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Chapter 174.

Limitations of Real Actions. Rights of Entry.

Sec. 1. Rights of entry and action barred in 20 years.—No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within 20 years after the right to do so first accrued, or unless within 20 years after he or those under whom he claims were seized or possessed of the premises, except as hereinafter provided. (R. S. c. 160, § 1.)

Disseizor may put end to his claim any time before disseizin complete.—A disseizor may abandon the land, or surrender his possession by parol, to the disseizee, at any time before his disseizin has ripened into a title, and thus put an entire end to his claim. School District No. 4 v. Benson, 31 Me. 381.

But once title is obtained it must be transferred by deed.—The title obtained by a disseizin so long continued as to take away the right of entry, and bar an action for the land by limitation, cannot be conveyed by a parol abandonment or relinquishment. It must be transferred by deed. One having such title may go out of possession declaring he abandons it to the former owner, and intending never again to make any claim to the land, and so may the person who holds an undisputed title by deed; but the law does not preclude them from reclaiming what they have abandoned in a manner not legally binding upon them. School District No. 4 v. Benson, 31 Me. 381.

Time is computed up to date of trial in petition for partition.—In a writ of entry, adverse possession will not establish title in the tenant, unless commenced twenty years before the commencement of the process. But in a petition for partition, title may be established by adverse possession commenced twenty years before the trial, though less than twenty years before the commencement of the process. Saco Water Power Co. v. Goldthwaite, 35 Me. 456.

Applied in Mellus v. Snowman, 21 Me. 201.

Quoted in part in Chase v. Alley, 82 Me. 234, 19 A. 397.

Stated in part in Cary v. Whitney, 50 Me. 322.

Sec. 2. When right shall begin to run.—If such right or title first accrued to an ancestor, predecessor or other person under whom the demandant claims, said 20 years shall be computed from the time when the right or title first accrued to such ancestor, predecessor or other person. (R. S. c. 160, § 2.)

Quoted in Cary v. Whitney, 50 Me. 322.

Cited in Mason v. Walker, 14 Me. 163.

Sec. 3. When right deemed to accrue.—The right of entry or of action to recover land, as used in this chapter, first accrues at the times hereinafter mentioned:

I. When a person is disseized, at the time of such disseizin;

Quoted in Pierce v. Rollins, 83 Me. 172, 22 A. 110.

II. When he claims as heir or devisee of one who died seized, at the time of such death, unless there is a tenancy by the curtesy or other estate intervening after the death of the ancestor or devisor; in that case, his right accrues when such intermediate estate expires, or would expire by its own limitation;

Applied in Wass v. Bucknam, 38 Me. 356.

III. When there is such an intermediate estate, and in all cases, when the party claims by force of any remainder or reversion, his right accrues when the intermediate estate would expire by its own limitation, notwithstanding any forfeiture thereof for which he might enter at an earlier time. (R. S. c. 160, § 3.)

Applied in Wass v. Bucknam, 38 Me. 356; Poor v. Larrabee, 58 Me. 543.

Quoted in Hooper v. Leavitt, 109 Me. 70, 82 A. 547.

Stated in part in French v. Rollins, 21 Me. 372.

Sec. 4. Any person may enter for condition broken.—The preceding section shall not prevent any person from entering, when so entitled by reason of any forfeiture or breach of condition; but if he claims under such a title, his right accrues when the forfeiture was incurred or the condition broken. (R. S. c. 160, § 4.)

Sec. 5. Cases not specially provided for. — In all cases not otherwise provided for, the right of entry accrues when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title on which the entry or action is founded. (R. S. c. 160, § 5.)

Sec. 6. Action by minister or other sole corporation.—If a minister or other sole corporation is disseized, any of his successors may enter upon the premises or bring an action for their recovery at any time within 5 years after the death, resignation or removal of the person disseized, notwithstanding 20 years after disseizin have expired. (R. S. c. 160, § 6.)

Sec. 7. Saving in favor of minors, and other disabled persons. — When such right of entry or action first accrues, if the person thereto entitled is a minor, insane, imprisoned or absent from the United States, he, or anyone claiming under him, may make the entry or bring the action at any time within 10 years after such disability is removed, notwithstanding 20 years have expired. (R. S. c. 160, § 7.)

Former provision of section.—For a case under this section when it provided that such action could be instituted at any time within 6 years after the disability was removed, see Butler v. Howe, 13 Me. 397.

