

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :
KENNEBEC JOURNAL PRINT,
1904.

TITLE SEVEN.

Titles to Property.

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

CHAPTER 75.

CONVEYANCES BY DEED, THEIR FORM AND CONSTRUCTION. TRUSTS.

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.

Conveyance by deed.

—what passes as realty, and what not.
 R. S., c. 73, § 1.
 13 Me., 234.
 56 Me., 46, 127.
 72 Me., 302.
 73 Me., 228.

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.

An alien may hold and convey real estate.
 R. S., c. 73, § 2.

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.

Contingent estates may be conveyed.
 R. S., c. 73, § 3.
 45 Me., 101.
 68 Me., 141.

SEC. 4. When real estate is subject to a contingent remainder, executory devise, or power of appointment, the supreme judicial court, or the probate court, for the county in which such real estate is situated, may, upon the petition of any person who has an estate in possession in such real estate, and after notice and other proceedings as hereinafter required, appoint one or more trustees, and authorize him or them to sell and convey such estate or any part thereof in fee simple, if such sale and conveyance appears to the court to be necessary or expedient; to mortgage the same, either with or without power of sale, for such an amount, on such terms, and for such purposes, as may seem to the court judicious or expedient; and such conveyance or mortgage shall be valid and binding upon all parties.

Real estate subject to contingent remainders may, upon notice and petition, be sold or mortgaged.
 1901, c. 245, § 1.

SEC. 5. Notice of any such petition shall be given in such manner as the court may order, to all persons who are or may become interested in the real estate to which the petition relates, and to all persons, whose issue, not in being, may become interested therein; and the court shall in every case appoint a suitable person to appear and act therein as the next friend of all minors, persons not ascertained, and persons not in being, who are or may become interested in such real estate; and the cost of the appearance and services of such next friend, including the compensation of his

Notice shall be such as the court may order.
 1901, c. 245, § 2.

—a suitable person shall be appointed to act as next friend of all minors, etc.

CHAP. 75.

counsel, to be determined by the court, shall be paid, as the court may order, either out of the proceeds of the sale or mortgage or by the petitioner, in which latter case execution therefor may issue in the name of the next friend.

Trustees shall give bond. 1901, c. 245, § 3.

—proceeds, how disposed of.

SEC. 6. Every trustee appointed under section four shall give bond in such form and for such an amount as the court appointing him may order, and he shall receive and hold, invest or apply the proceeds of any sale or mortgage made by him, for the benefit of the persons who would have been entitled to the real estate, if such sale or mortgage had not been made, and the probate court for the county in which such real estate or the greater part thereof, is situated shall have jurisdiction of all matters thereafter arising in relation to such trust.

Entailments may be barred by conveyance in fee simple. R. S., c. 73, § 4. 60 Me., 177. 80 Me., 592. 92 Me., 515.

SEC. 7. A person seized of land as a 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.

Conveyance of a greater estate, conveys what is owned. R. S., c. 73, § 5. 76 Me., 350.

SEC. 8. 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.

Conveyance or devise for life, and to one's heirs. R. S., c. 73, § 6.

SEC. 9. 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)

Conveyances to two or more. R. S., c. 73, § 7.

SEC. 10. 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. (b)

Not effectual against others, unless recorded. R. S., c. 73, § 8.

SEC. 11. 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. (c) Conveyances of the right, title or interest of the grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title.

—releases. 1903, c. 220.

SEC. 12. 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.

Absolute deed is not defeated by defeasance not recorded. R. S., c. 73, § 9. 77 Me., 554.

SEC. 13. 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. (d)

No estate in lands greater than tenancy at will, unless by writing. R. S., c. 73, § 10.

(a) 60 Me., 479; 68 Me., 141; 75 Me., 589; 76 Me., 350; 78 Me., 226, 227.

(b) 24 Me., 484; 46 Me., 260; 76 Me., 350; 82 Me., 230; 84 Me., 370.

(c) 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; 76 Me., 316; 77 Me., 50; 78 Me., 182; 79 Me., 202; 84 Me., 413; 85 Me., 435; 95 Me., 316; 96 Me., 500.

(d) 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; 84 Me., 532.

SEC. 14. 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. (a)

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

SEC. 15. 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. (b)

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

SEC. 16. 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.

Trustees in mortgage hold in joint tenancy. R. S., c. 73, §13.

—survivors may convey.

—personal property held with real estate.

SEC. 17. 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)

Release conveys interest of grantor. —husband and wife. R. S., c. 73, §14.

SEC. 18. 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)

Deeds, and contracts by agent bind principal. R. S., c. 73, §15.

SEC. 19. 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.

