SIXTH REVISION

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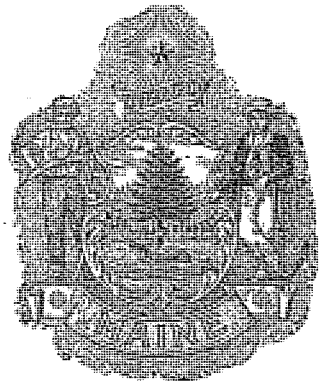

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own use, and materials for the repair of buildings, and for fences thereon, from any woodlands of which she is endowed, is not waste.

13 Me. 278; 51 Me. 435; 52 Me. 142.

Sec. 12. Remedy, if evicted of dower. R. S. c. 105, § 12. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as a jointure, or is deprived of the provision made for her by will or otherwise instead of dower, she may be endowed anew, as though no such assignment or provision had been made.

23 Me. 277; 27 Me. 392.

CHAPTER 109.

Real Actions.

Sec. 1. Recovery of estates by writ of entry; mode of service. R. S. c. 106, § 1. Any estate of freehold, in fee simple, fee tail, for life, or any term of years, may be recovered by a writ of entry; and such writs, and the writ in an action of dower, shall be served by attachment and summons, or copy of the writ, on the defendant, but if he is not in possession, the officer shall give the tenant in hand, or leave at his place of last and usual abode, an attested copy of the writ; and if the defendant is not an inhabitant of the state, the service on the tenant shall be sufficient notice to the defendant, or the court may order further notice.

6 Me. 439; 7 Me. 232; 17 Me. 220; 20 Me. 279; 24 Me. 527; 32 Me. 175; 51 Me. 366; 66 Me. 250.

Sec. 2. Declaration. R. S. c. 106, § 2. The demandant shall declare on his own seizin within twenty years then last past, without naming any particular day or averring a taking of the profits, and shall allege a disseizin by the tenant.

20 Me. 284; 58 Me. 335; 84 Me. 324, 435; 95 Me. 245.

Sec. 3. Demandant shall set forth the estate that he claims in the premises. R. S. c. 106, § 3. He shall set forth the estate which he claims in the premises, whether in fee simple, fee tail, for life, or for years; and if for life, then whether for his own life or that of another; but he need not state in the writ the origin of his title, or the deduction of it to himself; but, on application of the tenant, the court may direct the demandant to file an informal statement of his title, and its origin.

50 Me. 143; 57 Me. 344; 58 Me. 105; 59 Me. 133, 254; 63 Me. 415; 64 Me. 57; 73 Me. 472.

Sec. 4. Proof of seizin. R. S. c. 106, § 4. He need not prove an actual entry under his title; but proof that he is entitled to such an estate in the premises as he claims, and that he has a right of entry therein, is sufficient proof of his seizin.

23 Me. 419; 24 Me. 526; 38 Me. 79; 58 Me. 335; 59 Me. 450; 84 Me. 435; 113 Me. 528.

Sec. 5. Demandant must have right of entry. R. S. c. 106, § 5. No such action shall be maintained, unless, at the time of commencing it, the demandant had such right of entry; and no descent or discontinuance shall defeat any right of entry for the recovery of real estate.

83 Me. 49; 100 Me. 562; 106 Me. 219; 112 Me. 474.

Sec. 6. Who may be considered a disseizor; disclaimer in abatement, but not in bar. R. S. c. 106, § 6. 1909, c. 83. Every person alleged to be in possession of the premises demanded in such writ, claiming any freehold therein, may be considered a disseizor for the purpose of trying the right; but the defendant may plead in abatement, but not in bar, that he is not tenant of the freehold, or he may plead it by a brief statement under the general issue, filed within the time allowed for pleas in abatement; but by leave of court the time therefor may be enlarged, or permission to file such disclaimer may afterwards be granted by the court; and he may show that he was not in possession of the premises when the action was commenced, and disclaim any right, title or interest therein, and proof of such fact shall defeat the action; and if he claimed, or was in possession of only a part of the premises when the action was commenced, he shall describe such part in a statement signed by him or his attorney and filed in the case, and may disclaim the residue; and if the facts contained in such statement are proved on trial, the demandant shall recover judgment for no more than such part.

