

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1271

6
7 H.P. 973

House of Representatives, March 21, 1983

8 Referred to the Committee on Judiciary. Sent up for concurrence
9 and ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Rolde of York.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Relating to Claims to Real
18 Property.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 14 MRSA c. 724 is enacted to read:

23 CHAPTER 724

24 ACTION TO COMPEL DETERMINATION OF
25 A CLAIM TO REAL PROPERTY

26 §6671. Who may maintain an action

27 1. Persons or municipalities maintaining ac-
28 tion. Where a person claims an estate or interest in
29 real property; where he claims that estate or inter-

1 est as executor or administrator of a deceased
2 person; or where a municipality has purchased an
3 estate or interest in real property at a sale con-
4 ducted by it for unpaid taxes against the property
5 and the time within which redemption from that sale
6 may be made has expired and the municipality claims
7 it; the person or municipality may maintain an action
8 against any other person, known or unknown, including
9 one under disability as set out in this chapter, to
10 compel the determination of any claim adverse to that
11 of the plaintiff which the defendant makes, or which
12 it appears from the public records, or from the alle-
13 gations of the complaint, the defendant might make.
14 Where the estate or interest claimed by the plaintiff
15 is for a term of years, the action may not be main-
16 tained unless the balance remaining of that term of
17 years is not less than 5.

18 2. Validity of claim; other questions of fact
19 and law. That action may be maintained, even though
20 the defendant's claim appears to be invalid on its
21 face, or the court may have to determine the death of
22 a person, or any statutory limitation of time, or any
23 other question of fact or law upon which an adjudica-
24 tion of the adverse claims of the parties may depend.

25 3. Mortgages; vendors' liens. Where the period
26 allowed by the applicable statute of limitation for
27 the commencement of an action to foreclose a mort-
28 gage, or to enforce a vendor's lien, has expired, any
29 person having an estate or interest in the real prop-
30 erty subject to that encumbrance may maintain an ac-
31 tion against any other person or persons, known or
32 unknown, including one under disability as set out in
33 this chapter, to secure cancellation and discharge of
34 record of that encumbrance, and to adjudge the estate
35 or interest of the plaintiff in that real property to
36 be free from the encumbrance. No such action may be
37 maintained in any case where the mortgagee, holder of
38 the vendor's lien, or the successor of either of them
39 is in possession of the affected real property at the
40 time of the commencement of the action. In any ac-
41 tion brought under this subsection, it shall be
42 immaterial whether the debt upon which the mortgage
43 or lien was based, has or has not been paid; and also
44 whether the mortgage in question was or was not given
45 to secure a part of the purchase price.

1 4. Definition. The interest had by any mort-
2 gagee or contract vendee or real property, or by any
3 successor in interest of either of them, is an
4 "interest in real property" as that term is used in
5 this chapter.

6 §6672. Action to determine claims where foreclosure
7 of mortgage was void or voidable

8 When real property has been sold pursuant to a
9 judgment in an action to foreclose a mortgage or has
10 been conveyed to a mortgagee or the designee of the
11 mortgagee by deed in lieu of foreclosure, and it
12 appears from the public records or from the allega-
13 tions of the complaint that the judgment, sale or
14 foreclosure was or may have been, for any reason,
15 void or voidable as against any person, including an
16 owner of the real property mortgaged, the purchaser
17 or the mortgagee or designee, or the successor of any
18 such person, in possession of the real property, may
19 maintain an action as provided in this chapter to
20 determine the right of any person to set aside that
21 judgment, sale or conveyance or to enforce an equity
22 of redemption or to recover possession of the prop-
23 erty, or the right of any junior mortgagee to
24 foreclose a mortgage. The action may be maintained
25 even though an action against the defendant to
26 foreclose the mortgage under which the judgment,
27 sale or conveyance was made, or to extinguish a right
28 of redemption, would be barred by the statutes of
29 limitation.

30 §6673. Additional parties

31 1. Person in possession. In an action brought
32 under this chapter, the person in possession shall be
33 made a party to the action, and when that person
34 claims the right of possession, or an interest in the
35 real property, under another, that other person shall
36 also be made a party.

37 2. Other persons. Where it appears to the court
38 that a person not a party to the action may have an
39 estate or interest in the real property which may in
40 any manner be affected by the judgment, the court,
41 upon application of that person, or of any party to
42 the action, or on its own motion, may direct that the
43 person be made a party.

