REVISED STATUTES

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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
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Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted "section 51" for "the provisions of the preceding section" in the first sentence, and substituted "in the action, if relief from the judgment is granted, the plaintiff in such action" for "in review, the plaintiff in review" following "judgment" in the second sentence and "action" for "bill in equity" near the end of that sentence.

Effective date of 1959 amendment.—See note to § 19.

Chapter 172.

Real Actions. Proceedings to Quiet Title.

Sections 48-55. Proceedings to Quiet Title.

Real Actions.

Sec. 1. Recovery of estates by real action.—Any estate in fee simple, in fee tail, for life or for any term of years may be recovered by a real action. (R. S. c. 158, § 1. 1959, c. 317, § 311.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Applied in Portland Renewal Authority v. Reardon, 159 Me. 31, 187 A. (2d) 634.

Cited in Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364; Williams v. State Highway Comm., 157 Me. 324, 172 A. (2d) 625.

Sec. 2. Repealed by Public Laws 1959, c. 317, § 312.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 3. Repealed by Public Laws 1959, c. 317, § 313.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 4. Proof of seizin. The plaintiff need not prove an actual entry under his title; but proof that he is entitled to an estate in the premises and that he has a right of entry therein is sufficient proof of his seizin. (R. S. c. 158, § 4. 1959, c. 317, § 314.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "demandant", deleted "such" following "entitled to" and deleted "as he claims" following "premises."

Effective date of 1959 amendment.—See note to § 1.

Applied in Portland Renewal Authority v. Reardon, 159 Me. 31, 187 A. (2d) 634.

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

Sec. 5. Plaintiff must have right of entry.—No such action shall be maintained unless, at the time of commencing it, the plaintiff had such right of entry. No descent or discontinuance shall defeat any right of entry for the recovery of real estate. (R. S. c. 158, § 5. 1959, c. 317, § 315.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted "plaintiff" for "demandant" in the first sentence.

Effective date of 1959 amendment.—See note to § 1.

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

Sec. 6. Who considered as disseizor.—Every person alleged to be in possession of the premises demanded in such action, claiming any freehold

therein, may be considered a disseizor for the purpose of trying the right. (R. S. c. 158, § 6. 1959, c. 317, § 316.)

Effect of amendment.—The 1959 amendment substituted the word "action" for the word "writ" and struck out all of the language formerly appearing after the word "right" providing for disclaimer in abatement but not in bar by defendant.

Effective date of 1959 amendment.—See note to § 1.

Applied in Portland Renewal Authority v. Reardon, 159 Me. 31, 187 A. (2d) 634.

Sec. 7. Defendant ousting plaintiff deemed disseizor.—If the person in possession has actually ousted the plaintiff or withheld the possession, he may, at the plaintiff's election, be considered a disseizor for the purpose of trying the right, although he claims an estate therein less than a freehold. (R. S. c. 158, § 7. 1959, c. 317, § 317.)

Effect of amendment.—The 1959 amendment substituted the word "plaintiff" for the word "demandant" in two places.

Effective date of 1959 amendment.—See note to § 1.

Applied in Portland Renewal Authority v. Reardon, 159 Me. 31, 187 A. (2d) 634.

Sec. 8. Proof to entitle plaintiff to recover.—If the plaintiff proves that he is entitled to an estate in the premises and had a right of entry therein when he commenced his action, he shall recover the premises, unless the defendant proves a better title in himself. (R. S. c. 158, § 8. 1959, c. 317, § 318.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Applied in Portland Renewal Authority v. Reardon, 159 Me. 31, 187 A. (2d) 634.

Sec. 9. Joinder of plaintiffs.—Persons claiming as tenants in common or joint tenants may all, or any 2 or more, join in an action for recovery of lands, or one may sue alone. (R. S. c. 158, § 9. 1961, c. 317, § 567.)

Effect of amendment.—The 1961 amendment substituted "an action" for "a suit" in this section.

Sec. 10. Plaintiff may recover specific or undivided part.—The plaintiff may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded. (R. S. c. 158, § 10. 1959, c. 317, § 319.)

