

MAINE STATE LEGISLATURE

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SEVENTH REVISION

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Executions May Issue After Creditor's Death.

Sec. 22. How an execution may issue after creditor's death. R. S. c. 92, § 24. When a judgment creditor dies before the first execution issues, or before an execution issued in his lifetime is fully satisfied, such execution may be issued or renewed by order of any justice of the court rendering such judgment, in term time or vacation, or by like order of a municipal or police court or trial justice rendering such judgment, upon application in writing of the executor or general or special administrator of the deceased creditor; and any execution so issued or renewed, may be subsequently renewed; but no execution shall issue or be renewed, after the term within which it might have been done if the party had not died.

71 Me. 190.

Sec. 23. Recitals of the execution; to what uses property levied on shall be held. R. S. c. 92, § 25. In an execution so issued, originally or by renewal, besides the ordinary recitals, it shall be set forth in substance, that since the rendition of judgment, the creditor, (naming him) has died, and that the person whose name is inserted in his place, is the executor or administrator of his estate; and the command to the officer shall be the same as if the judgment had been recovered by the executor or administrator, who shall hold any real estate levied on, to the same uses as if he had recovered judgment in his representative capacity.

CHAPTER 102.

Partition of Real Estate.

Sec. 1. Partition, by writ at common law. R. S. c. 93, § 1. Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants may be compelled to divide the same by writ of partition at common law.

12 Me. 144, 327, 401; 16 Me. 391; 17 Me. 427; 21 Me. 49; *31 Me. 487; *35 Me. 110; 52 Me. 25; 64 Me. 99; *92 Me. 397; 110 Me. 63; 111 Me. 194.

Sec. 2. Partition by petition; form of petition. R. S. c. 93, § 2. Persons so entitled, and those in possession or having a right of entry for a term of years, as tenants in common, may present a petition to the superior court held in the county where such estate is, clearly describing it, and stating whether it is a fee simple, for life, or for years, and the proportion claimed by them, the names of the other tenants in common, and their places of residence, if known, and whether any or all of them are unknown.

5 Me. 461; 12 Me. 145, 327; 16 Me. 391; 17 Me. 427; 39 Me. 164; 52 Me. 416; 64 Me. 99; 94 Me. 490; 111 Me. 194; 118 Me. 1; 125 Me. 219.

Sec. 3. Filing, if all co-tenants are named; service. R. S. c. 93, § 3. The petition may be filed in the clerk's office in vacation, if all the co-tenants are named in it. A copy thereof, attested by the clerk, left with each or at his last and usual place of abode, twenty days before the session of the court to which it is addressed, is sufficient service.

100 Me. 548.

Sec. 4. Order of notice when not all named. R. S. c. 93, § 4. When the co-tenants are not all named in the petition, it may be presented to the court in that, or in any other county, returnable in the county where the estate is, and

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such notice shall be given to the other co-tenants, as the court orders; and in case of non-compliance therewith, or other imperfection of notice, the court may order further notice to be given.

5 Me. 464; 94 Me. 490; 96 Me. 558.

Sec. 5. When those not notified may appear; pleadings. R. S. c. 93, § 5. A person interested and not named in the petition, or out of the state, and not so notified as to enable him to appear earlier, may, in the discretion of the court, be permitted to appear and defend at any time before final judgment, on such terms as may be imposed. And any person, defendant in an action at law, or respondent in a petition for partition, may, jointly with others, or separately, by brief statement, without a plea of the general issue, allege any matter tending to show that partition ought not to be made as prayed for.

34 Me. 36; 35 Me. 463; 36 Me. 18; *46 Me. 90; 68 Me. 272.

Sec. 6. Counter brief statement may be filed. R. S. c. 93, § 6. The plaintiff or petitioner may reply by counter brief statement, alleging that the defendant or respondent has no interest in the premises, or other matter to show the insufficiency of the defense.

22 Me. 325.

Sec. 7. Guardian for infant or insane, and agent for non-resident. R. S. c. 93, § 7. When an infant or insane person, living in the state, has no guardian, and appears to be interested, the court shall appoint a guardian ad litem for him, and an agent for persons interested who had been out of the state for one year before the petition was presented, and do not return before judgment for the partition is to be made.

82 Me. 330.

Sec. 8. Division of time for occupation of sawmills. R. S. c. 93, § 8. Tenants in common of a sawmill may have a division of the time during which each may occupy according to his interest, as partition is made of an estate; and the court may make all necessary decrees in relation thereto.

64 Me. 465.

Sec. 9. Respondent, claiming a specific part, may have separate trial. R. S. c. 93, § 9. When it appears from the pleadings that one or more respondents claim to be seized of the whole of a specific parcel of the premises of which partition is prayed, there may first be a separate trial of that question only, at the discretion of the presiding judge. When it appears on trial that any respondent has no interest in the estate, he shall be heard no further, and the petitioner shall recover of him the costs of the trial.

