

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

the deceased, and a new administrator on the same estate shall be appointed, the time allowed for creditors of the deceased, for bringing their actions, shall be enlarged, as follows, viz: to so much of the four years, provided for the limitation of said actions, as shall have expired, while the former executor or administrator continued in office, shall be added so much time after the appointment of the new administrator, as shall make five years in the whole; and the new administrator shall not be held to answer to the suit of any creditor, commenced after the expiration of said five years, except as provided in the following section.

SECT. 33. Every such new administrator shall, in all cases, be liable to the actions of the creditors, for the space of two years after he shall have given bond for the discharge of his trust, although the whole time allowed to the creditors, should thereby be extended beyond the five years:

SECT. 34. If the former executor or administrator shall not have given notice of his appointment, according to law, the new administrator shall be liable to the actions of the creditors for the space of four years, from the date of such new administrator's bond.

SECT. 35. Such new administrator shall give notice of his appointment in the same manner, as an original administrator; and, failing so to do, he shall have no benefit from the limitations, contained in this chapter.

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die, before completing administration.

Limitation of actions against new administrator.

Further liability, if his predecessor gave no notice.

Notice by new administrator.

CHAPTER 121.

OF PARTITION OF REAL ESTATE BY SUPREME JUDICIAL COURT, AND DISTRICT COURT.

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36. Proceedings by a part owner, for whom no share was left, to recover the same.
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39. Indorsement of petitions.
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Tenants in common, &c. bound to make partition.
1821, 37, § 1.

Petitions for partition.
1821, 37, § 2.
7 Mass. 503.
15 Mass. 155.
5 Greenl. 458.
3 Fairf. 142, 320.
16 Maine, 388.
18 Pick. 322.

Estate to be described.

Cotenants to be named, if known.

In such case, petition may be filed and served in vacation.
1821, 37, § 3.

If cotenants be not named, court to order notice.
1821, 37, § 3.
21 Pick. 285.

Notice returnable in the county where the lands lie.

New notice, in case of failure.

Persons not notified may appear, and con-

SECTION 1. All persons, seized of any lands or other real estate in fee simple or for life, or to or for which they have a right of entry, as tenants in common, joint tenants or coparceners, may be compelled by writ of partition at common law, to divide the same.

SECT. 2. Any person seized, in fee simple or for life, of any lands or other real estate, or, to or for which he has a right of entry, as tenant in common, joint tenant or coparcener, and any person, possessed thereof, or having a right of entry for a term of years, as tenant in common with others, may apply to the supreme judicial court, or district court, held in and for the county, where such real estate is situated; describing in his petition, in a clear and intelligible manner, the estate whereof he claims partition, and stating what proportion he claims to be interested in.

SECT. 3. Such petitioner must state, whether he claims partition of his alleged proportion, as a fee simple estate, or an estate for life, or a term of years.

SECT. 4. He must also allege in his petition, who are the cotenants of the estate, and their place of residence, so far as those facts are known to him; and, if any or all the cotenants are unknown to him, he must so state in the petition.

SECT. 5. When the cotenants, alleged, are all named in the petition, the same may be filed in vacation, in the clerk's office; and a copy thereof, by him attested, being served on each of the alleged cotenants in person, or left at his usual place of abode, twenty days before the session of the court to which it is addressed, shall be one sufficient mode of notice.

SECT. 6. When the cotenants are not all named in the petition, the court, to which it is presented, shall order what kind of notice shall be given to the parties interested as cotenants; and such notice shall be given accordingly.

SECT. 7. Such a petition, as is mentioned in the preceding section, may be presented to the supreme judicial court, in any county, but the order of notice shall be made returnable to the court, when held in the county, in which the lands lie; and the cause shall be heard and determined in such county.

SECT. 8. The court may order such further notice, as they may deem proper, when the order of notice has not been complied with, or the notice was imperfect or insufficient.

SECT. 9. When a person interested is not named in the petition, or is out of the state, and has not had notice and an opportunity to

appear and answer to the suit, he may, on motion to the court, at any time before final judgment, be allowed to appear and defend.

SECT. 10. The court shall assign a guardian for the suit, for any infant or insane person, interested in the premises.

SECT. 11. Any person, interested in the premises, of which partition is prayed, may appear and allege jointly with the other respondents, or separately, any matter tending to show, that the petitioner ought not to have partition, as prayed for, in whole or in part; and this may be done in form of a brief statement, without formally pleading any general issue.

SECT. 12. To such brief statement the petitioner may reply, in the form of a counter brief statement, that the person thus answering as a respondent, has no interest in the premises, or right to be heard; and may also further reply any other matter to show the insufficiency of the respondent's brief statement.

SECT. 13. If it shall appear, that the respondent has no estate or interest in the lands, the objections to the partition shall be no further a matter of inquiry, and the petitioner shall recover of the respondent the costs, attending the trial.

SECT. 14. If, on trial, it shall appear, that the petitioner holds a less share or proportion in common, than he has alleged in his petition, the respondent shall recover his costs, though judgment be rendered for the petitioner to have an assignment in severalty of the part, which he in fact holds in common; but, if it appear that the petitioner is entitled to have partition, and an assignment of the part, described in his petition, he shall recover costs of the respondent.