Effect of amendment.—The 1959 amendment substituted the word "plaintiff" for the word "demandant."

Effective date of 1959 amendment.—See note to § 1.

Sec. 11. Repealed by Public Laws 1959, c. 317, § 320.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 12. Estimation of rents and profits.—The rents and profits for which the defendant is liable are the clear annual value of the premises while he was in possession, after deducting all lawful taxes paid by him and the necessary and ordinary expenses of repairs, cultivation of the land or collection of the rents and profits. (R. S. c. 158, § 12. 1959, c. 317, § 321.)

Effect of amendment.—The 1959 amendment substituted the word "defendant" for the word "tenant" near the beginning of this section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 13. Allowance for improvements. — In estimating the rents and profits, the value of the use by the defendant of improvements made by himself or by those under whom he claims shall not be allowed to the plaintiff. (R. S. c. 158, § 13. 1959, c. 317, § 322.)

Effect of amendment.—The 1959 amendment substituted the word "defendant" for the word "tenant" and the word "plaintiff" for the word "demandant."

Effective date of 1959 amendment.—See note to § 1.

Sec. 14. Defendant not liable for over 6 years' rents.—The defendant is not liable for the rents and profits for more than 6 years, nor for waste or other damage committed before that time, unless the rents and profits are allowed as an offset to his claim for improvements. (R. S. c. 158, § 14. 1959, c. 317, § 323.)

Effect of amendment.—The 1959 amendment substituted the word "defendant" for the word "tenant," near the beginning of this section, and substituted the words "as an offset" for the words "in setoff" near the end of the section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 15. Recovery of damages against other persons. — Nothing herein contained shall prevent the plaintiff from maintaining an action for mesne profits or for damage to the premises against any person except the defendant in a real action who has had possession of the premises or is otherwise liable to such action. (R. S. c. 158, § 15. 1959, c. 317, § 324.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "demandant," "defendant" for "tenant" and "real action" for "writ of entry."

Effective date of 1959 amendment.—See note to § 1.

Sec. 16. Repealed by Public Laws 1959, c. 317, § 325.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 18. Writs of possession; judgment conclusive. — If the plaintiff recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment is conclusive on them.

Within 30 days after said judgment is recovered, the clerk of the court from which said judgment issues shall forward to the registry of deeds in the county where the real estate is situated a true copy of the property described in said judgment, together with the names of the parties, the date of judgment and the term of court in which said judgment was rendered, and said register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof, and record in the same manner as a deed of real estate, and the fee of the clerk of said court for preparing said copy shall be $1 and the register of deeds shall be paid $1 for entering and recording the same. Such sums shall be paid by the plaintiff. (R. S. c. 158, § 18. 1945, c. 55. 1959, c. 317, § 326.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "demandant" near the beginning of the section, deleted "as aforesaid" following "thereof," substituted "plaintiff" for "demandant" and deleted "in said judgment" following "plaintiff" in the second paragraph.

Effective date of 1959 amendment.—See note to § 1.

Sec. 19. Execution; costs.—Execution shall issue as in other cases for such damages as have been recovered and for full costs to the prevailing party. The court may order execution for costs to be issued against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties. (R. S. c. 158, § 19. 1959, c. 317, § 327.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 20. Betterments allowed after 6 years' possession.—When the demanded premises have been in the actual possession of the defendant or of those under whom he claims for 6 successive years or more before commencement of the action, such defendant shall be allowed a compensation for the value of any buildings and improvements on the premises made by him or by those

under him whom he claims, to be ascertained and adjusted as provided. (R. S. c. 158, § 20. 1959, c. 317, § 328.)

