

# MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

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## CHAPTER 105.

## Mortgages of Personal Property. Liens and Their Enforcement.

Sections 1-6	Mortgages of Personal Property.
Sections 7-26	Liens on Vessels.
Section 27	Liens on Lime, Lime-rock, Granite, and Slate.
Section 28	Liens on Brick.
Sections 29-46	Liens on Buildings and Lots, Wharves, and Piers.
Sections 47-53	Liens on Logs, Lumber, Wood, and Bark.
Sections 54-55	Liens on Hay.
Sections 56-57	Liens on Vehicles.
Section 58	Liens on Canned Goods.
Section 59	Liens on Leather.
Sections 60-61	Liens on Colts, and on Animals for Pasturage, Food, and Shelter.
Section 62	Liens on Monumental Work.
Sections 63-65	Liens on Watches, Clocks, and Jewelry.
Sections 66-69	General Provisions for Enforcement and Discharge.
Sections 70-79	Enforcement of Liens on Goods in Possession and Choses in Action.
Sections 80-81	Pledges.
Section 82	Liens of Safe Deposit Companies.

## Mortgages of Personal Property.

Sec. 1. Mortgages of personal property, when valid; provisions as to record. R. S. c. 96, § 1. 1919, c. 121. No mortgage of personal property shall be valid against a trustee in bankruptcy or an assignee in insolvency of the mortgagor, or against an assignee under a general assignment for the benefit of the creditors of the mortgagor, or against any person other than the mortgagor, unless and until possession of such property is delivered to the mortgagee within twenty days from the date written in said mortgage, or, when undated, then from the date of execution and delivery of the same, and unless such possession is retained by the mortgagee, or unless and until the mortgage is recorded within the said period of twenty days in the office of the clerk of the city, town, or plantation organized for any purpose, in which the mortgagor resides when the mortgage is given, or registry of deeds as hereinafter provided. When all mortgagors reside without the state, the mortgage shall be so recorded in the office of the register of deeds in the registry district where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the cities, towns, or plantations so organized in which such mortgagors reside when the mortgage is given. If any mortgagor resides in an unorganized place, the mortgage shall be so recorded in the office of the register of deeds for the registry district in which such unincorporated place is located. A mortgage made by a corporation shall be so recorded in the city, town, or plantation where it has its established place of business, and, if said corporation

## CHAP. 105

has no established place of business in the state, or said place of business is in an unorganized place in the state, then in the office of the register of deeds for the registry district in which such property is when the mortgage is made. Such chattel mortgages need not be acknowledged for presentation for record. If possession is taken or said mortgage recorded subsequent to said period of twenty days, it shall be valid against mortgages, assignments and bills of sale executed and delivered subsequent to the making of said record, and also against attachments made subsequent thereto, based upon causes of action arising subsequent thereto, and also against trustees in bankruptcy and common law assignees, so far as relates to claims accruing subsequent thereto.

See c. 5, § 20; 19 Me. 169; 21 Me. 92; \*22 Me. 561; 24 Me. 108, 558; 25 Me. 421; 27 Me. 404; 30 Me. 184; 31 Me. 74; 32 Me. 30, 237; 33 Me. 319; 34 Me. 209; 37 Me. 186, 545; 40 Me. 413, 562; 42 Me. 131, \*174; 44 Me. 18; 45 Me. 605; \*46 Me. 296, 415; 47 Me. 13, 505; 48 Me. 30, 369, \*550, 586; 49 Me. \*98, 567; 50 Me. 129, 396; 51 Me. 601; \*53 Me. 321; \*55 Me. 81; \*56 Me. 464; 59 Me. 320; \*65 Me. 490; 72 Me. 400; 73 Me. 198; 83 Me. 528; 87 Me. 171; \*92 Me. 69; \*97 Me. 363; 98 Me. 163; 100 Me. 294; \*104 Me. 317; 113 Me. 441; 114 Me. 270; 115 Me. 32; \*117 Me. 95; \*117 Me. 138; 119 Me. 38; 127 Me. 175.

**Sec. 2. Duty of clerk; consent for sale or exchange.** R. S. c. 96, § 2. The clerk shall record all such mortgages delivered to him, in a book kept for that purpose, noting therein, and on the mortgage, the time when it was received; and it shall be considered as recorded when received. No consent given by the mortgagee of personal property to the mortgagor for the sale or exchange of the mortgaged personal property shall be valid or be used in evidence in civil process unless in writing and signed by the mortgagee or his assigns.

See c. 5, § 20; c. 6, § 24; c. 15, § 14; 19 Me. 173; 31 Me. 74; 37 Me. 186; 40 Me. 285; 43 Me. 376; 73 Me. 250; \*81 Me. 299; \*97 Me. 227; \*116 Me. 94; 117 Me. 512.

**Sec. 3. Redemption after breach of condition.** R. S. c. 96, § 3. When the condition of a mortgage of personal property is broken, the mortgagor, or person lawfully claiming under him, may redeem it at any time before it is sold, by virtue of a contract between the parties, or on execution against the mortgagor, or before the right of redemption is foreclosed, as hereinafter provided, by paying or tendering to the mortgagee, or the person holding the mortgage by assignment thereof, recorded where the mortgage is recorded, the sum due thereon, or by performing, or offering to perform the conditions thereof, when not for the payment of money, with all reasonable charges incurred; and the property, if not immediately restored, may be replevied, or damages for withholding it recovered in an action on the case.

See c. 104, § 30; 49 Me. 39; 54 Me. 561; 64 Me. 107; \*73 Me. 199; 77 Me. 355; \*95 Me. 227; 103 Me. 443; 118 Me. 298; 123 Me. 12.

**Sec. 4. Notice of foreclosure.** R. S. c. 96, § 4. The mortgagee or his assignee, after condition broken, may give to the mortgagor or his assignee, when his assignment is recorded where the mortgage is recorded, written notice of his intention to foreclose the same, by leaving a copy thereof with the mortgagor or such assignee, or if the mortgagor cannot be found by reasonable diligence or is out of the state, although resident therein, by leaving such copy at his last and usual place of abode, or by publishing it once a week, for three successive weeks in one of the principal newspapers published in the town where the mortgage is recorded. When the mortgagor or his assignee of record is not a resident of the state and no newspaper is published in such town, such notice may be published in any newspaper printed in the county where the mortgage is recorded.

See c. 91, § 36, ¶ 1; 59 Me. 420; \*73 Me. 199; 103 Me. 443; 123 Me. 13.

**Sec. 5. Notice shall be recorded; mortgagee out of state shall appoint agent to receive satisfaction.** R. S. c. 96, § 5. 1919, c. 193. 1927, c. 19. The notice with an affidavit of service or the official return of service of any officer qualified to serve civil process, or a copy of the last publication, with the name and date of the paper containing it, shall be recorded where the mortgage is recorded, and the copy of such record is evidence that the notice has been given. If the mortgagee or his assignee is not a resident of the state, he shall at the time of recording such notice, record therewith his appointment of an agent resident in the county where the mortgage is recorded, to receive satisfaction of the mortgage; and payment or tender thereof may be made to him. If he does not appoint such agent, the right to redeem is not forfeited.