Applied in Coombs v. Persons Unknown, 82 Me. 326, 19 A. 826.

Quoted in part in Pierce v. Rollins, 83 Me. 172, 22 A. 110.

Sec. 8. Further saving, if person first entitled dies during such disability.—If the person first entitled to make the entry or bring the action dies during the continuance of the disability and no determination or judgment has been had on his title or right of action, the entry may be made or action brought by his heirs, or other person claiming under him, at any time within 10 years after his death, notwithstanding the 20 years have elapsed; but no such further time for bringing the action or making the entry, beyond that hereinbefore prescribed, shall be allowed by reason of the disability of any other person. (R. S. c. 160, § 8.)

Sec. 9. Consequence, if tenant in tail or remainderman dies before expiration of limitation.—When a tenant in tail or a remainderman in tail dies before the expiration of the period hereinbefore limited for making an entry or bringing an action for lands, no person claiming any estate which such tenant in tail or remainderman might have barred shall make an entry or bring an action to recover such land, except within the period during which the tenant in tail or remainderman, if he had so long lived, might have done it. (R. S. c. 160, § 9.)

Sec. 10. What constitutes disseizin to bar right of recovery.—To constitute a disseizin, or such exclusive and adverse possession of lands as to bar or limit the right of the true owner thereof to recover them, such lands need not be surrounded with fences or rendered inaccessible by water; but it is sufficient, if the possession, occupation and improvement are open, notorious and comporting with the ordinary management of a farm; although that part of the same, which composes the woodland belonging to such farm and used therewith as a woodlot, is not so enclosed. (R. S. c. 160, § 10.)

Section strictly construed.—This section, being in derogation of common law, must be strictly construed. Penobscot Development Co. v. Scott, 130 Me. 449, 157 A. 311.

The object of this section was to modify the strict rules of the common law in relation to disseizin. Adams v. Clapp, 87 Me. 316, 32 A. 911.

Possession must be hostile or adverse.—To make a disseizin the possession taken by the disseizor must be hostile or adverse in its character, importing a denial of the owner's title in the property claimed, otherwise, however open, notorious, constant and long continued it may be, the owner's action will not be barred. Central Maine Power Co. v. Rollins, 126 Me. 299, 138 A. 170.

And not under a tenancy.—It was obviously not the design of this enactment to make such occupancy conclusive, but only presumptive evidence of disseizin. If the occupancy is satisfactorily indicative of such exercise of ownership as is usual in the improvement of a farm by its owner, it will be sufficient evidence of adverse possession in the absence of controlling evidence to the contrary. It must appear as a fact that the possession is adverse and not under a tenancy or otherwise in subordination to the title of the true owner. Martin v. Maine Central R. R., 83 Me. 100, 21 A. 740.

But wrongful act or hostility is not necessary for possession to be "adverse."—The word "adverse" does not necessarily imply any wrongful act or intent in effecting the entry or actual hostility in maintaining possession as against the true owner. Martin v. Maine Central R. R., 83 Me. 100, 21 A. 740.

And this is a jury question.—Whether or not the open and exclusive possession of a tenant was adverse, is a question of fact for the jury. Eaton v. Jacobs, 52 Me. 445.

Possession must be open and notorious.—By this enactment the common law may be considered so far altered as that a wood lot, constituting a part of a farm, may be subject to a disseizin by the occupant of the farm, if used for the purpose of cutting fuel, and getting housebote and fencebote therefrom, openly and notoriously, and in a manner comporting with the management of a farm. That the possession must still be open and notorious is not abrogated, but expressly retained. Tilton v. Hunter, 24 Me. 29.

As well as continuous.—Acts of possession must be shown to have been so open, notorious and continuous that the owner viewing the land may be presumed to know of the use and of its character and extent. Occasional trespasses will not ripen into title. Holden v. Page, 118 Me. 242, 107 A. 492.

Constructive disseizin extended to disseizor in possession without claim of title.—This section was enacted for the purpose of extending the doctrine of constructive disseizin by a disseizor in possession without claim of title. Brackett v. Persons Unknown, 53 Me. 228; Adams v. Clapp, 87 Me. 316, 32 A. 911.

But not to woodlands unless used as woodlot in connection with farm adversely occupied.—This section does not, either in express terms or by implication, extend the doctrine of constructive disseizin to woodland unless it is a part of a farm adversely occupied and used in connection with it as a woodlot. Adams v. Clapp, 87 Me. 316, 32 A. 911; Webber v. Barker Lumber Co., 121 Me. 259, 116 A. 586; Central Maine Power Co. v. Rollins, 126 Me. 299, 138 A. 170.