17 Me. 16; 22 Me. 317; 24 Me. 308; 34 Me. 174; 43 Me. 281; 44 Me. 48; 49 Me. 103; 58 Me. 335; 68 Me. 21; 69 Me. 52; 71 Me. 543; 75 Me. 431; 82 Me. 388; 85 Me. 316; 103 Me. 61; 108 Me. 140.

Sec. 7. Defendant ousting demandant may be deemed disseizor. R. S. c. 106, § 7. If the person in possession has actually ousted the demandant or withheld the possession, he may, at the demandant's election, be considered a disseizor for the purpose of trying the right, although he claims an estate therein less than a freehold.

3 Me. 324.

Sec. 8. Proof to entitle the demandant to recover. R. S. c. 106, § 8. In the trial upon such writ, on the general issue, if the demandant proves that he is entitled to such estate in the premises as he has alleged, and had a right of entry therein when he commenced his action, he shall recover the premises, unless the tenant proves a better title in himself.

5 Me. 225; 12 Me. 349; 19 Me. 386; 22 Me. 317; 23 Me. 237; 27 Me. 362; 31 Me. 148, 311, 587; 33 Me. 356, 542; 38 Me. 79; 44 Me. 120; 50 Me. 63; 52 Me. 568; 53 Me. 275; 55 Me. 549; 56 Me. 96; 57 Me. 344; 58 Me. 335; 63 Me. 104; 64 Me. 57; 102 Me. 228; 106 Me. 219.

Sec. 9. Joinder of demandants. R. S. c. 106, § 9. Persons claiming as tenants in common or joint tenants may all, or any two or more, join in a suit for recovery of lands, or one may sue alone.

30 Me. 359; 59 Me. 324; 108 Me. 526.

Sec. 10. Demandant may recover specific, or undivided part. R. S. c. 106, § 10. The demandant may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded.

56 Me. 95; 63 Me. 542; 64 Me. 57; 75 Me. 432; 80 Me. 116; 84 Me. 4; 85 Me. 316; 89 Me. 468; 104 Me. 431.

Sec. 11. May recover damages in same action. R. S. c. 106, § 11. When a demandant recovers judgment in a writ of entry, he may therein recover damages for the rents and profits of the premises from the time when his title accrued, subject to the limitation herein contained; and for any destruction or waste of the buildings or other property, for which the tenant is by law answerable.

34 Me. 84; 36 Me. 443; 63 Me. 546; 72 Me. 126; 76 Me. 202; 92 Me. 603; 112 Me. 464.

Sec. 12. Estimation of rents and profits. R. S. c. 106, § 12. The rents and profits, for which the tenant 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.

76 Me. 202; 112 Me. 464.

Sec. 13. Same subject. R. S. c. 106, § 13. In estimating the rents and profits, the value of the use by the tenant of improvements made by himself or by those under whom he claims, shall not be allowed to the demandant.

Sec. 14. Tenant not liable for over six years' rents; exception. R. S. c. 106, § 14. The tenant is not liable for the rents and profits for more than six years, nor for waste or other damage committed before that time, unless the rents and profits are allowed in set-off to his claim for improvements.

Sec. 15. Recovery of damages against other persons. R. S. c. 106, § 15. Nothing herein contained shall prevent the demandant from maintaining an action for mesne profits, or for damage to the premises, against any person except the tenant in a writ of entry, who has had possession of the premises, or is otherwise liable to such action.

36 Me. 445.

Sec. 16. No abatement by death or intermarriage. R. S. c. 106, § 16. No real action shall be abated by the death or intermarriage of either party after its entry in court; but the court shall proceed to try and determine such action, after such notice as the court orders has been served upon all interested in his estate, personally, or by publication in some newspaper.