1 §6674. Guardians ad litem

2 If it appears by the complaint or is otherwise
3 made to appear to the court at any time before a
4 final judgment that a defendant is or might be an
5 infant, or incompetent to manage himself or his
6 affairs, or that a future interest in the affected
7 real property has been so limited that as yet there
8 are neither certain nor presumptive owners in being
9 or ascertained, the court shall appoint a guardian ad
10 litem who shall represent and protect that infant or
11 incompetent, or the possible interests of the person
12 or persons who eventually may become entitled to the
13 real property or to an interest in the property and,
14 in case of the death or failure or inability of the
15 guardian to act, a successor, who shall appear for
16 the infant or incompetent or for those possible
17 interests until the termination of the action.

18 §6675. Complaint

19 1. Facts included in the complaint. The com-
20 plaint shall state that the action is brought pur-
21 suant to this chapter and shall set forth facts show-
22 ing:

23 A. The plaintiff's estate or interest in the
24 real property, the particular nature of that
25 estate or interest and the source from or means
26 by which the plaintiff's estate or interest
27 immediately accrued to him; and, if his estate or
28 interest is for a term of years, that the balance
29 remaining of that term of years is not less than
30 5;

31 B. That the defendant claims, or that it appears
32 from the public records or from the allegations
33 of the complaint, that the defendant might claim
34 an estate or interest in the real property,
35 adverse to that of the plaintiff, and the partic-
36 ular nature of that estate or interest. Where
37 the State is made a party defendant, as provided
38 in this chapter, the summons and complaint shall
39 be served upon the Attorney General who shall
40 appear in behalf of the State, and the complaint
41 shall set forth detailed facts showing the par-
42 ticular nature of the estate or interest and the

1 reason for making the State a party defendant.
2 Upon failure to state these facts, the complaint
3 shall be dismissed as to the State;

4 C. Whether any defendant is known or unknown,
5 and whether any defendant is or might be an
6 infant, mentally retarded or mentally ill;

7 D. Whether the judgment will or might affect a
8 person or persons not in being or ascertained at
9 the commencement of the action, who, by any con-
10 tingency contained in a devise or grant or other-
11 wise, could afterward become entitled to a bene-
12 ficial estate or interest in the property
13 involved; and whether every person in being who
14 would have been entitled to that estate or inter-
15 est if the event had happened immediately before
16 the commencement of the action is named as a
17 party; and

18 E. The complaint must describe the property
19 claimed with common certainty, by setting forth
20 the name of the municipality, township or tract
21 and the number of the lot, if there is any, or in
22 some other appropriate manner, so that from the
23 description possession of the property claimed
24 may be delivered where the plaintiff is entitled
25 to possession, and may contain an allegation that
26 no personal claim is made against any defendant
27 other than a defendant who shall assert a claim
28 adverse to the claim of the plaintiff set forth
29 in the complaint. The demand for judgment may be
30 to the effect that the defendant and every person
31 claiming under him be barred from all claim to an
32 estate or interest in the property described in
33 the complaint, or that possession be awarded to
34 the plaintiff, or it may combine 2 or more of
35 those demands with other demands for appropriate
36 relief.

37 §6676. Answer

38 The defendant may, in his answer, deny any mate-
39 rial allegation of the complaint controverted by him,
40 or any knowledge or information thereof sufficient to
41 form a belief, or may set forth facts constituting a
42 defense; and may demand judgment dismissing the com-

1 plaint. He may set forth facts as a counterclaim for
2 the same cause of action; or the defendant may set
3 forth facts showing that he has an estate or interest
4 in the property; and he may demand any judgment to
5 which he would be entitled in an action brought by
6 him to recover that estate or to enforce in any man-
7 ner the interst which he asserts in the property; or
8 he may combine any 2 or more of those demands.

9 §6677. Proceedings

10 1. Provisions regulating civil actions to gov-
11 ern. In an action maintained under this chapter, the
12 proceedings shall be governed by the provisions regu-
13 lating civil actions, except as otherwise provided in
14 this chapter.

15 2. Service by publication. When service of the
16 summons on any defendant is made by publication, the
17 order for that service shall direct that any papers
18 required by that order to be mailed to the defendant
19 shall be sent by registered mail and, when that mail-
20 ing is required, shall direct that an affidavit, by
21 or on behalf of the plaintiff, be filed, stating that
22 the papers were mailed as required by the order.

