

# 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.

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BY THE AUTHORITY OF THE LEGISLATURE.



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**CHAP. 83.**

and issue new executions for two years after commission expires. R.S., c. 83, § 28. See § 26.

11 Me., 380.  
35 Me., 137.

Unsatisfied executions of a trial justice, may be renewed by any other trial justice in same county. 1878, c. 68.

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; and after two years such copies may be certified and executions issued and renewed, as in case of the death of the justice.

SEC. 31. Executions remaining unsatisfied, in whole or in part, issued by a trial justice whose commission has expired, or who has removed from the county for which he was commissioned, may be renewed by any trial justice in the same county, upon such vouchers as would be required by the trial justice who rendered the judgment.

## TRIAL JUSTICE SHALL NOT BE OF COUNSEL.

Justice not to be of counsel. R.S., c. 83, § 29.

—such action shall abate.

SEC. 32. No trial 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.

## JUSTICES OF THE PEACE AND QUORUM.

Ex-officio, justices of the peace and quorum. R.S., c. 83, § 30. 66 Me., 271.

To be commissioned for the State. 1880, c. 215.

SEC. 33. Trial justices are, ex-officio, justices of the peace and of the quorum, and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices, are of equal effect.

SEC. 34. Justices of the peace and of the quorum shall exercise their powers and duties, and shall be commissioned to act, within and for every county.

## CHAPTER 84.

## LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

- SEC. 1. Execution; what goods may be sold on.
2. Execution; coin and bank notes, how to be levied on.
3. Execution; goods, how long to be kept, and within what time to be sold on.
4. Execution; notice of sale on.
5. Execution; adjournments of sale on, each not to exceed six days.
6. Execution; adjournment of sale on, to another place.
7. Indemnity; officer may require.
8. Re-sale, if purchaser refuses to take; officer shall account for proceeds of second sale, 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 to be disposed of.
11. Buildings on leased lands, how to be sold for land rent. Sale of buildings in other cases, and right of redeeming the same.
12. Shares in incorporated companies, how to be sold.
13. Notice of seizure of, how to be given, if not attached; and how, if attached.
14. Officers of corporations shall certify number of debtor's shares. Penalty.

- SEC. 15. Shares sold, shall be transferred; new certificates to buyer. Dividends.
16. Notice of sale, how to be given.
17. Franchise of corporation, how to be sold; notice of sale of, how to be given.
18. Mode of sale. Possession, what, and how to be given to the purchaser.
19. Rights and duties of the purchaser.
20. Rights of redemption by the corporation.
21. Franchises of railroads wholly within the state, notice of sale of, how to be given in each county interested. Conveyance by sheriff's deed.
22. Proceeds of sale applied in order of attachment; balance paid to debtor.
23. Notice of second attachment, shall be given to the first attaching officer.
24. Warrant against turnpike corporation for damages. Sale of the franchise may be adjourned. In what county, sale may be had.
25. In case of prior attachment, lien by seizure on execution, how preserved.
26. Proceedings, when such attachment is removed.
27. Executions, shall be set off against each other.
28. Cases, in which it may not be done.
29. Proceeds of sale of mortgaged property, how applied. Sale without tender.
30. Executions and warrants of distress against towns, how to be issued and enforced upon personal estate. How levied on real estate.
31. Notice and incidents of the sale.
32. Remedy of owner of property so sold.

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

What goods may be sold on execution.  
R.S., c. 84, § 1.

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.

Coin and bank notes, how levied on.  
R.S., c. 84, § 2.  
87 Me., 414.

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

Goods, when to be sold on execution.  
R.S., c. 84, § 3.  
24 Me., 398.  
61 Me., 531.

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

Notice of sale.  
R.S., c. 84, § 4.  
60 Me., 206.

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 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.

Adjournments of sale; time.  
R.S., c. 84, § 5.  
11 Me., 374.  
34 Me., 442.  
60 Me., 206.