118 Me. 312.

**Sec. 6. Right of redemption forfeited after sixty days; exceptions.** R. S. c. 96, § 6. The right to redeem shall be forfeited, except as provided in the preceding sections, if the money to be paid or other thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is recorded; but nothing in the preceding sections defeats a contract of bottomry, respondentia, transfer, assignment, or hypothecation of a vessel or goods, at sea or abroad, if possession is taken as soon as may be after their arrival in the state.

See c. 104, § 30; 24 Me. 136; 29 Me. 432; 31 Me. 106; 32 Me. 174; 36 Me. 49; 39 Me. 450; \*55 Me. 81; 59 Me. 420.

### Liens on Vessels.

**Sec. 7. Lien on domestic vessels created.** R. S. c. 96, § 7. All domestic vessels shall be subject to a lien to any part owner or other person to secure the payment of debts contracted and advances made for labor and materials necessary for their repair, provisions, stores, and other supplies necessary for their employment, and for the use of a wharf, dry dock, or marine railway, provided, that such lien shall in no event continue for a longer period than two years from the time when the debt was contracted or advances made.

80 Me. 530.

**Sec. 8. Lien for labor or materials furnished for building vessels; on vessels, by owners of dry docks and marine railways.** R. S. c. 96, § 8. Whoever furnishes labor or materials for building a vessel, has a lien on it therefor, which may be enforced by attachment thereof, within four days after it is launched; but if the labor and materials have been so furnished by virtue of a contract not fully completed at the time of the launching of the vessel, the lien may be enforced within four days after such contract has been completed. He also has a lien on the materials furnished, before they become part of the vessel, which may be enforced by attachment; and the owners of any dry dock or marine railway, used for any vessel, have a lien on said vessel for the use of said dock or railway, to be enforced by attachment within four days after the last day in which the same is used or occupied by said vessel.

33 Me. 479; 34 Me. 206; 36 Me. 387; 40 Me. 292, 411; 41 Me. 399; 42 Me. 81, 147; \*58 Me. 98; \*61 Me. 567; 69 Me. 235; 70 Me. 351; 71 Me. 464, 494; 72 Me. 129; \*80 Me. 522.

**Sec. 9. Form of writ for enforcing lien.** R. S. c. 96, § 9. The form of a writ for enforcing such lien, shall be in substance as follows:

"STATE OF MAINE.

\_\_\_\_\_, ss.

To the sheriff of our county of \_\_\_\_\_, or his deputy:

Greeting.

[L. S.] We command you to attach the vessel" (here give such a description of the vessel as will identify it,) "and summon all persons interested, in the manner directed by law, to appear before our justices of our \_\_\_\_\_ court, next to be held at \_\_\_\_\_, within and for our county of \_\_\_\_\_, on the \_\_\_\_\_ Tuesday of \_\_\_\_\_ next, then and there in our said court, to answer to A. B., of \_\_\_\_\_, who claims a lien on said vessel for" (here describe briefly the nature of the lien,) "to the amount of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, according to the specification hereto annexed, which amount, C. D., of \_\_\_\_\_, who owes the same, neglects and refuses to pay, to the damage of said A. B., as he says, the sum of \_\_\_\_\_ dollars, which shall then and there be made to appear, with other due damages; and have you there this writ with your doings thereon.

Witness, \_\_\_\_\_, Esquire, our \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, nineteen hundred and \_\_\_\_\_.

E. F., Clerk."

Said writ shall be signed, sealed and tested like other writs in civil actions, and returned in the county where said vessel is.

\*61 Me. 567; \*69 Me. 237.

**Sec. 10. Specification to be annexed to the writ; verification by oath.** R. S. c. 96, § 10. The specification annexed to the writ, shall contain a just, true, and particular account of the demand claimed to be due the plaintiff, with all just credits; the names of the persons personally liable to him, and names of the owners of the vessel if known to him, and it shall be verified by the oath of one plaintiff, or of some person in his behalf, that the amount claimed in said specification is justly due from the person named in the writ and specification as owing it, and that he believes that by the law of the state, he has a lien on such vessel for the whole or a part thereof.

61 Me. 588; \*69 Me. 237.

**Sec. 11. Attachment of vessel on the stocks; proceedings for sale of attached vessel liable to depreciation.** R. S. c. 96, § 11. If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within forty-eight hours thereafter, a copy of so much of his return on the writ, as relates to the attachment, with the name of the plaintiff, the name of the person liable for the debt, the description of the vessel as given in the writ, the date of the writ, the amount claimed, and the court to which it is returnable, and by leaving a copy of such certificate with one of the owners of the vessel, if known to him and residing within his precinct, or with the master workman thereon; if the attachment is so made, the officer need not take possession of the vessel before it is launched, unless specially directed by the plaintiff or his attorney to do so; but he shall, as soon as may be, afterwards; he may take possession at any time before it is launched; but if he does, he shall not hinder the work thereon, or prevent or delay the launching. If at the time of attachment, the vessel is launched, it shall be attached like other personal property. And whenever a vessel has been attached as aforesaid, and the expense of retaining possession of said vessel is great, or the vessel is liable to depreciate in value by reason thereof, any attaching creditor, or an owner of said vessel may in term time or vacation, petition a justice of the superior court, praying that said vessel attached as aforesaid, may be sold, and said justice may order a hearing thereon; and due notice shall be given to all parties

in interest, of the time and place appointed for said hearing, and a hearing on said petition shall be had before a justice of said court; and if it appears to said justice to be for the benefit of all parties in interest that said vessel should be sold, he shall issue to the officer in possession of the same, or to the sheriff of the county in which said vessel has been attached, an order to sell it at public auction, and shall designate in said order the notice to be given of the time and place of said sale; and said vessel shall be sold pursuant to said order, and the proceeds of such sale, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments, as if sold on execution; provided, however, that if said parties do not consent to a sale as herein provided, the provisions of sections thirty-two to forty-one, inclusive, of chapter ninety-five, so far as the same are applicable, shall apply to proceedings under this section.

\*58 Me. 99; \*75 Me. 444.

**Sec. 12. Service of writ on debtors and on owners.** R. S. c. 96, § 12. The writ shall be served on persons named as personally liable for the plaintiff's claim, as in other personal actions against them, or on the owners of the vessel, who are known or reside in the county where the vessel is, by a notice in substance, as follows, and served as summonses are:

" , ss. To the owners of the ship or vessel," (describe it as in writ,) "Greeting.

Take notice that the above described vessel is attached on a writ in favor of , who claims a lien thereon for the sum of dollars and cents," (naming the amount of the claim,) "due him by C. D., and that said writ is returnable to the court at the term to be held at , in and for the county of , on the Tuesday of , A. D. 19 , when and where you may appear and defend if you see fit.

Dated," (etc.)

"G. H., Sheriff," (or) "Deputy Sheriff;"—

and by a notice in like form posted in some conspicuous place on the vessel attached. The attachment, service and notices shall be made fourteen days at least before the term of the court to which the writ is returnable.

**Sec. 13. Subsequent writs to be served by same officer, unless disqualified.** R. S. c. 96, § 13. On all writs made after the first attachment and while any lien attachment is pending, the attachment and services shall be made as aforesaid by the same officer, or, if he is disqualified, by any qualified officer, by his giving notice thereof to the first attaching officer.

