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Chapter 168.

Conveyances by Deed. Form and Construction. Trusts.

Sec. 1. Conveyance by deed; what passes as realty.—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 such down trees as are cut into wood, logs or other lumber and hemlock bark peeled 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. (R. S. c. 154, § 1.)

This section dispenses with the formality of livery of seizin, required by the common law. Hovey v. Hobson, 51 Me. 62.

Prior to the enactment of this section, the deed of one who was disseized could not, during the continuance of the disseizin, convey a title to his grantee. Carville v. Hutchins, 73 Me. 227.

And a disseizee may convey, if he has a right of entry. Porter v. Sevey, 43 Me. 519.

Owner can convey any portion of his estate.—The owner of real estate can convey, in the manner prescribed, such part or portion of his estate as he and his grantee may agree, subject only to those restrictions which the law imposes as required by public policy, but relieved from the technical doctrines which arose out of ancient feudal tenures, and all the restrictive effect which they had upon alienations. Abbott v. Holway, 72 Me. 298.

And parties may agree as to when grantee's estate to commence.—The mere technicalities of ancient law are dispensed with upon compliance with statute requirements. The acknowledgments and recording are accepted in place of livery of seizin, and it is competent to fix such time in the future as the parties may agree upon as the time when the estate of the grantee shall commence. Abbott v. Holway, 72 Me. 298.

But section does not include possibility of reverter.—A naked possibility of a reverter of a title to land does not denote an estate or any present legal interest in it, and gives no right of entry into it. It is not an existing right of reversion, but a bare possibility which is uncertain. Hence, this section has never been held to include a mere possibility of a reverter. Pond v. Douglass, 106 Me. 85, 75 A. 320.

Applied in Hooper v. Leavitt, 109 Me. 70, 82 A. 547.

Cited in Trull v. Fuller, 28 Me. 545; Brown v. Lunt, 37 Me. 423; Spaulding v. Goodspead, 39 Me. 564; White's Case, 124 Me. 343, 128 A. 739.

Sec. 2. Rights of aliens.—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. (R. S. c. 154, § 2.)

Sec. 3. Contingent estates conveyed.—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. (R. S. c. 154, § 3.)

Purpose of section.—This section was intended to prevent the injustice which would follow if the heir, after indirectly profiting through the reception by his ancestor's estate of the purchase money of the property, could avail himself of a technical defect in the conveyance, and reclaim the property itself, notwithstanding the ancestor's right to it had become perfected after the execution of his deed. Read v. Hilton, 68 Me. 139.

Section changes common law.—Contingent remainders were at common law inalienable and could not be devised. Merrill Trust Co. v. Perkins, 142 Me. 363, 53 A. (2d) 260.

Applied in Pearce v. Savage, 45 Me. 90.

Cited in Belding v. Coward, 125 Me. 305, 133 A. 689.

Sec. 4. Real estate subject to contingent remainders sold or mortgaged.—When real estate is subject to a contingent remainder, executory devise

or power of appointment, the superior 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, which petition shall set forth the nature of the petitioner's title to said real estate, the source from which the title was derived, the names and addresses of all persons known to be interested in said real estate and such other facts as may be necessary for a full understanding of the matter, 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. (R. S. c. 154, § 4.)

Applied in Johnson v. Palmer, 118 Me. 226, 107 A. 291.

Sec. 5. Notice; appointment of next friend of minors, etc.—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; provided that if persons interested in said real estate do not consent in writing to a sale thereof, personal notice of the time and place of the hearing on said petition shall be given to all persons known to be interested therein. Said personal notice may be given in any manner provided by law, or by the clerk of courts or the register of probate sending a copy of said petition and order of court thereon by registered mail, return receipt requested, in time to give each party at least 14 days' notice of said hearing. The written statements of said clerk and register, with the return receipt, shall be proof of said service. 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 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. (R. S. c. 154, § 5.)

Sec. 6. Trustees to give bond; disposal of proceeds of sale.—Every trustee appointed under the provisions of section 4 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. (R. S. c. 154, § 6.)

Sec. 7. On application of owners of certain interests in woodlands, court may grant leave to sell trees.—Any person seized of a freehold estate, or of a remainder or reversion in fee simple, or fee tail, in a tract of woodland or timberland, on which the trees are of a growth and age fit to be cut, may apply to the superior court in any county for leave to cut and dispose of such trees and invest the proceeds for the use of the persons interested therein; and the court after due notice to all persons interested and a hearing of the parties, if any appear, may appoint one or more persons to examine the land and report to the court, and the court may thereupon order the whole or a part of such trees to be cut and sold and the proceeds brought into court subject to further orders. The court shall appoint one or more commissioners to superintend the cutting and sale of such trees who shall account for the proceeds to the court and be under bond to the clerk for the faithful performance of their trust. (R. S. c. 154, § 7.)

Sec. 8. Proceeds invested; income appropriated. — The court may cause the net proceeds of sale to be invested in other real estate in the state or in public stocks, to the same uses and under he same limitations as the land; the income thereof to be paid to the persons entitled to the income of the land, or apportioned among the persons interested in the estate, according to their interests. (R. S. c. 154, § 8.)

Sec. 9. Appointment of trustees of said funds; bond.—The court may appoint one or more trustees, removable at its pleasure, to hold said estates or stocks for said uses, who shall give bond with sufficient sureties to the clerk of said court for the faithful discharge of their duty. (R. S. c. 154, § 9.)

Sec. 10. Entailments barred by conveyance in fee simple.—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 1 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. (R. S. c. 154, § 10.)

A devise to one for life and to his heirs generally, does not create an estate tail. And the owner of the life estate cannot, by a conveyance, bar the estate of the heir. He can convey no greater estate than that which he owns; namely, an estate which will continue so long as he lives, and no longer. Spencer v. Chick, 76 Me. 347.

Applied in Willey v. Haley, 60 Me. 176; Skolfield v. Litchfield, 116 Me. 440, 102 A. 240.

Cited in Richardson v. Richardson, 80 Me. 585, 16 A. 250; Hall v. Cressey, 92 Me. 514, 43 A. 118.

Sec. 11. Conveyance of a greater estate, conveys what is owned.—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. (R. S. c. 154, § 11.)

Remainderman cannot lose title by adverse possession.—The remainderman or reversioner, not having any right to the immediate possession of the land, cannot lose title by adverse possession. They either cannot or, if they can, are not bound to enter during the continuance of the particular estate, to defeat a wrongful possession. In accordance with the common law are the statutory provisions in this respect. Pratt v. Churchill, 42 Me. 471.

Applied in Spencer v. Chick, 76 Me. 347; Hooper v. Leavitt, 109 Me. 70, 82 A. 547.

Sec. 12. Conveyance or devise for one's life and to his heirs in fee.—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. (R. S. c. 154, § 12.)

The rule in Shelley's case has been abolished in this state. Buck v. Paine, 75 Me. 582.

Applied in Read v. Fogg, 60 Me. 479; Read v. Hilton, 68 Me. 139; Spencer v. Chick, 76 Me. 347; Plummer v. Hilton, 78 Me. 226.

Sec. 13. Conveyances to 2 or more.—Conveyances not in mortgage, and devises of land to 2 or more persons, create estates in common, unless otherwise expressed. Estates vested in survivors upon the principal of joint tenancy shall be so held.

A conveyance of real property by the owner thereof to himself and another or others as joint tenants or with the right of survivorship, or which otherwise indicates by appropriate language the intent to create a joint tenancy between himself and such other or others by such conveyance, shall create an estate in joint tenancy in the property so conveyed between all of the grantees, including the

grantor. Estates in joint tenancy so created shall have and possess all of the attributes and incidents of estates in joint tenancy created or existing at common law and the rights and liabilities of the tenants in estates in joint tenancy so created shall be the same as in estates in joint tenancy created or existing at common law. (R. S. c. 154, § 13. 1953, c. 301.)

Estates in joint tenancy are not favored in law and cannot be created in this state without unequivocal and compelling language. Staples v. Berry, 110 Me. 32, 85 A. 303.

Section applicable to personalty.—This section applies to personal property as well as to realty and, while joint tenancy in personal property may exist in certain rare cases, it must be created by apt and explicit terms. Staples v. Berry, 110 Me. 32, 85 A. 303.

And tenancy in common is presumed from bequest to two or more persons.—A bequest of personal property, to two or more persons individually named as legatees, without words indicating the nature of the tenancy to be created thereby, will be construed as creating a tenancy in common, and not a joint tenancy. The law presumes that a tenancy in common was intended unless a different intention of the testator be manifested by the terms of the will. Stetson v. Eastman, 84 Me. 366, 24 A. 868.

Applied in Crooker v. Crooker, 46 Me. 250; Spencer v. Chick, 76 Me. 347; Poulson v. Poulson, 145 Me. 15, 70 A. (2d) 868.

Cited in Morse v. Hayden, 82 Me. 227, 19 A. 443; Cary v. Talbot, 120 Me. 427, 115 A. 166.

