

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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TITLE SEVEN.

Titles to Property.

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CHAPTER 73.

CONVEYANCES BY DEED, THEIR FORM AND CONSTRUCTION. TRUSTS.

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2. Real estate may be conveyed and purchased by an alien.
 3. Contingent estates may be conveyed.
 4. Entailments may be barred by conveyance in fee simple.
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 7. Conveyances to two or more, create estates in common.
 8. Not effectual against others than grantors, heirs, devisees, and parties having notice, unless recorded.
 9. Conveyance absolute, is not defeated by defeasance not recorded.
 10. No estate in lands beyond tenancy at will, unless by writing signed.
 11. No trust in lands, unless by writing signed; exception.
 12. Titles are not defeated by trusts without record or notice.
 13. Trustees in mortgage hold in joint tenancy. Survivors may convey. Personal property held with real estate.
 14. Deed of release or quitclaim conveys grantor's interest. Deed of husband and wife conveys her estate.
 15. Deeds and contracts of agents, when binding on principal.
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 23. Certificate of acknowledgment or proof thereof shall be indorsed or annexed to deed. No deed shall be recorded without.
 24. Certificate made after commission has expired; is valid.
 25. How a deed, lost before recording, may be effectually recorded.
 26. A deed, conveying land in more than one county, and lost before being fully recorded, may be recorded in the others by copy.
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 28. Register shall certify on deed, the time when received, and enter it, with names of parties, on book open to inspection.
 29. Pews, real estate. Record of deeds and levies may be made by town clerk.

CHAP. 73.

Conveyance by deed.

—what passes as realty, and what not.

R.S., c. 73, § 1.

13 Me., 284.

56 Me., 46, 127.

72 Me., 302.

73 Me., 228.

An alien may hold and convey real estate.

R.S., c. 73, § 2.

Contingent estates may be conveyed.

R. S., c. 73, § 3.

45 Me., 101.

68 Me., 141.

Entailments may be barred by conveyance in fee simple.

R.S., c. 73, § 4.

60 Me., 177.

Conveyance of a greater estate, conveys what is owned.

R.S., c. 73, § 5.

Conveyance or devise for life and to one's heirs.

R. S., c. 73, § 6.

Conveyances to two or more.

R.S., c. 73, § 7.

24 Me., 484.

46 Me., 260.

Not effectual against others, unless recorded.

R.S., c. 73, § 8.

Absolute deed is not defeated by defeasance not recorded.

R.S., c. 73, § 9.

No estate in lands greater than tenancy at will, unless

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. Down trees lying on land at the time of conveyance, are real estate and pass by the deed; but if they are peeled, or cut into wood, logs or other lumber, they 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.

SEC. 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. 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. (a)

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 shall 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, 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. (b)

SEC. 9. 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.

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 sur-

(a) 60 Me., 479; 68 Me., 141.

(b) 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.

rendered, unless by some writing signed by the grantor, or maker, or his attorney. (a)

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. (b)

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 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. 14. 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. (c)

SEC. 15. 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. (d)

SEC. 16. 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. 17. 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, or woman otherwise eligible under the constitution and appointed for the purpose by the governor with the advice and consent of council, in the state, or any justice of the peace, magistrate, or notary public within any of the United States, or before a 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 the state. No deed without one subscribing witness can, for this purpose, be proved before any court or justice.

(a) 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.

(b) 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; 57 Me., 508; 58 Me., 266; 60 Me., 188; 65 Me., 181, 401, 504; 68 Me., 92.

(c) 43 Me., 436; 45 Me., 71; 67 Me., 561.

(d) 1 Me., 234, 342; 23 Me., 59; 59 Me., 175, 486; 61 Me., 122; 68 Me., 92; 72 Me., 41.

CHAP. 73.

by writing.
R.S., c. 73, § 10.

No trust in lands unless by writing; exception.
R.S., c. 73, § 11.

Titles not defeated by trusts without notice or record.
R.S., c. 73, § 12.