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

Adjournment of sale to another place.  
R.S., c. 84, § 6.  
Indemnity, officer may

SEC. 7. When there is reasonable doubt as to the ownership of goods,

(a) 24 Me., 399; 51 Me., 557.

(b) 11 Me., 374; 74 Me., 553.

## CHAP. 84.

require.  
R.S., c. 84, § 7.  
Re-sale, if  
buyer refuses  
to take; offi-  
cer to account  
for proceeds  
of second sale  
and damages  
recovered.  
R.S., c. 84, § 8.

Return of  
sale, how to  
be made.  
R.S., c. 84, § 9.  
—penalty for  
fraud, in sale  
or in return.

Proceeds of  
sale, how  
disposed of.  
R.S., c. 84, § 10.

Buildings on  
leased land,  
how to be sold  
for land rent.  
R.S., c. 84, § 11.

—sale of  
buildings in  
other cases,  
and right of  
redeeming  
same.

Shares in  
incorporated  
companies,  
how to be  
sold.  
R.S., c. 84, § 12.

Notice of  
seizure of;  
how to be giv-  
en, if not at-  
tached, and  
how, if at-  
tached.  
R.S., c. 84, § 13.

Officers of  
corporations,  
shall certify  
number of  
debtor's  
shares, under  
penalty.  
R.S., c. 84, § 14.

Shares sold,  
to be trans-  
ferred; new  
certificate  
to purchaser.  
R.S., c. 84, § 15.

or their liability to be taken on 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 that he recovers of the first bidder for a loss on the re-sale, as for so much received on the execution.

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 commits any fraud in the sale or return, he forfeits to the debtor, five times the sum of which he defrauds him, to be recovered in an action on the case.

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 applied as provided in section twenty-two.

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 sufficient to pay the debt and costs; or cause such building to be sold like any other personal estate. In all cases, any mill or building seized and sold on execution as a chattel personal, may be redeemed within one year, as land levied upon by appraisement may be; and the remedies and rights of the parties are the same as those of mortgagor and mortgagee, except the rate of interest, which shall be ten per cent. a year.

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 not otherwise, anything in the charter of such company to the contrary notwithstanding.

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 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 section twenty-seven of chapter eighty-one.

SEC. 15. Within fourteen days after the 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 is thereupon 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. CHAP. 84.  
63 Me., 514.  
—dividends.

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 in one or more public places in the town where the sale is to be made, and in two adjoining towns, if there are so many, thirty days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for 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 are sufficient. Notice of  
sale, how to  
be given.  
R.S., c. 84, § 16.  
74 Me., 20.

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, giving notice of the time and place of sale by posting a notification in any town, in which the treasurer, clerk, or any officer thereof, if there are any officers, and if not, where any stockholder resides, for thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted for three weeks successively in a newspaper printed in a county where either of said officers, or, if the company is without officers, where any stockholder resides, the last publication being at least 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 to be  
sold; notice  
of sale how  
to be given.  
R.S., c. 84, § 17.

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, is the highest bidder, and the purchaser for such period; 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. 84, § 18.

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, 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. 84, § 19.

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 which he paid in satisfaction of the execution, with twelve per cent. interest, in addition to the toll received. Rights of  
redemption  
by the  
corporation.  
R.S., c. 84, § 20.

SEC. 21. The provisions of the four preceding sections apply to the franchises of railroad corporations whose railroads lie wholly within the Sections  
seventeen to  
twenty apply

## CHAP. 84.

to franchises of railroads lying wholly within the state.

1880, c. 236, § 1.  
See c. 76, § 46.

—notice, how to be given in each county interested.

—conveyance of franchise, by sheriff's deed.

1880, c. 236, § 2.

Proceeds of property sold shall be applied in order of attachment; balance shall be paid to the debtor.

R.S., c. 84, § 21.  
67 Me., 31.

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

R.S., c. 84, § 22.

When warrant against turnpike and other corporations taking toll, may be issued.