Conveyances for use of county, how effectual. R. S., c. 73, §16.

SEC. 20. 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 the council in the state, or any clerk of a court of record having a seal or notary public within the United States, or before a minister or consul of the United States or notary public in any foreign country. The seal of such court, or the official seal of such notary shall be affixed to the certificate of acknowledgment. (e)

Deeds, before whom to be acknowledged. R. S., c. 73, §17. 1903, c. 89. See c. 2, § 38.

SEC. 21. 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.

Grantor dead, or out of state, how execution may be proved. R. S., c. 73, §18. 69 Me., 583.

(a) 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; 79 Me., 325; 81 Me., 149; 88 Me., 125; 89 Me., 167; 94 Me., 313.

(b) 18 Me., 223; 46 Me., 265; 71 Me., 302; 74 Me., 595; 79 Me., 202, 250; 94 Me., 307.

(c) 43 Me., 436; 45 Me., 71; 67 Me., 561; 75 Me., 90; 83 Me., 567; 84 Me., 150.

(d) 1 Me., 234, 342; 23 Me., 59; 59 Me., 175, 486; 61 Me., 122; 68 Me., 92; 72 Me., 41; 75 Me., 502; 76 Me., 204; 96 Me., 526.

(e) 17 Me., 419; 20 Me., 420; 37 Me., 428; 62 Me., 596, 607; 80 Me., 36.

CHAP. 75.

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.
69 Me., 583.

Justice may
certify on
deed that it
has been
proved.
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., 423.

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.
R. S., c. 73, §26.
1895, c. 63.

Person
holding an
unrecorded
deed, may be
compelled to
have it
recorded.
R. S., c. 73, §27.
1895, c. 33.

SEC. 22. When the witnesses are dead or out of the state, the handwriting of the grantor and subscribing witness may be proved by other testimony.

SEC. 23. 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. 24. 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. 25. 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. 26. 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. 27. 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. 28. 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. 29. 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 another county, or registry district, with the same effect as a record of the original.

SEC. 30. A person having an interest in real estate of which any 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 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, together

(a) 17 Me., 419; 19 Me., 277; 37 Me., 427; 89 Me., 380.

with the legal fees of the register for recording such deed or other evidence of title.

SEC. 31. 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.

Pews, real estate.—deeds and levies, where recorded. R. S., c. 73, § 29.

SEC. 32. No agreement that a building erected with the consent of the landowner, by one not the owner of the land upon which it is erected, shall be and remain personal property, shall be effectual against any person, except the owner of such land, his heirs, devisees and persons having actual notice thereof, unless such agreement is in writing and signed by such land owner, or by some one duly authorized for that purpose, and acknowledged and recorded as deeds are required to be acknowledged and recorded under this chapter; *provided*, that this section shall not apply to agreements entered into prior to April twenty-eight, nineteen hundred and three, and then outstanding.

Agreement that building on land of another shall be personal property not effectual, unless recorded. 1903, c. 150.

CHAPTER 76.

WILLS THEIR EXECUTION, AND DEVISES.

WILLS AND DEVISES.

SEC. 1. A person of sound mind, and of the age of twenty-one years, may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will. (a)

Will, by whom and how to be made. R. S., c. 74, § 1.

SEC. 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will shall be distributed as the estate of an intestate.

Competency of witnesses.—property not willed, distributed. R. S., c. 74, § 2. 22 Me., 441. 91 Me., 422.

SEC. 3. A will so executed is valid, until it is destroyed, altered or revoked by being intentionally burnt, canceled, torn or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker. (b)

Will, how rendered invalid, or revoked. R. S., c. 74, § 3.

SEC. 4. Lands into which the testator, at the time, has a right of entry although not seized of them, and lands of which he is subsequently dis-seized, pass by his will, as they would, if not devised, have descended to his heirs; and his devisee has the same remedy for their recovery, as his heirs would have had.

What lands of testator pass by will. R. S., c. 74, § 4.

SEC. 5. Real estate owned by the testator, the title to which was acquired after the will was executed, will pass by it, when such appears to have been his intention.

After-acquired lands pass. R. S., c. 74, § 5. 69 Me., 309. 84 Me., 71.

(a) 21 Me., 463; 22 Me., 440; 27 Me., 24; 34 Me., 162; 42 Me., 74; 45 Me., 585; 46 Me., 244; 47 Me., 476; 48 Me., 194; 57 Me., 573; 66 Me., 294; 70 Me., 548; 79 Me., 45; 80 Me., 53; 82 Me., 208.

(b) 4 Me., 341; 22 Me., 426; 57 Me., 453; 73 Me., 597; 79 Me., 342; 81 Me., 277; 86 Me., 288.