18 Me., 223.
46 Me., 265.

71 Me., 302.
74 Me., 595.

Trustees in mortgage hold in joint tenancy.
1881, c. 46.

—survivors may convey.

—personal property held with real estate.

Release conveys interest of grantor.

—husband and wife.
R.S., c. 73, § 14.

Deeds, and contracts by agent bind principal.

R.S., c. 73, § 15.

Conveyances for use of county, how effectual.

R.S., c. 73, § 16.

Deeds, before whom to be acknowledged.

R.S., c. 73, § 17.

1880, c. 201, § 1.
1875, c. 56.

R.S., c. 73, § 17.
17 Me., 419.
20 Me., 420.

37 Me., 428.
62 Me., 596,
607.

Grantor dead, or out of state, how execution may be proved.

R.S., c. 73, § 18.
69 Me., 583.

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How proved,
if witness is
dead or
absent.

R.S., c. 73, § 19.
69 Me., 583.

If grantor
refuses to
acknowledge,
proceedings.

R.S., c. 73, § 20.
69 Me., 583.

Grantor may
be summoned
before a
justice, and
execution
proved.

R.S., c. 73, § 21.
1883, c. 156, § 1.
R.S., c. 73, § 21.
69 Me., 583.

Justice may
certify on
deed that it
has been
proved.

R.S., c. 73, § 22.
1883, c. 156, § 1.
R.S., c. 73, § 22.
69 Me., 583.

Certificate to
be put on
deed, or it
cannot be
recorded.

R.S., c. 73, § 23.
Certificate
after com-
mission ex-
pired, valid.
R.S., c. 73, § 24.
37 Me., 428.

How a deed,
lost before
recording,
may be
effectually
recorded.

R.S., c. 73, § 25.

Deed of lands
in several
counties,
lost before
record in all,
how recorded
in others.
1883, c. 105.

How a person

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 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.

SEC. 22. 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. 23. 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. (a)

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 is as valid as if done before such expiration.

SEC. 25. 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. 26. 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 any other county, with the same effect as a record of the original.

SEC. 27. A person having an interest in real estate of which any

(a) 17 Me., 419; 19 Me., 277; 37 Me., 427.

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 tender to him, or leave with the register, the legal fees therefor; 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.

SEC. 28. 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 kept for that purpose, and open to inspection in business hours.

SEC. 29. 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.

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holding an unrecorded deed, may be compelled to have it recorded.
R.S., c. 73, § 27.

Register to certify on deed when received, also in book open to all.
R.S., c. 73, § 28.
12 Me., 501.
17 Me., 395.

Pews, real estate.
—deeds and levies may be recorded in town clerk's office.
R.S., c. 73, § 29.

CHAPTER 74.

WILLS, THEIR EXECUTION, AND DEVISES.

WILLS AND DEVISES.

- SEC. 1. Will, by whom and how to be made.
2. Witnesses competent at the time, are sufficient. Property not disposed of, how to be distributed.
3. Will, how rendered invalid, or revoked.
4. What lands pass, although testator is not seized, or is disseized.
5. Lands subsequently acquired, pass.
6. Property taken from a devisee for payment of debts, loss to be borne equally.
7. Assets, how to be marshalled for payment of debts.
8. Posthumous child takes a share of an estate.
9. Child or issue of deceased child, having no devise, takes; exception.
10. When devisee dies before testator, his lineal heirs take the devise.
11. Who shall contribute to the loss of a devisee.
12. When one cannot pay, loss shall be borne equally by the others.
13. Real estate not devised, shall be first applied to pay debts. Exceptions.
14. Cases of contribution, how determined.
15. Will is not effectual unless proved and allowed in probate court. Proof there, conclusive.
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 is stated in will, reasonable time shall be allowed, not exceeding five years; if condition is not performed, how administered.

NUNCUPATIVE WILLS.

- SEC. 18. Nuncupative wills, where and when to be made; exceptions.
19. Testimony to prove, not receivable after six months; exception.
20. Not effectual to dispose of property exceeding one hundred dollars, unless three witnesses were present.