

Among its other purposes, section 201 creates a priority system for competing claims to the same property.

Powell & Wolf, *Powell on Real Property* §82.01(1)(a), (3). Recording statutes from other jurisdictions generally employ one of three main approaches to determining priority to disputed land: “race,” “notice,” and “race notice.”

Powell & Wolf, *Powell on Real Property* §82.02(1)(a). “Race” statutes provide that the first to record takes priority, even if the first to record obtained her deed later in time.

Powell & Wolf, *Powell on Real Property* §82.02(1)(a), (c)(i). “Notice” statutes provide priority to a subsequent purchaser who acquires the property without notice of any prior conveyance, without regard to whether or when either party has recorded his deed.

Finally, hybrid “race notice” statutes afford priority to a subsequent purchaser who acquires the property without notice of any prior conveyance, as long as the subsequent purchaser records his deed before the prior purchaser records his.

[Maine Real Estate Law 266; 14]

Although we have not had occasion to use this precise terminology in evaluating into which of these categories section 201 falls, we take this opportunity to clarify that Maine’s recording statute is a “race notice” provision.

The plain language of section 201 states that when a party chooses not to acknowledge and record her deed, that deed trumps the interest in the same property of only three classes of people: the grantor, the grantor’s heirs and devisees, and people who have “actual notice” of the conveyance. 33 M.R.S. § 201 (emphasis added).

By this language, the provision contains a notice requirement. “[I]f duly recorded” however, a deed is more secure in that it trumps “prior unrecorded conveyances,” as well as any subsequent recorded or unrecorded conveyance. 33 M.R.S. §201 (emphasis added).

By this language, section 201 also contains a race requirement.

[¶11]

This interpretation is supported by established authority, which provides that if a grantor conveys property to more than one grantee, a subsequent grantee may divest the first grantee of title if he obtains the property “without notice of the first grantee’s prior unrecorded deed and place[s] his own deed on record.” *Hill v. McNichol*, 76 Me. 314, 317 (1884) (emphases added).

Although *Hill* was issued more than a century ago, it was decided based on language that has undergone remarkably few changes since then, and we reaffirm its vitality today. See *Laws of Maine* ch. 36, § 1 (approved Feb. 20, 1821).

[¶12]

As a race notice provision, section 201 therefore provides that when two parties claim the same property, a subsequent grantee obtains title to the property notwithstanding a prior conveyance if the subsequent grantee both (1) has no actual notice of the first conveyance, and is not the grantor, the grantor’s heir, or the grantor’s devisee, and (2) recorded his deed before the first grantee recorded hers. 33 M.R.S. § 201; see also *Maine Real Estate Law* 266 & n.30

[¶13]

Accordingly, the recording statute provides two ways in which Adah could have obtained good title to the property as issue. First, she could obtain her deed to the property from a predecessor in title who had already divested Olive of her title by fulfilling the conditions of the recording statute. Second, she could independently fulfill the conditions of the recording statute to divest Olive of her preexisting interest.

We review the conveyances in Adah’s chain of title in chronological order to determine whether either of these alternative methods applies to Adah

[¶14]

The first path requires an examination and evaluation of the property before 1986, when Olive recorded her deeds. The ownership of the property at issue first became questionable in 1983, when Depositors Trust obtained a deed from R. D. Realty that purported to include the property R. D. Realty had previously conveyed to Olive.

Following a trial, a jury found that Depositors Trust “knew” that R. D. Realty had already conveyed a portion of the same property to Olive, and Adah does not challenge the jury’s finding. Although Depositors Trust did record its deed before Olive recorded hers, the jury’s finding that Depositors Trust had actual notice that a portion of that property had already been conveyed to Olive precluded Depositors Trust from successfully asserting that it had priority to the disputed parcel pursuant to section 201 as against Olive.

See *Spofford v. Weston*, 29 Me. 140, 144 (1848) (“[T]he 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.”).

[¶15]

The jury also found, based on the evidence presented at trial, that when Herbert obtained the property from Key Bank, Herbert “knew” that

R.D. Realty had already conveyed that property to Olive. Adah also does not challenge this finding of fact. Although Herbert, like Depositors Trust, recorded his deed before Olive recorded hers, the jury's finding that Herbert knew of the conveyance to Olive means that Herbert also never divested Olive of her title to the property.

[¶16]

Herbert then purported to convey the property to the Company in 1985, and the Company became the third party to record its deed before Olive. In its judgment on the jury's verdict, however, the court found that the Company also had actual knowledge of R. D. Realty's prior conveyance to Olive. Again, Adah does not dispute this finding. Given that knowledge, the Company failed to divest Olive of her title to the same parcel. In short, the jury's verdict and the court's findings in this portion of the litigation leave no room to find any party in Adah's chain of title who fulfilled both of the required elements to claim priority: acquiring the property without notice of the prior conveyance, and recording its deed before the prior purchaser has done so.

None of Adah's predecessors in title had divested Olive of her interest in the property according to section 201, so none could pass good title on to Adah before Olive recorded her deed in 1986.

[¶17]

The second path requires an examination and evaluation of the property from 1986 forward.

As between Adah and Olive there is no dispute that Olive recorded her deed in 1986. Adah did not obtain or record her deed until 2002, sixteen years after Olive had already recorded hers. Although Robert did not obtain or record his deed until 2007, by recording her deed in 1986, Olive effectively cut off the interest of any subsequent grantee who had not already recorded as of that date; that includes Adah.

In cutting off Adah's interest by recording before Adah did, Olive was able to pass good title on to Robert. The failure of Adah or any of Adah's predecessors in title to divest Olive of her prior interest in the property precludes a judgment in Adah's favor pursuant to section 201.

Given this analysis, we do not reach the other issues of law raised by the parties, including what type of notice is sufficient to inform a grantee of a prior conveyance and to what classes of grantee the protections of the recording statute are available.

[¶18]

This interpretation comports with the most complete discussion of the recording statute found in Maine case law:

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[s] without notice of the first grantee's prior unrecorded deed and place[s] his own deed on record, the title of the first grantee under his unrecorded deed is gone forever. Hill, 76 Me. at 316 (emphases added).

We apply Hill to the present matter, in light of the jury's and the court's findings, as follows.

[¶19]

If a fee owner (R. D. Realty) conveys property to someone who fails to record the deed right away (Olive), and that fee owner (R. D. Realty) thereafter conveys the same property to a grantee who has notice of the prior unrecorded deed (Depositors Trust), the first grantee (Olive) holds the title against the second grantee (Depositors Trust) even though the second grantee (Depositors Trust) recorded its deed first. See id.

Subsequent conveyances from the second grantee (Depositors Trust) to others who have notice of the first conveyance (Herbert and the Company) also fail as against the first grantee (Olive) even if those subsequent grantees (Herbert and the Company) record their deeds before the first grantee (Olive) records hers. See id.

Although any successor to the second grantee who purchases the property without notice of the first grantee's deed and who records his deed first will render the first grantee's deed "gone forever," Adah does not qualify as such a successor at least because she did not record her deed before Olive recorded hers. See id.

When Olive conveyed the property to Robert in 2007, Olive's ownership in the property was thus already superior to Adah's, and Adah could do nothing to obtain the title. By this analysis, we agree with the Superior Court that the jury's verdict renders Robert the owner of the disputed property as against Adah. The entry is: Judgment affirmed

**source:**

[http://www.courts.maine.gov/opinions\\_orders/opinions/2012\\_documents/12me46sp.pdf](http://www.courts.maine.gov/opinions_orders/opinions/2012_documents/12me46sp.pdf)