**Sec. 14. Entry of action; who may defend; bond required.** R. S. c. 96, § 14. At the return term, the actions shall be entered on the docket as follows: the person claiming the lien, as plaintiff; the person alleged to be personally liable, as defendant, and the name or other description of the vessel attached; and the owners or mortgagees of the vessel, or any plaintiff in a suit wherein it is attached for a lien, may appear and defend any action so far as relates to the validity and amount of the lien claim; but no such plaintiff shall so defend until he gives bond, to the satisfaction of the court, to pay the costs awarded against him.

**Sec. 15. Offer of default; owners may admit certain sum due; effect.** R. S. c. 96, § 15. The defendant may offer to be defaulted as in other cases; and the owners of the vessel may admit, in writing filed with the clerk, that a certain sum is due the plaintiff as a lien on the vessel; and if the plaintiff does not recover a greater sum as lien, he recovers no costs against such owner or the

## CHAP. 105

vessel or its proceeds, after the admission is filed; but such owner recovers costs thereafter.

\*58 Me. 100; \*69 Me. 240.

**Sec. 16. Court to apportion costs as in equity.** R. S. c. 96, § 16. The court, except as provided in the preceding section, may decide all questions of costs and apportion them as they think proper, as in cases of equity.

\*61 Me. 498.

**Sec. 17. Issue, how framed.** R. S. c. 96, § 17. At the request of either party, the following questions of fact shall be submitted to a jury: "What amount claimed in the writ is due from the defendant to the plaintiff?" and "For how much of such amount has the plaintiff a lien on the vessel attached?" And the verdict shall be in answer to these questions. If the parties waive a jury trial, these questions shall be decided by the court, on a hearing or report of an auditor appointed by the court.

\*58 Me. 100; \*69 Me. 240.

**Sec. 18. Judgment against defendant.** R. S. c. 96, § 18. Upon ascertaining the amount aforesaid, judgment shall be rendered in his favor against the defendant, as in other personal actions, for the amount found not to be a lien on the vessel, with such costs as the court awards; and a separate judgment shall be rendered in his favor against said defendant and the vessel attached, for the amount decided to be a lien, with such costs as the court awards; and separate executions shall be issued thereon.

\*58 Me. 100; 61 Me. 567; \*69 Me. 240.

**Sec. 19. Exceptions, motions, etc.** R. S. c. 96, § 19. Parties have the same right of exceptions, motions for new trial, and writs of error, as in other actions.

**Sec. 20. Court may order vessel sold, and proceeds paid into court.** R. S. c. 96, § 20. When judgment is recovered in any suit on which a vessel was attached, the court may issue an order, to the attaching officer to sell it at auction, and to pay the proceeds thereof into court after deducting the expenses of sale and for taking care of the vessel while under attachment. Such officer shall sell it as other personal property is sold on execution; and the purchaser shall hold it free from any prior claim.

\*58 Me. 100; \*61 Me. 567; 76 Me. 447.

**Sec. 21. Distribution of proceeds, and of any surplus.** R. S. c. 96, § 21. If such proceeds are more than all the judgments recovered against such vessel, and the amounts claimed in the undecided suits, the court may order the judgments, as fast as they are recovered against said vessel, to be paid from said fund until all such suits are terminated and all judgments satisfied. The balance, if any, the court may, on petition, order to be paid to the persons legally entitled thereto.

\*76 Me. 447.

**Sec. 22. When proceeds are not enough they shall be distributed pro rata, and double liens to be prevented.** R. S. c. 96, § 22. If such proceeds are not enough to pay in full the judgments recovered and the claims still undecided, the court may order the money to remain until all the suits are terminated, and then divide pro rata; or it may direct a sufficient amount to be retained to pay on the undecided claims their proportion, and divide the residue ratably among the judgments recovered, and if, after all the suits are terminated and the judgments recovered subsequent to the first division have received the same proportion as prior judgments, there is any sum remaining, it shall be divided among the judgments pro rata, and in such division the court shall make such



orders as will prevent the enforcement of a double lien, and will secure the just rights of all.

**Sec. 23. How vessel under attachment may be attached on lien claim.** R. S. c. 96, § 23. If the vessel has been already attached by a sheriff or his deputy, when a writ is issued for such lien claim, such writ shall be served by such officer; if attached by a constable, he shall give up to the officer having the lien writ, the possession and the precept upon which he attached it with his return of the facts thereon; and the attachment shall hold subject to the legal priorities of the lien claim.

For form see 1858, c. 15, § 21; \*61 Me. 567.

**Sec. 24. If attached for lien, how attached for non-lien claims.** R. S. c. 96, § 24. A vessel attached for a lien claim, may be attached by the same officer, in the ordinary manner, in a suit against the owners thereof, and such attachment shall be valid, subject to the legal priorities of the lien attachments.

**Sec. 25. Sale of vessel, attached on both kinds of claims.** R. S. c. 96, § 25. When a vessel attached for liens, and also in the ordinary manner, is sold by order of the court, and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer, to be held upon the writs not founded on the lien claims.

**Sec. 26. Admiralty powers of court.** R. S. c. 96, § 26. The court like a court in admiralty, may make all orders necessary for carrying out the provisions of sections nine to twenty-five inclusive, according to their true intent and meaning.

#### Liens on Lime, Lime-rock, Granite, and Slate.

**Sec. 27. Enforcement of liens on lime and lime-rock, granite, and slate.** R. S. c. 96, § 27. Whoever digs, hauls, or furnishes rock for the manufacture of lime, has a lien thereon for his personal service, and on the rock so furnished, for thirty days after such rock is manufactured into lime, or until such lime is sold or shipped on board a vessel; whoever labors in quarrying or cutting and dressing granite in any quarry, has a lien for his wages on all the granite quarried or cut and dressed in the quarry by him, or his co-laborers, for thirty days after such granite is cut and dressed, or until such granite is sold or shipped on board a vessel; and whoever labors in mining, quarrying, or manufacturing slate in any quarry, has a lien for the wages of his labor on all slate mined, quarried, or manufactured in the quarry by him or his co-laborers for thirty days after the slate arrives at the port of shipment, and until it has been shipped on board a vessel or laden in a car; such liens take precedence over all other claims, and may be enforced by attachment within the times aforesaid.

See § 66; 72 Me. 423; \*73 Me. 161, 209; 107 Me. 136.

#### Liens on Brick.

**Sec. 28. Enforcement of lien on brick.** R. S. c. 96, § 28. Whoever performs labor, or furnishes labor or wood for manufacturing and burning bricks has a lien on such bricks for such labor and wood, for thirty days after the same are burned, suitable for use, provided, that said bricks remain in the yard where burnt; such lien shall take precedence over all other claims and of all attachments and encumbrances not made to secure a similar lien and may be enforced by attachment within the time aforesaid.

See § 66; 78 Me. 227.

Liens on Buildings and Lots, Wharves, and Piers.

**Sec. 29. Liens on buildings and lots for labor and materials.** R. S. c. 96, § 29. Whoever performs labor or furnishes labor or materials in erecting, altering, moving, or repairing a house, building, or appurtenances, including any public building erected or owned by any city, town, county, school district, or other municipal corporation, or in constructing, altering, or repairing a wharf, or pier, or any building thereon, by virtue of a contract with or by consent of the owner, has a lien thereon, and on the land on which it stands and on any interest such owner has in the same, to secure payment thereof, with costs. If the owner of the building has no legal interest in the land on which the building is erected, or to which it is moved, the lien attaches to the building, and if the owner of the wharf or pier has no legal interest in the land on which the wharf or pier is erected, the lien attaches to the wharf or pier, and in either case may be enforced as hereinafter provided; and if the owner of such land, building, wharf or pier so contracting, is a minor or married woman, such lien shall exist, and such minority or coverture shall not bar a recovery in any proceeding brought to enforce it.

