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Chapter 122.

Forcible Entry and Detainer. Tenancies.

Sec. 1. Forcible entry and detainer.—Process of forcible entry and detainer may be maintained against a disseizor who has not acquired any claim by possession and improvement; against a tenant holding under a written lease or contract or person holding under such tenant; against a tenant where the occupancy of the premises is incidental to the employment of a tenant; at the expiration or forfeiture of the term, without notice, if commenced within 7 days from the expiration or forfeiture of the term; and against a tenant at will, whose tenancy has been terminated as provided in the following section. (R. S. c. 109, § 1.)

Cross reference.—See note to c. 113, § 18, re defendant in forcible entry and detainer may defend on equitable grounds.

The action of forcible entry and detainer is a summary process to obtain possession of real estate. Throumoulos v. Bernier, 143 Me. 286, 61 A. (2d) 681.

And the United States is a proper party to institute and maintain an action of forcible entry and detainer under this section. United States v. Burrill, 107 Me. 382, 78 A. 568.

The United States acts in a dual capacity, as a sovereign and as a body politic or corporate; and while in its sovereign capacity it cannot be sued, following the common-law doctrine that suit will not lie against the crown, yet, in its corporate capacity as a body politic, it can contract and hold property, real and personal, and as an attribute to such right, can sue to preserve and protect its property, and can avail itself of the same remedies and in the same tribunals that other owners can, and hence may sue in forcible entry and detainer in a state court to obtain possession of its property. United States v. Burrill, 107 Me. 382, 78 A. 568.

Process must come within provisions of statutes.—The process of forcible entry and detainer is one created and regulated by the statutes, and, in order to be maintained, must come clearly within their provisions. Treat v. Bent, 51 Me. 478; Eveleth v. Gill, 97 Me. 315, 54 A. 756; Karahalies v. Dukais, 108 Me. 527, 81 A. 1011; Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

And it is available only against persons named.—If the defendant is not a disseizor, a tenant holding under a written lease or contract, a person holding under such tenant, a tenant whose occupancy is incidental to his employment, or a tenant at will of the complainants, the complaint cannot be sustained under this section. Boston & Maine R. R. v. Durgin, 67 Me. 263.

Plaintiff should allege facts showing process available.—The summary process of forcible entry and detainer at common law was a criminal, or quasi criminal, process and was only allowed where the entry and detainer were with force, the strong hand. The legislature of this state has devised a process of the same name, but now purely civil in form and nature, for the cases specified in the statute. It follows under the general law of pleading that the plaintiff in such a process should allege in his declaration the facts declared by the statute to be an occasion where the process may be used. Eveleth v. Gill, 97 Me. 315, 54 A. 756; Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

The statutory process of forcible entry and detainer is summary, and to sustain it a plaintiff must bring himself completely within the terms and conditions of the statute authorizing it. Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

And he must prove case stated.—The rule that a plaintiff cannot recover by stating one case and proving another and different case, applies to actions of forcible entry and detainer as well as to other actions. Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

Process available without proof of actual or threatened force.—The legislature has extended the application of this summary process, from the original limitation to cases of actual force, to the following cases, which can be sustained without proof of such actual or threatened force: 1. Against a disseizor, who has not acquired any claim by possession and improvement. 2. Against a tenant, or subtenant, holding under a written lease or contract, at the expiration or forfeiture of the term, without notice, if instituted

in seven days after the expiration or forfeiture. 3. Against a tenant at will, whose tenancy has been terminated in the manner set forth in § 2. Dunning v. Finson, 46 Me. 546. See Gower v. Waters, 125 Me. 223, 132 A. 550.

But it retains its tortious character.—The action of forcible entry and detainer was originally a quasi criminal process, and, while it is now civil in its aspect, it has retained its highly tortious character. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

Process available where deed purporting to convey whole conveys only part.—A grantee may maintain forcible entry and detainer against his grantor, the grantor not defending under any other title, if the deed purports to convey the whole, but in fact conveys only an undivided half of the described premises. Jewett v. Mitchell, 72 Me. 28.

The process of forcible entry and detainer is not adapted to the relation subsisting between mortgagee and mortgagor. The process is available only against a disseizor, who has not acquired any claim by possession and improvement, and against a tenant holding under a lease or contract, or person holding under such tenant, at the expiration or forfeiture of the term, if the process is commenced within seven days from the expiration or forfeiture of the term; and against a tenant at will, whose tenancy has been terminated in the manner provided in § 2. Reed v. Elwell, 46 Me. 270.

The case of mortgagor and mortgagee rests upon the peculiar provisions of the statute as to the mode of entry, and the legislature did not contemplate that this process should apply ordinarily to such a case, either under the provision in relation to disseizin or that in relation to tenants at will. Dunning v. Finson, 46 Me. 546; Clement v. Bennett, 70 Me. 207.