For where the woodlot is no part of a farm adversely occupied the common-law doctrine in relation to disseizin applies and in order to acquire title to such woodland, there must be such actual use and occupation of it, and of such unequivocal character, as will reasonably indicate to the owner visiting the premises during the statutory period, that instead of such use and occupation suggesting only occasional trespasses, they unmistakably indicate an asserted exclusive appropriation and ownership. The acts must be such as to leave no reason to inquire about intention, so notorious that the owner may be presumed to have knowledge that the occupancy is adverse. Adams v. Clapp, 87 Me. 316, 32 A. 911.

The exact line of demarcation between a woodlot and wild land is difficult to define, but it is ordinarily possible to distinguish one from the other in any given case. Penobscot Development Co. v. Scott, 130 Me. 449, 157 A. 311.

All land contiguous to improved and cultivated land to which title has been gained by adverse possession does not cease to be wild land and become a woodlot in the purview of this section simply because the owner of the improved land has cut fuel or fencing or lumber for repairing from a portion of it or used a part of it for pasture. Penobscot Development Co. v. Scott, 130 Me. 449, 157 A. 311.

Title to property previously conveyed may be reacquired by adverse possession.—A party may reacquire title to property that he has once parted with, by the same process through which he might have originally acquired it; and if he conveys the premises by deed to another, but for twenty years thereafter holds open, notorious, exclusive, and adverse possession of

it, he reacquires title to it as effectually as though it had been reconveyed to him. Traip v. Traip, 57 Me. 268.

Applied in Foxcroft v. Barnes, 29 Me. 128; Moore v. Moore, 61 Me. 417; Hitchings v. Morrison, 72 Me. 331.

Stated in Blake v. Freeman, 13 Me. 130; Wass v. Bucknam, 38 Me. 356.

Sec. 11. Limitation not to take effect in certain cases, when first suit fails.—If a writ in a real or mixed action fails of sufficient service or return by unavoidable cause, or if by the default or negligence of any officer to whom it was delivered or directed for service, the writ is abated; or if the action is defeated for any matter of form or by the death or other disability of either party, or if the demandant's judgment is reversed on writ of error, the demandant may commence a new action at any time within 6 months after the abatement or determination of the first suit or the reversal of the judgment. (R. S. c. 160, § 11.)

Sec. 12. Right-of-way or other easement not acquired but by adverse use; prevented by notice.—No person, class of persons or the public shall acquire a right-of-way or other easement through, in, upon or over the land of another by the adverse use and enjoyment thereof, unless it is continued uninterruptedly for 20 years; if a person apprehends that a right-of-way or other easement in or over his land may be acquired by custom, use or otherwise by any person, class of persons or the public, he may give public notice of his intention to prevent the acquisition of such easement by causing a copy of such notice to be posted in some conspicuous place upon the premises for 6 successive days and such posting shall prevent the acquiring of such easement by use for any length of time thereafter; or he may prevent a particular person or persons from acquiring such easement by causing an attested copy of such notice to be served by an officer qualified to serve civil process upon him or them in hand or by leaving it at his or their dwelling house, or, if the person to whom such notice is to be given is not in the state such copy may be left with the tenant or occupant of the estate, if any; if there is no such tenant or occupant, a copy of such notice shall be posted for 6 successive days in some conspicuous place upon such estate. Such notice from the agent, guardian or conservator of the owner of land shall have the same effect as a notice from the owner himself. A certificate by an officer qualified to serve civil process that such copy has been served or posted by him as above provided, if made upon original notice and recorded with it, within 3 months after the service or posting in the registry of deeds for the county or district in which the land lies, shall be conclusive evidence of such service or posting. (R. S. c. 160, § 12.)

Design of section.—This enactment was not designed to create or give such rights, or to determine when or upon what terms, they had already been acquired. The design was to prevent their future acquisition without conformity to certain prescribed conditions. Pierre v. Fernald, 26 Me. 436.

Owner's acquiescence is conclusively presumed if he has knowledge and fails to act.—When an adverse use has continued for twenty years without interruption or denial on the part of the owner, and with his knowledge, his acquiescence is conclusively presumed, and a prescriptive easement is established. Dartnell v. Bidwell, 115 Me. 227, 98 A. 743.

Stated in part in Blanchard v. Moulton, 63 Me. 434.