16 Me. 273; 28 Me. 520; 33 Me. 144, 374; 34 Me. 199; 35 Me. 74, 297, 482; 52 Me. 301; \*54 Me. 348; 71 Me. 292; \*73 Me. 353; \*74 Me. 552; 75 Me. 76; 83 Me. 136, \*503; 85 Me. 336, 359; 87 Me. 274; 91 Me. 116, 559; 92 Me. 22; 97 Me. 99; \*98 Me. 439; \*103 Me. 73; 107 Me. 135; 108 Me. 223, 438; 109 Me. 343; 112 Me. 406; 116 Me. 199; \*118 Me. 34; \*123 Me. 355; 124 Me. 133.

**Sec. 30. Lien, how prevented.** R. S. c. 96, § 30. If the labor or materials were not furnished by a contract with the owner of the property affected, the owner may prevent such lien for labor or materials not then performed or furnished by giving written notice to the person performing or furnishing the same, that he will not be responsible therefor.

\*73 Me. 354; 75 Me. 79; 87 Me. 276; \*103 Me. 73; \*118 Me. 37.

**Sec. 31. Lien dissolved unless claim is filed in town clerk's office.** R. S. c. 96, § 31. The lien mentioned in the preceding section shall be dissolved unless the claimant within sixty days after he ceases to labor or furnish materials as aforesaid, files in the office of the clerk of the town in which such building, wharf, or pier is situated, a true statement of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate to identify it, and the names of the owners, if known; which shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and recorded in a book kept for that purpose, by said clerk, who is entitled to the same fees therefor as for recording mortgages, but this section shall not apply where the labor or materials are furnished by a contract with the owner of the property affected.

72 Me. 108; 79 Me. 285; 83 Me. 136, 503; 85 Me. 336; 91 Me. 116, 559; 94 Me. 534; 98 Me. 541; \*103 Me. 73; 108 Me. 223, 367; 123 Me. 423; 124 Me. 134, 207.

**Sec. 32. No inaccuracy avoids lien, if reasonably certain.** R. S. c. 96, § 32. No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor or materials, invalidates the proceedings, unless it appears that the person making it wilfully claims more than his due.

83 Me. 138, 503; 98 Me. 541.

**Sec. 33. Liens may be preserved and enforced by bill in equity.** R. S. c. 96, § 33. The liens mentioned in the four preceding sections may be preserved and enforced by bill in equity against the debtor and owner of the property affected, and all other parties interested therein, filed with the clerk of courts, in the

county where the house, building or appurtenances, wharf, pier, or building thereon, on which a lien is claimed, is situated, within ninety days after the last of the labor is performed, or labor or materials are so furnished, and not afterwards, except as provided in the following section.

35 Me. 297; 54 Me. 350; 71 Me. 293; 79 Me. 285; 87 Me. 436; \*89 Me. 231; 91 Me. 424; 98 Me. 488, 541; 103 Me. 73; 124 Me. 202.

**Sec. 34. Lien extended.** R. S. c. 96, § 34. When the owner dies, is adjudicated a bankrupt or a warrant in insolvency issues against his estate within the ninety days and before the commencement of a suit, the action in law or equity may be commenced within sixty days after such adjudication, or after notice given of the election or appointment of the assignee in insolvency, executor, or administrator, or the revocation of the warrant; and the lien shall be extended accordingly.

See c. 101, § 14; \*89 Me. 231; 122 Me. 146.

**Sec. 35. Necessary allegations of bill; other lienors may join and be made parties, also mortgagees.** R. S. c. 96, § 35. The bill shall state that the plaintiff claims a lien on the house, building or appurtenances, or on the wharf, pier, or building thereon, as the case may be, described therein, and the land on which it stands for labor performed, or for labor or materials furnished, in erecting, altering, moving, or repairing said house, building or appurtenances, or in constructing, altering, or repairing said wharf, pier, or building thereon, as the case may be; whether it was by virtue of a contract with or by consent of the owner, and if not, that the claimant has complied with the provisions of section thirty-one. And the bill shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a bill. Other lienors may be made parties; other lienors may become parties, and preserve and enforce their liens on said property, provided, their petitions therefor, setting forth their claims in substance, as required in a bill as aforesaid, be filed with the clerk within ninety days after the last labor is performed, or the last labor or materials are furnished by them, as aforesaid, or within the additional time prescribed in the preceding section. The court may consolidate two or more bills claiming liens on the same property, into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in said property, may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding.

123 Me. 352; 124 Me. 133.

**Sec. 36. Amount may be determined by jury trial, or otherwise.** R. S. c. 96, § 36. The court shall determine the amount for which each lienor has a lien upon the property, by jury trial, if either party so requests in bill, petition or answer; otherwise in such manner as the court shall direct. And such determination shall be conclusive as to the fact and amount of the lien subject to appeal and exceptions according to the practice in equity. Any lienor may contest another lienor's claim upon issues framed under direction of the court.

103 Me. 73.

**Sec. 37. Court may decree that property be sold; redemption; lienors to share pro rata.** R. S. c. 96, § 37. If it is determined that the parties or any of them, claiming a lien, have a lien upon said building and land, or upon said wharf, pier, building, and land, the court may decree that said property, or such interest in it as is subject to the liens, or any of them, shall be sold, and shall prescribe the place, time, terms, manner, and conditions of such sale; any justice, in term time or vacation, may order an adjournment of such sale from time to time; and a deed of the officer of the court, appointed to make such sale, recorded in

the registry of deeds where the land lies, within three months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court may provide in the order of sale, that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land, on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The lienors shall share, pro rata; provided, their bills or petitions therefor are filed with the clerk of courts prior to the order of sale, and within the time mentioned in sections thirty-three, thirty-four and thirty-five. The court may make such decree in regard to costs as is equitable.

**Sec. 38.** If proceeds are insufficient to pay claims, court may render judgment for balance. R. S. c. 96, § 38. If the proceeds of the sale after payment of costs and expenses of sale, are insufficient to pay the lien claims and costs in full, the court may render judgment against the debtor in favor of each individual lienor, for the balance of his claim and costs remaining unpaid, and may issue executions therefor. If the proceeds of sale after the payment of costs and expenses of sale, are more than sufficient to pay the lien claims and all costs in full, the balance remaining shall be paid to the person or persons legally or equitably entitled thereto.

124 Me. 206.

**Sec. 39.** Clerk shall file certificate with register of deeds. R. S. c. 96, § 39. When any bill or petition provided for in this chapter in which a lien is claimed on real estate is filed with the clerk, he shall forthwith file a certificate, setting forth the names of the parties, the date of the bill or petition, and of the filing thereof, and a description of the said real estate as described in said bill or petition, in the registry of deeds for the county or district in which the land is situated.