2 Me. 128; 23 Me. 236; 33 Me. 175; 76 Me. 577; 78 Me. 105; 95 Me. 194.

Sec. 17. Guardians to be appointed for minors. R. S. c. 106, § 17. In such case, if any heir is a minor, the court shall order notice to the guardian, and may appoint a guardian ad litem, if necessary, and direct all necessary amendments in the forms of proceeding.

Sec. 18. Writs of possession shall issue; judgment conclusive. R. S. c. 106, § 18. If the demandant 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.

Sec. 19. Allowance of costs and stay of execution in such cases. R. S. c. 106, § 19. The prevailing party shall recover full costs in all such cases, and the court may order one or more executions to be issued therefor 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, and may stay any such execution, if the situation of the estate requires it.

Sec. 20. Betterments shall be allowed after six years' possession. R. S. c. 106, § 20. When the demanded premises have been in the actual possession of the tenant or of those under whom he claims, for six successive years or more before commencement of the action, such tenant shall be allowed a compensation for the value of any buildings and improvements

on the premises, made by him or by those under whom he claims, to be ascertained and adjusted as hereinafter provided.

12 Me. 376; 21 Me. 523; 22 Me. 111; 23 Me. 194; 25 Me. 413; 75 Me. 434; 107 Me. 386.

Sec. 21. Premises must be clearly defined and described. R. S. c. 106, § 21. In such action, the demanded premises shall be clearly described in the declaration, otherwise the court may direct a nonsuit. If the tenant, or person under whom he claims, has been in possession of a tract of land lying in one body, for six years or more before the commencement of the action, and only part of it is demanded, and the tenant alleges that the demandant has as good a title to the whole as to such part, he may request the jury to inquire and decide that fact; and if they so find, they shall proceed no farther; but the court shall enter judgment that the writ abate, unless the declaration is amended so as to include the whole tract, which the court may allow without costs.

61 Me. 367.

Sec. 22. Consent to recovery of a specified part; effect thereof. R. S. c. 106, § 22. If the tenant enters notice on record in open court, that the demandant may recover a specified part of the demanded premises, by consent of the demandant judgment may be rendered in his favor for such part, and for the tenant for the residue; but if he does not consent, and recovers only such part, he shall recover no costs, but the tenant shall recover his costs from the time of such notice.

Sec. 23. Tenant may have betterments, upon demurrer or default. R. S. c. 106, § 23. The tenant shall have the benefit of the provisions in the following sections as to the increased value of premises, when the cause, including all real actions brought by a reversioner or remainder man, 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 upon demurrer, default or by verdict.

58 Me. 563; 68 Me. 571; 72 Me. 45.

Sec. 24. Request of either party for appraisal of improvements, and its effect. R. S. c. 106, § 24. The tenant may file a written claim to compensation for buildings and improvements on the premises, and a request for an estimation by the jury of the increased value of the premises, by reason thereof; and the demandant 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; and the jury shall allow for no buildings or improvements, except those that they find were made by the tenant, his grantor, or assignor, and were judicious and proper under the circumstances.

101 Me. 463; 106 Me. 91; 111 Me. 298.

Sec. 25. Rule for valuation of betterments. R. S. c. 106, § 25. If the tenant, so claiming, alleges and proves that he, and those under whom he claims, have had the premises in actual possession for more than twenty years prior to the commencement of the action, the jury may find that fact; and 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 tenant, or those under whom he claims, first entered thereon. The sum so found shall be deemed the estimated value of the premises; and 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 tenant or those under whom he claims, first entered thereon; and the sum, so found and stated, shall be taken for the buildings and improvements.

75 Me. 434.

Sec. 26. Election by demandant to abandon. R. S. c. 106, § 26. If the demandant after such verdict, at the same, or a subsequent term of the court, if the cause is continued, makes his election on record to abandon the premises to the tenant at the value estimated by the jury, and files with the clerk for the use of the tenant a bond, in the penal sum of three times the estimated value of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the tenant, his heirs or assigns, if they are evicted from the land within twenty years by a title better than that of the demandant, then judgment shall be rendered against the tenant for the sum so estimated by the jury, and costs.