Mortgagor in possession is not a disseizor.—The provision in our statutes providing for this summary process against a disseizor, who has not been in possession of the premises long enough to be entitled to betterments, does not apply to the case of a mortgagor in possession, who has prevented the mortgagee from taking actual possession, or excluded him after possession taken. The disseizin contemplated by this section is not a disseizin which exists only at the election of a party, for the purpose of trying his title, but a disseizin at the common law, which cannot exist as between mortgagee and mortgagor, so long as the debt secured by the mortgage remains unpaid. Reed v. Elwell, 46 Me. 270.

Nor is he a tenant within the meaning of this section. Clement v. Bennett, 70 Me. 207. See note to § 2, re mortgagor not tenant at will.

But process is available in case of equitable mortgage.—The process of forcible entry and detainer lies by an equitable mortgagor; although otherwise, where the parties to the suit are parties to a legal instead of an equitable mortgage. Jewett v. Mitchell, 72 Me. 28.

Process available against disseizor.—It is not necessary that the defendant be a tenant of the plaintiff. The law now allows such process to be commenced against a disseizor. Baker v. Cooper, 57 Me. 388.

Under this section, forcible entry and detainer may be maintained against a disseizor who has not been long enough in possession to be entitled to improvements. John v. Sabattis, 69 Me. 473; Folsom v. Clark, 72 Me. 44.

If he is not entitled to betterments.—The action of forcible entry and detainer cannot be maintained at all if the defendant is entitled to betterments. The statute distinctly so states. "Process of forcible entry and detainer may be maintained against a disseizor who has not acquired any claim by possession and improvement." If therefore, the defendant is entitled to betterments, such claim if established is not to be enforced in this action but it destroys the action itself and leaves both parties to their respective rights and remedies in a real action. United States v. Burrill, 107 Me. 382, 78 A. 568.

Whether his possession originated in tenancy or otherwise.—This section makes the process available in two classes of cases: The one applies exclusively to situations existing between landlords and tenants, and the other to a withholding of possession by a disseizor, irrespective of whether the disseizor's possession originated in a tenancy or otherwise. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

The first clause of this section makes no mention of tenancy, and if the action is within that clause it is not necessary that the person against whom the action is brought be a tenant. The essential element is that he be a disseizor. Lacking this element the clause does not apply. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

Disseizin is a wrongful putting out of

him that is seized of a freehold. Dyer v. Chick, 52 Me. 350; Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

A disseizor is one who enters intending to usurp the possession and to oust another of his freehold. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

The clearest and most comprehensive definition of a disseizin perhaps, is an actual, visible and exclusive appropriation of land, commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim arising from the acts and circumstances attending the appropriation to hold the land against him who was seized. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

And the term "disseizor," as used in this section, is strictly a legal term and carries a wrongful import. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

Common-law disseizin is contemplated by this section.—The disseizin contemplated by this section is not a disseizin which exists only at the election of a party, for the purpose of trying his title, but a disseizin at common law. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

If the plaintiff is entitled in law to possession of the property and as against him, the defendant is a disseizor and the remedy of forcible entry and detainer is an appropriate one. Rancourt v. Nichols, 139 Me. 339, 31 A. (2d) 410.

It is true that the legislature has defined the use of the action of forcible entry and detainer and likewise has defined the procedure, but it is to be presumed that it had in mind the nature and general scope of the action and intended to give it such import as is not taken away by the terms of the statute. It no doubt selected this form of action, with the changes made in its procedure, as an appropriate remedy against one who wrongfully withholds possession from the one rightfully entitled to the same. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

But person having rights of lessee is not disseizor.—A defendant, having in the eyes of the law all the rights of a lessee, cannot be deemed "a disseizor who has not acquired any claim by possession and improvement." An action of forcible entry and detainer, based on that clause of the section, cannot be maintained. Kirstein Holding Co. v. Bangor Veritas, 131 Me. 421, 163 A. 655.

And every trespass is not a disseizin.—Every disseizin is a trespass, but every trespass is not a disseizin. A manifest intention to oust the real owner must clearly appear, in order to raise an act which may be only a trespass to the bad eminence of disseizin. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

Only owner at time of forfeiture can bring process against tenant.—It is the owner of the premises at the time of the forfeiture of the lease who may bring forcible entry and detainer against the tenant, and he alone. Small v. Clark, 97 Me. 304, 54 A. 758.

Process available against tenant which is quasi public corporation.—This section, which provides that an action of forcible entry and detainer may be maintained against a tenant holding under a written lease, "at the expiration or forfeiture of the term, without notice, if commenced within seven days from the expiration or forfeiture of the term," is applicable where such tenant is a quasi public corporation, engaged in the business of supplying electricity, for lighting and other purposes, to municipalities and their inhabitants. Bodwell Water Power Co. v. Old Town Elec. Co., 96 Me. 117, 51 A. 802.