22 Me. 326; 82 Me. 328; 90 Me. 102.

Sec. 10. Costs. R. S. c. 93, § 10. When a petitioner is found to own a less share than is claimed in his petition, he shall have partition of such share, but the respondent recovers costs. When found entitled to have partition of the share claimed, he recovers costs of the respondent. In such cases, or on default, a judgment that partition be made shall be entered. In all other cases, including default of the respondent or respondents, when judgment for partition is given, the court, after notice to all parties in interest, may, in the discretion of the presiding justice, apportion the costs between the petitioner and respondent or respondents, or allow the petitioner to recover costs of the proceedings against the respondent or respondents to be taxed the same as in a civil action, and execution may be issued therefor.

45 Me. 164; 46 Me. 90; 76 Me. 549; 87 Me. 140.

Sec. 11. Owners may join or sever; proceedings when petitioner dies or conveys. R. S. c. 93, § 11. The owners may join or sever in their petitions. When they join, and one dies or conveys his share, or when a several petitioner

dies or conveys his share, the petition, by leave of court, may be amended by erasing his name and inserting the names of his heirs, devisees or grantees, and they may proceed with the process for their respective shares.

60 Me. 208.

Sec. 12. On death of respondent, heirs or devisees may be cited in. R. S. c. 93, § 12. The petition is not abated by the death of a party respondent. His heirs or devisees, or if the estate is for a term of years, his executor or administrator may be cited to appear, and upon service on them, they shall become parties to the proceedings; and the court may order such judgment, and with such costs, as the law and facts require.

Sec. 13. Commissioners to be appointed. R. S. c. 93, § 13. After judgment that partition be made, the court shall appoint three or five disinterested persons as commissioners, to make partition and set off to each his share, which shall be expressed in the warrant. Their shares may be set off together, or in one tract, or the share of each may be assigned to him, at his election.

15 Me. 367; 50 Me. 264.

Sec. 14. Oath and certificate on warrant. R. S. c. 93, § 14. Before proceeding to discharge their duty, the commissioners shall be sworn to the faithful and impartial performance of it; and the justice of the peace, before whom they are sworn, shall make his certificate thereof on the back of their warrant.

Sec. 15. Notice; all to be present, but majority may report. R. S. c. 93, § 15. They shall give reasonable notice of the time and place for making partition, to all concerned who are known and within the state. They must all be present at the performance of their duties, but the report of a majority is valid.

20 Me. 293; 32 Me. 137; 38 Me. 540.

Sec. 16. Share of tenant in exclusive possession of part, how assigned; his improvements to be considered. R. S. c. 93, § 16. When one of the tenants in common, by mutual consent, has had the exclusive possession of a part of the estate, and made improvements thereon, his share shall be assigned from or including such part; and the value of the improvements made by a tenant in common shall be considered, and the assignment of shares be made in conformity therewith. When any person shall have heretofore made or shall hereafter make improvements upon a part of any real estate with the consent of the owners thereof, or any of them, and such person shall have thereafter become a tenant in common of such real estate, his share shall be assigned from or including such part, and the value of the improvements so made shall be considered, and the assignment of shares made in conformity therewith.

38 Me. 540; 50 Me. 265; 68 Me. 140, *569; 71 Me. 379; 120 Me. 555.

Sec. 17. Parcel of greater value than share, assigned to one who pays to others. R. S. c. 93, § 17. When any parcel of the estate to be divided is of greater value than either party's share, and cannot be divided without great inconvenience, it may be assigned to one party by his paying the sum of money awarded to the parties who have less than their shares; but the report shall not be accepted, until the sums so awarded are paid or secured to the satisfaction of the parties entitled thereto.

15 Me. 367; 30 Me. 219; *62 Me. 113; 120 Me. 555.

Sec. 18. Expenses may be apportioned. R. S. c. 93, § 18. An account of all the charges and expenses attending the partition shall, on request of any petitioner, be presented to the court, and the presiding justice shall determine, after notice to all concerned, 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.

Sec. 19. When share of greater value is set off to one, part owner out of state may have new division. R. S. c. 93, § 19. If a share larger than his real interest, or more than equal in value to his proportion, is set off to a part owner, an aggrieved part owner who at the time of partition was out of the state and was not notified in season to prevent it, his heirs or assigns, may, within three years thereafter, apply to the court that made the partition, and it shall cause a new partition to be made.