R.S., c. 84, § 23.

—sale of franchise may be adjourned.

—in what county, sale may be had.

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

R.S., c. 84, § 24.

state, except that notice shall be given of the time and place of such sale, by posting a notification thereof at the court house in each county through which such railroad runs, either wholly or in part, for thirty days at least before the day of sale, and by causing an advertisement to be inserted for three weeks successively in at least one newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least four days before the day of sale, and if there is no newspaper printed in any one or more of such counties, then in the state paper instead; and when the company has an established office in the state, notice of the sale shall also be given by leaving an attested copy thereof at the office of said company for not less than thirty days previous to such sale; and notice given in the manner herein provided is sufficient. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.

SEC. 22. 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 attachment or execution were served; and the residue, if any, shall be paid over to the debtor.

SEC. 23. 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 is not liable therefor to the person claiming under such subsequent attachment or seizure.

SEC. 24. When damages are assessed in favor of a person by the county commissioners, by a committee, or by verdict of a jury, for an injury sustained by him through 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. 25. When real or personal estate is seized on execution, and further service is suspended by a prior attachment thereof, such estate shall be bound by the seizure until it is set off or sold in whole or in part under the prior attachment, or until the attachment 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. 26. If the prior attachment is dissolved, or the estate is set off or sold in part under it, the estate or remaining part thereof continues 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.

Proceedings, when attachment is removed.  
R. S., c. 84, § 25.

SEC. 27. When an officer has in his hands executions, wherein 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; and 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.

Executions shall be set off against each other.  
R. S., c. 84, § 26.  
22 Me., 462.  
24 Me., 352.  
58 Me., 155.

SEC. 28. 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.

Cases, in which executions shall not be set off.  
R. S., c. 84, § 27.  
3 Me., 37.  
7 Me., 84.  
58 Me., 155.

SEC. 29. After deducting his fees and charges of sale, the officer shall apply the proceeds of the sale of property mortgaged or pledged, 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.

Proceeds of sale of property mortgaged, how to be applied.  
R. S., c. 84, § 28.  
24 Me., 110.

—sale without tender.

SEC. 30. 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. (a)

Executions and warrants of distress against towns, how to be issued and satisfied on personal estate; how to be levied on real estate.  
R. S., c. 84, § 29.  
See c. 46, § 55.

SEC. 31. He shall advertise in the state paper, and in one of the newspapers printed in the county where the lands lie, if any, for three

Notice and incidents of the sale.

(a) 47 Me., 141; 49 Me., 328; 68 Me., 507; 69 Me., 467; 74 Me., 43.



**CHAP. 84.** 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.

Remedy of owner of the property so sold.  
R.S., c. 84, § 31.  
See c. 46, § 55.

**SEC. 32.** The owner of any real or personal estate so sold, 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. (a)

## CHAPTER 85.

### BAIL IN CIVIL ACTIONS.

- SEC. 1.** Bail shall be by bond to the sheriff or other officer; bond shall be returned with the writ.
2. What bail the sheriff may require.
  3. In what cases the obligors shall be held.
  4. Surrender of principal before entry; how it shall be done, and its effect.
  5. Names of bail shall be entered on execution.
  6. Officer shall notify bail; his fees shall be paid.
  7. Surrender of principal in court.
  8. In case of avoidance, officer's duty, and liability of bail.
  9. When scire facias against bail may issue.
  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, and its effect.
  14. Officer's fees, duty, and liability for neglect.
  15. Surrender in such case before judgment, and after judgment.
  16. Remedy of bail against principal.

Bail shall be by bond to officer, to be returned with writ.  
R.S., c. 85, § 1.  
1 Me., 336.  
4 Me., 13.  
8 Me., 423.  
40 Me., 125.

**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, officer may require.

**SEC. 2.** No officer is obliged to accept a bail bond unless signed by at least two sureties, having sufficient property in the county in which

(a) 69 Me., 468; 74 Me., 43.