Forcible entry and detainer against a tenant may be maintained, without notice, if commenced within seven days from the forfeiture. Small v. Clark, 97 Me. 304, 54 A. 758. See Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

Seven-day limitation not applicable to tenancy at will.—This section, authorizing the use of the process of forcible entry and detainer, recites that the process is available in some cases only "if commenced within seven days from the expiration or forfeiture of the term." This limitation is not applicable to tenancies at will terminated by notice under § 2. Dunning v. Finson, 46 Me. 546; Gilbert v. Gerrity, 108 Me. 258, 80 A. 704; McFarland v. Stewart, 142 Me. 265, 50 A. (2d) 194.

To hold that a landlord who has terminated a tenancy at will by notice must institute legal proceedings to eject his former tenant, or use force for the purpose, within a week under penalty of having a new one created by inaction would compel unnecessary litigation. No argument based on sound reason can support the theory that a property owner must throw out a tenant at sufferance by physical force today who is willing to leave peacefully tomorrow or that he must place the burden of litigation expense up-

on himself and that tenant under those circumstances. McFarland v. Stewart, 142 Me. 265, 50 A. (2d) 194.

History of section.—See Dunning v. Finson, 46 Me. 546.

For cases under a former statute which gave the remedy in the case of an unlawful refusal of the tenant to quit, see Clapp v. Paine, 18 Me. 264; Sawyer v. Hanson, 24 Me. 542; Wheeler v. Cowan, 25 Me. 283.

Applied in Franklin Land, Mill & Water Co. v. Card, 84 Me. 528, 24 A. 960; Braman v. Dodge, 100 Me. 143, 60 A. 799; Shriro v. Paganucci, 113 Me. 213, 93 A. 358; Bennett v. Casavant, 129 Me. 123, 150 A. 319.

Cited in Gordon v. Gilman, 48 Me. 473.

Sec. 2. Tenancy at will; applies to buildings on land of another party.—Tenancies at will may be determined by either party by 30 days' notice in writing for that purpose given to the other party, and not otherwise save by mutual consent, excepting cases where the tenant, if liable to pay rent, shall not be in arrears at the expiration of the notice, in which case the 30 days' notice aforesaid shall be made to expire upon a rent day. Either party may waive in writing said 30 days' notice or any part thereof. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless he has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. (R. S. c. 109, § 2.)

I. General Consideration.
II. Termination by Notice.
III. Termination by Mutual Consent.
IV. Termination by Operation of Law.

Cross References.

See § 11, re lease voidable if house of ill fame; c. 141, § 3, re lease void if common nuisance.

I. GENERAL CONSIDERATION.

The object of this section was to prevent a breach of the peace, by protecting the tenant from molestation at the hands of his landlord, until he shall have had a reasonable opportunity to provide himself with other accommodations, and also, to seasonably advise the landlord of the intention of the tenant to vacate the premises, that he may engage another tenant. Cunningham v. Horton, 57 Me. 420.

This section was intended to prevent the sudden termination of a tenancy at will by one of the parties, against the will of the other, in cases where there was no valid agreement for its termination otherwise. Withers v. Larrabee, 48 Me. 570.

Purpose of last sentence of section.—The purpose of the legislature by the last sentence of this section was to enable the owner of a building erected on the land of a third person to recover the possession of the same from a tenant who had forfeited his rights and after due notice had refused to quit. Boston & Maine R. R. v. Durgin, 67 Me. 263.

History of section.—See Dunning v. Finson, 46 Me. 546; Seavey v. Cloudman, 90 Me. 536, 38 A. 540.

This section applies only to tenancies at will. Everything contemplated under it is predicted upon the existence of such a tenancy. Fisher v. Nelke, 114 Me. 112, 95 A. 508.

And mortgagor in possession is not tenant at will.—Although, in a loose sense, a mortgagor in possession is said to be tenant at will of the mortgagee, yet he is not within the reason or the letter of this section. He is not a lessee, or holding under a lessee, or holding demised premises without right after the determination of the lease. The remedies of a mortgagee are altogether of a different character, clearly marked out by law. Reed v. Elwell, 46 Me. 270.

A tenancy at will may be determined either by thirty days' notice in writing or by mutual consent. McLeod v. Amero, 111 Me. 216, 88 A. 652.

And a landlord may terminate a tenancy at will without entry therefor or alienation. Esty v. Baker, 50 Me. 325.

Notice and mutual consent are only statutory modes of terminating such tenancy.—By this section, a tenancy at will can be terminated only by thirty days' notice in writing therefor by one party to the other,

or by mutual consent. Thomas v. Sanford Steamship Co., 71 Me. 548; Rollins v. Moody, 72 Me. 135; Willoughby v. Atkinson Furnishing Co., 93 Me. 185, 44 A. 612.

