

RULE 70. JUDGMENT FOR SPECIFIC ACTS

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may after notice and opportunity to be heard, direct the act to be done by some other person appointed by the court and the act when so done has like effect as if done by the party, except that the appointee of the court shall have no authority to execute a conveyance of land located outside the State of Maine. The court may also in proper cases adjudge the party in contempt.

Advisory Committee's Notes May 1, 2000

The rule is amended to require that any direction or substitution for action only occur after notice and opportunity to be heard, a procedural safeguard likely required by due process in any event. The reference to costs is removed. Presumably costs could be assessed under the court's general cost authority, if it deems such appropriate. However, costs need not be assessed in every such case.

Reporter's Notes December 1, 1959

This rule is based upon a part of Federal Rule 70. It authorizes a conveyance of land by a court-appointed official in a case where a judgment directs a conveyance and the party fails to comply. Most states have either an "appointing" or a "vesting" type of statute to deal with this contingency; and Federal Rule 70 provides for both methods. Maine has no such statute, although R.S.1954, Chap. 119, Sec. 16 [now 33 M.R.S.A. § 4] covers the problem in cases where a person who has contracted to convey real estate dies before conveying it and his executor, administrator, or heirs neglect or refuse to comply with a decree for conveyance. It appears, however, that this power is held to exist in Maine without a statute. *Rowe v. Hayden and Eaton*, 149 Me. 266, 101 A.2d 190 (1953); *Du Puy v. Standard Mineral Co.*, 88 Me. 202, 33 A. 976 (1895).

In the *Rowe* case, the court reversed a decree which recited that the recording of a certified copy of the decree, in the Penobscot Registry of Deeds would transfer record title to the land in question, on the ground that Maine had no statute providing for it. Merrill, C. J., went on to say, however, that if the defendant's whereabouts were unknown or if he was personally outside the

jurisdiction, the court below could in aid of the decree appoint a master to make conveyance to the plaintiff of the defendant's title.

Apparently the conveyance by a master, therefore, can be justified without a statute although a decree purporting to vest title cannot. It may be questioned whether a court rule could cure the lack of a statute in the latter situation. Because of that doubt and because the "appointing" approach equally serves the purpose, the rule eliminates that part of Federal Rule 70 which gives a court decree the effect of a conveyance.

The provision that a court-appointed official shall not have authority to execute a conveyance of land outside the state is not in Federal Rule 70. It seems highly unlikely, however, that the deed of such an official would pass title to foreign land or that full faith and credit would be required of such a judgment. *See Fall v. Eastin*, 215 U.S. 1, 30 S.Ct. 3, 54 L.Ed. 65 (1909).