1 Me. 314; 3 Me. 377; 4 Me. 297; 16 Me. 127; 50 Me. 322; 101 Me. 466; 111 Me. 300.

Sec. 27. Tenant may pay one-third the value of land, interest and costs, the first year. R. S. c. 106, § 27. At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the tenant shall have deposited with the clerk of the court, or in his office for the demandant's use, one year's interest of said sum, and one-third of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time.

Sec. 28. At the end of two years, another third with interest. R. S. c. 106, § 28. If within two years after the rendition of judgment, the tenant pays one year's interest on the balance of the judgment due, and one-third of the original judgment, execution shall be further stayed; otherwise it may issue for two-thirds of the original amount of the judgment and interest thereon.

Sec. 29. And at the end of three years, he may pay the balance; effect thereof. R. S. c. 106, § 29. If the tenant, within three years after judgment, pays into the clerk's office the remaining third and interest thereon, having made the other payments as aforesaid, execution shall never issue; otherwise, it may issue for the third aforesaid and one year's interest thereon; and 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 sixty days after an execution might have issued as aforesaid, 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 three months after default of payment by the tenant, in cases mentioned in this and the two preceding

sections, although it is more than a year after the rendition of judgment.

Sec. 30. Tenant's remedy, if he is evicted. R. S. c. 106, § 30. If the tenant or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the demandant or his heirs to aid him in his defense against such title, they, their executors or administrators, may recover back the money so paid, with lawful interest, of said demandant or his representatives; but if no notice was given, the tenant, in an action against the original demandant to recover the price paid for the premises, may show that he was evicted by a title better than that of the demandant.

Sec. 31. If demandant does not abandon, he pays for improvements. R. S. c. 106, § 31. When the demandant 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 into the clerk's office, or to such person as the court appoints, for the use of the tenant, the sum assessed for the buildings and improvements, with interest thereon.

111 Me. 300.

Sec. 32. Restriction of the right to betterments. R. S. c. 106, § 32. 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 tenant, 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 tenant when he entered.

70 Me. 240.

Sec. 33. Tenant shall not commit waste after judgment. R. S. c. 106, § 33. No tenant, 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.

Sec. 34. Parties may agree upon reference as to value of improvements. R. S. c. 106, § 34. When the parties agree that the value of the buildings and improvements on the land demanded, and the value of the land, shall be ascertained by persons named on the record for that purpose, their estimate, as reported by them and recorded, is equal in its effect to a verdict.

111 Me. 299.

Sec. 35. Tenant may propose a value for premises and betterments; its effect. R. S. c. 106, § 35. When the tenant, 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 demandant consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the demandant 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 tenant shall recover his costs after such offer, and have judgment and execution therefor, subject to the following section.

2 Me. 355.

Sec. 36. Set-off of costs against improvements. R. S. c. 106, § 36. In all cases where the demandant does not abandon the premises to the tenant, the court may, on written application of either party during the term when judgment is entered, order the costs recovered by the demandant to be set off 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.

Sec. 37. Juror is disqualified, if interested in similar questions. R. S. c. 106, § 37. No person, who, as proprietor or occupant, is interested in a similar question, shall sit as juror in the trial of a cause, when the value of buildings and improvements made on the demanded premises, and the value of the premises, are to be estimated as aforesaid.

Sec. 38. What constitutes a possession and improvement. R. S. c. 106, § 38. A possession and improvement of land by a tenant are within 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.

2 Me. 281; 31 Me. 345; 101 Me. 138.

Sec. 39. Proceedings, if either party dies before the cause is disposed of. R. S. c. 106, § 39. After judgment has been rendered for the demandant in a writ of entry, if either party dies before a writ of possession is executed, or the cause is otherwise disposed of according to the foregoing provisions, any money payable by the tenant may be paid by him, his executor or administrator, or by any person entitled to the estate under him, to the demandant, his executor or administrator, with the like effect as if both parties were living.