Effect of amendment.—The 1959 amendment substituted the word "defendant" for the word "tenant" in two places and deleted the word "hereinafter" formerly appearing before the word "provided" at the end of this section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 21. Repealed by Public Laws 1959, c. 317, § 329.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 22. Defendant entitled to costs if successful in defense. — A defendant who by answer defends for a part only and succeeds in his defense as to all of such part shall be entitled to all costs accruing from the time of the answer. (R. S. c. 158, § 22. 1959, c. 317, § 330.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 23. Defendant may have betterments. — The defendant shall have the benefit of the provisions of this chapter as to the increased value of premises when the cause, including all real actions brought by a reversioner or remainderman, or his assigns, after the termination of a tenancy in dower, or any other life estate, against the assignee or grantee of the tenant of the life estate, or against his heirs or legal representatives, is determined in favor of the plaintiff. (R. S. c. 158, § 23. 1959, c. 317, § 331.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant" and "of this chapter" for "in the following sections" near the beginning of the section, and deleted "upon demurrer, default or by verdict" at the end of the section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 24. Request of either party for appraisal of improvements.— The responsive pleading of the defendant shall state as a counterclaim any claim which he has to compensation for buildings and improvements on the premises and may request an estimation by the jury of the increased value of the premises by reason thereof. The plaintiff may file a request, in writing, that the jury would also estimate what would have been the value of the premises at the time of trial if no buildings had been erected, improvements made or waste committed. Both these estimates they shall make and state in their verdict. The jury shall allow for no buildings or improvements, except those that they find were made by the defendant, his grantor or assignor, and were judicious and proper under the circumstances. (R. S. c. 158, § 24. 1959, c. 317, § 332.)

Effect of amendment.—The 1959 amendment divided the section into four sentences, substituted "responsive pleading of the defendant shall state as a counterclaim any claim which he has" for "tenant may file a written claim" near the beginning of the first sentence, substituted "may request" for "a request for" following "premises and" in the first sentence, substituted "The plaintiff" for "and the demandant" at the beginning of the second sentence and substituted "defendant" for "tenant" in the fourth sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 25. Valuation of betterments.—If the defendant, so claiming, alleges and proves that he and those under whom he claims have had the premises in actual possession for more than 20 years prior to the commencement of the action, the jury may find that fact. In estimating the value of the premises, if no buildings had been erected or improvements made thereon, they shall find and state in their verdict what was the value of the premises when the defendant or those under whom he claims first entered thereon. The sum so found shall be deemed the estimated value of the premises. In estimating the increased value by reason of the buildings and improvements, the jury shall

find and state in their verdict the value of the premises at the time of the trial, above their value when the defendant or those under whom he claims first entered thereon. The sum so found and stated shall be taken for the buildings and improvements. (R. S. c. 158, § 25. 1959, c. 317, § 333.)

Effect of amendment.—The 1959 amendment divided the former first sentence into two sentences and the former second sentence into three sentences and substituted "defendant" for "tenant" in the present first, second and fourth sentences.

Effective date of 1959 amendment.—See note to § 1.

Sec. 26. Election by plaintiff to abandon.—Judgment on such verdict shall not be entered for 10 days or such further time as the court may order, during which time the plaintiff may make his election on record to abandon the premises to the defendant at the value estimated by the jury and file with the clerk for the use of the defendant a bond in the penal sum of 3 times the estimated value of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the defendant, his heirs or assigns, if they are evicted from the land within 20 years by a title better than that of the plaintiff. If such election is made and bond filed, judgment shall be rendered against the defendant for the sum so estimated by the jury, and costs. (R. S. c. 158, § 26. 1959, c. 317, § 334.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 27. Defendant may pay 1/3 value of land, interest and costs first year.—At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the defendant shall have deposited with the clerk of the court for the plaintiff's use, one year's interest on said sum, and ⅓ of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time. (R. S. c. 158, § 27. 1959, c. 317, § 335.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant," deleted "or in his office" following "court" and substituted "plaintiff's" for "demandant's" and "on" for "of" following "interest."

Effective date of 1959 amendment.—See note to § 1.

Sec. 28. At end of 2 years, another 1/3 interest.—If within 2 years after the rendition of judgment, the defendant pays one year's interest on the balance of the judgment due and ⅓ of the original judgment, execution shall be further stayed. Otherwise it may issue for ⅔ of the original amount of the judgment and interest thereon. (R. S. c. 158, § 28. 1959, c. 317, § 336.)

Effect of amendment.—The 1959 amendment substituted the word "defendant" for the word "tenant" and divided the section into two sentences.