Sec. 13. Right-of-way not extinguished by adverse obstruction, unless such obstruction continued for 20 years; interruption by notice.—No right-of-way or other easement existing in, upon, over or through the land of another shall be extinguished by the adverse obstruction thereof, unless such adverse obstruction has been continued uninterruptedly for 20 years; and a notice in writing given by the owner of such right-of-way or other easement to the person whose land is subject thereto, setting forth said owner's intention to contest the extinguishment of such right-of-way or other easement, and duly served and recorded as provided in section 12, shall be deemed an interruption

of such obstruction and prevent the extinguishment of such right-of-way or other easement. (R. S. c. 160, § 13.)

Sec. 14. Trespassers on wild lands; notice to quit; return and record.—If any person without right dwells upon or in any manner occupies any lands which on the 1st day of April, 1883, were wild lands, any owner of such wild lands or of any legal or equitable interest therein may cause a notice to quit such lands to be served upon such person by any sheriff or deputy sheriff, by giving the same to such person in hand. Such officer shall make his return upon a copy of such notice certified by him to be a true copy, and within 60 days thereafter such owner may cause such copy and return to be recorded in the registry of deeds in the county or district where said land is located. Proceedings had and taken as above specified shall bar such person who has so entered or dwells upon such wild land from obtaining any rights by adverse possession to the land upon which he has so entered; provided, however, such person shall be entitled to the benefits of all the provisions of law relating to betterments. (R. S. c. 160, § 14.)

Sec. 15. No action for recovery of land after 40 years' possession.—No real or mixed action for the recovery of lands shall be commenced or maintained against any person in possession thereof, when such person or those under whom he claims have been in actual possession for more than 40 years, claiming to hold them by adverse, open, peaceable, notorious and exclusive possession, in their own right. (R. S. c. 160, § 15.)

Cross references.—See c. 96, § 103, re action for recovery of land after 40 years' possession; c. 172, § 44, re cases in which title deeds may be impeached.

Applied in Moulton v. Edgcomb, 52 Me. 31.

Quoted in part in Shurtleff v. Redlon, 109 Me. 62, 82 A. 645.

Cited in Worthing v. Webster, 45 Me. 270.

Sec. 16. Limitations of actions for uncultivated lands in incorporated places.—No real or mixed action for the recovery of uncultivated lands or of any undivided fractional part thereof, situated in any place incorporated for any purpose, shall be commenced or maintained against any person, or entry made thereon, when such person or those under whom he claims have, continuously for the 20 years next prior to the commencement of such action or the making of such entry, claimed said lands or said undivided fractional part thereof under recorded deeds; and have, during said 20 years, paid all taxes assessed on said lands or on such undivided fractional part thereof, however said tax may have been assessed whether on an undivided fractional part of said lands or on a certain number of acres thereof equal approximately to the acreage of said lands or of said fractional part thereof; and have, during said 20 years, held such exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of such lands or of undivided fractional parts of such lands in this state. (R. S. c. 160, § 16.)

The word "deed" as used in this section includes release deeds. Tibbetts v. Holway, 119 Me. 90, 109 A. 382.

Intent of section.—The context of this section demonstrates legislative intent to clothe possessory titles to wild lands, about which there is absence of actual, physical occupation so open, so continuous and exclusive as in similar titles to other lands, with status and protection comparatively equal to the latter. Stewart v. Small, 119 Me. 269, 110 A. 683.

Land contiguous to improved land and used therewith is not wild land.—Land contiguous to improved and cultivated land and commonly used therewith for fuel, fencing, repairs or pasturing, is not wild land within the purview of this section. Central Maine Power Co. v. Rollins, 126 Me. 299, 138 A. 170.

Parties protected of time interval between execution and recordation is reasonable.—A reasonable time must ordinarily intervene between the date a deed is executed and the date of its recordation; and the continuity of holding by recorded

deeds is not broken by reason of this fact. This necessary and reasonable interval will not deprive parties of the protection of this section. Campbell v. Whitehouse, 122 Me. 409, 120 A. 529.

Payment of taxes may be shown by entries and official records.—Payment of taxes may be shown by the receipt of the collector of taxes, or other officer authorized to receive them, but this is not the only method of proof, for the fact may be shown by entries in the books and official records of the tax office. Campbell v. Whitehouse, 122 Me. 409, 120 A. 529.

Applied in Sproul v. Cummings, 118 Me. 129, 106 A. 342.