108 Me. 372.

**Sec. 40.** Liens mentioned in §§ 29-32 may be enforced by action at law. R. S. c. 96, § 40. In addition to the remedy hereinbefore provided, the liens mentioned in sections twenty-nine, thirty, thirty-one and thirty-two may be enforced by attachment in actions at law commenced in any court having jurisdiction, in the county where the property, on which a lien is claimed is situated, which attachment shall be made within ninety days after the last of the labor is performed, or labor or materials are furnished, and not afterwards, except as provided in section thirty-four.

See § 66; 35 Me. 297; 54 Me. 350; 71 Me. 293; 79 Me. 285; 87 Me. 436; \*89 Me. 231; 91 Me. 424; 98 Me. 488; 108 Me. 372.

**Sec. 41.** Owner may petition for release. R. S. c. 96, § 41. Any owner of a building, wharf, pier, or real estate, upon which a lien is claimed, may petition in writing a justice of the superior court in term time or vacation, setting forth the name of the lienor, the court and county in which the bill in equity or action at law is returnable or pending, the fact that a lien is claimed thereon under sections twenty-nine, thirty, thirty-one and thirty-two, the particular building, wharf, pier, or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice, which shall be served on the lienor, or his attorney, ten days at least, prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor, in such amount and with such sureties as he may approve, conditioned to pay the amount, for which such lienor may be entitled to a lien, as determined by the court, with his costs on the petition, within thirty days after final decree or judgment. The clerk shall give the

petitioner an attested copy of the petition and proceedings, with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office; and the record of such copy and certificate in the registry of deeds, in the county or district where such real estate or interest therein lies, vacates the lien.

108 Me. 372.

**Sec. 42. Proceedings pending at the same time may be transferred to one court.** R. S. c. 96, § 42. When two or more proceedings, either at law or in equity, are pending at the same time, in whatever court or courts, to enforce liens on the same house, building, or appurtenances, wharf, pier, and building thereon, upon petition of any lienor who has commenced such proceedings, or of the owner of the building, wharf, or pier, a justice of the supreme judicial court after notice and hearing, in term time or vacation, may, if justice requires it, order all such actions to be transferred either to the supreme judicial court or to the superior court as he may determine, and require the parties in all such proceedings, in whatever court commenced, to plead in equity, substantially in the manner prescribed in section thirty-five, and thereafter all the proceedings shall be in accordance with the provisions of said section and the five following sections; and while such petition is pending all such actions shall stand continued.

**Sec. 43. Property may be taken and sold on execution to satisfy judgment; proceedings when two or more are rendered at same term; redemption.** R. S. c. 96, § 43. When a judgment is rendered in any suit authorized by this chapter, against any house, building, or appurtenances, wharf, pier, or building thereon, and the land on which it stands, or any interest that the owner of such house, building or appurtenances, wharf or pier has in such land, said property shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If two or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under the provisions of this chapter shall be notified in writing by any lienor who has caused said property to be attached as aforesaid, or who has filed his bill in equity as herein provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments, and all lienors so notifying such officer otherwise direct, shall thereupon sell said property as aforesaid, and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which any such lien suit is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made, may fix the time within which the owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall be paid to the person or persons legally or equitably entitled thereto.

**Sec. 44. Lien on lands for landscape-gardening.** R. S. c. 96, § 44. Whoever performs labor or furnishes labor or materials in the laying out, or construction of any road, path, or walk, or in improving or beautifying any land in a manner commonly known as landscape-gardening, by virtue of a contract with or by consent of the owner, has a lien on the lot of land over which such road, path, or walk is laid out or constructed, or on the land so improved and beautified, to secure payment thereof, with costs. Such lien may be preserved and enforced in

the same manner and under the same restrictions as liens on buildings and lots are preserved and enforced under sections twenty-nine to forty-three inclusive, and is made subject to all the provisions of said sections wherever applicable.

**Sec. 45. Lien for rent on buildings placed on leased land, how enforced.** R. S. c. 96, § 45. When a lease of land, with a rent payable is made for the purpose of erecting a mill or other buildings thereon, such buildings and all the interest of the lessee are subject to a lien and liable to be attached for the rent due. Such attachment, made within six months after the rent becomes due, is effectual against any transfer of the property by the lessee.

**Sec. 46. Lien on buildings for land rent.** R. S. c. 96, § 46. In all cases where land rent accrues and remains unpaid, whether under a lease, or otherwise, all buildings upon the premises while the rent accrues, are subject to a lien and to attachment for the rent due, as provided in the preceding section, although other persons than the lessee may own the whole or a part thereof, and whether or not the land was leased for the purpose of erecting such buildings: provided, however, that if any person except the lessee, is interested in said buildings, the proceedings shall be substantially in the forms directed for enforcing liens against vessels, with such additional notice to supposed or unknown owners, as any justice of the court having jurisdiction of the proceedings, orders, or the attachment and levy of execution shall not be valid except against the lessee.

See c. 98, § 11; 93 Me. 344.

#### Liens on Logs, Lumber, Wood, and Bark.

**Sec. 47. Enforcement of lien on logs and lumber; and for shoring and running logs.** R. S. c. 96, § 47. Whoever labors at cutting, hauling, rafting, or driving logs or lumber, or at cooking for persons engaged in such labor, or in shoeing horses or oxen, or repairing property while thus employed, has a lien on the logs and lumber for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens reserved to the state; whoever both shores and runs logs by himself, his servants, or agents, has a lien thereon for the price of such shoring and running; such liens continue for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment.

See § 69; 9 Me. 22; 24 Me. 219; 33 Me. 291, 431; 34 Me. 276, 287; 35 Me. 128; 36 Me. 538, 544; 38 Me. 82, 131; 43 Me. 585; 45 Me. 319, 567; 46 Me. 365; 49 Me. 77; 56 Me. 152, 298; \*66 Me. 57, 67; 71 Me. 118; 72 Me. 440; 74 Me. 240; 77 Me. 135; 79 Me. 22; 81 Me. 136; \*89 Me. 174, 178; 90 Me. 227; 92 Me. 336, 338; 93 Me. 168; \*95 Me. 528; 97 Me. 506; \*106 Me. 93; 107 Me. \*389, 482; \*122 Me. 199.

**Sec. 48. Boomage may be paid by officer; lien not defeated by taking note; notice to owner.** R. S. c. 96, § 48. The officer making such attachment may pay the boomage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ, which shall be included in the damages recovered. The action or lien is not defeated by taking a note, unless it is taken in discharge of the amount due and of the lien. Such notice of the suit, as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it.

35 Me. 128; 41 Me. 471; 43 Me. 456, 585; 47 Me. 144, 156; 50 Me. 430; 61 Me. 489, 493; 66 Me. 140; 89 Me. 174.

**Sec. 49. Lien on logs for driving by contract; precedence and enforcement.** R. S. c. 96, § 49. Whoever drives logs or lumber by contract with the owner, or with any other person, has a lien on said logs or lumber for the amount payable under said contract, which takes precedence of all other claims, except liens for labor, for stumpage, and for towing, continues for sixty days after the logs

or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment. When the contract is made with any person other than the owner of the logs or lumber, actual notice in writing shall be given to the owner before work is begun, stating therein the terms of the contract. If the owner, at the time said notice is given him, or immediately thereafter, notifies said contractor in writing, that he will not be responsible for the amount payable or to become payable under said contract, then said contractor shall not have a lien on said logs or lumber so driven.