Without the consent of the other, one party cannot terminate a tenancy at will, except by written notice in accordance with this section. Duley v. Kelley, 74 Me. 556.

A verbal lease of land creates only a tenancy at will which can be terminated by the parties thereto only in the mode prescribed by this section. Anderson v. Robbins, 82 Me. 422, 19 A. 910.

Section does not deprive landlord of common-law rights.—The existence of this civil process does not deprive a landlord of his common-law right to terminate a tenancy at will without notice and enter upon such termination. It furnishes him with a convenient and speedy process to regain possession of his premises of which he may avail himself instead of resorting to an entry without legal process and with force, if necessary, and a consequent liability to indictment in case of the use of excessive force, for which no exact standard can be prescribed for his guidance; but except so far as the statute regulating the use of this process is expressly or by necessary implication in conflict with the common law, it should not be held to deprive a landlord of his common-law rights. Gower v. Waters, 125 Me. 223, 132 A. 550.

Applied in Davis v. Thompson, 13 Me. 209; Lithgow v. Moody, 35 Me. 214; Dutton v. Colby, 35 Me. 505; Cunningham v. Holton, 55 Me. 33; Franklin Land, Mill & Water Co. v. Card, 84 Me. 528, 24 A. 960; Karahalies v. Dukais, 108 Me. 527, 81 A. 1011.

Cited in Reed v. Elwell, 46 Me. 270; Lambert v. Breton, 127 Me. 510, 144 A. 864.

II. TERMINATION BY NOTICE.

Notice to be given by one contracting party to the other.—The word "party" in this section is to be understood as party to the contract. The notice is given by one contracting party to the other contracting party, by the landlord to the tenant, or by the tenant to the landlord. Seavey v. Cloudman, 90 Me. 536, 38 A. 540.

And it must name the day on which the tenancy is to terminate, and will not operate to terminate it on any other day. Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

Until which day tenant's occupation is lawful.—The tenancy continues until the expiration of the time specified in the notice and the tenant's occupation is lawful until it has elapsed. Withers v. Larrabee, 48 Me. 570.

And his possession is not that of landlord.—The possession of a tenant at will, under this section, before notice, and for 30 days after, can in no sense be held to be the possession of the landlord. Gordon v. Gilman, 48 Me. 473.

The giving of notice of increase in rent cannot be held to comply with the statutory requirement of notice of termination. Ryan v. J. H. Cogan Co., 130 Me. 88, 153 A. 815.

Leaving notice at tenant's residence not sufficient service.—No mode of giving the notice is prescribed, but it is broadly declared that the notice shall be "given to the other party," that is, that the other party shall have notice. Under such a statute, to lay the foundation for the summary process of forcible entry and detainer, something more is required than merely leaving the notice at the tenant's residence at a distance from the demised premises in his absence without more. Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

Whatever might be the effect of giving the notice, the writing, to some agent of the tenant, or leaving it with someone on the demised premises in the absence of the tenant himself, it is clear that merely leaving the notice at some other place in his absence, and not with any agent nor with any explanation to anyone of its contents or purpose, is not a compliance with this section even though that other place be his residence. Nothing in the section indicates that a notice thus left is to be regarded as sufficient. Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

Expiration of notice must be coincident with rent day. — The expiration of the thirty days' notice to terminate the lease at will must be coincident in point of time with a payday of rent. Such notice given by either side will be valid. Wilson v. Prescott, 62 Me. 115.

Unless tenant is in arrears.—There is an exception to this requirement, so far as a termination by the landlord is concerned. His notice to the tenant may be thirty days without respect to any payday, if, when the notice expires, the tenant shall be in any arrears of paying his rent. That is, it matters not whether any rent becomes payable on such particular day or not, if any rent previously due then remains unpaid. The privilege of giving the limited notice is accorded only to the landlord. Of course, the tenant cannot take advantage of his own wrong. Wilson v. Prescott, 62 Me. 115. See Ryan v. J. H. Cogan Co., 130 Me. 88, 153 A. 815.

Tenant presumed to control possession until notice given.—If the landlord tacitly

renews his verbal lease at the end of every payday by an omission to serve notice to quit before that time, so does the tenant tacitly renew his promise from payday to payday as long as he neglects to give the notice required of him. Until notice given, the tenant is conclusively presumed to control the possession whether he actually occupies or not. Rollins v. Moody, 72 Me. 135.

Landlord entering without notice becomes trespasser.—If the landlord did not give the notice required by this section, but forcibly entered upon the premises, and held them in defiance of the tenant's rights, he becomes a trespasser. Cunningham v. Horton, 57 Me. 420.

And liable for damages. — A tenant at will, evicted by his landlord without notice, may recover damages for being deprived of the use of the premises for such term as he was entitled to occupy before his tenancy could be legally terminated. The same rule applies conversely, when the landlord sues for damages instead of rent. Rollins v. Moody, 72 Me. 135.

