

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
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Sec. 9. Assignments of rents and profits.—When the estate, out of which the dower is to be assigned, consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents and profits thereof, to be received by the plaintiff as tenant in common with the other owners of the estate. (R. S. c. 161, § 9. 1961, c. 317, § 582.)

Effect of amendment.—The 1961 amendment substituted “plaintiff” for “demandant” in this section.

Sec. 10. Costs apportioned.—In actions for dower, when it appears to the court that there has been no refusal to set out dower, the costs accruing on the assignment of dower shall be apportioned according to the interests of the parties. (R. S. c. 161, § 10. 1961, c. 317, § 583.)

Effect of amendment.—The 1961 amendment substituted “for” for “of” near the beginning of this section.

Sec. 11. Waste.—If any woman endowed of lands commits or suffers any waste thereon, she forfeits the place wasted and the amount of the damages done to the premises, to be recovered in an action for waste by the person having the next immediate estate of inheritance therein; but the taking of fuel necessary for her own use and materials for the repair of buildings and for fences thereon from any woodlands of which she is endowed is not waste. (R. S. c. 161, § 11. 1961, c. 317, § 584.)

Effect of amendment.—The 1961 amendment substituted “for” for “of” near the middle of this section.

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 “defend-

ant” 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 “peti-

tion” 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 “respond-

ent” 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 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. (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 sec-

tion.

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 con-

firmation 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.

Sec. 24. Person not party claiming share assigned or left.—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 share, 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 plaintiff had claimed the piece demanded, instead of an undivided part of the whole. (R. S. c. 162, § 24, 1961, c. 317, § 585.)

Effect of amendment.—The 1961 amendment substituted “plaintiff” for “demand-

ant” near the end of this section and made a minor change in punctuation.

Chapter 177.

Mortgages of Real Estate.

Sec. 6. Fees of attorneys for foreclosure of mortgage.

Section does not preclude contract for payment of reasonable fee.—The provision of a fee of \$25 in certain types of mortgage foreclosure does not deny the right of the

parties to contract for payment of a reasonable fee. *Pepperell Trust Co. v. Mehlman*, 155 Me. 318, 154 A. (2d) 161.

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 and substituted “action” for “suit” near the end of that sentence.