**Sec. 50. Lien on logs for towing.** R. S. c. 96, § 50. Owners of steamboats employed in towing logs or lumber on any of the inland waters of the state, have a lien on such logs or lumber for the amounts due for such towing; such lien continues for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment. Said lien shall take precedence of all other claims except liens reserved to the state, liens for labor and for stumpage.

**Sec. 51. Lien on hemlock bark, cord-wood, and pulp-wood.** R. S. c. 96, § 51. Whoever labors at cutting, peeling, or hauling hemlock bark, or cutting, yarding, or hauling cord-wood, or cutting, peeling, yarding, or hauling pulp-wood or any wood used in the manufacture of pulp-wood, or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal labor and the services performed by his team, which takes precedence of all other claims, continues for thirty days after the contract is completed, and may be enforced by attachment.

93 Me. 168; 107 Me. 391; 127 Me. 243.

**Sec. 52. Lien on last blocks, shovel handle blocks, railroad ties, and ship knees.** R. S. c. 96, § 52. Whoever labors in the manufacturing of last blocks, shovel handle blocks, railroad ties, or ship knees, or is engaged in cooking for persons engaged in such labor, or cuts or furnishes wood for the manufacture of last blocks or shovel handle blocks, or furnishes a team for the hauling of last blocks or shovel handle blocks, or the lumber from which they are made, or for the hauling of railroad ties or ship knees, has a lien on said last blocks, shovel handle blocks, railroad ties and ship knees, as the case may be, for the amount due him for his personal labor thereon, and for the services of his team, and for the amount due for wood so cut or furnished for the manufacture of said last blocks or shovel handle blocks, which takes precedence of all other claims, except liens reserved to the state, and continues for thirty days after said last blocks are stored or housed for drying purposes, or for thirty days after said shovel handle blocks arrive at their destination either for shipment or to be turned, or for thirty days after said railroad ties are on the line of a railroad, or for thirty days after said ship knees are delivered in a shipyard; such lien may be enforced by attachment.

\*107 Me. 391.

**Sec. 53. Lien on shingles, staves, laths, dowels, and spool timber.** R. S. c. 96, § 53. Whoever labors at cutting, hauling, or sawing shingle, stave, lath, dowel, or spool timber, or in the manufacture of shingle, stave, lath, dowel, or spool timber into shingles, staves, laths, dowels, or spool bars, or at piling staves, laths, dowels, or spool bars, or at bunching shingles or dowels, or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal labor thereon, and the services performed by his team, which takes precedence of all other claims, and continues for sixty days after such shingle, stave, lath, or dowel timber, and such shingles, staves, laths and dowels are manufactured, provided the same have not been sold and shipped, or for sixty

## CHAP. 105

days after such spool timber or spool bars arrive at the place of destination for sale or manufacture; such lien may be enforced by attachment.

See § 69; 100 Me. 74; \*107 Me. 391.

### Liens on Hay.

**Sec. 54. Lien on hay, for cutting.** R. S. c. 96, § 54. Whoever labors in cutting or harvesting hay has a lien on all the hay cut or harvested by him and his co-laborers for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens reserved to the state, continues for thirty days after the last of such services are performed and may be enforced by attachment.

108 Me. 540.

**Sec. 55. Lien on hay, for pressing.** R. S. c. 96, § 55. Whoever presses hay or straw has a lien on all the hay or straw so pressed for the amount due for such pressing, which takes precedence of all other claims except liens reserved to the state and the lien specified in the preceding section, continues for thirty days after said pressing is completed and may be enforced by attachment.

### Liens on Vehicles.

**Sec. 56. Liens on vehicles.** R. S. c. 96, § 56. 1925, c. 171. 1929, c. 279. Whoever performs labor by himself or his employees in manufacturing, or repairing the ironwork or woodwork of wagons, carts, sleighs, and other vehicles, or so performing labor furnishes materials therefor or provides storage therefor, by direction or consent of the owner thereof, shall have a lien on such vehicle for his reasonable charges for said labor, and for materials used in performing said labor, and for said storage, which takes precedence of all other claims and incumbrances on said vehicles, not made to secure a similar lien, and may be enforced by attachment at any time within ninety days after such labor is performed or such materials or storage furnished and not afterwards, provided, that a claim for such lien is duly filed as required in the following section; said lien, however, shall be dissolved if said property has actually changed ownership prior to such filing.

114 Me. 120; \*121 Me. 432; 122 Me. 29; \*126 Me. 392.

**Sec. 57. Lien claim to be filed in office of town clerk; inaccuracy of statement does not invalidate lien.** R. S. c. 96, § 57. The liens mentioned in the preceding section shall be dissolved unless the claimant within thirty days after the labor is performed, or storage furnished, files in the office of the clerk of the town in which the owner of such vehicle resides, a true statement of the amount due him for such labor and materials, or for storage, with all just credits given, together with a description of the vehicle manufactured or repaired sufficiently accurate to identify it and the name of the owner, if known, which shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and recorded in a book kept for that purpose by the clerk, who is entitled to the same fees therefor as for recording mortgages. No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor or materials, or for storage, invalidates the proceedings, unless it appears that the person making it wilfully claims more than his due.

\*121 Me. 432; 126 Me. 392.



### Liens on Canned Goods.

Sec. 58. Lien on canned corn, grain, and fruit. R. S. c. 96, § 58. Whoever furnishes corn or other grain or fruit, for canning or preservation otherwise, has a lien on such preserved article, and all with which it may have been mingled, for its value when delivered, including the cans and other vessels containing the same, and the cases, for thirty days after the same has been delivered, and until it has been shipped on board a vessel or laden in a car, which lien may be enforced by attachment within that time.

### Liens on Leather.

Sec. 59. Lien on leather, for wages. R. S. c. 96, § 59. Whoever performs labor in any tannery where leather of any kind is manufactured completely or partially, whether such labor is performed directly on the hides and skins or in any capacity in or about the establishment, has a lien for his wages on all leather so manufactured in such tannery for labor performed by him or his co-laborers, which continues for thirty days after such leather is made and manufactured, and until such leather is shipped on board a vessel or taken in a car, and may be enforced by attachment within that time.

### Liens on Colts, and on Animals for Pasturage, Food, and Shelter.

Sec. 60. Lien on colts, for service fee. R. S. c. 96, § 60. There shall be a lien on all colts foaled in the state, to secure the payment of the service fee, for the use of the stallion begetting the same. Such lien shall continue in force until the foal is six months old, and may be enforced during that time by attachment of such foal.

93 Me. 226.

Sec. 61. Lien on animals for pasturage, food, and shelter. R. S. c. 96, § 61. Whoever pastures, feeds, or shelters animals by virtue of a contract with or by consent of the owner, has a lien thereon for the amount due for such pasturing, feeding, or sheltering, and for necessary expenses incurred in the proper care of such animals and in payment of taxes assessed thereon, to secure payment thereof with costs, to be enforced in the same manner as liens on goods in possession and choses in action; and the court rendering judgment for such lien shall include therein a pro rata amount for such pasturage, feed, and shelter provided by the lienor from the date of the commencement of proceedings to the date of said judgment.

Lien on animals for entry fee at agricultural fairs and races, c. 39, § 37; on animals in transit for expenses of proper care, c. 135, §§ 61, 62; for food, shelter and care furnished to abandoned or neglected animals, c. 135, § 67; 63 Me. 533; 69 Me. 425; \*76 Me. 444; 79 Me. 220; 91 Me. 144; \*96 Me. 348.