Sec. 14. Priority of recorded deeds and leases.—No conveyance of an estate in fee simple, fee tail or for life, or lease for more than 2 years or for an indefinite term is effectual against any person except the grantor, his heirs and devisees, and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds within the county where the land lies, and if the land is in 2 or more counties then the deed or lease shall be recorded in the registry of deeds of each of such counties, and in counties where there are 2 or more registry districts then the deed or lease shall be recorded in the district legal for such record. 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. Provided, however, that all recorded deeds, leases or other written instruments regarding real estate take precedence over unrecorded attachments and seizures. (R. S. c. 154, § 14.)

I. General Consideration.

II. Effect of Failure to Record.

III. Notice of Prior Unrecorded Conveyance.

A. Effect of Notice.

B. Sufficiency of Notice.

C. Proof of Notice.

I. GENERAL CONSIDERATION.

Purpose of section is to prevent fraud.—The provisions of the statute for registering conveyances are to prevent fraud, by giving notoriety to alienations. Banton v. Shorey, 77 Me. 48.

And protect subsequent purchasers and incumbrancers.—The whole object of the registry acts is to protect subsequent purchasers and incumbrancers against previous conveyances which are not recorded, and to deprive the holder of previous unregistered conveyances of his right of priority, which he would have at common law. Banton v. Shorey, 77 Me. 48.

And it is for benefit of all interested in examining record title.—The statute is for the benefit and protection of all persons who have any interest in examining the record title to property to which they may thereafter become owner, either in whole or in part, absolutely or otherwise. Banton v. Shorey, 77 Me. 48.

The language of this section has been regarded as prohibitory. It is clear and positive. Houghton v. Davenport, 74 Me. 590; Banton v. Shorey, 77 Me. 48.

But it has reference only to conveyances of the same property. McCausland v. York, 133 Me. 115, 174 A. 383.

Record provides notice of instrument and its contents.—By reason of record of an instrument in the registry of deeds a party affected thereby is chargeable with notice of its existence and contents. Buswell v. Wentworth, 134 Me. 383, 186 A. 803.

The record of a mortgage is constructive notice of its contents to all subsequent purchasers. As to them the mortgage takes effect, not because of its prior execution, but by reason of its prior record. Banton v. Shorey, 77 Me. 48.

Applied in Roberts v. Bourne, 23 Me. 165; Veazie v. Parker, 23 Me. 170; Pierce v. Taylor, 23 Me. 246; Reed v. Elwell, 46 Me. 270; Brackett v. Ridlon, 54 Me. 426; Parker v. Prescott, 85 Me. 435, 27 A. 343; Littlefield v. Prince, 96 Me. 499, 52 A. 1010; Glover v. O'Brien, 100 Me. 551, 62 A. 656; Tibbetts v. Holway, 119 Me. 90, 109 A. 382; United States Plywood Co. v. Verrill, 131 Me. 469, 164 A. 200.

Quoted in part in Sanford v. Stillwell, 101 Me. 466, 64 A. 843.

Cited in Trull v. Fuller, 28 Me. 545; Spaulding v. Goodspead, 39 Me. 564; Shaw v. Wilshire, 65 Me. 485; Roberts v. Cyr, 136 Me. 39, 1 A. (2d) 281.

II. EFFECT OF FAILURE TO RECORD.

Unrecorded deed not effective against bona fide creditors and purchasers.—For the protection of bona fide creditors and purchasers, the rule has been established that, although an unrecorded deed is binding upon the grantor, his heirs and devisees, and also upon all persons having actual notice of it, it is not valid and effectual as against any other persons. As to all such other persons, the unrecorded deed is a mere nullity. So far as they are concerned, it is no conveyance or transfer which the statute recognizes as binding on them, or as having any capacity to affect their rights, as purchasers or attaching creditors. As to them, the person who appears of record to be the owner is to be taken as the true and actual owner, and his apparent seizin is not divested or affected by any unknown and unrecorded deed that he may have made. Banton v. Shorey, 77 Me. 48.

Unless the deed is recorded, no conveyance in fee is effectual against any person except the grantee, his heirs and devisees and persons having actual notice thereof. Gibson v. Norway Savings Bank, 69 Me. 579.

Nor is unrecorded lease for more than 2 years.—Except against the lessor and his heirs and devisees, and also in opposition to any other person actually having notice, every lease of real estate for more than 2 years is imperfect, without record. Hopkins v. McCarthy, 121 Me. 27, 115 A. 513.

Or contract for renewal of such a lease.—A contract for the renewal or extension of a lease is incipiently executory. Nevertheless, the stipulation for a renewal operates to give the lease effect as an original present demise for the full term for which it might be made inclusive; contingent, however, upon an election to exercise the privilege of extension. So operating, if the term possible for it to embrace is for more than two years, it brings the lease within the meaning of the statute requiring record. Hopkins v. McCarthy, 121 Me. 27, 115 A. 513.

And recorded conveyance is good against prior unrecorded deed.—The title acquired under a recorded conveyance of specific real estate is valid against an unrecorded previous conveyance of the same property by the same grantor, unless it is shown that the grantee in the recorded conveyance, when he took it, had actual notice of the previous conveyance. Hooper v. Leavitt, 109 Me. 70, 82 A. 547.

A prior unrecorded deed is not effectual against other persons, claiming title by a subsequently recorded deed, without actual notice of such prior deed. Sidelinger v. Bliss, 95 Me. 316, 49 A. 1094.

An unrecorded deed is not effectual as against a prior recorded conveyance of the same property. McCausland v. York, 133 Me. 115, 174 A. 383.

One claiming by record title will prevail against a prior deed unrecorded, unless the grantee has actual knowledge of the prior conveyance. Goodwin v. Cloudman, 43 Me. 577.

But unrecorded instrument is not void.—The want of record of a deed does not render the instrument void. Want of record does not reinvest seizin in him who gave the deed. The statute provides only that in certain instances the conveyance shall be ineffectual. Gatchell v. Gatchell, 127 Me. 328, 143 A. 169, holding that an unrecorded deed prior to marriage defeats a widow's estate by descent.

And, although not acknowledged or recorded, a deed is good against the grantor and his heirs. Lawry v. Williams, 13 Me. 281.

And persons having actual notice thereof.—Although the deed was not recorded, as between the grantee and the grantor, his heirs and devisees, and persons having actual notice thereof, the transfer of title is complete and effectual. McCausland v. York, 133 Me. 115, 174 A. 383.

The object of the acknowledgment of a deed being to give such authenticity to its execution as to entitle it to registration, and that of registration to give notice of the title, neither is required as between the immediate parties thereto and all others having actual notice of its existence. Gibson v. Norway Savings Bank, 69 Me. 579.

And a mortgage is effectual against the mortgagee and his heirs without record. Newbert v. Fletcher, 84 Me. 408, 24 A. 889.

Unrecorded lease good against grantor's assignee in bankruptcy.—By the terms of the statute, an unrecorded lease for more than two years is valid against the grantor, and the assignee in bankruptcy of the grantor stands in the place of the grantor. Or, in other words, an assignee in bankruptcy takes only such rights and interests as the bankrupt himself had and could assert, at the time of his bankruptcy, except in case of fraud. Goss v. Coffin, 66 Me. 432.

III. NOTICE OF PRIOR UNRECORDED CONVEYANCE.

A. Effect of Notice.

A subsequent purchaser having notice of a prior deed is affected in the same way as if the deed had been recorded. Hill v. McNichol, 76 Me. 314.

The clause relating to persons having actual notice thereof was substantially to confirm the decisions which had been made theretofore, and which had placed such persons in the same condition as if they had had the notice which was to be given by the registry. Porter v. Sevey, 43 Me. 519.

And such purchaser cannot defeat prior unrecorded deed.—A subsequent purchaser of real estate, who had notice at the time of his purchase of a prior unregistered deed, cannot, upon the strength of his prior registry, defeat the unrecorded deed. The notice to him has all the effect of a prior registry. McLaughlin v. Shepherd, 32 Me. 143.

If the holder of a fee conveys to one, who omits for the time being to record his deed, and thereafter the grantor makes another conveyance of the same premises to a second grantee having notice of the prior unregistered deed, the former grantee holds the title against the second even if the latter's deed is recorded. Moreover, if any number of conveyances be made in the chain of title derived from the second grantee, each with like notice of the prior unrecorded deed, the first grantee will still hold the title although all the deeds except his own are duly recorded; and he can perfect his title by recording his deed. If, however, any one of the second grantee's successors purchase without notice of the first grantee's prior unrecorded deed and place his own deed on record, the title of the first grantee under his unrecorded deed is gone forever. Hill v. McNichol, 76 Me. 314.

As his conduct is fraudulent.—The conduct of a subsequent purchaser or attaching creditor, who has knowledge or notice of a prior conveyance, and afterwards attempts to acquire a title to himself, is fraudulent. Spofford v. Weston, 29 Me. 140.