Plaintiff has burden of proving proper notice.—If the defendant is declared against as tenant at will whose tenancy was terminated by thirty days' notice in writing, the plaintiff has the burden to show that the tenancy had been thus determined by notice in the manner prescribed by this section. Gilbert v. Gerrity, 108 Me. 258, 80 A. 704.

But he need not allege and prove relationship of landlord and tenant at time of notice.—The fair construction of this section leads to the conclusion that it is not absolutely essential to allege or prove that the relation of landlord and tenant existed at the time of the notice. If the tenancy is at will, that tenancy may be terminated by a written notice. Such a tenancy the statute contemplates when no such relation exists as would authorize a suit for rent, or as would impose the respective rights of such a relation. Dunning v. Finson, 46 Me. 546.

For process available whether such relationship existed or not.—Wherever a case of a tenancy at will existed, however created, and whether the relation of landlord and tenant existed or not, and this tenancy has been terminated by the written notice specified, the process of forcible entry and detainer will lie for the owner to obtain possession. Dunning v. Finson, 46 Me. 546.

III. TERMINATION BY MUTUAL CONSENT.

Unless notice given termination must result from agreement of the parties.—As the tenancy is the result of the express or implied agreement of the contracting parties, so must be its termination, unless the notice required by this section is given. Withers v. Larrabee, 48 Me. 570.

And their minds must have met.—To show that the tenancy was terminated by mutual consent, it must appear that the minds of the parties met and agreed or assented to the fact. Thomas v. Sanford Steamship Co., 71 Me. 548.

And burden on party alleging termination to show mutual consent.—If no statutory notice is given, the burden of proof is on the party alleging the termination to show that the tenancy was determined by mutual consent. McLeod v. Amero, 111 Me. 216, 88 A. 652.

The surrender of the premises by the tenant and possession by the landlord are sufficient to show a termination of a tenancy at will. Thomas v. Sanford Steamship Co., 71 Me. 548.

But the delivery of the key by the tenant and keeping it by the landlord are not sufficient to show a surrender of the premises by the tenant and an acceptance by the landlord, unless that appears to be the intention of the parties. Thomas v. Sanford Steamship Co., 71 Me. 548.

And abandonment with knowledge of landlord is not sufficient.—It is not sufficient to constitute termination by mutual consent that the premises are abandoned by the tenant and that the fact is known by the landlord, but it must appear that he consents to it. Thomas v. Sanford Steamship Co., 71 Me. 548.

By an abandonment of the possession without the statutory notice, the tenant violates his agreement, but does not terminate the tenancy. Rollins v. Moody, 72 Me. 135.

And liability for rent continues in such case.—Where a tenant without written notice, or the consent of the landlord, abandons the possession of premises verbally leased to him, his liability for rent continues for whatever period may elapse before the tenancy becomes terminated by written notice, or until possession of the premises may be accepted by the landlord. Rollins v. Moody, 72 Me. 135.

IV. TERMINATION BY OPERATION OF LAW.

Section does not refer to termination by operation of law.—This section has reference to the determination of tenancies by the will and acts of the parties, and not by operation of law. Seavey v. Cloudman, 90 Me. 536, 38 A. 540.

The words "and not otherwise" refer rather to the acts of the parties to the ten-

ancy than to the effects of their acts by operation of law. Seavey v. Cloudman, 90 Me. 536, 38 A. 540.

And limitations which attach by operation of law are not affected.—This section does not assume to change the nature or essentials of a tenancy at will at common law. It only provides a new method by which the parties to the relation may terminate it as between themselves. Those incidents or limitations which attach themselves to the relation by operation of law are not affected by the section. Seavey v. Cloudman, 90 Me. 536, 38 A. 540.

Tenancy at will is terminated by alienation of property.—When title to property occupied by a tenant at will is passed by either deed or lease, the tenancy is terminated. Rancourt v. Nichols, 139 Me. 339, 31 A. (2d) 410.

A deed or lease from the owner to a third party will terminate a tenancy at will, and the court will not inquire as to the purpose of the conveyance. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

And changed to tenancy at sufferance.—By alienation of the estate by the landlord, a tenancy at will is changed to a tenancy at sufferance. Seavey v. Cloudman, 90 Me. 536, 38 A. 540; wherein it was said: "Our attention has been called to the case of Young v. Young, 36 Me. 133, in which it was held that the tenancy at will was ot terminated by alienation. The tenancy at will in that case was such by statute and not so at common law."

A tenant at will holding over after his tenancy is terminated becomes a tenant at sufferance whether the termination results by reason of notice from his landlord or by the alienation of his landlord's title. McFarland v. Stewart, 142 Me. 265, 50 A. (2d) 194.