23 3. Presumed right of possession. Whenever a
24 claim of right to immediate possession is in issue,
25 the person in possession shall be presumed to have
26 the right to that possession, but the presumption
27 may be rebutted.

28 4. Estates in reversion or in remainder. Where
29 any party claims the real property in question, or
30 any part of the property, by virtue of an estate in
31 reversion or in remainder, whether vested or contin-
32 gent, and the verdict, report or decision finds that
33 he has such an estate, it shall specify the time
34 when, or the contingency upon which, he will be enti-
35 tled to possession.

36 §6678. Judgment

37 1. Validity of claims. Final judgment in the
38 action shall declare the validity of any claim to any
39 estate or interest established by any party to the
40 action. The judgment shall declare that any party

1 whose claim to an estate or interest in the property
2 has been adjudged invalid, and every person claiming
3 under him, by title accruing after the filing of the
4 judgment roll, or of the notice of the pendency of
5 the action, as prescribed by law, be forever barred
6 from asserting the claim to an estate or interest the
7 invalidity of which is established in the action, and
8 may direct that any instrument purporting to create
9 any such estate or interest be delivered up or can-
10 celled of record or be reformed of record as the
11 facts may require. Judgment may be given awarding
12 possession of real property to any party, together
13 with his damages for the withholding of that property
14 and 2 or more of these forms of judgment may be
15 awarded in the same action.

16 2. Actions involving State. If one of the parties
17 to the action is the State and the judgment
18 adversely affects the title, interest or claim of the
19 State based upon a tax deed, the judgment shall provide
20 in effect as follows:

21 A. That the State shall have a lien upon the
22 real property or part of the property described
23 in the tax deed, prior and superior to all other
24 liens:

25 (1) For the amount of the unpaid taxes not
26 adjudged illegal in the action for which the
27 real property was sold or liable to be sold
28 in the first instance and for which the tax
29 deed was issued, together with fees, charges
30 and interest;

31 (2) For the amount of the unpaid taxes not
32 adjudged illegal in the action for which the
33 real property was subsequently sold or liable
34 to be sold, together with fees, charges
35 and interest; and

36 (3) For the amount of all taxes, fees and
37 charges admitted or paid by the State upon
38 the real property to the date of the entry
39 of the judgment, together with interest
40 thereon from the date of the admission or
41 payment.

1 In the determination of the amount of the lien,
2 establishment of payments of taxes on the land by
3 the adjudged or admitted owner of the property
4 during any of the same years in which payments
5 were also made by the State shall reduce the lien
6 of the State by the larger of the 2 tax payments
7 for each of the years affected by duplicate pay-
8 ments, and in the event that wholly identical
9 areas are not affected by the duplicate payments,
10 the court may apportion and adjust the amount of
11 the lien as equity may require; and

12 B. That the State may foreclose the lien as a
13 mortgage on real property is foreclosed, provided
14 that the lien remains unpaid after the expiration
15 of one year from the entry of the judgment.

16 The remedy provided by this subsection for recovery
17 of tax payments shall be in addition to any other
18 remedy available in law or in equity.

19 3. Failure to appear; costs. If a judgment de-
20 scribed in subsection 1 or 2 is taken upon the defen-
21 dant's default in appearing or pleading, it shall not
22 award costs to either party, unless it is taken upon
23 a default in answering after the decision of a motion
24 addressed to the complaint. A defendant against whom
25 no personal claim is made in the complaint shall not
26 be entitled to costs, unless awarded by the court
27 when the defendant asserts in his answer and estab-
28 lishes a claim in the lands adverse to the claim of
29 the plaintiff in the action.

30 4. Estates in reversion or in remainder. Where
31 a verdict, report or decision is rendered, as pre-
32 scribed in section 6677, subsection 4, final judgment
33 to that effect shall be rendered accordingly, without
34 damages. In such a case, an execution for the deliv-
35 ery of the possession of the property may be issued
36 upon the judgment; but only by the special order of
37 the court, made upon an application by the defendant,
38 or a person claiming under him, and upon satisfactory
39 proof that the time has arrived when, or the contin-
40 gency has happened upon which, the applicant is enti-
41 tled to possession by the terms of the judgment.

1 5. Delivery, cancellation or reformation of
2 records; penalties. Where the judgment directs that
3 an instrument be delivered up, cancelled or reformed
4 of record, or that real property be conveyed, if the
5 direction is disobeyed, the court, by order, besides
6 punishing the disobedience as a contempt, may require
7 the sheriff to take, and deposit or deliver, the
8 instrument or to convey the real property or to per-
9 form the required acts in conformity with the direc-
10 tion of the court.