If the second purchaser had notice of the first conveyance, before he purchased, no estate will pass to him by the second deed, though recorded before the first, because it is fraudulent. Porter v. Sevey, 43 Me. 519.

Unrecorded deed good against attaching creditor with notice. — A grantee, by recording his deed, can derive no benefit over a prior grantee from the same grantor, of the same land, in a deed unrecorded, if he has actual notice of the former, because this section expressly forbids it. And an attaching creditor stands in the same relation. Whitcomb v. Simpson, 39 Me. 21.

At time of attachment.—The title of an execution creditor, under a levy upon the real estate of his debtor, is not affected by a notice of a prior conveyance not recorded, the creditor having no knowledge thereof at the time of his attachment upon his writ. Houghton v. Davenport, 74 Me. 590.

B. Sufficiency of Notice.

Section requires actual notice. — This section requires "actual notice" of an unrecorded deed, to defeat a subsequent purchaser's title from the same grantor. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

And abrogates implied or constructive notice.—The implied or constructive notice, of a prior unregistered deed, which would avoid a subsequent one from the same grantor, is abrogated by the statute. The grantee, in the subsequent deed, must have "actual notice" of the prior one, otherwise his title is valid. The language of the statute is clear and explicit and leaves no room to doubt, as to the intention of the legislature. Spofford v. Weston, 29 Me. 140.

Such as formerly arose from possession. —This section introduced a new principle and abolished the constructive notice arising from possession under a deed not recorded, and required actual notice of such deed to a subsequent purchaser, to prevent him from holding the estate. Hanly v. Morse, 32 Me. 287. See this note, analysis line III C, re possession considered by jury.

Evidence of open occupation, possession and cultivation of land, and fencing it, by a party who has an unrecorded deed

thereof, is not sufficient to warrant the inference that a third person had notice of such deed. Porter v. Sevey, 43 Me. 519.

The requirement of actual notice was intended to control the construction which had been given by the courts that the possession of the grantee alone, if open, continued and exclusive, would be sufficient foundation in law from which to infer notice to subsequent purchasers. It was not intended to change the moral bearings of the question or the rules of the common law, by making a transaction honest which was before fraudulent. It was to prevent a legal inference from inadequate premises; to repudiate a course of inconclusive reasoning. The subsequent purchaser might not know the fact, if it existed, that a prior purchaser was in possession; or if he did, that he claimed to hold the fee, etc. He might suppose that he was only a tenant holding over; or a disseizor of his grantor, who had a right of entry. If he was acting in good faith, he might well suppose that his grantor would not undertake to sell to him an estate which he did not own, or had previously conveyed. Porter v. Sevey, 43 Me. 519.

And notice should be such as to make subsequent purchase fraudulent.—The notice should be so express and satisfactory to the party as that it would be a fraud in him subsequently to purchase, attach, or levy upon the land, to the prejudice of the first grantee. Porter v. Sevey, 43 Me. 519.

However, "actual notice" and "actual knowledge" are not necessarily synonymous expressions. "Actual notice" is that which gives "actual knowledge," or the means to such knowledge. It is a warning brought directly home to one whom it concerns to know. "Actual notice" may be either express or implied. It is express when established by direct proof. It is implied when inferable as a fact by proof of circumstances. "Express actual notice" is its own definition. "Implied actual notice" is that which one who is put on a trail is in duty bound to seek to know, even though the track or scent lead to knowledge of unpleasant and unwelcome facts. Hopkins v. McCarthy, 121 Me. 27, 115 A. 513.

And positive and certain knowledge is not required.—It is not necessary, in order to render an unrecorded conveyance valid against a subsequent purchaser, that he should have positive and certain knowledge of its existence; but the notice will be sufficient if it is such as men usually act upon in the ordinary affairs of life. McLaughlin v. Shepherd, 32 Me. 143.

It is not necessary, in order to enable the tenant to hold under his deed, that he should prove that the demandant had positive and certain knowledge of its existence. It is not necessary that the demandant should have such knowledge as he would acquire from having seen the deed, or being told thereof by the grantor. The notice is sufficient if it was such as men in the ordinary affairs of life usually act upon. Porter v. Sevey, 43 Me. 519.

Something less than positive personal knowledge of the fact of the conveyance will be sufficient to constitute actual notice, within the true intent and meaning of the statute. Porter v. Sevey, 43 Me. 519.

As whatever puts party on inquiry amounts to notice.—Whatever puts a party upon inquiry, amounts in judgment of law to notice, provided the inquiry becomes a duty and would lead to the knowledge of the requisite fact by the exercise of ordinary diligence and understanding. Hopkins v. McCarthy, 121 Me. 27, 115 A. 513.

The doctrine of actual notice implied by circumstances (actual notice in the second degree) necessarily involves the rule that a purchaser before buying should clear up the doubts which apparently hang upon the title, by making due inquiry and investigation. If a party has knowledge of such facts as would lead a fair and prudent man, using ordinary caution, to make further inquiries, and he avoids the inquiry, he is chargeable with notice of the facts which by ordinary diligence he would have ascertained. He has no right to shut his eyes against the light before him. He does a wrong not to heed the "signs and signals" seen by him. It may be well concluded that he is avoiding notice of that which he in reality believes or knows. Actual notice of facts which, to the mind of a prudent man, indicate notice, is proof of notice. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

And he is bound to make the inquiry.—Where an intending purchaser has actual notice of any fact, sufficient to put him on inquiry as to the existence of some right or title in conflict with that which he is about to purchase, he is bound to make the inquiry. Hopkins v. McCarthy, 121 Me. 27, 115 A. 513.

Notice held sufficient. — See Merrill v. Ireland, 40 Me. 569.

C. Proof of Notice.

The burden is on the party asserting actual notice to prove it. See Butler v. Stevens, 26 Me. 484; Smith v. Hodsdon, 78 Me. 180, 3 A. 276.

It is for the party relying on an unre-

corded deed, against a subsequent purchaser or attaching creditor, to prove that the latter had actual notice or knowledge of the deed. Smith v. Hodsdon, 78 Me. 180, 3 A. 276.

The burden of proof to show actual notice of the unrecorded deed rests upon the party seeking to establish title by an unrecorded deed, as against the holder of a subsequent deed having an earlier record. Sidelinger v. Bliss, 95 Me. 316, 49 A. 1094.

To the satisfaction of the jury. — The evidence from all the circumstances must be such as to give the jury reasonable satisfaction that the second purchaser had notice of the prior deed, before his purchase. Porter v. Sevey, 43 Me. 519.

Notice may be established by all grades of legitimate evidence.—The statutory "actual notice" is a conclusion of fact capable of being established by all grades of legitimate evidence. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

Including circumstantial evidence. — Actual notice may be proved by direct evidence, or it may be inferred, or implied, that is, proved, as a fact from indirect evidence—by circumstantial evidence. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

"Actual notice" may be proved by circumstances like any other fact. Porter v. Sevey, 43 Me. 519.

Actual notice, like any other fact to be proved, may be established by direct evidence, or it may be inferred as a legitimate conclusion from indirect evidence—by circumstantial evidence. But, in considering whether or not the evidence of such fact, relied upon in any given case, is sufficient, it must be borne in mind that actual notice is the requirement of the statute, and it is that fact that must be proved, whether the evidence be direct or circumstantial. Hooper v. Leavitt, 109 Me. 70, 82 A. 547.

And possession is circumstance to be considered.—Possession and improvement by the first purchaser is one circumstance proper, with others, for the consideration of the jury in determining the question of actual notice, though not alone sufficient. Porter v. Sevey, 43 Me. 519. See this note, analysis line III B.

Sec. 15. Absolute deed not defeated by defeasance not recorded. —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. (R. S. c. 154, § 15.)

Cross reference. — See c. 177, § 1 and note, re instrument of defeasance as mortgage.

Same necessity for recording instrument of defeasance as for recording deed.—As the instrument of defeasance affects the title of the parties to the conveyance, there would seem to be the same necessity for recording it as for recording the deed, and for the like purpose of giving notice. Such, undoubtedly, was the object of the legislature in framing the law. McLaughlin v. Shepherd, 32 Me. 143.

Subsequent purchaser with knowledge has same rights as if instrument recorded. —The object of the legislature in requiring such instruments to be recorded undoubtedly was that all persons interested might know the true condition of the title. Such being the manifest object of the legislature, in all cases where subsequent purchasers had notice of the condition of the title, they should be entitled to the same rights in relation thereto, that they would have been, had the instrument of defeasance been recorded, and nothing more. Purrington v. Pierce, 38 Me. 447.

And his purchase would not be valid against mortgage.—A subsequent purchase from the grantee, with knowledge, express or implied, of an unrecorded bond of defeasance, would not be valid against the mortgage. The subsequent purchaser would be chargeable with notice of the unregistered deed or instrument of defeasance, upon like evidence. McLaughlin v. Shepherd, 32 Me. 143.