Without notice.—It is an intrinsic quality in an estate at will, that it is personal and cannot pass to an assignee; and that by an alienation in fee, or for years, the estate at will is, ipso facto, determined and cannot subsist longer. This is a limitation of the estate, which is incident to its very nature; when, therefore, it is thus determined by operation of law, it is determined by its own limitation without notice. Seavey v. Cloudman, 90 Me. 536, 38 A. 540.

And 30 days' notice not required before bringing forcible entry and detainer.—A conveyance of property will terminate a tenancy and the notice which is required by this section to terminate a tenancy by the will of the landlord is not necessary before bringing forcible entry and detainer against the tenant. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

The grantee of the landlord, finding a tenant at will in occupation of the premises, may elect to regard the tenancy as terminated by the alienation, and bring forcible entry and detainer without giving the thirty days' notice, or he may give the notice and then bring his action. Small v. Clark, 97 Me. 304, 54 A. 758.

But tenant must have some notice or knowledge of alienation.—The action of forcible entry and detainer cannot be maintained by the alienee of property against a tenant at will of the former owner as a disseizor without notice to the tenant of the alienation, or knowledge of the same by the tenant. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

It is necessary to distinguish in adjudicated cases when the court is referring to the statutory notice necessary to terminate a tenancy by will of the parties, as provided in this section, and when it is referring to a notice to the tenant after the termination of tenancy by operation of law, a disregard of which notice will constitute him a disseizor and make the action of forcible entry and detainer available against him. Sweeney v. Dahl, 140 Me. 133, 34 A. (2d) 673.

Sec. 3. Jurisdiction.—Trial justices and judges of municipal courts have jurisdiction of cases of forcible entry and detainer respecting estates within their counties. Such justices and judges have exclusive jurisdiction of such cases within their cities or towns unless interested; provided, however, that judges of muncipal courts shall also have jurisdiction of such cases in all towns in which they are authorized to hold court, notwithstanding the fact that their residence may be in some other town. (R. S. c. 109, § 3.)

Applied in Labaree v. Brown, 38 Me. 482.

In cases of forcible entry and detainer, parties are entitled to a trial by jury only upon the issue of this title (see § 6 and note). Of all other matters, the inferior court has exclusive jurisdiction, from whose judgment an appeal lies. Abbott v. Norton, 53 Me. 158.

Sec. 4. How commenced; recognizance when plaintiff lives out of state. — The process of forcible entry and detainer shall be commenced by in-

serting the substance of the complaint, as a declaration, in a writ of attachment, to be indorsed and served like other writs; and when the plaintiff lives out of the state and a recognizance is required of him, any person may recognize in his behalf and shall be personally liable. (R. S. c. 109, § 4.)

Plaintiff must state case within terms of statute.—Where the plaintiff resorts to the process of forcible entry and detainer, he must insert "the substance of the complaint, as a declaration, in a writ of attachment." In other words, he must state a case within the terms of the statute. Karahalies v. Dukais, 108 Me. 527, 81 A. 1011. See note to § 1.

And complaint must show jurisdiction on its face.—A complaint for forcible entry and detainer must disclose enough upon its face to give the court jurisdiction without resort to parol testimony. Karahalies v. Dukais, 108 Me. 527, 81 A. 1011.

Applied in Woodside v. Wagg, 71 Me. 207.

Sec. 5. Writ of possession; service.—When the defendant is defaulted or fails to show sufficient cause, judgment shall be rendered against him for possession of the premises and a writ of possession be issued to remove him, which may be served by a constable. (R. S. c. 109, § 5.)

Sec. 6. When defendant files brief statement of title.—When the defendant pleads not guilty and files a brief statement of title in himself or in another person under whom he claims the premises, he shall, except as hereinafter provided, recognize in a reasonable sum to the claimant, with sufficient sureties, conditioned to pay all intervening damages and costs and a reasonable rent for the premises; and the claimant shall in like manner recognize to the defendant, conditioned to enter the suit at the next term of the superior court and to pay all costs adjudged against him. If either party neglects so to recognize, judgment shall be rendered against him as on nonsuit or default. (R. S. c. 109, § 6.)

The transfer of an action of forcible entry and detainer to the superior court is governed by this section. Haskell v. Young, 134 Me. 221, 184 A. 394.

Plea of not guilty and filing of statement of title remove case to superior court.—If the defendant pleads not guilty, and files a brief statement of title in one under whom he claims as tenant, this plea necessarily, by force of this section, suspends the process before the municipal court and brings it up to the superior court, where the issue can only be presented upon the brief statement. Abbott v. Norton, 53 Me. 158.

Where defendant's title is only issue.—The plaintiff, as in all other cases, must prove his title or right to maintain the action. And upon removal, only the title set up by the defendant is in issue. If, however, the defendant succeeds in establishing title in himself, or in one under whom he claims, it necessarily defeats the plaintiff's title. Reed v. Reed, 113 Me. 522, 95 A. 211.