SECT. 15. In all actions, at common law, for partition, the like rules of proceeding shall be observed in the trial, as to the filing of brief statements and counter statements, as in cases of petition for partition; and costs shall be taxed upon like principles.

SECT. 16. Tenants in common, claiming under a common ancestor, joint tenants, and copartners may, all, or any two or more of them, join, or sever, in petitions for partition; and whenever they join, and either petitioner shall decease, or convey his share, pending the petition, the court may allow an amendment of the petition; and his name may be erased, and the names of his heirs, devisees or grantees, respectively, inserted in his stead; and they, with the other petitioners, may proceed in the cause for their respective shares; and the heirs, devisees or grantees of a several petitioner may be inserted, as petitioners, instead of the deceased or grantor.

SECT. 17. When it shall appear, on trial or default, that the petitioner is entitled to have partition for the share by him claimed, or a less share, the court shall enter the interlocutory judgment, that partition shall be made.

SECT. 18. Whenever, in the trial of a case of partition, originated by writ or petition, as before mentioned, in the district court, exceptions shall be alleged against the opinion or judgment of said court in matter of law, as provided in the eighteenth and nineteenth sections of chapter, ninety seven; or whenever a writ of error shall be sued out of the supreme judicial court to obtain a reversal of the

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test, at any time before final judgment.

Guardians, for the suit.

Pleadings, or brief statements by respondents. 1821, 37, § 4.

Replication. 1821, 37, § 4.

Costs for respondent, if petition fail.

1821, 37, § 4.
9 Mass. 372.
4 Pick. 246.

Costs, if petitioner hold all, or a part only, of what he alleges. 1821, 37, § 4.

Pleadings and costs, on writs of partition.

Who may join in a petition.

Proceedings, if a petitioner die, or his share be alienated. 1826, 347, § 7.
10 Mass. 5.

Interlocutory judgment.

1821, 37, § 4.
5 Greenl. 458.

Proceedings, if exceptions be filed.

13 Mass. 211.
15 Maine, 365.

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Appointment of commissioners.
1821, 37, § 2.
5 Greenl. 458.

SECT. 19. The court, having entered the interlocutory judgment, shall appoint three or five disinterested persons, as commissioners, to make the partition, and to set off to the petitioners the share or shares belonging to them; which shall be expressed in the warrant.

Petitioners' shares may be set off severally, or in common.

15 Maine, 365.
10 Pick. 152.

Commissioners to be sworn.
1821, 37, § 2.

SECT. 20. When there are several petitioners, they may have their shares set off together, or in one body; or each one may have his assigned in severalty, at his election.

SECT. 21. The commissioners, before proceeding to the discharge of their duty, shall be sworn before a justice of the peace, faithfully and impartially to perform it; and the justice, administering the oath, shall make his certificate thereof on the warrant.

Appointment of guardians or agents for persons absent or incapacitated.
1821, 37, § 7.

SECT. 22. Where any persons, insane, or incapacitated to take care of their own business, are interested, guardians shall be appointed for them, if living in the state; and an agent or agents for all those interested, who had been out of the state, one year at the time the petition was presented, and had not then returned.

Commissioners to give notice.
1821, 37, § 7.

SECT. 23. The commissioners shall give sufficient notice of the time and place, for making the partition, to all concerned, who are known and within the state, that they may be present at the making thereof.

All must act; a majority may decide.

SECT. 24. All the commissioners shall be present at the performance of the duties assigned them; but the acts of a majority of them shall be valid.

Proceedings, if it cannot be equally divided.
1821, 37, § 9.
16 Maine, 461.
15 Pick. 364.

SECT. 25. When any messuage, tract of land, or other real estate, shall be of greater value, than either party's share of the estate to be divided, and cannot at the same time be subdivided among them without great inconvenience, the same may be assigned to one of the parties; the party, to whom the same shall be so assigned, paying such sum of money to such parties, as by means thereof shall have less than their share of the real estate, as the commissioners shall award; but, in such case, the partition shall not be established by the court, until the sums, so awarded, shall be paid to the parties entitled thereto, or secured to their satisfaction.

Payment of expenses of partition.
1821, 37, § 9.

SECT. 26. When partition shall be made, if any of the petitioners shall neglect, or refuse to pay his proportion of the charges attending the partition, an account of such charges shall be laid before the court, and all just proportions settled, after notice to all concerned; and the court may issue execution against the delinquents interested.

New partition, in certain cases, if a part owner be out of the state, and not notified by the commissioners.
1821, 37, § 8.

SECT. 27. If any part owner shall have a larger share set off to him, than his true and real interest, or more than equal in value to the proportion it was set off for, then any aggrieved partner, who, at the time the partition was made, was out of the state, and not notified in season to prevent it, may, at any time within three years after the same was made, apply to the court, which made the partition, and the court shall cause partition thereof to be made anew.