And an attaching creditor is chargeable with notice in the same manner, and with like effect, as a subsequent purchaser. McLaughlin v. Shepherd, 32 Me. 143.

Applied in Bailey v. Myrick, 50 Me. 171.

Cited in Stowe v. Merrill, 77 Me. 550.

Sec. 16. No estate in lands greater than tenancy at will, unless by writing.—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. (R. S. c. 154, § 16.)

Without written assignment, a grantee obtains no estate greater than a tenancy at will. McKusick v. Murray, 135 Me. 169, 192 A. 422.

Deed may be signed for grantor by another.—Where the name of the grantor is signed to his deed by another in his presence, at his request and by his direction, he is bound thereby. And where the grantor's name is thus affixed, and he acknowledges the deed, receives the consideration therefor and delivers the same, he is estopped to deny his signature thereto. Lovejoy v. Richardson, 68 Me. 386.

Lease valid though executed by lessor alone. — The owner of real estate may transfer his land by a lease executed by him alone, and the lease will be effectual, although it contains covenants for execution by the lessee by signing and sealing, but is not in fact signed by the latter. The lessor may waive the covenants on the part of the lessee. Braman v. Dodge, 100 Me. 143, 60 A. 799.

And it is not necessary under this section that a lease of land be under seal. Calkins v. Pierce, 112 Me. 474, 92 A. 529.

Provided it is in writing, and signed by the maker or his attorney. Sweetser v. McKenney, 65 Me. 225; Kelleher v. Fong, 108 Me. 181, 79 A. 466.

This section does not prevent proof of surrender by act or operation of law. McCann v. Bass, 117 Me. 548, 105 A. 130.

This statute was not intended to prevent the operation of a mutual agreement between the parties, when consummated by the acts of the parties. McCann v. Bass, 117 Me. 548, 105 A. 130.

When the lessee does the acts which prove his intention to abandon and surrender, like vacating the premises and giving up the key, and the lessor, in pursuance of such acts, goes into actual occupation, then, by acts and operation of law, the lease is terminated. McCann v. Bass, 117 Me. 548, 105 A. 130.

Applied in Wheeler v. Cowan, 25 Me. 283; Wheeler v. Wood, 25 Me. 287; Lyford v. Ross, 33 Me. 197; Segars v. Segars, 71 Me. 530; Duley v. Kelley, 74 Me. 556; Franklin Land, etc., Co. v. Card, 84 Me. 528, 24 A. 960.

Quoted in Nobleboro v. Clark, 68 Me. 87.

Cited in Kendall v. Moore, 30 Me. 327.

Sec. 17. No trust in lands unless by writing.—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. (R. S. c. 154, § 17.)

I. General Consideration.

II. Sufficiency of Writing.

III. Implied Trusts.

A. In General.

B. Resulting Trusts.

C. Constructive Trusts.

I. GENERAL CONSIDERATION.

History of section. — See McClellan v. McClellan, 65 Me. 500.

This section recognizes the two general classes of trusts, express and implied. Wood v. White, 123 Me. 139, 122 A. 177; Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

Express trusts must be created or declared by a writing duly signed. An express trust fails for want of written proof, however clearly it may be orally established. Wood v. White, 123 Me. 139, 122 A. 177.

And oral evidence not admissible to prove declaration of trust. — If the oral evidence in a case fails to establish any fact from which a trust might arise by implication of law, such as the payment of the consideration by one for land conveyed to another, in the absence of fraud or grounds for an equitable estoppel, the admission of oral evidence to prove any declaration of trust would be in direct contravention of the express provisions of this section. McGuire v. Murray, 107 Me. 108, 77 A. 692.

Oral evidence is undoubtedly admissible to establish a fact from which a trust may arise by implication of law, such as the payment of the consideration by one for land conveyed to another; but in the absence of any allegations of fraud or of facts which would constitute an equitable estoppel, such evidence cannot be received to prove any declarations of a trust, without violating the explicit provisions of the statute. Wentworth v. Shibles, 89 Me. 167, 36 A. 108.

Testimony is not admissible for the purpose of establishing a "trust concerning real estate" in contravention of the express terms of the statute. Wentworth v. Shibles, 89 Me. 167, 36 A. 108.

Or to convert deed into one of trust.— Parol evidence of the object and purpose for which a conveyance was made thereby, to convert the deed into one of trust, is not admissible. Gerry v. Stimson, 60 Me. 186.

"Created" and "declared" are synonymous with "manifested" and "proved".— The words "created" and "declared" in this section are construed by the courts to be synonymous with "manifested" and "proved" as they stood in the original seventh section of the statute of frauds, 29 Car. II, c. 3. Bates v. Hurd, 65 Me. 180.

And proof in writing is sufficient. — A trust need not be created in writing; it is sufficient if it is proved in writing under the hand of the party to be charged. McClellan v. McClellan, 65 Me. 500.

This section does not require that trusts shall be "created" only by a writing; but that they shall be manifested and proved; for then the great mischief of parol declarations against which the statute was intended to guard, is entirely taken away. McClellan v. McClellan, 65 Me. 500.

This section formerly read that all trusts concerning lands must be "created and manifested" by some writing. In Richardson v. Woodbury, 43 Me. 206, it was held that trusts must be created by writing; and that it was not sufficient that they were subsequently admitted, acknowledged or declared in writing. The change of the revision of 1841, from "created and manifested" to "created or declared" was more than a mere change of phraseology; and succeeding as it did, the construction given in Richardson v. Woodbury, the marked change of language evinced an intention on the part of the legislature to change the law as there decided, so that under the existing statute express trusts may be "created" in the first instance, or subsequently "declared" by any proper writing signed as required. In fact they frequently originate in the verbal negotiations of parties; and whenever they do so arise and are proved by "some writing signed by the party or his attorney," whether it be contemporaneous with, or prior or subsequent to the principal transaction, the authorities all concur in declaring the statute complied with in this respect. McClellan v. McClellan, 65 Me. 500.

And writing may be made subsequent to principal transaction.—An express trust concerning lands can only be created or declared by some writing signed by the party or his attorney. But the writing need not be made at the time of the principal transaction; it may be made subsequently. Hinckley v. Hinckley, 79 Me. 320, 9 A. 897.

Or prior thereto. — The agreement by which the trust is established, may be made before the purchase of the estate to which it attaches. Bragg v. Paulk, 42 Me. 502.

It is entirely immaterial whether the trust is evidenced by a writing made before or after the purchase. The written declaration of a trust, parol in its origin, is as valid as if its creation had been by writing. Bragg v. Paulk, 42 Me. 502.

Trust in personalty may be created by parol.—An express trust of lands can only be created by some writing signed by the party or his attorney, but a trust of personal property may be created or declared by parol. Bath Savings Institution v. Hathorn, 88 Me. 122, 33 A. 836.

Applied in Johnson v. Cardage, 31 Me. 28; Fisher v. Shaw, 42 Me. 32; Coe v. Bradley, 49 Me. 388; Norris v. Laberee, 58 Me. 260; Perry v. Perry, 65 Me. 399; Gilpatrick v. Glidden, 81 Me. 137.

Cited in Shaw v. Merrill, 131 Me. 441, 163 A. 792.

II. SUFFICIENCY OF WRITING.

This section does not require the creation or declaration of the trust to be by deed. Bragg v. Paulk, 42 Me. 502.

And it prescribes no particular form by which the trust is to be created or declared. Bragg v. Paulk, 42 Me. 502.

Where the trust is in writing, the law requires no particular form of words, by which it is to be evidenced. Buck v. Swazey, 35 Me. 41.

Nor does it require the writing to be under seal.—A declaration of trust is required to be in writing; but it is not necessary that it should have any particular form or solemnity in writing, nor that the writing should be under seal. Pratt v. Thornton, 28 Me. 355.

Writing sufficient if terms of trust can be understood from it. The writing required by this section is sufficient, though it is informal, if the terms of the trust can be understood from it. Hinckley v. Hinckley, 79 Me. 320, 9 A. 897.

"Some writing," as used in this section, means any writing whatever, however informal, from which the existence of the trust in the estate, and the terms of it can be sufficiently understood, whether it was intended by the signer as such or not. McClellan v. McClellan, 65 Me. 500.

But it must show what the trust is.— To be effectual, the "writing" must not only show that there is a trust, but also

what it is. In other words, that a trust exists in a particular estate, the nature and objects of it, who the beneficiaries are and what are their respective interests. McClellan v. McClellan, 65 Me. 500.

Letter or other memorandum may be sufficient.—No particular formality need be observed to meet the requirement of this section. A letter or other memorandum is sufficient to establish a trust provided its terms and the relations of the parties to it appear with reasonable certainty. Brackenbury v. Hodgkin, 116 Me. 399, 102 A. 106.

The letters, memoranda, or other writings of a party, delivered or left by him and found among his papers after his decease, have been held sufficient. Buck v. Swazey, 35 Me. 41; McClellan v. McClellan, 65 Me. 500.