Effective date of 1959 amendment.—See note to § 1.

Sec. 29. At end of 3 years, may pay balance; effect.—If the defendant, within 3 years after judgment, pays into the clerk's office the remaining ⅓ and interest thereon, having made the other payments, execution shall never issue. Otherwise, it may issue for the ⅓ and one year's interest thereon. The premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until 60 days after an execution might have issued, notwithstanding any intermediate conveyance, attachment or seizure upon execution; and such execution may be extended on said land or any part of it; or it may be sold on execution like an equity of redemption; in either case, subject to the right of redemption as in those cases. An execution or writ of possession may issue at any time within 3 months after default of payment by the defendant, in cases mentioned in this and sections 27 and 28, although it is more than a year after the rendition of judgment. (R. S. c. 158, § 29. 1959, c. 317, § 337.)

Effect of amendment.—The 1959 amendment divided the first sentence into three sentences, substituted "defendant" for "tenant" in the first and fourth sentences,

deleted "as aforesaid" following "payments" in the first sentence and following "issued" in the third sentence, deleted "aforesaid" following "⅓" in the second sentence, and substituted "sections 27 and 28" for "the 2 preceding sections" in the fourth sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 30. Defendant's remedy, if evicted.—If the defendant or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the plaintiff or his heirs to aid them in their defense against such title, they, their executors or administrators may recover back the money so paid, with lawful interest, of said plaintiff or his representatives; but if no notice was given, the defendant, in an action against the original plaintiff to recover the price paid for the premises, may show that he was evicted by a title better than that of the plaintiff. (R. S. c. 158, § 30. 1959, c. 317, § 338.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant" twice, "plaintiff" for "demandant" four times, "them" for "him" following "aid" and "their" for "his" before "defense" in this section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 31. If plaintiff does not abandon, he pays for improvement. — When the plaintiff does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land unless, within one year from the rendition thereof, he pays to the clerk or to such person as the court appoints for the use of the defendant, the sum assessed for the buildings and improvements, with interest thereon. (R. S. c. 158, § 31. 1959, c. 317, § 339.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "demandant," "to the clerk" for "into the clerk's office" and "defendant" for "tenant."

Effective date of 1959 amendment.—See note to § 1.

Sec. 32. Restriction of right to betterments.—Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgagor and mortgagee, their heirs and assigns; or to any case where the defendant or the person under whom he claims entered into possession of the premises and occupied under a contract with the owner, which was known to the defendant when he entered. (R. S. c. 158, § 32. 1959, c. 317, § 340.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant," twice in this section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 33. Defendant not to commit waste after judgment.—No defendant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away timber or make any strip or waste on the land until the amount of such judgment is satisfied. (R. S. c. 158, § 33. 1959, c. 317, § 341.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant" near the beginning of this section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 35. Defendant may propose value for premises and betterments; effect.—When the defendant, at any stage of such action, files a statement in open court consenting to a sum at which the buildings and improvements and the value of the demanded premises may be estimated, if the plaintiff consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the plaintiff does not consent, and the jury does not reduce the value of the buildings and improvements below the sum offered, nor increase the value of the premises above the sum offered, he shall recover no costs after such offer; but the

defendant shall recover his costs after such offer and have judgment and execution therefor, subject to section 36. (R. S. c. 158, § 35. 1959, c. 317, § 342.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant" twice, "plaintiff" for "demandant" twice, and "section 36" for "the provisions of the following section."

Effective date of 1959 amendment.—See note to § 1.

Sec. 36. Setoff of costs against improvements.—In all cases where the plaintiff does not abandon the premises to the defendant, the court may, on written application of either party during the term when judgment is entered, order the costs recovered by the plaintiff to be setoff against the appraised value of the buildings and improvements on the land. A record of this order shall be made, and the court shall thereupon enter judgment according as the balance is in favor of one party or the other. (R. S. c. 158, § 36. 1959, c. 317, § 343.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted "defendant" for "tenant" once and "plaintiff" for "demandant" twice in the first sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 38. What constitutes possession and improvement.—A possession and improvement of land by a defendant are within the meaning of this chapter, although a portion of it is woodland and uncultivated, and although not wholly surrounded by a fence or rendered inaccessible by other obstructions, if they have been open, notorious, exclusive and comporting with the usual management and improvement of a farm by its owner. (R. S. c. 158, § 38. 1959, c. 317, § 344.)

