 Maine, 423.  
R. S., c. 121,  
§ 40.

SEC. 23. When a person, to whom a share was left, was out of the state when notice was served on him, and did not return in season to become a party to the proceedings, he may, within three years after final judgment, apply to the same court for a new partition; and if it appears to the court that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, it may order a new partition as provided in section twenty.

SEC. 24. When a person, not a party to the proceedings, claims to hold the premises described, or any part thereof in severalty, he shall not be precluded by the judgment for partition; but may bring his action therefor, as if no such judgment had been rendered.

SEC. 25. When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he shall be concluded so far as it respects the assignment of the shares; but shall not be prevented from maintaining an action, within the time in which it might have been brought if no judgment for partition had been rendered, for the share claimed, against the tenant in possession, as if the demandant had claimed the piece demanded, instead of an undivided part of the whole.

SEC. 26. When a person, not a party to the proceedings, claims to have been a part owner of the estate, to whom no share was assigned or left, he shall be concluded so far as it respects the partition, but not from maintaining an action, against each person holding a share, for his proportion of each share as owned before partition was made.

SEC. 27. When a person, to whom a share has been assigned or left, has been evicted by an elder and better title than that of the parties to the judgment, he shall be entitled to a new partition of the residue, as if no partition had been made.

SEC. 28. A person having a mortgage, attachment, or other lien on the share in common of a part owner, shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien shall remain in force on the part assigned or left to such part owner.

SEC. 29. When portions or lots are reserved for public uses in a tract of land to be divided, they shall first be set out, of an average quality and situation, and a return made thereof to the land office, with a description of its quality and location; and the commissioners' return of partition, accepted and recorded as before provided, shall be a valid location of such reserved lands.