Although not addressed to cestui que trust and not intended as evidence of trust.—A letter, memorandum or recital subscribed by the trustee, whether addressed to, or deposited with the cestui que trust or not, or whether intended when made to be evidence of the trust or not, will be sufficient to establish the trust when the subject, object and nature of the trust, and the parties and their relations to it and each other, appear with reasonable certainty. Bates v. Hurd, 65 Me. 180.

Any trust may be declared in indenture, etc.—The declaration of a trust may be contained in an indenture between parties, in the recitals of a deed, the conditions of a bond or other instrument under seal. Bragg v. Paulk, 42 Me. 502.

Only one of several writings need be signed.—When the necessary facts are not all contained in one writing but are in several, only one of them need be signed, provided the others are so referred to therein as to be deemed altogether parts of one and the same transaction. McClellan v. McClellan, 65 Me. 500.

III. IMPLIED TRUSTS.

A. In General.

All trusts which arise by operation of law are excepted from the requirement of the statute. Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

Implied trusts include resulting and constructive trusts.—The exceptions in the statute which require no writing are implied trusts. These are of two fundamentally different kinds; resulting and constructive. The former carry into effect the presumed intent of the parties. The latter defeat the intent of one of the parties. Wood v. White, 123 Me. 139, 122 A. 177; Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

And it is not necessary that the alleged trustee in a resulting or constructive trust be the holder of the legal title. Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

B. Resulting Trusts.

Resulting trust created when property conveyed to one person is paid for by another.—A resulting trust is created when property is conveyed to one person and the whole consideration or some definite fractional part thereof is paid by another. Wood v. White, 123 Me. 139, 122 A. 177.

And such trust may be established by parol evidence.—When a conveyance of real estate is made to one person, and the consideration is paid by another, a trust is created by implication of law. Such a trust may be established by parol evidence. Sawyer v. Skowhegan, 57 Me. 500.

Even against the face of a deed, etc.—Where a trust is claimed as arising by operation of law, in consequence of the consideration having been paid by the one asserting the claim, for the conveyance made to the alleged trustee, this payment may be proved by parol. Such evidence is admissible not only against the face of the deed, but in opposition to the answer of the supposed trustee, denying the trust. Baker v. Vining, 30 Me. 121.

But funds must have been advanced at time of purchase.—In order to create a trust by the purchase of lands with the funds of another person, such funds must have been advanced and invested at the time of the purchase. Buck v. Swazey, 35 Me. 41.

And no resulting trust can arise from the payment or advance of money after the purchase has been completed. Farnham v. Clements, 51 Me. 426; Gerry v. Stimson, 60 Me. 186.

A resulting trust does not arise upon subsequent payments, under a contract to purchase. In that case, the trust, if any exists, is express; and depends upon the terms of the contract. Conner v. Lewis, 16 Me. 268.

If one man purchase an estate in the name of another, a trust results to him who advances the purchase money. But it is a well settled part of the doctrine, that it should appear that the payment, from which the trust results, was a part of the original transaction, at the time of the conveyance; and that it cannot arise from subsequent payments. Buck v. Pike, 11 Me. 9.

Parol evidence not admissible to show

purchase for benefit of one not advancing money.—When the person who sets up a resulting trust has in fact paid no part of the purchase money, he will not be allowed to show by parol that the purchase was made for his benefit. Farnham v. Clements, 51 Me. 426.

C. Constructive Trusts.

Constructive trusts are based on fraud, oppression, etc.—Constructive trusts, the second species of implied trusts, are based upon fraud, abuse of a confidential relation, oppression or mistake. Wood v. White, 123 Me. 139, 122 A. 177; Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

In order that a given case may be classified with constructive trusts there must appear to have been abuse, duress, mistake or fraud in some one of its multifarious forms. Wood v. White, 123 Me. 139, 122 A. 177.

And arise by construction of equity.—A constructive trust is one raised by equity in respect to property which has been acquired by fraud or, though acquired originally without fraud, it is against equity that it should be retained by him who holds it. A constructive trust arises purely by construction of equity, independent of any real or presumed intention of the parties to create the trust, and is generally thrust on the trustee for the purpose of working out a remedy. The trust is not what is known as a technical trust, and the ground of relief in such cases is, strictly speaking, fraud, and not trust. Equity declares the trust in order that it may lay its hand on the thing and wrest it from the possession of the wrongdoer. The trust is said to arise from actual fraud, constructive fraud, and from some equitable principle independent of any fraud. Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

Fraud gives rise to constructive trust though accompanied by unenforceable promise.—Fraud or abuse of a confidential relation gives rise to a constructive trust, none the less because accomplished by or accompanied by a parol promise which is, as such, unenforceable. Wood v. White, 123 Me. 139, 122 A. 177; Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

But fraud must be more than breach of oral agreement.—The fraud upon which the court acts in cases of a constructive trust must be something more than that which, in a moral sense, arises from a mere breach of an oral agreement. Wood v. White, 123 Me. 139, 122 A. 177.

And trust cannot be predicated on broken promise to hold land in trust.—A constructive trust cannot be predicated alone upon a broken promise to hold land in trust, though such promise be fully proved and based upon an adequate consideration. Such a promise creates an express trust which to be valid must be in writing. Wood v. White, 123 Me. 139, 122 A. 177; Sacre v. Sacre, 143 Me. 80, 55 A. (2d) 592.

Sec. 18. Titles not defeated by trusts without notice or record. — 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. (R. S. c. 154, § 18.)

Conveyance to bona fide purchaser without notice bars interest of cestui que trust.—It is a well established principle in equity that, if a trustee disposes of the trust estate to a bona fide purchaser, for a valuable consideration, without notice of the trust, he will bar the interest of the cestui que trust. This principle the legislature has incorporated into this section. Moore v. Ware, 38 Me. 496.

And purchaser's title cannot be defeated by the trust.—The title of a purchaser of the premises from an equitable mortgagee, if for a valuable consideration, cannot be defeated by a trust however declared or implied by law unless the purchaser had notice thereof. Devine v. Tierney, 139 Me. 50, 27 A. (2d) 134.

However, a trust follows the real estate into the hands of any subsequent holder who is not a bona fide purchaser thereof without notice. Austin v. Austin, 135 Me. 155, 191 A. 276.

Purchaser must have had actual notice.—This section, which declares that the title of one who purchases property for a valuable consideration cannot be defeated by a trust affecting the property, unless the purchaser has notice of the trust, while it may in peculiar instances mean constructive notice, in cases generally, including a case where the trust reduces an absolute deed to a mortgage, means actual notice. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

Either of trust or of facts which would have put him on inquiry.—The notice which will defeat the title of a purchaser

for a valuable consideration is actual notice either of the trust or of facts which would or ought to put him upon inquiry in reference to it. Devine v. Tierney, 139 Me. 50, 27 A. (2d) 134; Rowe v. Hayden, 149 Me. 266, 101 A. (2d) 190.

Which facts must be sufficient to lead prudent man to make inquiry.—As to what facts are sufficient to excite inquiry in such a case and charge the purchaser with implied actual notice under the statute there is no hard and fast rule. They must be such facts as would lead a fair and prudent man with ordinary caution to make inquiry. Devine v. Tierney, 139 Me. 50, 27 A. (2d) 134; Rowe v. Hayden, 149 Me. 266, 101 A. (2d) 190.

As to what would be a sufficiency of facts to excite inquiry no rule can very well establish; each case depends upon its own facts. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

In which case purchaser is charged with notice of that which inquiry would have revealed.—Where an intending purchaser has actual notice of any fact sufficient to put him on inquiry as to the existence of some right or title in conflict with that which he is about to purchase, he stands charged with notice of that which inquiry would have revealed by the exercise of ordinary diligence. This, in the judgment of the law, is actual notice inferred or implied as a fact from circumstances and the equivalent of actual notice proved by direct evidence. Devine v. Tierney, 139 Me. 50, 27 A. (2d) 134; Rowe v. Hayden, 149 Me. 266, 101 A. (2d) 190.

The doctrine of actual notice implied by circumstances (actual notice in the second degree) necessarily involves the rule that a purchaser before buying should clear up the doubts which apparently hang upon the title, by making due inquiry and investigation. If a party has knowledge of such facts as would lead a fair and prudent man, using ordinary caution, to make further inquiries, and he avoids the inquiry, he is chargeable with notice of the facts which by ordinary diligence he would have ascertained. He has no right to shut his eyes against the light before him. He does a wrong not to heed the "signs and signals" seen by him. It may be well concluded that he is avoiding notice of that which he in reality believes or knows. Actual notice of facts which, to the mind of a prudent man, indicate notice, is proof of notice. Knapp v. Bailey, 79 Me. 195, 9 A. 122; Rowe v. Hayden, 149 Me. 266, 101 A. (2d) 190.