Effective date of 1959 amendment.—See note to § 1.

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant" near the beginning of the section.

Secs. 39, 40. Repealed by Public Laws 1959, c. 317, § 345.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 42. If life estate demanded.—If the plaintiff claims an estate for life only in the premises and pays a sum allowed to the defendant for improvements, he or his executor or administrator, at the termination of his estate, is entitled to receive of the remainderman or reversioner the value of such improvements as they then exist; and shall have a lien therefor on the premises as if they had been mortgaged for its payment, and may keep possession until it is paid. If the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate. (R. S. c. 158, § 42. 1959, c. 317, § 346.)

Effect of amendment.—The 1959 amendment divided this section into two sentences and substituted "plaintiff" for "demandant" and "defendant" for "tenant" in the first sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 43. If tenant ousted after 6 years' possession, may recover for improvements.—When a person makes entry into lands or tenements of which the tenant in possession, or those under whom he claims, have been in actual possession for 6 years or more, and withholds from such tenant the possession thereof, the tenant may recover of the person so entering, or of his executor or administrator, the increased value of the premises by reason of the buildings and improvements made by the tenant or by those under whom he claims, to be ascertained by the principles hereinbefore provided. These provisions extend to the grantee or assignee of the tenant in dower and of any other life estate. A lien is created on the premises in favor of such claim, to be enforced by an action commenced within 3 years after such entry. It is no bar to such action if the tenant, to avoid cost, yields to the superior title. (R. S. c. 158, § 43. 1959, c. 317, § 347.)

Effect of amendment.—The 1959 amendment divided this section into four sentences and deleted "in an action of assumpsit for money laid out and expended" following "administrator" in the first sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 45. If defendant and his grantors have been in possession for 40 years, no costs for plaintiff.—In all real and mixed actions in which the defendant proves that he and those under whom he claims have been in the open, notorious, adverse and exclusive possession of the demanded premises, claiming in fee simple, for 40 years preceding the commencement of the action, and the jury so finds, the plaintiff recovers no costs. (R. S. c. 158, § 45. 1959, c. 317, § 348.)

Effect of amendment.—The 1959 amendment substituted "defendant" for "tenant" near the beginning of the section and "plaintiff" for "demandant," near the end.

Effective date of 1959 amendment.—See note to § 1.

Sec. 46. Court may appoint and protect surveyors.—The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action, or in an action in which the title to land is involved, as shown by the pleadings filed, on motion of either party. If he is prevented by force, menaces or fear from performing the duties assigned him, the court may issue a warrant to the sheriff, commanding him with suitable aid to prevent such opposition. In the execution of such warrant, he may exercise all the power pertaining to his office. All persons refusing their aid when called for him are liable to the same penalties as in like cases. (R. S. c. 158, § 46. 1959, c. 317, § 349.)

Effect of amendment.—The 1959 amendment divided the section into four sentences, deleted "of trespass" following "action" in the first sentence, and deleted "other" following "as in" in the fourth sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 47. Fees of surveyor; court may determine amount paid by parties.—The amount of the fees and necessary expenses of such surveyor shall be fixed and determined by the court upon the acceptance of the report, and shall be paid as follows: if the court is of the opinion that such fees and expenses, or some portion of the same, ought to be paid by the county, then the amount thereof to be paid by the county, whether the whole or a part, shall be fixed and determined by the court and the amount so fixed and determined shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county. After notice to all parties and a hearing held thereon, if the court is of the opinion that the whole or any part or portion of such fees and expenses should be paid by the parties to the action, or by either of such parties, then the court may fix and determine the amount to be paid by such parties, or by either of such parties, and the amount determined to be due from such parties, or by either of such parties, shall have the force and effect of a judgment in favor of the surveyor against such parties or either of such parties and any execution upon such judgment may run against the body of such party or of either of such parties. (R. S. c. 158, § 47. 1961, c. 317, § 568. 1963, c. 7.)