11 §6679. Accounting in certain cases

12 In an action brought under section 6672, the
13 court shall direct such accounting as justice re-
14 quires in the circumstances for rents and profits of
15 the property or the value of the use and occupation
16 during the period subsequent to the original sale or
17 conveyance in lieu of foreclosure during which pos-
18 session of the property was held by the plaintiff or
19 by any other party to the action.

20 §6680. Judgment of foreclosure in certain cases

21 1. Foreclosure or reforeclosure. In an action
22 under section 6672, if it appears to the court that
23 there was a defect in the original foreclosure pro-
24 ceedings and the defect was not occasioned by the
25 fraud or willful neglect of the plaintiff, the judg-
26 ment may foreclose or reforeclose the mortgage pur-
27 suant to this Title, notwithstanding that an action
28 to foreclose the mortgage would otherwise be barred.
29 No recovery may be granted for any residue of the
30 debt, remaining unsatisfied, if an action to
31 foreclose the mortgage would otherwise be barred.

32 2. Redemption. If it appears to the court in
33 any such action that the defect in the foreclosure
34 proceedings was not due to fraud or willful neglect
35 of the plaintiff and that the defendant or the person
36 under whom he claims was not actually prejudiced
37 thereby, the judgment may fix a time for redemption
38 of the property and provide that a failure to redeem
39 within that time shall thereafter preclude the defen-
40 dant from redeeming the property or claiming any
41 right, title or interest in the property.

1 3. Value of improvements. If a redemption of
2 the property is ordered, the court shall direct that
3 the value of any improvement to the property made
4 subsequent to the original sale or conveyance in lieu
5 of foreclosure shall be added in computing the amount
6 necessary to redeem the premises, in the same manner
7 as if the value of the improvements was a portion of
8 the mortgage debt.

9 4. Sale of premises; value of improvements. If
10 a new sale of the premises is ordered, the court may
11 include in the judgment a provision awarding to the
12 plaintiff the value of any improvements to the prop-
13 erty made subsequent to the original sale or convey-
14 ance in lieu of foreclosure, in the same manner as if
15 the value of the improvements was a portion of the
16 mortgage debt.

17 §6681. Effect of judgment

18 1. Final judgment conclusive. A final judgment
19 in favor of either party, in an action brought as
20 prescribed in this chapter, is conclusive, as to the
21 title established in the action, against the other
22 party, known or unknown, including an infant, a men-
23 mentally retarded person or a mentally ill person, and
24 against every person claiming from, through or under
25 that party, by title accruing after the filing of the
26 judgment roll, or of the notice of the pendency of
27 the action, as prescribed by law; against each person
28 not in being or ascertained at the commencement of
29 the action, who, by any contingency contained in a
30 devise or grant or otherwise, could afterward become
31 entitled to a beneficial estate or interest in the
32 property involved, provided that every person in
33 being who would have been entitled to that estate or
34 interest if the event had happened immediately before
35 the commencement of the action is a party, or that a
36 guardian ad litem is appointed.

37 2. New trial. A new trial of the action after
38 judgment shall not be granted as a matter of right,
39 but the court may, in its discretion in the interest
40 of justice, grant a new trial upon an application made
41 by any party within one year after the judgment.
42 Upon any new trial of an action brought, as
43 prescribed in this chapter, the record of the evi-

1 dence given upon the previous trial may be again
2 offered to the court by either party, and may be
3 received in evidence, in case the same evidence can-
4 not be again procured. The courts may make such
5 rules and orders as to preserving the record of the
6 evidence given in such actions and perpetuating the
7 proofs produced, either with or without the awarding
8 of any other relief to the party whose proofs are so
9 perpetuated, as shall be necessary or proper, and may
10 embrace those directions in the judgment.

11 §6682. Application of chapter

12 An action may be maintained, as prescribed in
13 this chapter, by or against a corporation, or by or
14 against an unincorporated association, as if it were
15 a natural person, or such an action may be maintained
16 by or against the receiver or other successor of any
17 such corporation or association, or by or against the
18 State.

19 §6683. Effect of chapter

20 Nothing contained in this chapter may be con-
21 strued to limit any other remedy in law or equity.

22 Statement of Fact

23 The purpose of this bill is to provide a proce-
24 dure for adjudicating claims to real property and
25 clearing up possible claims against property.

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