

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
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cerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been made, and execution therefor may be issued against any owner neglecting to pay. (R. S. c. 162, § 18. 1959, c. 317, § 369.)

Effect of amendment.—The 1959 amendment substituted the word “plaintiff” for “petitioner” near the beginning of the sec-

tion.

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

Sec. 21. Report; judgment; effect.

The court may confirm, recommit, or set aside, but may not alter or change the report. The final decision upon the partition must come from the commissioners. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Grounds for objection to confirmation.—The report is not final. Commissioners must follow the warrant, and failure so to do is good ground for objection to the confirmation of the report. There must be no irregularities in procedure. Examples are: lack of proper notice by the commissioners; the report not showing equal division as to value; and the appraisal of a building by commissioners when the duty to appraise was not included in the judgment

for partition. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Report set aside or recommitted for bias, prejudice or gross error.—If the commissioners reach their result through bias or prejudice, or gross error clearly and unmistakably shown, the report should be set aside or recommitted. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Unequal allotments. — The action of commissioners in partition will not be set aside on the ground of unequal allotments except in extreme cases. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Evidence to be considered by court in passing on objections.—See *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Sec. 22. When unequal share left to person out of state, new partition made.—When a person to whom a share was left was out of the state when the partition was made and was not notified in season to prevent it, he may, within 3 years after final judgment, apply to the same court for a new partition. If it appears that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, the court may order a new partition as provided in section 20. (R. S. c. 162, § 22. 1959, c. 317, § 370.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted “the partition was made and was not notified in season to prevent it” for “notice was served on him

and did not return in season to become a party to the proceedings” in the first sentence.

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

Chapter 177.

Mortgages of Real Estate.

Sec. 9. Form of complaint in action to obtain possession.—The mortgagee or person claiming under him in an action for possession may declare on his own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him, or that the owner of the mortgage proceeded for foreclosure conformably to sections 5 and 7 before the action was commenced, the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment shall be entered as at common law. (R. S. c. 163, § 9. 1959, c. 317, § 371.)

Effect of amendment.—The 1959 amendment divided this section into three sentences, substituted “real action” for “writ

of entry” in the first sentence, deleted “on default, demurrer, verdict or otherwise” near the beginning of the second sentence

and substituted "action" for "suit" near the end of that sentence.

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."

Sec. 24. Owner of subsequent mortgage may request assignment of prior mortgage under foreclosure; bill in equity to compel assignment; appeal.—When proceedings for the foreclosure of any prior mortgage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate or of any part of the same real estate may, at any time before the right of redemption from such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured to him, upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure and such other sums as the mortgagor or person redeeming would be required to pay in order to redeem; if the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a bill in equity in the supreme judicial court or in the superior court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment as aforesaid. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured, shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment as aforesaid. The time within which and the place where such payment shall be made shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under the provisions of this section. The owner of any prior mortgage assigned under the provisions hereof shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as in other civil actions. (R. S. c. 163, § 24. 1959, c. 317, § 372.)

Effect of amendment.—The 1959 amendment substituted "in other civil actions" for "provided by section 21 of chapter

107" at the end of the section.

Effective date of 1959 amendment.—See note to § 9.

Sec. 35. Real action against mortgagee in possession, after mortgage paid.—When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a real action to recover possession of said premises, the same as if paid or released before condition broken. (R. S. c. 163, § 34. 1959, c. 317, § 373.)

Effect of amendment.—The 1959 amendment substituted the words "real action" for the words "writ of entry."

Effective date of 1959 amendment.—See note to § 9.

Sec. 36. To bar action on undischarged mortgage.—When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he or they, or any person having a freehold estate, vested or contingent in possession, reversion or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest therein with covenants of title or warranty, may apply to the superior court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts, and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 39, no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the superior court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought by any person to enforce a title under said mortgage. (R. S. c. 163, § 35. 1947, c. 64, § 1. 1959, c. 317, § 374.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, deleted “or any justice of the superior court in vacation” following “superior court” in the first and second sentences, substituted “complaint” for “peti-

tion” in the first sentence and deleted “at law or proceeding in equity” following “action” in the third sentence.

Effective date of 1959 amendment.—See note to § 9.

Sec. 37. Two or more persons owning in severalty may join in complaint.—Any 2 or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one complaint. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same complaint. In case of a contest the court shall make such order for separate issues as may be proper. (R. S. c. 163, § 36. 1959, c. 317, § 375.)

Effect of amendment.—The 1959 amendment divided the second sentence into two sentences, and substituted “complaint” for “petition” in the first and second sen-

tences.

Effective date of 1959 amendment.—See note to § 9.

Sec. 38. To bar action on undischarged mortgage given to secure against some contingent liability.—When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to exist and that the interests of no person will be prejudiced by the discharge of such mortgage, the mortgagor or those having his estate in the premises, or any of the persons to whom a similar remedy is granted in section 36 may apply to the superior court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 39, and upon hearing it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the superior court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is

recorded. Thereafter no action shall be brought to enforce a title under said mortgage. (R. S. c. 163, § 37. 1947, c. 64, § 2. 1959, c. 317, § 376.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, deleted “or any justice of the superior court in vacation” following “superior court” in both the first and second sentences, substituted “complaint” for “petition” in the first sentence, substituted

“section 39” for “the following section” in the second sentence and deleted “or proceeding in equity” following “action” in the third sentence.

Effective date of 1959 amendment.—See note to § 9.

Sec. 39. Description of unknown mortgagees; service of complaint.

—When it is alleged under oath in the complaint that the mortgagees or persons claiming under them are unknown or that their names are unknown, that may be described generally as claiming by, through or under some person or persons named in the complaint. Service shall be made as in other actions on all known defendants residing either in the state or outside the state, and notice by publication to defendants whose identity or whereabouts are unknown shall be given as in other actions where publication is required. (R. S. c. 163, § 38. 1947, c. 64, § 3. 1959, c. 317, § 377.)

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

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 9.

Sec. 40. Court has jurisdiction over all defendants.—Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made defendants in the manner provided, and shall upon due hearing make such decree upon the complaint and as to costs as it shall deem proper. (R. S. c. 163, § 39. 1959, c. 317, § 378.)

Effect of amendment.—The 1959 amendment substituted “defendants” for “respondents” and “complaint” for “petition,” and deleted “above” following “manner”

in this section.

Effective date of 1959 amendment.—See note to § 9.

Sec. 41. Decree effectual to bar claims.—The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the defendants from any claim thereunder contrary to such determination, and such decree so barring said defendants shall have the same force and effect as a release of such claims executed by the defendants in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other defendants. (R. S. c. 163, § 40. 1959, c. 317, § 379.)

Effect of amendment.—The 1959 amendment substituted the word “defendants” for the word “respondents” throughout

the section.

Effective date of 1959 amendment.—See note to § 9.

Chapter 178.

Mortgages of Personal Property. Liens. Pledges.

Mortgages of Personal Property.

Sec. 1. Mortgages of personal property; record.

Cited in *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.

Sec. 2. Duty of clerk; consent for sale or exchange.

Cited in *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.