Effect of amendments.—Prior to the 1963 amendment, which rewrote the last sentence, the parties were liable to the surveyor in civil actions for the amounts to be paid by them, jointly or severally. The 1961 amendment had deleted "suit or" near the beginning of the last sentence and substituted "a civil action" for "an action of money had and received" in such sentence.

Proceedings to Quiet Title.

Sec. 48. Summary proceedings to quiet title to real estate.—A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than 10 years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be

liable, may, if he or those under whom he claims or those claiming under him have been in uninterrupted possession of such property for 4 years or more, bring an action in the superior court setting forth his estate, stating the source of his title, describing the premises, and averring that an apprehension exists that persons named in the complaint, or persons unknown claiming as heirs, devisees or assigns, or in any other way, by, through or under a person or persons named in the complaint, claim or may claim some right, title or interest in the premises adverse to his said estate; and that such apprehension creates a cloud upon the title and depreciates the market value of the property; and praying that such persons be summoned to show cause why they should not bring an action to try their title to the described premises. If any such supposed claimants are unknown, the plaintiff or his attorney shall so allege under oath, but the truth of the allegation shall not after decree has been filed be denied for the purpose of defeating the title established thereby. A person in the enjoyment of an easement is in possession of real property within the meaning and for the purposes of this section. (R. S. c. 158, § 48. 1959, c. 317, § 350.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "petition" twice and "bring an action" for "file a petition" in the first sentence, and substituted "plaintiff" for "petitioner" in the second sentence.

Effective date of 1959 amendment.—See note to § 1.

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.

Sec. 49. When easement claimed.—A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than 10 years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he or those under whom he claims or those claiming under him have been in uninterrupted possession of such property for 4 years or more, bring an action in the superior court by complaint setting forth his estate, describing the premises and averring that an apprehension exists that persons named in the complaint, or persons unknown, claim by continued and uninterrupted use for 20 years or more, by grant, prescription, custom or in any other way, an easement through or on such real property adverse to the estate of the said plaintiff and that such apprehension creates a cloud upon the title and depreciates the market value of such property; and praying that such persons be summoned to show cause why they should not bring an action to determine their legal rights in and to such easement over or upon said real estate. If such supposed claimants are unknown, the plaintiff or his attorney shall so allege under oath, but the truth of the allegation shall not after the decree has been filed be denied for the purpose of defeating the title established thereby. (R. S. c. 158, § 49. 1959, c. 317, § 351.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "petitioner" in the first and second sentences and in the first sentence substituted "bring an action" for "file a petition," added "by complaint" following "superior court," and substituted "complaint" for "petition."

Effective date of 1959 amendment.—See note to § 1.

Sec. 50. Complaint; grantee may become party.—An action under either section 48 or 49 shall be brought in the county where the real estate lies. Service in such action shall be made as in other actions on all supposed known claimants residing either in the state or outside the state, and notice to persons who are unascertained, not in being or unknown shall be given by publication as in other actions where publication is required, unless the court on motion permits posting in such public places as the court may direct in lieu of all or part of the publication