Sec. 40. How writ of possession shall issue in such case. R. S. c. 106, § 40. The writ of possession shall be issued in the name of the original demandant against the original tenant, although either or both are dead; and when executed, it shall inure to the use and benefit of the demandant, or of the person who is then entitled to the premises under him, as if executed in the lifetime of the parties.

89 Me. 94.

Sec. 41. Either party may have a view by the jury. R. S. c. 106, § 41. Either party may have a view by the jury of the place in question, if in the opinion of the court it is necessary to a just decision; the party moving for it shall advance to the jury such sum as the court orders, to be taxed against the adverse party if the cause is decided against him on the merits, or through his default.

Sec. 42. Proceedings, if a life estate is demanded. R. S. c. 106, § 42. If the demandant claims an estate for life only in the premises, and pays a sum allowed to the tenant for improvements, he, or his executor or administrator, at the termination of his estate, is entitled to receive of the remainder man 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;

and if the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate.

Sec. 43. If tenant is ousted, after six years' possession, he may recover for improvements. R. S. c. 106, § 43. 1911, c. 74. 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 six 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, in an action of assumpsit for money laid out and expended, 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; and a lien is created on the premises in favor of such claim, to be enforced by an action commenced within three years after such entry; and it is no bar to such action, if the tenant, to avoid cost, yields to the superior title.

74 Me. 513.

Sec. 44. Cases in which defendant may impeach plaintiff's title deeds. R. S. c. 106, § 44. In all actions respecting lands or any interest therein, a title deed, offered in evidence, may be impeached by the defendant as obtained by fraud, where the grantor, if a party, could impeach it, if the defendant has been in the open, peaceable and adverse possession of the premises for twenty years.

Sec. 45. If tenant and his grantors have been in possession for forty years, no costs for plaintiff. R. S. c. 106, § 45. In all real and mixed actions, in which the tenant 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 forty years preceding the commencement of the action, and the jury so find, the demandant recovers no costs.

Sec. 46. Court may appoint and protect surveyors. R. S. c. 106, § 46. 1909, c. 9. 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 of trespass in which the title to land is involved, as shown by the pleadings filed, on motion of either party; and 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; and in the execution of such warrant, he may exercise all the power pertaining to his office; and all persons refusing their aid when called for by him are liable to the same penalties as in other like cases.

Appointment in vacation, c. 86, § 2; 58 Me. 410.

Sec. 47. Fees of surveyor; court may determine amount to be paid by parties. 1913, c. 7. 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. 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 suit or 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 parties shall be liable to the surveyor in an action of money had and received for the amount to be paid by them jointly, and each of the parties shall likewise be liable to the surveyor in the same kind of an action for the amount to be severally paid.

Sec. 48. Summary proceedings to quiet title to real estate. R. S. c. 106, § 47. 1909, c. 93. A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than ten 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 four years or more, file a petition in the supreme judicial 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 petition, 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 petition, 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 petitioner 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.

77 Me. 585; 78 Me. 153; 83 Me. 178, 272; 84 Me. 98; 93 Me. 534; 101 Me. 340; 102 Me. 164; 104 Me. 81; 105 Me. 290.

Sec. 49. Proceedings when easement is claimed. 1907, c. 62, § 1. A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than ten 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 four years or more, file a petition in the supreme judicial court setting forth his estate, describing the premises and averring that an apprehension exists that persons named in the petition, or persons unknown, claim by continued and uninterrupted use for twenty 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 petitioner 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 petitioner, 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.

