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more persons who claim to own separate and distinct parcels of land in the same county by titles derived from a common source, or 2 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. (R. S. c. 158, § 52. 1959, c. 317, § 354.)

Cross reference.
See note to § 48.

Effect of amendment.—The 1959 amendment substituted "an action" for "a suit in equity" near the beginning of the first sentence and "complaint" for the word "bill" after the words "described in the" in the first sentence.

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

Sec. 53. Service when defendant cannot be found; appointment of agent; expenses.—Service in such action shall be as provided in section 50. 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 and who have not appeared in the action, it may of its own motion, or on the representation of any party, appoint an agent, guardian ad litem or next friend for 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. (R. S. c. 158, § 53. 1959, c. 317, §§ 355, 356.)

Effect of amendments. — This section was amended twice by P. L. 1959, c. 317. Section 355 of P. L. 1959, c. 317, rewrote the first sentence. Section 356 amended the third sentence by deleting "within the state" following "process" and substituting "action" for "suit" and "for" for "of" preceding "any such defendant."

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

Sec. 55. Action by owners of wild land.—Any person or persons claiming an estate of freehold in wild lands or in an interest in common and undivided therein, if the plaintiff and those under whom he claims has for 4 years next prior to the filing of the complaint held such open, exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of wild lands in this state, may maintain an action to quiet or establish the title thereto or to remove a cloud from the title thereto, as provided in sections 52 to 54. (R. S. c. 158, § 55. 1959, c. 317, § 357.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "bill," "an action" for "a suit in equity" and "sections 52 to 54" for "the 3 preceding sections."

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

Chapter 176.

Partition of Real Estate.

Sec. 1. Partition, by a civil action.—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 a civil action for partition. (R. S. c. 162, § 1. 1959, c. 317, § 358.)

Effect of amendment.—The 1959 amendment substituted "a civil action for partition" for "writ of partition at common law" at the end of this section.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective

December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 2. Form.—Persons entitled as provided in section 1, and those in possession or having a right of entry for a term of years, as tenants in common, may commence an action for partition in the superior court held in the county where such estate is by a complaint, 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. (R. S. c. 162, § 2. 1959, c. 317, § 359.)

Effect of amendment.—The 1959 amendment substituted "commence an action for partition in" for "present a petition to" after the word "may" and added "by a complaint" after the word "is" and before the word "clearly" in this section.

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

Sec. 3. Repealed by Public Laws 1959, c. 317, § 360.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1

Sec. 4. Service of process; notice by publication.—Service of process shall be made as in other civil actions and notice by publication to tenants whose identity or whereabouts are unknown shall be given as in other actions where publication is required. (R. S. c. 162, § 4. 1959, c. 317, § 361.)

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

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 5. When those not notified may appear; pleadings. — A person interested and not named in the complaint, 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. Any defendant may, jointly with others or separately, allege in his answer any matter tending to show that partition ought not to be made as prayed for. (R. S. c. 162, § 5. 1959, c. 317 § 362.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "petition" near the beginning of the first sentence, deleted "person" following "Any" and "in an action at law or respondent in a petition for partition" following "defendant" near the beginning of the second sentence, and deleted "by brief statement, without a plea of the general issue" following "separately" and added "in his answer" following "allege" in the middle of the second sentence.

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

Sec. 6. Repealed by Public Laws 1959, c. 317, § 363.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 7. Guardian for infant or insane and agent for nonresident.—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 shall appoint an agent for persons interested who had been out of the state for one year before the action was commenced and do not return before judgment for the partition is to be made and have no actual notice of the actions. (R. S. c. 162, § 7. 1959, c. 317, § 364.)

Effect of amendment.—The 1959 amendment added "shall appoint" preceding "an agent," substituted "action was commenced" for "petition was presented," and added "and have no actual notice of the actions" at the end of this section.

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

Sec. 9. Defendant, claiming specific part, may have separate trial. —When it appears from the pleadings that one or more defendants 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 justice. When it appears on trial that any defendant has no interest in the estate, he shall be heard no further and the plaintiff shall recover of him the costs of the trial. (R. S. c. 162, § 9. 1959, c. 317, § 365.)

Effect of amendment.—The 1959 amendment substituted "defendants" for "respondents" and "justice" for "judge" in the first sentence, and substituted "defendant" for "respondent" and "plaintiff" for "petitioner" in the second sentence.

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

Sec. 10. Costs.—When a plaintiff is found to own a less share than is claimed in his complaint, he shall have partition of such share, but the defendant recovers costs. When found entitled to have partition of the share claimed, he recovers costs of the defendant. In such cases or on default, a judgment that partition be made shall be entered. In all other cases, including default of the defendant or defendants, 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 plaintiff and defendant or defendants or allow the plaintiff to recover costs of the proceedings against the defendant or defendants to be taxed the same as in a civil action, and execution may be issued therefor. (R. S. c. 162, § 10. 1959, c. 317, § 366.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "petition," in the first sentence and "plaintiff" for the word "petitioner," "defendant" for "respondent" and "defendants" for "respondents" throughout the section.

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

Sec. 11. Owners may join or sever; when plaintiff dies or conveys. —The owners may join or sever in their complaints. When they join and one dies or conveys his share, or when a several plaintiff dies or conveys his share, the complaint, 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 action for their respective shares. (R. S. c. 162, § 11. 1959, c. 317, § 367.)

Effect of amendment.—The 1959 amendment substituted "complaints" for "petitions" in the first sentence and "plaintiff" for "petitioner," "complaint" for "petition" and "action" for "process" in the second sentence.

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

Sec. 12. On death of defendant, heirs or devisees cited in. — The action is not abated by the death of a party defendant. 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. The court may order such judgment, and with such costs, as the law and facts require. (R. S. c. 162, § 12. 1959, c. 317, § 368.)

Effect of amendment.—The 1959 amendment divided the second sentence into two sentences, and substituted "action" for "petition" and "defendant" for "respondent" in the first sentence.

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

Sec. 13. Commissioners appointed.

Commissioners decide questions relating to valuation and division of land.—The legislature has placed in the commissioners, and not in the court, the responsibility for deciding questions relating to the valuation and division of real estate. Morse v. Morse, 150 Me. 174, 107 A. (2d) 496.

Sec. 18. Expenses apportioned.—An account of all the charges and expenses attending the partition shall, on request of any plaintiff, be presented to the court, and the presiding justice shall determine, after notice to all con-

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

Effect of amendment.—The 1959 amendment substituted the word "plaintiff" for "petitioner" near the beginning of the section.

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

Sec. 21. Report; judgment; effect.

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

Grounds for objection to confirmation.—The report is not final. Commissioners must follow the warrant, and failure so to do is good ground for objection to the confirmation of the report. There must be no irregularities in procedure. Examples are: lack of proper notice by the commissioners; the report not showing equal division as to value; and the appraisal of a building by commissioners when the duty to appraise was not included in the judgment for partition. Morse v. Morse, 150 Me. 174, 107 A. (2d) 496.

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

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

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

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

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted "the partition was made and was not notified in season to prevent it" for "notice was served on him and did not return in season to become a party to the proceedings" in the first sentence.

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

Chapter 177.

Mortgages of Real Estate.

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

Effect of amendment.—The 1959 amendment divided this section into three sentences, substituted "real action" for "writ of entry" in the first sentence, deleted "on default, demurrer, verdict or otherwise" near the beginning of the second sentence