All other issues being waived by the removal.—Where the case is removed to the superior court under this section, the only issue open to the defendant in that court is the one of title. The court below had exclusive jurisdiction, subject to appeal, of all other issues. By pleading title and securing a removal of the case all other issues are waived. Reed v. Reed, 113 Me. 522, 95 A. 211.

The defendant by pleading title and securing a removal of the case to the superior court, waives all other defenses, and the only issue triable in such court is that of the defendant's title. Reed v. Reed, 115 Me. 441, 99 A. 181.

And defendant has right to open and close.—In a case of forcible entry and detainer in which the defendant in the municipal court pleads title in himself, and thereupon, as required by this section, the case is removed to the superior court, in the latter court the defendant's title is the only issue, and upon that issue the burden is on the defendant, at the outset, and he has the right to open and close. Reed v. Reed, 115 Me. 441, 99 A. 181.

Case not removed if defendant fails to file recognizance.—Under this section, on the defendant's failure to file his recognizance, it is the duty of the municipal court to enter judgment against the defendant as on default. Such a case is not in order for transfer to the superior court. Haskell v. Young, 134 Me. 221, 184 A. 394.

Section not applicable when defendant claims under contract with plaintiff.—This section is not applicable in any way to a case where the defendant claims to hold under a contract with the plaintiff himself, but only when, by his brief state-

ment, he asserts title in himself or in some third party under whom he claims. Sweetser v. McKenney, 65 Me. 225.

Or when he merely denies plaintiff's title.—This section provides for removal of a case of forcible entry and detainer only when the defendant files a brief statement of title in himself or in another person under whom he claims. It does not provide for removal when the defendant merely denies the plaintiff's title. The section contemplates a removal only when there is a conflict of titles. In all other cases the lower court has jurisdiction of all issues. Reed v. Reed, 113 Me. 522, 95 A. 211.

History of section. — See Haskell v. Young, 134 Me. 221, 184 A. 394.

Applied in Merrill v. Hinckley, 49 Me. 40; Ingalls v. Chase, 68 Me. 113; Ladd v. Dickey, 84 Me. 190, 24 A. 813; United States v. Burrill, 107 Me. 382, 78 A. 568; Bennett v. Casavant, 129 Me. 123, 150 A. 319.

Sec. 7. Claimant may allege that brief statement intended for delay.—The claimant may make a written allegation that the brief statement of the defendant is frivolous and intended for delay and the magistrate shall then examine the case so far as to ascertain the truth of such allegation, and if satisfied of the truth thereof, he shall proceed to try the cause upon the plea of not guilty, and if it is determined in favor of the claimant, he may issue a writ of possession for removal of the defendant; but this shall not prevent an appeal as provided in the following section. (R. S. c. 109, § 7.)

Applied in Merrill v. Hinckley, 49 Me. 40.

Sec. 8. Appeal.—Either party may appeal from a judgment to the superior court next to be held in the county. When the claimant appeals, he shall recognize in manner aforesaid to the defendant, except as hereinafter provided, conditioned to enter the suit and to pay all costs adjudged against him. When the defendant appeals, he shall recognize in like manner to the claimant, conditioned to enter the suit and to pay all intervening costs and such reasonable rent of the premises, as the magistrate shall adjudge, if the judgment is not reversed. (R. S. c. 109, § 8.)

Where there is no recognizance, when one is required, the appeal cannot be sustained. Merrill v. Hinckley, 49 Me. 40.

And appeal not perfected if recognizance contains requirements not specified in section.—Where the recognizance taken is not in its terms in conformity with the statute, but contains requirements not specified therein, although it does include all the statute conditions, it is void and the appeal is not perfected, and the appellate court has no jurisdiction. Merrill v. Hinckley, 49 Me. 40.

This section does not authorize the recognizance to be taken to prosecute the appeal "with effect." Dennison v. Mason, 36 Me. 431.

The statute recognizance requires only that the claimant shall enter the suit and not that "he shall prosecute his appeal with effect." Merrill v. Hinckley, 49 Me. 40.

The recognizance required of the claimant under this section provides for only two liabilities: That the suit shall be entered and to pay all costs adjudged against him. The statute is silent as to damages. Merrill v. Hinckley, 49 Me. 40.

The claimant is not responsible for costs, if the final judgment is in his favor, although he may fail to obtain a writ of restitution. Merrill v. Hinckley, 49 Me. 40.

Defendant liable for rent only if judgment not reversed.—The obligation "to pay such reasonable rent of the premises as the magistrate shall adjudge" accrues by the statute only "if the judgment is not reversed." But in this recognizance the words "if the judgment is not reversed" are omitted. Now to pay the reasonable intervening rent, and to pay the reasonable intervening rent in case the judgment of the magistrate appealed from is not reversed, are very different obligations. The one is an absolute undertaking, the other a conditional one. In the latter case, the liability of the party recognizing may never attach, while in the former it arises at once upon his entering into the recognizance. The magistrate had no legal authority to require of a party claiming an appeal, and as a preliminary to granting it, a recognizance upon conditions so materially different from those which the statute prescribes, and so opposed to the just rights of the defendant. Dennison v. Mason, 36 Me. 431.