"Actual notice" and "actual knowledge" are not synonymous.—"Actual notice" and "actual knowledge" are not necessarily synonymous expressions. "Actual notice" is that which gives "actual knowledge," or the means to such knowledge. It is a warning brought directly home to one whom it concerns to know. "Actual notice" may be either express or implied. It is express when established by direct proof. It is implied when inferable as a fact by proof of circumstances. "Express actual notice" is its own definition. "Implied actual notice" is that which one who is put on a trail is in duty bound to seek to know, even though the track or scent lead to knowledge of unpleasant and unwelcome facts. Rowe v. Hayden, 149 Me. 266, 101 A. (2d) 190.

Actual notice may be proved by circumstantial evidence.—Actual notice may be proved by direct evidence, or it may be inferred, or implied, that is, proved as a fact from indirect evidence—by circumstantial evidence. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

Actual notice, as applicable to conveyances, does not necessarily mean actual knowledge; it may be express or implied; it may be proved by direct evidence, or may be implied (in that way proved) from indirect or circumstantial evidence; a person may have notice or its equivalent; may be estopped to deny notice; in fine, the statutory actual notice is a conclusion of fact capable of being established by all grades of legitimate evidence. Knapp v. Bailey, 79 Me. 195, 9 A. 122.

Recording is equal to actual notice.—The provision made by this section, in relation to instruments in writing creating or declaring trusts, is that recording shall be equal to actual notice. Pike v. Collins, 33 Me. 38.

Applied in Johnson v. Candage, 31 Me. 28; Bragg v. Paulk, 42 Me. 502; Bromley v. Gardner, 79 Me. 246, 9 A. 621; Bailey v. Coffin, 115 Me. 495, 99 A. 447.

Cited in Bowman v. Pinkham, 71 Me. 295; Houghton v. Davenport, 74 Me. 590.

Sec. 19. Trustees in mortgage hold in joint tenancy; survivors convey real and personal property.—When real estate is conveyed in mortgage or in trust to 2 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 re-

maining 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. (R. S. c. 154, § 19.)

Sec. 20. Release conveys interest of grantor; husband and wife.—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. (R. S. c. 154, § 20.)

Cross reference.—See note to c. 170, § 9, re release or quitclaim deed by wife during husband's lifetime not sufficient to convey her right by descent.

Quitclaim deed is suitable instrument for conveyance.—A quitclaim deed, whatever may have been its office at common law, is, by virtue of declaratory legislation, a suitable instrument for the conveyance of real property. Canton v. Livermore Falls Trust Co., 136 Me. 103, 3 A. (2d) 429.

And a deed of quitclaim gives to the grantee a record title. Canton v. Livermore Falls Trust Co., 136 Me. 103, 3 A. (2d) 429.

A release deed is a deed. Courts so class it. The statute so denominates it. Men generally so understand it. All definitions of the term include it. It is a legitimate, though humble member of the deed family. Tibbetts v. Holway, 119 Me. 90, 109 A. 382.

A deed in form in the nature of a release, containing words of grant as well as release, is as much a conveyance as any other kind of a deed. Shaw v. Merrill, 131 Me. 441, 163 A. 792.

Deed of release or quitclaim conveys grantor's interest as effectually as warranty deed.—A deed of release or quitclaim in the usual form will convey the grantor's title and estate as effectually as a deed of warranty. Garcelon v. Tibbetts, 84 Me. 148, 24 A. 797.

The usual words in a quitclaim deed will convey the grantor's title as effectually as any other form of words. Maker v. Lazell, 83 Me. 562, 22 A. 474.

And a quitclaim deed will convey an equitable interest defeasible by a contingency. Goodwin v. Boutin, 130 Me. 322, 155 A. 738.

But the quitclaim deed is to be effective upon the lands described therein, if the grantor "can convey" them. Abbott v. Chase, 75 Me. 83.

A quitclaim deed conveys the estate which the grantor has, and can convey by a deed of any other form. Goodwin v. Boutin, 130 Me. 322, 155 A. 738.

And it conveys only the interest which grantor had at time of conveyance.—A conveyance of all the right, title and interest which the grantor has in and to the land described in his deed conveys only the right, title and interest which he actually has at the time of the conveyance. Such a grant in a deed does not convey the land itself or any particular estate in it, but the grantor's right, title and interest in it alone. Coe v. Persons Unknown, 43 Me. 432.

Applied in Whitman v. Weston, 30 Me. 285; Patterson v. Snell, 67 Me. 559.

Cited in Palmer v. Dougherty, 33 Me. 502.

Sec. 21. Deeds and contracts by agent bind principal.—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. (R. S. c. 154, § 21.)

History of section.—See Nobleboro v. Clark, 68 Me. 87.

Whether person acts as agent is determined from examination of whole instrument.—While, in order to bind the principal, it is necessary that it should appear that the agent acted for or in behalf of his principal, it is by no means necessary that these identical words be used. It is sufficient if such fact appear by any words apt to show it. The law in such cases makes no particular form of words the exclusive medium of conveying this idea. The question whether in a particular case a person acts as agent is to be determined from an examination of the whole instrument, and not from any prescribed form of language. Winship v. Smith, 61 Me. 118.

And intent to bind principal is effective

however informally expressed.—If it can, upon the whole instrument, be collected that the object and intent of it is to bind the principal, and not merely the agent, courts of justice will adopt that construction of it, however informally it may be expressed. Rogers v. March, 33 Me. 106.

And even if agent signs in his own name.—The true rule in this state is that, where a deed is executed by an agent or attorney, with authority therefor, and it appears by the deed that it was the intention of the parties to bind the principal or constituent—that it should be his deed and not that of the agent or attorney—it must be regarded as the deed of the principal or constituent, though signed by the agent or attorney in his own name. Nobleboro v. Clark, 68 Me. 87; Simpson v. Garland, 72 Me. 40.

For intent may appear in body of instrument as well as after signature.—In determining the meaning of the parties as to their intention to bind the principal, recourse must be had to the whole instrument—the granting part, the covenants, the attestation clause, the sealing and acknowledgment, as well as the manner of signing. If signed by the agent in his own name, it must appear by the deed that he did so for his principal. This may appear in the body of the deed as well as immediately after the signature. Nobleboro v. Clark, 68 Me. 87; Simpson v. Garland, 72 Me. 40.

Words used in the body of the note tending to show the meaning of the parties as to the authority of the agent should have the same force and effect as if following, or written against the defendants' signatures. Their meaning is as significant in the one case as in the other. Simpson v. Garland, 72 Me. 40.

Evidence aliunde not admissible to show intent.—The intention of the parties to bind the principal or constituent—that the deed or contract should be his deed or contract—must appear by the deed or contract itself, and no evidence aliunde, except evidence of the authority of the agent or attorney, can be received to show such intent. Nobleboro v. Clark, 68 Me. 87.

This section is not to be considered as applying to negotiable paper in such a way as to make parol evidence of the understanding and intention of the parties admissible to relieve an agent who has, on the face of the paper, expressly assumed the liability himself. Sturdivant v. Hull, 59 Me. 172.

But evidence is admissible to show authority of agent.—This section makes the authority of the agent an essential element to be considered, and evidence offered to prove the authority is admissible. Simpson v. Garland, 72 Me. 40.

Agent must execute contract personally.—The agent to whom the power is originally committed, in order to bind his principal by a written contract, must execute it personally, and cannot authorize anyone else to do it in his behalf. Curtis v. Portland, 59 Me. 483.

Applied in Porter v. Androscoggin & Kennebec R. R., 37 Me. 349; Rendell v. Harriman, 75 Me. 497.

Cited in Simpson v. Garland, 76 Me. 203; Copeland v. Hewett, 96 Me. 525, 53 A. 36.

Sec. 22. Conveyances for use of county. — 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. (R. S. c. 154, § 22.)

Sec. 23. Deeds and other instruments acknowledged; admitted to record.—Deeds and all other written instruments before recording in the registries of deeds, except those issued by a court of competent jurisdiction and duly attested by the proper officer thereof, and excepting plans and notices of foreclosure of mortgages and certain chattel mortgages as provided in section 1 of chapter 178, shall be acknowledged by the grantors, or by the persons executing any such written instruments, or by one of them, or by their attorney executing the same, or by the lessor in a lease or one of the lessors or his attorney executing the same, before a justice of the peace or notary public having a seal, in the state; or before any clerk of a court of record having a seal, notary public, justice of the peace or commissioner appointed by the governor of this state for the purpose, or a commissioner authorized in the state where the acknowledgment is taken, 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 public or commissioner, if he has one, shall be affixed to the certificate

of acknowledgment, but if such acknowledgment is taken outside the state before a justice of the peace, notary public not having a seal or commissioner, a certificate under seal from the secretary of state, or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking such acknowledgment and the genuineness of his signature, must be annexed thereto.