### Liens on Monumental Work.

Sec. 62. Enforcement of lien on monumental work. R. S. c. 96, § 62. Whoever under express contract fixing the price to be paid by the other party thereto, sells, erects, or furnishes any monument, tablet, headstone, vault, posts, curbing, or other monumental work, has a lien thereon to secure the payment of such contract price, which continues for two years after the completion, delivery, or erection of such monument, tablet, headstone, vault, posts, curbing, or other monumental work, to be enforced by suit and attachment; such attachment shall be recorded within said two years by the clerk of the town in which the property

subject to the lien is then situated; or such lien may be enforced by petition setting forth the names and residences of the parties to the contract, the contract price, the sum due, the description and location of the property on which the lien is claimed, and such other facts as are necessary to make it appear that such petitioner is entitled to an enforcement of such lien, and praying for judgment, for title and possession of the property therein described. Said petition, before service thereof, and within said two years, shall be recorded by the clerk of the town in which such property is situated, and a certificate of such record indorsed thereon. The sum alleged to be due shall be deemed to be the damage demanded, and the petition, after being recorded, may be inserted in a writ, and made returnable, like other writs in transitory actions, before any court of competent jurisdiction. If the defendant is a known resident of the state he shall be served with a summons and copy of said writ and petition, otherwise the court, in term time or vacation, may order notice. If the petitioner prevails, he shall recover judgment for title and possession of the property on which the lien is claimed, and for his costs, and a possessory execution may issue. By virtue of such judgment the judgment creditor if unopposed, may take possession and remove the property described in his execution, otherwise any officer qualified to serve civil process, having said execution, may take possession of said property and deliver the same to the judgment creditor, and shall make his return on said execution accordingly. Said lien may be discharged at any time before final judgment by tendering the petitioner the amount of the debt and costs.

#### Liens on Watches, Clocks, and Jewelry.

**Sec. 63. Lien on watches, clocks, and jewelry.** 1917, c. 295, § 1. Every individual, partnership or corporation, having an established place of business in this state, engaged in making, altering, or repairing any watch, clock or jewelry or expending any labor or materials thereon, shall have a lien upon such watch, clock or jewelry for his reasonable compensation for said labor and materials, which shall take precedence of all other claims and incumbrances, and such watch, clock or jewelry shall be exempt from attachment or execution until such lien and the cost of enforcing it are satisfied.

**Sec. 64. May be sold after one year; provisions.** 1917, c. 295, § 2. 1925, c. 210. The lien holder shall retain such watch, clock or jewelry for a period of one year, at the expiration of which time, if such lien is not satisfied, he may sell such watch, clock or jewelry at public or private sale, after giving thirty days' notice in writing to the owner, specifying the amount due, describing the property to be sold and informing him that the payment of such amount within thirty days will entitle him to redeem such property. Such notice may be given by mailing the same addressed to the owner's place of residence if known, or if the owner's place of residence is unknown, a copy of such notice may be posted in two public places in the town, village, or city where the property is held.

**Sec. 65. Residue, if not claimed by owner, deposited with county treasurer.** 1917, c. 295, § 3. After satisfying the lien and any cost and expenses that may have accrued, any residue remaining from said sale shall on demand within six months, be paid to the owner, and if not so demanded within six months from such sale, such residue shall be deposited by such lien holder, with the treasurer of the county in which said property was held, together with a statement of said lien holder's claim and the cost of enforcing the same, a copy of the published notice, and of the amount received for the property sold at said sale; said residue shall be credited by said county treasurer to the general revenue fund

of said county, subject to the right of said owner, or his representatives, to reclaim at any time within three years of the date of deposit.

### General Provisions for Enforcement and Discharge.

**Sec. 66. Lien attachments have precedence; upheld although debtor dies and estate is insolvent.** R. S. c. 96, § 63. Suits to enforce any of the liens before named have precedence of attachments and encumbrances made after the lien attached, and not made to enforce a lien, and may be maintained although the employer or debtor is dead and his estate has been represented insolvent; and his executor or administrator may be summoned and held to answer to an action brought to enforce the lien. The declaration must show that the suit is brought to enforce the lien; but all the other forms and proceedings therein, shall be the same as in ordinary actions of assumpsit.

See c. 13, § 15, ¶ ii; 28 Me. 520; 33 Me. 144, 292; 34 Me. 281, 287; 35 Me. 297; 36 Me. 387; 37 Me. 552; 38 Me. 131; \*41 Me. 371; 42 Me. 81, 130, 149; 45 Me. 295, 319; 50 Me. 430; 53 Me. 321; 61 Me. 494, 497; 63 Me. 564; 65 Me. 577; 66 Me. 58; 77 Me. 421; 89 Me. 174, 178, \*232; 103 Me. 54; \*107 Me. 483.

**Sec. 67. Discharge.** R. S. c. 96, § 64. All liens named herein may be discharged by tender of the sum due, made by the debtor or owner of the property, or his agents.

66 Me. 59.

**Sec. 68. Appearance of owner.** R. S. c. 96, § 65. In all lien actions, when the labor or materials were not furnished by a contract with the owner of the property affected, such owner may voluntarily appear and become a party to the suit. If he does not so appear, such notice of the suit as the court orders, shall be given him, and he shall then become a party to the suit.

69 Me. 425; 78 Me. 79; \*89 Me. 174, 233; 103 Me. 53.

**Sec. 69. Judgment; discontinuance as to any defendant; costs.** R. S. c. 96, § 66. In any such action, judgment may be rendered against the defendant and the property covered by the lien, or against either, for so much as is found due by virtue of the lien, and if the amount due exceeds the amount so covered, then a separate execution shall be issued to the plaintiff against the defendant for such excess, and the plaintiff may discontinue as to any defendant. The court may apportion costs as justice requires.

79 Me. 285; \*89 Me. 175; \*107 Me. 483.

### Enforcement of Liens on Goods in Possession and Choses in Action.

**Sec. 70. Enforcement by sale.** R. S. c. 96, § 67. Whoever has a lien on or pledge of any stock or certificate thereof, bond, note, account or other chose in action, or on any other personal property in his possession, may enforce it by a sale thereof, in the manner provided in the contract creating such lien or pledge, if in writing, or as hereinafter provided.

69 Me. 428; \*76 Me. 445; 121 Me. 432.

**Sec. 71. Petition may be filed; contents thereof.** R. S. c. 96, § 68. The person claiming the lien may file, in the superior court in the county where he resides, or in the office of the clerk thereof, a petition briefly setting forth the nature and amount of his claim, a description of the article possessed, and the names and residences of its owners, if known to him, and a prayer for process to enforce his lien.

\*76 Me. 445; \*96 Me. 348; 100 Me. 450.

**Sec. 72. Service on owners within the state.** R. S. c. 96, § 69. If the owners are set forth in a petition filed in the clerk's office, and are residents of

## CHAP. 105

the state, the clerk may issue an order of notice, to be given by serving them with a copy of the petition and order thereon, at least fourteen days before the next term of the court in such county.