SECT. 28. In such new partition, the commissioners need not make a new division of the premises; but so much, and no more, shall be taken off from any share, as the same shall be considered more than the proportion of the whole it was designed for, estimating such lands or real estate, as in the state they were in, when first divided; and, in case any improvements have been made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made him by the partner, to whose share the same shall be added, by the estimation of the commissioners; and the court, which ordered the partition, are also empowered to issue execution for such satisfaction and the costs of the new partition, the same being first taxed and allowed by the court.

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Mode of proceeding.
1821, 37, § 8.

SECT. 29. The commissioners shall make return of their proceedings under their hands, with their warrant, to the court which appointed them; and, if their doings be confirmed by the court, judgment shall be thereupon rendered, that the said partition be firm and effectual forever; and the return shall then be recorded in the clerk's office, and also in the registry of deeds, for the county or registry district, where the lands lie.

Return of the commissioners.
Acceptance, and record thereof.
1821, 37, § 2.

SECT. 30. For good and sufficient reasons, the report of the commissioners may be recommitted or set aside; whereupon the same proceedings shall be had, as before directed.

Recommitment.

SECT. 31. Such final judgment, confirming the partition, shall be conclusive, as to all rights both of property and possession of all parties and privies to the judgment; including all persons who might by law have appeared and answered to the petition, except as hereinafter provided.

Final judgment, how far conclusive.

SECT. 32. If any person, who was a part owner with the petitioner, and for whom a share is left upon the partition, should be out of the state, when the notice to him was served, and should not return in time to appear and answer to the partition, he may, at any time, within three years after final judgment, apply to the same court for a new partition of the premises; and, should it appear to the court, that the share left for the applicant was less than he was entitled to, or that the part left was not, at the time of the partition, equal in value to his share in the premises, they may order a new partition; which shall be made in the manner before provided.

Part owner out of the state, during pendency of the petition, may petition for new partition in certain cases.

SECT. 33. If any person, who has not appeared and answered to the petition for partition, shall claim to hold in severalty the premises described therein, or any part thereof, he shall not be concluded by the judgment for partition; but may bring his action for the land claimed, against any or all of the petitioners or respondents, or of the persons holding under them, as the case may require, within the same time, in which he might have brought it, if no such judgment for partition had been rendered.

Persons claiming in severalty, who do not appear, not concluded by judgment for partition.

SECT. 34. When any person, who has not appeared and answered, as aforesaid, shall claim the share that was assigned or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit; still, he shall not be prevented

How far concluded, if claiming a share set off to another person.

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Mode of proceeding to recover such share.

Proceedings by a part owner, for whom no share was left, to recover the same.
22 Pick. 316.

New partition, if one shall be evicted of the part assigned to him.

Mortgage, or other lien, attaches to the part set off in severalty.

Indorsement of petitions.

Lots reserved for public uses, to be set off by commissioners in making partition.
1839, 357, § 1.

thereby, from bringing his action for the share claimed by him, against the person to whom it was assigned, or for whom it was left.

SECT. 35. Such action shall be brought against the tenant in possession, in like manner as if the demandant had originally claimed the particular piece demanded, instead of an undivided part of the whole land; and it may be brought in the same time, in which it might have been brought, if no judgment for partition had been rendered.

SECT. 36. If any person, who has not appeared and answered, as aforesaid, shall claim any part of the premises described in the petition, as a part owner with those, who were parties to the suit, or any of them, and, if the part or share, so claimed, was not known or not allowed or left for him in the partition process, he shall be concluded by the judgment, so far as it respects the partition; but he shall not be prevented from bringing an action for the share, claimed by him, against each of the persons, who shall hold any part of the premises under the judgment; and, if he should prevail in such action, instead of his being entitled to a new partition of the whole premises, he shall recover against each of the persons, holding under the judgment for partition, the same proportion held by him, that the demandant was entitled to claim out of the whole premises, before partition was made.

SECT. 37. If any person, to whom a share shall have been assigned, or left, shall be evicted thereof by any person, who, at the time of the partition, had an elder and better title, than those who were parties to the judgment, he shall be entitled to a new partition of the residue, in like manner as if no partition had been made.

SECT. 38. Any person, having a mortgage, attachment, or other lien on the share in common, of any part owner, shall be bound by the judgment, so far as it respects the partition; but his lien shall remain in full force upon that part, which shall have been assigned to, or left for such owner.

SECT. 39. Every petition for partition, originally filed, shall be indorsed in the same manner, as original writs; and all the regulations, concerning the indorsement of writs, contained in the one hundred and fourteenth chapter, shall apply to indorsements of petitions for partition.

SECT. 40. In any process for the partition of a tract of land, in which certain lots or proportions of such tract are reserved for public uses, the court shall also order the commissioners, appointed to made the partition, that they shall first set off, by metes and bounds, such reserved lots, or proportions, of an average quality and situation of the lands of said tract, and make return of such location into the land office, of the state, with a description of its quality and location, and then proceed to execute the other duties, assigned them by the court; and the return, being accepted by the court, and recorded as before provided, shall be valid, as a location of such reserved lands.