

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
VOLUME 4

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1957

C. The value of residue of the estate real and personal, at the date of death over and above the value of $\frac{1}{3}$ the real estate, the amount necessary to pay the debts of the deceased, funeral charges and charges of administration and widow's allowance. Such decree of determination shall include a finding as to what part of decedent's estate passes to the widow and shall be binding upon all parties.

Within 30 days after such determination by the probate court, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated, an attested copy of such decree, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills.

If additional property is later discovered, the right or title to the estate covered by such decree shall not be affected thereby, but the court may make such further orders and decrees as are necessary to effect the distribution provided for in section 20. (1957, c. 290, § 3.)

Effective date.—The act inserting this section became effective on its approval, May 17, 1957.

Chapter 172.

Real Actions. Proceedings to Quiet Title.

Real Actions.

Sec. 1. Recovery of estates by writ of entry; mode of service.

Cited in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Sec. 2. Declaration.

Stated in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Sec. 3. Demandant to set forth estate he claims in premises.

Stated in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Sec. 4. Proof of seizin.

Stated in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Sec. 5. Demandant must have right of entry.

Stated in *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Sec. 16. No abatement by death or intermarriage.

When only the administrator of a deceased defendant appears in a real action, there is no defendant in court against whom a judgment can be given for the land. A judgment against an administrator in this type of case cannot affect the heirs. *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

And his representatives and heirs must have notice.

In accord with 1st paragraph in original. See *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364

In accord with 2nd paragraph in original. See *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Where demandant died after institution and entry of an action and his wife, in a capacity as administratrix, came in to prosecute the action, it was held that the action must fail for lack of a proper plaintiff in absence of evidence showing that wife had any interest in the real estate or that the heirs or any other persons interested had been given notice. *Butts v. Fitzgerald*, 151 Me. 505, 121 A. (2d) 364.

Proceedings at Law to Quiet Title.

Sec. 48. Summary proceedings to quiet title to real estate.

Concurrent remedies.—Proceedings to quiet title may be brought either at law under the provisions of §§ 48 to 51, inclusive, of this chapter, or in equity under the provisions of §§ 52 to 55, inclusive. The remedies are concurrent and

the mere fact that an alternative remedy at law is provided does not defeat equity jurisdiction in this instance. *Socec v. Maine Turnpike Authority*, 152 Me. 326, 129 A. (2d) 212.

Proceedings in Equity to Quiet Title.

The fact that a concurrent remedy at law exists, etc.

See *Socec v. Maine Turnpike Authority*, 152 Me. 326, 129 A. (2d) 212.

In accord with 1st paragraph in origi-

Chapter 176.

Partition of Real Estate.

Sec. 13. Commissioners appointed.

Commissioners decide questions relating to valuation and division of land.—The legislature has placed in the commissioners, and not in the court, the responsibility

for deciding questions relating to the valuation and division of real estate. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Sec. 21. Report; judgment; effect.

The court may confirm, recommit, or set aside, but may not alter or change the report. The final decision upon the partition must come from the commissioners. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

for partition. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Report set aside or recommitted for bias, prejudice or gross error.—If the commissioners reach their result through bias or prejudice, or gross error clearly and unmistakably shown, the report should be set aside or recommitted. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Grounds for objection to confirmation.—The report is not final. Commissioners must follow the warrant, and failure so to do is good ground for objection to the confirmation of the report. There must be no irregularities in procedure. Examples are: lack of proper notice by the commissioners; the report not showing equal division as to value; and the appraisal of a building by commissioners when the duty to appraise was not included in the judgment

Unequal allotments. — The action of commissioners in partition will not be set aside on the ground of unequal allotments except in extreme cases. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Evidence to be considered by court in passing on objections.—See *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Chapter 178.

Mortgages of Personal Property. Liens. Pledges.

Liens on Buildings and Lots, Wharves and Piers.

Sec. 34. Liens on buildings and lots for labor and materials.

I. GENERAL CONSIDERATION.

A lien is given upon the ground, etc.

In accord with original. See *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

Extent of lien generally.—When this section speaks of securing “payment thereof” it refers to the debt created by the acts of the parties. When by express contract the parties fix the compensation to be paid for full and complete perform-