ordinarily required. Upon the filing of the complaint the clerk of courts in the county where such proceedings are pending shall file a certificate in the registry of deeds in the county or district where said land is situated, setting forth the names of the parties, the date of the complaint and the filing thereof and the description of the real estate as given in the complaint, which said certificate shall be recorded by the register of deeds, who shall receive therefor the same fee as for recording a deed. The action shall not be abated by the death of any party thereto, nor by the conveyance of the premises by deed recorded after said certificate is recorded. The grantee of any defendant named or described in the complaint, or any person claiming under such grantee, may voluntarily appear and become a party, and make any defense that would have been open to the defendant under whom he claims. If any person who becomes such grantee by conveyance recorded after the filing of the certificate does not voluntarily appear, no such conveyance by the defendant shall be given in evidence, either in the proceedings on the complaint or in any action brought thereunder to try title to the premises as provided in section 51 and the issue shall be determined as though no such conveyance were made. (R. S. c. 158, § 50. 1959, c. 317, § 352.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 51. If claimant appears; record of decree; action by claimant of easement.—If any person so summoned appears and claims title or an easement in the premises, or voluntarily appears as aforesaid and claims title or such easement, he shall by answer show cause why he should not be required to bring an action and try such title, or his title to such easement. The court shall make such decree respecting the bringing and prosecuting of such action as seems equitable and just. If any person so summoned appears and disclaims all right and title adverse to the plaintiff, he recovers his costs. If the court upon hearing finds that the allegations of the complaint are true and that notice by publication has been given as ordered, it shall make and enter a decree that all persons named in the complaint and all persons alleged to be unknown claiming by, through or under persons so named, and all persons named as grantees in any deed given by the defendant and recorded after the filing of the certificate, and all persons claiming under such grantee who have not so appeared, or who, having appeared, have disclaimed all right and title adverse to the plaintiff, or who, having appeared, shall disobey the order of the court to bring an action and try their title, shall be forever debarred and estopped from having or claiming any right or title adverse to the plaintiff in the premises described in the complaint; which decree shall within 30 days after it is finally granted be recorded in the registry of deeds for the county or district where the land lies, and shall be effectual to bar all right, title and interest, and all easements, of all persons, whether adults or minors, upon whom notice has been served, personally or by publication, and all persons named as grantees in any deed given by the defendant and recorded after the filing of said certificate and all persons claiming under such grantees. The court may in its discretion appoint agents or guardians ad litem to represent minors or other supposed claimants. If any person appears and claims an easement, however acquired, in such premises, he may bring an action to try the title thereto, alleging in his complaint how said easement was acquired and issue shall be framed accordingly. Any party may at his option assert such title or such easement by counterclaim in the plaintiff's action, but he shall not be required to do so. Trial of any action brought pursuant to a decree hereunder or of any counterclaim asserting such title or such easement shall be by jury unless waived. (R. S. c. 158, § 51. 1959, c. 317, § 353.)

Effect of amendment.—The 1959 amendment divided the first sentence into three sentences, substituted "plaintiff" for "petitioner" once in the third sentence and twice in the fourth, substituted "complaint" for "petition" three times in the

fourth sentence, deleted "as herein provided" following "publication" in the fourth sentence, deleted "on the case" following "action" in the sixth sentence, substituted "complaint" for "declaration" in the sixth sentence and added the seventh and eighth sentences.

Effective date of 1959 amendment.—See note to § 1.

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

In accord with 1st paragraph in original. See Socec v. Maine Turnpike Authority, 152 Me. 326, 129 A. (2d) 212.

Sec. 52. Actions to quiet or remove cloud from title; description of defendants; joinder of plaintiffs. — If, in an action to quiet or establish the title to land situated in this state or to remove a cloud from the title thereto, the plaintiff, or those under whom he claims, has been in uninterrupted possession of the land described in the complaint for 4 years or more, claiming an estate of freehold therein, and seeks to determine the claims or rights of any persons who are unascertained, not in being, unknown or out of the state, or who cannot be actually served with process and made personally amenable to the decree of the court, such persons may be made defendants and, if they are unascertained, not in being or unknown, they may be described generally as the heirs or legal representatives of A. B., or such persons as shall become heirs, devisees or appointees of C. D., a living person, or persons claiming under A. B. It shall not be necessary for the maintenance of such action that the defendants shall have a claim or the possibility of a claim resting upon an instrument, the cancellation or surrender of which would afford the relief desired; but it shall be sufficient that they claim or may claim by purchase, descent or otherwise, some right, title, interest or estate in the land which is the subject of the action and that their claim depends upon the construction of a written instrument or cannot be met by the plaintiffs without the production of evidence. Two or more persons who claim to own separate and distinct parcels of land in the same county by titles derived from a common source, or 2 or more persons who have separate and distinct interests in the same parcel, may join as plaintiffs in any action brought under this section. (R. S. c. 158, § 52. 1959, c. 317, § 354. 1961, c. 317, § 569.)

Cross reference.