**Sec. 73. Service on owners, when unknown, or out of the state.** R. S. c. 96, § 70. If the owners are not known, or are not residents of the state, or if the petition is filed in court, the court may order reasonable notice of at least fourteen days to them and to others interested, returnable at the same or a subsequent term; to be given by personal service of a copy of the petition with the order of court thereon, or by publication in a newspaper, or both, as the court directs.

**Sec. 74. Appearance by owner; proceedings.** R. S. c. 96, § 71. At the time fixed in the notice, any party interested in the article as owner, mortgagee or otherwise, may appear, and after appearance, the proceedings shall be the same as is an action on the case in which the petitioner is plaintiff and the party appearing is defendant. Questions of fact, at the instance of either party, shall be submitted to a jury on an issue framed under the direction of the court.

\*96 Me. 348.

**Sec. 75. Owner may be required to give bond for costs.** R. S. c. 96, § 72. If, in the opinion of the court, the article on which the lien is claimed is not of sufficient value to pay the petitioner's claim, with the probable costs of suit, the court may order the defendant to give bond to the petitioner, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed.

**Sec. 76. Court may order property to be sold to pay lien.** R. S. c. 96, § 73. After trial and final adjudication in favor of the petitioner, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the petitioner the amount and costs awarded him, and the balance to the person entitled to it, if he is known to the court, otherwise into court.

See c. 98, §§ 3-8; \*76 Me. 445.

**Sec. 77. Disposal of proceeds.** R. S. c. 96, § 74. Money paid into court may be paid over to the person legally entitled to it, on petition and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury; and if afterwards the person entitled to it petitions and establishes his claim to it, the court may order the county treasurer to pay it to him.

**Sec. 78. Jurisdiction of trial justices; appeal.** R. S. c. 96, § 75. Liens for less than twenty dollars may be enforced before any trial justice for the county where the person having the lien resides, and all proceedings, rights and liabilities, shall be the same as hereinbefore provided, so far as the nature of the tribunal admits; and either party may appeal as in other cases.

\*96 Me. 348.

**Sec. 79. Concurrent jurisdiction of municipal and police courts.** R. S. c. 96, § 76. Municipal and police courts have jurisdiction concurrent with the superior court and trial justices in their respective counties, of liens, and proceedings relative thereto, for an amount not exceeding their jurisdiction in other civil actions, to be enforced as provided in this chapter.

\*96 Me. 348; \*100 Me. 450.

**Pledges.**

**Sec. 80. Pledge for payment of money; notice of sale.** R. S. c. 96, § 77. 1929, c. 196. The holder of stocks, bonds, or other personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, sell such stocks, bonds, or other personal property in the manner provided in the contract creating the pledge, if in writing, or he may proceed as hereinafter provided.

If the pledger is a resident of this state, the pledgee or his assignee may give written notice of his intention to enforce payment by a sale of the pledge by serving a copy of such notice upon the pledger or leaving such copy at the last and usual place of abode of the pledger within the state, if such residence is known to the pledgee or his assignee, or can be ascertained by reasonable diligence. If the pledger is, at that time, not a resident of this state or cannot be found by reasonable diligence, the pledgee may cause such notice to be published at least once a week for three successive weeks in one of the principal newspapers, if any, in the city or town where the pledgee resides; otherwise, in one of the principal newspapers published in the county, or in the state paper. The notice with an affidavit of service or the official return of service of any officer qualified to serve civil process, or a copy of the last publication, with the name and date of the paper containing it, shall be recorded in the clerk's office of the city or town where the pledgee resides and the copy of such record is evidence that the notice has been given. If the pledgee or his assignee is not a resident of the state, he shall, at the time of recording such notice, record therewith his appointment of an agent resident in the county where the notice is recorded, to receive satisfaction of the pledge; and payment or tender thereof may be made to him. If he does not appoint such agent, the right to redeem is not forfeited.

96 Me. \*43, 430.

**Sec. 81. Sale; application of proceeds.** R. S. c. 96, § 78. If the money to be paid or the thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the holder may sell the pledge at public auction, and apply the proceeds to the satisfaction of the debt or demand and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto on demand.

96 Me. \*43, 430.

**Liens of Safe Deposit Companies.**

**Sec. 82. Right of company to open box; proceedings; lien on contents.** R. S. c. 96, § 79. Whenever the amount due for the use of any safe or box, in the vaults of any safe deposit company, shall not have been paid for three years, such corporation may, at the expiration of such period, notify the person in whose name such safe or box stands on its books, by a notice in writing in a securely closed, post-paid, registered letter, directed to such person at his post-office address as recorded upon the books of the corporation, that if the amount then due for the use of such safe or box, is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box, to be opened in the manner hereinafter provided; at the expiration of sixty days after the mailing of said notice, the corporation may then cause such safe or box, to be opened in the presence of its president, secretary, or treasurer, and of a notary public not an officer, or in the employ of the corporation, and the contents of said safe or box, shall then be sealed up by such notary public

in a package and a certificate of such sealing shall be indorsed thereon, signed by such notary and attested by his seal, and said package shall be distinctly marked with the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof; said package shall then be placed in one of the general safes or boxes of the corporation, and shall be held subject to redemption by the owner thereof, who shall be required to pay the rent due for said safe or box, and all costs and damages attending the opening thereof together with reasonable charges for the custody of said package by the corporation, and the corporation shall have a lien upon said package to secure the payment of such rent, damages, and charges.

Lien on crops of members of cooperative marketing associations, c. 59, §§ 32-39.

## CHAPTER 106.

The Right of Erecting Mills and Mill-Dams, of Flowing Lands and of Diverting Water for the Supply of Mills; and the Mode of Obtaining Damages. Protection of Ways from Overflow. Inspection of Dams and Reservoirs.

Sections 1-38 Erection of Mills and Dams, and Rights of Flowage.

Sections 39-44 Protection of Ways from Overflow.

Sections 45-47 Inspection of Dams and Reservoirs.

### Erection of Mills and Dams, and Rights of Flowage.

Sec. 1. Right to erect and maintain mill-dams, and to divert water by a canal for mills. R. S. c. 97, § 1. Any man may on his own land, erect and maintain a water-mill and dams to raise water for working it, upon and across any stream, not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed.

5 Me. 12; 28 Me. 20; 36 Me. 43; 39 Me. 250; 42 Me. 155; 50 Me. 483; 52 Me. 261; 54 Me. 489; \*61 Me. 26; 62 Me. 456, 497; \*65 Me. 194; 68 Me. 542; 69 Me. 19; 70 Me. 246; 76 Me. 95, 200; 82 Me. 57; 86 Me. 104; 99 Me. 136; 100 Me. 196, 241; \*123 Me. 535.

Sec. 2. Not to injure mill or canal previously built. R. S. c. 97, § 2. No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or mill-dam has been lawfully erected and used, unless the right to maintain a mill thereon has been lost or defeated.

31 Me. 254; 38 Me. 246; 44 Me. 173, 199; 54 Me. 489; \*95 Me. 321; \*99 Me. 136.

Sec. 3. Restrictions and regulations. R. S. c. 97, § 3. The height to which the water may be raised, and the length of time during which it may be kept up in each year, and the quantity of water that may be diverted by such canal, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is hereinafter provided.

38 Me. 239; 76 Me. 95.

Sec. 4. Damages for flowing or by diversion of water, recoverable. R. S. c. 97, § 4. Any person whose lands are damaged by being flowed by a mill-