Provided, however, that when a state of war exists between the United States and any other nation, or when a state of emergency has been proclaimed by the president, any resident of the state who is in the armed forces of the United States, and who executes a general or special power of attorney, deed, lease, contract or any instrument that is required to be recorded, may acknowledge the same as his true act and deed before any lieutenant or officer of senior grade thereto in the army, or before any ensign or officer of senior grade thereto in the navy, and the record of such acknowledgment by said officers shall be received and have the same force and effect as acknowledgments under the other provisions of this section. Provided further, that powers of attorney and other instruments requiring seals executed by such members of the armed forces may be accepted for recordation in registries of deeds and other offices of record in cases where no seal is affixed after the name of the person or persons executing the instrument with like force and effect as though seals were affixed thereto.

Any justice of the peace who is a stockholder, director, officer or employee of a bank or other corporation may take the acknowledgment of any party to any written instrument executed to or by such corporation; provided that such justice of the peace is not a party to such instrument either individually or as a representative of such bank or other corporation.

This section shall not be construed as invalidating any instrument duly executed in accordance with the statutes heretofore in effect, or made valid by any such statute. All such instruments may be admitted to record which at the time of their execution or subsequent validation could be so recorded. (R. S. c. 154, § 23. 1945, c. 326. 1951, c. 157, § 17.)

Cross reference.—See §§ 28, 29, re grantor dead or out of state.

As between the parties, a deed is valid though not acknowledged. It will pass the title to the estate in such case, as against the grantor and his heirs. Fitch v. Lewiston Steam-Mill Co., 80 Me. 34, 12 A. 732.

The object of the acknowledgment of a deed being to give such authenticity to its execution as to entitle it to registration, and that of registration to give notice of the title, neither is required as between the immediate parties thereto and all others having actual notice of its existence. Gibson v. Norway Savings Bank, 69 Me. 579.

An original unacknowledged deed, or deed with a defective certificate of acknowledgment, is valid and admissible in evidence as against the grantor and his heirs, but if not properly acknowledged and recorded it is not valid or admissible against others. Hudson v. Webber, 104 Me. 429, 72 A. 184.

Acknowledgment gives no efficacy to the deed, but immediately upon its due execution and delivery the estate therein described passes to the grantee and does not remain in the grantor until acknowledgment and registration. Gibson v. Norway Savings Bank, 69 Me. 579.

And the act of acknowledgment by the justice of the peace is purely ministerial and in nowise judicial. Gibson v. Norway Savings Bank, 69 Me. 579.

And he need not be disinterested.—The statute does not in terms require an acknowledgment to be made before a disinterested justice of the peace. Gibson v. Norway Savings Bank, 69 Me. 579.

Relationship between the acknowledging justice and one of the parties is no objection. Gibson v. Norway Savings Bank, 69 Me. 579.

Applied in DeWitt v. Moulton, 17 Me. 418; Brown v. Lunt, 37 Me. 423.

Cited in Bramhall v. Seavey, 28 Me. 45; Fishing Gazette Publishing Co. v. Beal & Garnett Co., 124 Me. 278, 127 A. 904.

Sec. 24. Appointment of commissioners; power to authenticate deeds.—The governor may appoint one or more commissioners in any other of the United States, and in any foreign country, who shall continue in office during

his pleasure; and have authority to take the acknowledgment and proof of the execution of any deed, other conveyance or lease of lands lying in this state; and of any contract, letter of attorney or any other writing, under seal or not, to be used or recorded in this state. (R. S. c. 154, § 24.)

Cross reference.—See c. 21, § 7, re fee payable to secretary of state.

Stated in Opinion of the Justices, 72 Me. 542.

Sec. 25. Legal effect of their official acts.—The acknowledgment or proof, taken according to the laws of this state and certified by any such commissioner under his seal of office, annexed to or indorsed on such instrument, shall have the same force and effect as if done by an officer authorized to perform such acts within this state. (R. S. c. 154, § 25.)

Sec. 26. May administer oaths and take depositions.—Every commissioner appointed under the provisions of section 24 may administer any oath lawfully required in this state to any person willing to take it; and take and duly certify all depositions to be used in any of the courts in this state, in conformity to the laws thereof, on interrogatories proposed under commission from a court of this state, by consent of parties or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a magistrate in this state. (R. S. c. 154, § 26.)

Sec. 27. Qualification and seal.—Every commissioner appointed under the provisions of section 24, before performing any duty or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation, before a judge or clerk of one of the superior courts of the state or country in which he resides, well and faithfully to execute and perform all his official duties under the laws of this state; which oath and a description of his seal of office shall be filed in the office of the secretary of state. (R. S. c. 154, § 27.)

Sec. 28. Grantor dead, or out of state; execution proved.—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 1 subscribing witness can, for this purpose, be proved before any court of justice. (R. S. c. 154, § 28.)

Cited in Gibson v. Norway Savings Bank, 69 Me. 579.

Sec. 29. How proved, if witness dead or absent.—When the witnesses are dead or out of the state, the handwriting of the grantor and subscribing witness may be proved by other testimony. (R. S. c. 154, § 29.)

Sec. 30. If grantor refuses to acknowledge.—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 40 days as a record of the deed. (R. S. c. 154, § 30.)

Cited in Gibson v. Norway Savings, Bank, 69 Me. 579.

Sec. 31. Grantor summoned before justice, and execution proved.—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 7 days before the time for proving the deed. (R. S. c. 154, § 31.)

Cited in Gibson v. Norway Savings Bank, 69 Me. 579.

Sec. 32. Certification that deed proved.—When the justice or notary at said 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. (R. S. c. 154, § 32.)

Sec. 33. Certificate put on deed.—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. (R. S. c. 154, § 33.)

Deed cannot be recorded without certificate of acknowledgment.—A deed cannot be recorded in the registry of deeds unless a certificate of acknowledgment, or proof of execution in the exceptional cases mentioned, is indorsed on or annexed to the deed. Gibson v. Norway Savings Bank, 69 Me. 579.

And the registry of a deed, without acknowledgment, is illegal. It confers no priority and gives no rights. De Witt v. Moulton, 17 Me. 418.

Requirement of acknowledgment is to protect registry from misuse.—The statute requires deeds of conveyance to be acknowledged before being recorded in the official registry. The only purpose of this requirement seems to be to protect the registry from misuse. The certificate of acknowledgment is to be evidence to the register, sufficient to admit the deed to registration. There is in this statute no indication of any other purpose in requiring an acknowledgment. Webber v. Stratton, 89 Me. 379, 36 A. 614.

And it is not prima facie proof of execution.—A rule that acknowledgment and registration should be prima facie proof of the execution of a deed might in many cases save expense and trouble, but such a rule does not seem to have been established in this state either by legislation or by judicial custom. Webber v. Stratton, 89 Me. 379, 36 A. 614.

Nor does the certificate dispense with other proof of execution.—The official certificate of the statute acknowledgment of the deed, appearing upon a recorded deed, does not dispense with other proof of its execution, when offered by the grantee therein as evidence of title. Since the certificate is purely a creature of statute, it cannot have that effect, except by force of some statute provision, and there is in Maine no statute providing in terms for such an effect of a certificate of acknowledgment. Webber v. Stratton, 89 Me. 379, 36 A. 614.

Certificate must disclose place where acknowledgment taken.—A certificate of acknowledgment is insufficient when it does not disclose the place or venue where it was taken. A magistrate has no authority to take acknowledgments outside the state, within and for which he is appointed, and it must appear that he acted within the territorial limits of his jurisdiction. A deed which does not show this fact is not admissible except as against the grantor and his heirs. Hudson v. Webber, 104 Me. 429, 72 A. 184.

But this may appear from inspection of entire deed.—When the venue of acknowledgment appears upon the deed, the law attaches to the acts of the officer the presumption of regularity. But it is not indispensable that it should appear from the certificate of acknowledgment itself. It will suffice if the place of acknowledgment can be discovered with reasonable certainty by inspection of the whole instrument. Hudson v. Webber, 104 Me. 429, 72 A. 184.

Applied in Brown v. Lunt, 37 Me. 423.

Sec. 34. Certificate after commission expired.—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. (R. S. c. 154, § 34.)

For a case, prior to the enactment of this section, concerning acknowledgment by a justice whose commission had expired, see Brown v. Lunt, 37 Me. 423.

Sec. 35. Deed lost before recording.—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 90 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 perpetuam; but if any person

supposed to have an adverse interest lives out of the state in an unknown place, a justice of the superior court in term time 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 90 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. (R. S. c. 154, § 35.)

Sec. 36. Certified copies of recorded deeds recorded in other registries.—If a deed conveying lands in more than 1 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. (R. S. c. 154, § 36.)

Sec. 37. Person holding unrecorded deed compelled to record.—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 30 days, a justice of the superior court, in term time 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 with the legal fees of the register for recording such deed or other evidence of title. (R. S. c. 154, § 37.)

Sec. 38. Pews, real estate; deeds and levies, where recorded. — 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. (R. S. c. 154, § 38.)