And he is not liable for rent after issuance of writ of possession under § 7. — When a writ of possession issues to re-

move the defendant, under § 7, although he is allowed to appeal from the judgment on the general issue, a recognizance is not required conditioned that the defendant should pay rent, after his removal under the writ. This section requires it only for such reasonable rent as the magistrate shall adjudge. In such a case the magistrate could not reasonably adjudge that any rent should be secured. Merrill v. Hinckley, 49 Me. 40.

Applied in Abbott v. Norton, 53 Me. 158; Small v. Clark, 97 Me. 304, 54 A. 758.

Cited in Ingalls v. Chase, 68 Me. 113; Throumoulos v. Bernier, 143 Me. 286, 61 A. (2d) 681.

Sec. 9. When judgment rendered for claimant, he shall have possession on filing recognizance.—When judgment is rendered for the claimant, a writ of possession shall issue in all cases if the claimant recognizes to the defendant in the manner before provided, conditioned to pay all such damages and costs as may be awarded against him if final judgment is rendered for the defendant; and if on trial the jury find for the defendant, they shall also find the damages sustained by him; in case of nonsuit, his damages shall be assessed by the court; and in either case the claimant may give evidence of any claim for rent of the premises, to be set off against damages claimed by the defendant. If the defendant prevails, the court may or not, as justice requires, issue a writ to restore to him possession of the premises. (R. S. c. 109, § 9.)

Applied in Small v. Clark, 97 Me. 304, 54 A. 758.

Cited in Merrill v. Hinckley, 49 Me. 40; Throumoulos v. Bernier, 143 Me. 286, 61 A. (2d) 681.

Sec. 10. Sums due for rent and damages.—Sums due for rent on leases under seal or otherwise and claims for damages to premises rented may be recovered in an action of assumpsit on account annexed to the writ, specifying the items and amount claimed, but no action or suit at law in assumpsit, debt, covenant broken or otherwise shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns or tenant, contained in a lease or written agreement to hire or occupy any building, buildings or part of a building, during a period when such building, buildings or part of a building, which the lessee, his assigns, legal representatives or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use or habitation; and no agreement contained in a lease of any building, buildings or part of a building or in any written instrument shall be valid and binding upon the lessee, his legal representatives or assigns to pay the rental stipulated in said lease or agreement during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use and habitation. (R. S. c. 109, § 10.)

Cross references. — See c. 141, § 3, re lease void if common nuisance; c. 180, § 35, re lease voidable if streams obstructed; c. 171, § 13, re levy of execution.

Account annexed should specify items and amount claimed. — This section requires that the account annexed to the writ should specify "the items and amount claimed." Willoughby v. Atkinson Furnishing Co., 93 Me. 185, 44 A. 612.

This section allows sums due for rent to be recovered in assumpsit upon an account annexed, the account "specifying the items and amount claimed." Plummer v. Bowie, 76 Me. 496.

And actual amount due need not have been agreed upon.—This section provides that "sums due for rent on leases under seal or otherwise * * * may be recovered in an action of assumpsit." To be sure, the recovery must be for a "sum due." And it may be conceded, following the analogy of actions of debt for rent reserved in leases under seal, that the sum must be certain, or one that can be made certain. But that does not mean that the actual amount due must have been agreed upon. It is sufficient if the definite elements of which it is composed are agreed upon, or if a certain basis of computation is agreed upon. What remains will be merely a computation. Nor does the basis

become indefinite or uncertain, in legal contemplation, because the parties may afterward disagree about the items which composed it. Rumford Falls Boom Co. v. Rumford Falls Paper Co., 96 Me. 96, 51 A. 810.

Applied in Willoughby v. Atkinson Furnishing Co., 96 Me. 372, 52 A. 756.

Cited in Coffin v. Freeman, 84 Me. 535, 24 A. 986; Calkins v. Pierce, 112 Me. 474, 92 A. 529.

Sec. 11. Lease of tenant of house of ill fame void at option of landlord.—When the tenant of a dwelling house is convicted of keeping it as a house of ill fame, the lease or contract by which he occupies it may, at the option of the landlord, be deemed void and the landlord shall have the same remedy to recover possession as against a tenant holding over after his term expires. (R. S. c. 109, § 11.)

See c. 100, §§ 149-152, re licensee of employment agency not to send persons to places of bad repute, etc.; c. 141, § 3, re lease void if common nuisance; c. 180, § 35, re lease voidable if streams obstructed.