See note to § 48.

Effect of amendments. — The 1959 amendment substituted "an action" for "a suit in equity" near the beginning of the first sentence and "complaint" for the word "bill" after the words "described in the" in the first sentence.

The 1961 amendment substituted "action" for "suit" in three places in the last two sentences and deleted "the provisions of" preceding "this section" at the end of the section.

Effective date of 1959 amendment.—See note to § 1.

Applied in McCarty v. Greenlawn Cemetery Ass'n, 158 Me. 388, 185 A. (2d) 127.

Sec. 53. Service when defendant cannot be found; appointment of agent; expenses.—Service in such action shall be as provided in section 50. Notice given under the provisions of this section shall be constructive service on all the defendants. If, after notice has been given or served as ordered by the court and the time limited in such notice for the appearance of the defendants has expired, the court finds that there are or may be defendants who have not been actually served with process and who have not appeared in the action, it may of its own motion, or on the representation of any party, appoint an agent, guardian ad litem or next friend for any such defendant, and if any such defendants have or may have conflicting interests, it may appoint different agents, guardians ad litem or next friends to represent them. The cost of appearance of any such agent, guardian ad litem or next friend, including the compensation of his counsel, shall be determined by the court and paid by the plaintiff, against whom execution may issue therefor in the name of the agent, guardian ad litem or next friend. (R. S. c. 158, § 53. 1959, c. 317, §§ 355, 356.)

Effect of amendments. — This section was amended twice by P. L. 1959, c. 317. Section 355 of P. L. 1959, c. 317, rewrote the first sentence. Section 356 amended

the third sentence by deleting "within the state" following "process" and substituting "action" for "suit" and "for" for "of" preceding "any such defendant."

Effective date of 1959 amendment.—See note to § 1.

Sec. 54. Proceedings in court.—After all the defendants have been served with process or notified as provided in the preceding section, and after the appointment of an agent, guardian ad litem or next friend, if such appointment has been made, the court may proceed as though all the defendants had been actually served with process. Such action shall be a proceeding in rem against the land, and a decree establishing or declaring the validity, nature or extent of the plaintiff's title may be entered, and shall operate directly on the land and shall have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby. The provisions of this and the 2 preceding sections shall not prevent the court from also exercising jurisdiction in personam against the defendants who have been actually served with process and who are personally amenable to its decrees. (R. S. c. 158, § 54. 1961, c. 317, § 570.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the beginning of the second sentence of this section.

Applied in McCarty v. Greenlawn Cemetery Ass'n, 158 Me. 388, 185 A. (2d) 127.

Sec. 55. Action by owners of wild land.—Any person or persons claiming an estate of freehold in wild lands or in an interest in common and undivided therein, if the plaintiff and those under whom he claims has for 4 years next prior to the filing of the complaint held such open, exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of wild lands in this state, may maintain an action to quiet or establish the title thereto or to remove a cloud from the title thereto, as provided in sections 52 to 54. (R. S. c. 158, § 55. 1959, c. 317, § 357.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "bill," "an action" for "a suit in equity" and "sections 52 to 54" for "the 3 preceding sections."

Effective date of 1959 amendment.—See note to § 1.

Chapter 173.

Inquest of Office and Information for Intrusion.

Sec. 3. State may maintain action; service.—The state may maintain an action against the person stated as holding the lands under such grant, returnable to said court, which shall be served 30 days before the return day. (R. S. c. 159, § 3. 1961, c. 317, § 571.)

Effect of amendment.—The 1961 amendment substituted "The state may maintain an action" for "The court shall issue a scire facias" at the beginning of this section.

Sec. 14. Defendant may hold by title subsequently acquired.—If it is found that the defendant was not the legal owner of such estate nor had any right as tenant or agent when the process was commenced against him, but afterward acquired a good title, or became tenant or agent, the attorney general shall cease further to prosecute the action; but when the defendant proves no such title to the estate as owner or interest therein as tenant or agent, judgment shall be rendered that the state be seized thereof, and recover rents and profits as in a civil action between private persons. (R. S. c. 159, § 14. 1961, c. 317, § 572.)