82 Me. 331.

Sec. 20. Proceedings on new partition. R. S. c. 93, § 20. In such new partition, so much shall be taken from any share as the same shall be adjudged to be in excess of its just proportion of the whole, estimated as in the condition when first divided, and no more; and if improvements have been made on the part taken off, reasonable satisfaction therefor, to be estimated by the commissioners, shall be made to him, who made the improvements, by him to whose share they are added; and the court may issue execution therefor, and for costs of the new partition.

82 Me. 331.

Sec. 21. Report; proceedings thereon; judgment. R. S. c. 93, § 21. Commissioners in all cases shall make and sign a written return of their proceedings, and make return thereof with their warrant to the court from which it issued. Their report may be confirmed, recommitted, or set aside, and new proceedings be had as before. When confirmed, judgment shall be entered accordingly, and recorded by the clerk, and by the register of deeds of the district where the estate is.

2 Duplicate plans to be filed in registry of deeds, c. 15, § 22; 20 Me. 294; 30 Me. 219; 39 Me. 218.

Sec. 22. Judgment, effect of. R. S. c. 93, § 22. Such judgment is conclusive on all rights of property and possession of all parties and privies to the judgment, including all persons who might have appeared and answered, except as hereinafter provided.

29 Me. 42, 130, 560.

Sec. 23. When an unequal share is left out of state, new partition may be made. R. S. c. 93, § 23. When a person to whom a share was left was out of the state when notice was served on him, and did not return in season to become a party to the proceedings, he may, within three years after final judgment, apply to the same court for a new partition; and 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 twenty.

82 Me. 331.

Sec. 24. Claimant not party to proceedings, is not affected by judgment. R. S. c. 93, § 24. When a person not a party to the proceedings claims to hold the premises described, or any part thereof, in severalty, he is not precluded by the judgment for partition; but may bring his action therefor, as if no such judgment had been rendered.

29 Me. 42; 33 Me. 102; 82 Me. 328.

Sec. 25. Person not party claiming a share assigned or left, rights of. R. S. c. 93, § 25. When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he is concluded so far as it respects the assignment of the shares; but he is not prevented from maintaining an action within the time in which it might have been brought if no judgment for partition had been rendered, for the share claimed, against the tenant in possession, the same as if the demandant had claimed the piece demanded, instead of an undivided part of the whole.

Sec. 26. Part owner, to whom no share was assigned, rights of. R. S. c. 93, § 26. When a person, not a party to the proceedings, to whom no share was assigned or left, claims to have been a part owner of the estate, he is concluded so far as it respects the partition, but not from maintaining an action, against each person holding a share, for his proportion of each share as owned before partition was made.

Sec. 27. Person evicted of his share, to have new partition. R. S. c. 93, § 27. When a person to whom a share has been assigned or left is evicted by an elder and better title than that of the parties to the judgment, he is entitled to a new partition of the residue, as if no partition had been made.

Sec. 28. Mortgage, attachment, or lien on a share in common holds the share set out. R. S. c. 93, § 28. A person having a mortgage, attachment, or other lien on the share in common of a part owner shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien remains in force on the part assigned or left to such part owner.

111 Me. 194; *117 Me. 211.

Sec. 29. Lots reserved for public uses to be first set off. R. S. c. 93, § 29. When portions or lots are reserved for public uses in a tract of land to be divided, they shall first be set out, of an average quality and situation, and a return made thereof to the land office, with a description of its quality and location; and the commissioners' return of partition, accepted and recorded as before provided, shall be a valid location of such reserved lands.

See c. 11, § 29; 17 Me. 427; 61 Me. 411.

Joint tenants and tenants in common liable in treble damages for cutting trees and timber pending partition, c. 109, § 5.

CHAPTER 103.

Petitions and Actions of Review.

Sections 1- 5 Petitions for Review.

Section 6 Second Review.

Sections 7-15 Actions of Review.

Petitions for Review.

Sec. 1. Review within three years after judgment; special cases. R. S. c. 94, § 1. Any justice of the superior court may grant one review in civil actions, including petitions for partition, and for certiorari, and proceedings for the location of lands reserved for public uses, when judgment has been rendered in any judicial tribunal in said county, if petition therefor is presented within three years after the rendition of judgment, and in the special cases following:

1 Me. 324; 3 Me. 93; 4 Me. 61, 537; 6 Me. 412, 479; 8 Me. 212; 19 Me. 108, 260;
24 Me. 170; 27 Me. 537; 33 Me. 233, 586; 39 Me. 170; 67 Me. 408; 72 Me. 366;
102 Me. 421; 122 Me. 264.

I. When a petition for a review of an action defaulted without appearance is presented within three years after an officer having the execution issued on the judgment therein demands its payment of the defendant or his legal representative.

33 Me. 586; 42 Me. 571; 73 Me. 30; 84 Me. 303.