Sec. 50. Proceedings on petition; grantee may become party. R. S. c. 106, § 47. 1907, c. 62, § 1; c. 150, § 1. Upon a petition filed under either of the two preceding sections the court, or any justice thereof in vacation, shall order notice returnable at a term of the supreme judicial court to be held in the county where the real estate lies. Personal service by copy of the petition and order of notice, shall be made upon all such supposed known claimants residing in the state, fourteen days before the return day; and upon all such supposed unknown claimants residing in the state, and upon all such supposed claimants, known or unknown, residing out of the state, service may be made by personal service of copy of the petition and order of notice; by publication for such length of time, in such newspaper or newspapers or by posting in such public places as the court may direct; or in any or all of these ways at the discretion of the court. If the petitioner prefers, the petition may be inserted like a declaration in a writ, and served by copy like a writ of original summons. Upon the filing of the petition 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 petition and the filing thereof, and the description of the real estate as given in the petition, which said certificate shall be recorded by the register of deeds, who shall receive therefor the same fee as for recording a deed. The proceedings on the petition shall not be abated by the death of any party thereto, and the issues may be determined after such personal or public notice, as the court orders, has been given to all persons interested in his estate, and they may become or be made parties; nor shall the proceedings be abated by the conveyance of the premises by the respondent by deed recorded after said certificate is recorded. The grantee of any defendant named or described in the petition, 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 aforesaid, does not voluntarily appear, no such conveyance by the defendant shall be given in evidence, either in the proceedings on the petition or in any action brought thereunder to try title to the premises as provided in the following section, and the issue shall be determined as though no such conveyance were made.

104 Me. 81; 105 Me. 290.

Sec. 51. Proceedings if claimant appears; record of decree; action on case by claimant of easement. R. S. c. 106, § 48. 1907, c. 62, §§ 2, 3; c. 150, § 2. 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; and the court shall make such decree respecting the bringing and prosecuting of such action as seems equitable and just; if any person so sum-

moned appears and disclaims all right and title adverse to the petitioner, he recovers his costs. If the court upon hearing, finds that the allegations of the petition 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 petition 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 aforesaid 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 petitioner, 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 petitioner in the premises described in the petition; which decree shall within thirty 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, as herein provided, 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 on the case to try the title thereto, alleging in his declaration how said easement was acquired and issue shall be framed accordingly.

77 Me. 585; 78 Me. 153; 83 Me. 178, 272; 84 Me. 98; 102 Me. 164; 105 Me. 290.

Suits in Equity to Quiet Title.

Sec. 52. Suits in equity to quiet title; description of defendants; joinder of plaintiffs. R. S. c. 106, § 49. 1909, c. 93. If, in a suit in equity 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 bill for four 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 suit that the defendants shall have a claim or the possibility of a claim resting upon an instrument, the cancelation 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 suit and that their claim depends upon the construction of a written instrument or cannot be met by the plaintiffs without the produc-

tion 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 two or more persons who have separate and distinct interests in the same parcel, may join as plaintiffs in any suit brought under the provisions of this section.

Sec. 53. Service when defendant cannot be found; appointment of agent; expenses. R. S. c. 106, § 50. If in such suit the court finds that actual service cannot be made upon a defendant, it may order notice of the suit to be posted in a conspicuous place on the land or to be published in a newspaper within or without the state, or both, or to be given in such other manner as it considers most effectual, and may also require personal notice to be given. 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 within the state and who have not appeared in the suit, it may of its own motion, or on the representation of any party, appoint an agent, guardian ad litem or next friend of 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.

Sec. 54. Proceedings in court. R. S. c. 106, § 51. 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 suit 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 two 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.

Sec. 55. Bill by owners of wild land. R. S. c. 106, § 52. 1909, c. 93. Any person or persons claiming an estate of freehold in wild land or in an interest in common and undivided therein, if the plaintiff and those under whom he claims, has for four years next prior to the filing of the bill held such open, exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of wild lands in Maine, may maintain a suit in equity to quiet or establish the title thereto or to remove a cloud from the title thereto, as provided in the three preceding sections.

Note. No judgment divesting any person of title to real estate effectual unless recorded, c. 82, § 30.

Tenant in real action may be enjoined from committing waste, c. 100, § 7; liable in treble damages for strip or waste, c. 100, § 8.