Sec. 39. Agreement that building on land of another shall be personal property.—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 landowner or by someone duly authorized for that purpose, and acknowledged and recorded as deeds are required to be acknowledged and recorded under the provisions of this chapter; provided that this section shall not apply to agreements entered into prior to the 28th day of April, 1903, and then outstanding. (R. S. c. 154, § 39.)

Applied in Andover v. McAllister, 119 Me. 153, 109 A. 750.

Cited in Vorsec Co. v. Gilkey, 132 Me. 311, 170 A. 722.

Sec. 40. Records of deeds with certain kinds of defective acknowledgments validated. — All records of all deeds and other instruments, including powers of attorney, heretofore made for the conveyance of real property in this state, or of any interest therein, and recorded or written out at length in the books of record in the registry of deeds of the county in which said real property lies, the acknowledgment of which was not completed, or was erroneously taken, or was taken by a person not having authority to take such acknowledgment, or where the authority of the person taking such acknowledgment was not completely stated, or was erroneously stated, or where it does not appear whether the authority taking such acknowledgment acted as a notary public, a justice of the peace or other duly authorized authority for the taking of such acknowledgment, or where no acknowledgment of such deed or other instrument was taken, or where the authority taking such acknowledgment had not signed the same but had attached or had affixed or had stamped thereon his seal of authority, or

where the acknowledgment was taken by the grantor or grantee, or by the husband or wife of the grantor or grantee, or the acknowledgment was taken by a magistrate who was a minor, or an interested party or whose term of office had expired at the time of such acknowledgment, or an acknowledgment of which was taken by a proper officer but outside of the territory in which he was authorized to act, or was taken before any person who, at the time of such acknowledgment had received an appointment, election or permission authorizing him to take such acknowledgment, but had not qualified, but who has since such time duly qualified, or where the grantor was acting as a duly authorized agent or in a fiduciary or representative capacity, or was acting as an officer of a corporation and acknowledged said instrument individually, or where the acknowledgment was taken without the state before any person authorized to take acknowledgments, and using the form of acknowledgment prescribed by the laws of the state or country in which such instrument was executed, or such person has failed to affix to such instrument a proper certificate, showing his authority to act as such magistrate; or where such aknowledgment was not signed by a magistrate of this state or any other state or territory of the United States, or any foreign country, authorized to take such acknowledgment, but such acknowledgment was signed by an ambassador, minister, charge d'affaires, consul, vice-consul, deputy consul, consul-general, vice-consul-general, consular agent, vice-consular-agent, commercial agent or vice-commercial agent of the United States in any foreign country, who was not qualified to take such acknowledgment, but has since become qualified by law to do so, but which acknowledgment was complete in every other respect; or where the acknowledgment was signed by a proper magistrate but there has been omitted therefrom, his official seal, if he had one, or the names of the grantors, the date and place of acknowledgment, or the words, "personally appeared before me," or a statement that it was acknowledged as the grantor's "free act and deed"; or such certificate of acknowledgment is in the form of an oath, or states merely that the said instrument was subscribed in his presence, or is otherwise informal or incomplete, if signed by a proper magistrate; and all records in any such registry of instruments relating to the title to real property which fail to disclose the date when received for record or the record of which has not been signed by the register of deeds for said county or other duly authorized recording officer, such records are validated. (R. S. c. 154, § 40.)

Prior to the enactment of this section, it was held that, if the certificate of acknowledgment was not made by a person authorized to make it, or to take the acknowledgment of deeds, it was, therefore, inoperative, and did not authorize the deed to be recorded. The record of such a deed would not afford constructive notice to an attaching creditor, since actual notice to him of the prior conveyance was not proved. Brown v. Lunt, 37 Me. 423.

Cited in Gates v. Oliver, 126 Me. 427, 139 A. 230.

Sec. 41. Deeds lacking statement of consideration or seals validated; informal discharges, deeds of irregularly formed corporations, deeds executed by attorney but no record of power of attorney, validated.—All deeds and other instruments, including powers of attorney, heretofore made for the conveyance of real property in this state or any interest therein, and otherwise valid except that the same omitted to state any consideration therefor or that the same were not sealed by the grantors or any of them, are validated. Every duly recorded satisfaction piece or instrument heretofore executed with intent to cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage so intended to be canceled and discharged or assigned, but not drawn in formal accordance with statutory requirements, shall be held a valid discharge or assignment of such mortgage and a release or assignment of the mortgaged interest in such real estate. All corporations organized or attempted to be organized under and by virtue of any of the statutes of this state more than 20 years prior to April 15, 1927, and not heretofore declared to be invalid, shall be held to all intents and purposes as if the same had

in all respects been properly and rightfully organized and existing as lawful corporations, and the deeds or other instruments of such corporations organized or attempted to be organized, given in their corporate names, affecting real estate in this state or conveying the same, and heretofore recorded, or written out at length upon the books of record in the registry of deeds in the county in which such real estate lies, shall not be held invalid by reason of any lack of authority or informality for or in their execution or delivery, if taken bona fide from the acting officers of such corporation or attempted organization as such, which such taking shall be presumed, but such corporations, attempted organizations as such, with such deeds and their records made as aforesaid, are validated. Any deed or other instrument made for the purpose of conveying real property in this state or any interest therein, and heretofore recorded or spread at length in the books of record in the registry of deeds for the county in which said real property lies, which said deed or other instrument or said records fail to disclose authority by such corporation for the conveyance of such real estate, or which deed or other instrument fails to bear the corporate seal, or is executed or acknowledged by the person executing such deed in his individual capacity, or which fails to disclose the official capacity of the person executing such deed, or which was not signed by the officer duly authorized to sign such deed, with its record made as aforesaid, is validated. All deeds and other instruments heretofore made for the conveyance of real property in this state, or any interest therein and executed by a person or persons purporting to act as the agent or attorney of the grantors, their spouses, or any of them, which such deeds have been recorded or written at length in the books of record in the registry of deeds for the county in which said real property lies more than 40 years prior to April 15, 1927, but no power of attorney authorizing and empowering such agent or attorney to make such conveyance or execute and deliver such deed, appears of record, but such real estate has in the meantime been occupied, claimed or treated by the grantees and those claiming by, through or under them as other property of like kind and similarly situated would be held or claimed by the owners thereof, shall be held to all intents and purposes as if executed and delivered under and by virtue of proper power of attorney duly recorded and given for the purpose, and the records thereof are validated. All instruments written or recorded in the books of record in the registry of deeds in the county in which the real estate affected thereby lies, more than 40 years prior to April 15, 1927, signed or executed by any person or persons purporting to act as the agent or attorney of the holder of any mortgage of real estate and purporting to operate as a discharge of such mortgage, shall be held as if executed and delivered under and by virtue of a proper power of attorney given for the purpose, although no power of attorney authorizing such agent or attorney thereto shall appear of record, and the records thereof are validated. In all cases in which an executor, administrator, guardian or conservator or trustee, master or receiver or similar officer has been authorized or ordered by a court of probate or other competent court to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing such sale or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such executor, administrator, guardian, conservator, trustee, master or receiver, or other similar officer, appointed as aforesaid, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts heretofore done are validated. (R. S. c. 154, § 41.)

Section retrospective.—The very broad language used in this section plainly shows the intention of the legislature to make the same retrospective in its effect.

Bowman v. Geyer, 127 Me. 351, 143 A. 272.

Cited in Gates v. Oliver, 126 Me. 427, 139 A. 230.

Sec. 42. Joint tenancies in corporate securities.—Certificates of stock in corporations, corporate bonds, corporate debentures and other corporate securities, not including shares in building and loan associations, record title to which is held in the name of 2 or more persons as joint tenants or under language indicating the intention that said property be held with the right of survivorship, shall be deemed to be held in an estate in joint tenancy with all the attributes and incidents of estates in joint tenancy created or existing at common law, and shall be deemed to be so held even though said property may have been transferred directly by a person to himself jointly with another or other persons. (1951, c. 51.)

Sec. 43. Not retroactive unless agreement filed.—Section 42 shall not apply to any such transfer made prior to August 20, 1951, unless the persons in whose names said securities have been issued or are held, file with the corporation issuing such securities or with its transfer agent or registrar an agreement indicating their intention that section 42 shall apply. (1951, c. 51. 1953, c. 308, § 108.)

Sec. 44. Form of agreement.—The following shall be a sufficient agreement to secure the application of section 42:

"We , , and , owners of shares of common (preferred) stock of company represented by certificate No. , owners of bonds No. , Series of company, owners of debentures No. , Series of company, owners of a certain promissory note dated , etc., signed by company, owners of (describe any other security) issued by company hereby agree that our ownership in the above-mentioned property shall be as joint tenants with rights of survivorship as such, and not as tenants in common, in accordance with the provisions of sections 42 and 43 of chapter 168 of the revised statutes of Maine." (1951, c. 51.)

Sec. 45. Existing valid joint tenancies not affected.—Nothing in sections 42, 43 and 44 shall be construed so as to affect the validity of any joint tenancy otherwise validly created. (1951, c. 51.)