

**CHAPTER 725**

**REAL ACTIONS**

**SUBCHAPTER 1**

**GENERAL PROVISIONS**

**§6701. Recovery of estates by real action**

Any estate in fee simple, in fee tail, for life or for any term of years may be recovered by a real action.

**§6702. Plaintiff must have right of entry**

No such action shall be maintained unless, at the time of commencing it, the plaintiff had such right of entry. No descent or discontinuance shall defeat any right of entry for the recovery of real estate.

**§6703. Recovery of specific or undivided part**

The plaintiff may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded.

**§6704. Writs of possession; judgment conclusive**

If the plaintiff recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment is conclusive on them.

Within 30 days after the judgment is recovered, the clerk of the court from which the judgment issues shall forward to the registry of deeds in the county where the real estate is situated a true copy of the property described in the judgment, together with the names of the parties, the date of judgment and the term of court in which the judgment was rendered, and the register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof, and record in the same manner as a deed of real estate, and the fee of the clerk of the court for preparing the copy shall be \$1 and the register of deeds shall be paid the fee set in Title 33, section 751 for entering and recording the same. Such sums shall be paid by the plaintiff. [PL 1981, c. 279, §8 (AMD).]

**SECTION HISTORY**

PL 1981, c. 279, §8 (AMD).

**§6705. Election by plaintiff to abandon**

Judgment on such verdict shall not be entered for 10 days or such further time as the court may order, during which time the plaintiff may make his election on record to abandon the premises to the defendant at the value estimated by the jury and file with the clerk for the use of the defendant a bond in the penal sum of 3 times the estimated value of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the defendant, his heirs or assigns, if they are evicted from the land within 20 years by a title better than that of the plaintiff. If such election is made and bond filed, judgment shall be rendered against the defendant for the sum so estimated by the jury, and costs.

**§6706. Installment payments by defendant**

At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the defendant shall have deposited with the clerk of the court for the plaintiff's use, one year's

interest on said sum, and 1/3 of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time.

If within 2 years after the rendition of judgment, the defendant pays one year's interest on the balance of the judgment due and 1/3 of the original judgment, execution shall be further stayed. Otherwise it may issue for 2/3 of the original amount of the judgment and interest thereon.

If the defendant, within 3 years after judgment, pays into the clerk's office the remaining 1/3 and interest thereon, having made the other payments, execution shall never issue. Otherwise, it may issue for the 1/3 and one year's interest thereon. The premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until 60 days after an execution might have issued, notwithstanding any intermediate conveyance, attachment or seizure upon execution; and such execution may be extended on said land or any part of it; or it may be sold on execution like an equity of redemption; in either case, subject to the right of redemption as in those cases. An execution or writ of possession may issue at any time within 3 months after default of payment by the defendant, in cases mentioned in this section, although it is more than a year after the rendition of judgment.

#### **§6707. Defendant's remedy if evicted**

If the defendant or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the plaintiff or his heirs to aid them in their defense against such title, they, their executors or administrators may recover back the money so paid, with lawful interest, of said plaintiff or his representatives; but if no notice was given, the defendant, in an action against the original plaintiff to recover the price paid for the premises, may show that he was evicted by a title better than that of the plaintiff.

#### **§6708. Commitment of waste after judgment prohibited**

No defendant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away timber or make any strip or waste on the land until the amount of such judgment is satisfied.

#### **§6709. Disqualification of juror interested in similar questions**

No person who, as proprietor or occupant, is interested in a similar question shall sit as juror in the trial of a cause when the value of buildings and improvements made on the demanded premises, and the value of the premises, are to be estimated.

#### **§6710. View by jury**

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

#### **§6711. Demand for life estate**

If the plaintiff claims an estate for life only in the premises and pays a sum allowed to the defendant for improvements, he or his executor or administrator, at the termination of his estate, is entitled to receive of the remainderman or reversioner the value of such improvements as they then exist; and shall have a lien therefor on the premises as if they had been mortgaged for its payment, and may keep possession until it is paid. If the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate.

#### **§6712. Impeachment of plaintiff's title deeds**

In all actions respecting lands or any interest therein, a title deed offered in evidence may be impeached by the defendant as obtained by fraud, where the grantor, if a party, could impeach it, if the defendant has been in the open, peaceable and adverse possession of the premises for 20 years.

## **SUBCHAPTER 2**

### **PARTIES**

#### **§6751. Joinder of plaintiffs**

Persons claiming as tenants in common or joint tenants may all, or any 2 or more, join in an action for recovery of lands, or one may sue alone.

#### **§6752. Guardians for minors**

In such case, if any heir is a minor, the court shall order notice to the guardian, and may appoint a guardian ad litem, if necessary, and direct all necessary amendments in the forms of proceeding.

## **SUBCHAPTER 3**

### **DISSEIZORS**

#### **§6801. Disseizor defined**

Every person alleged to be in possession of the premises demanded in such action, claiming any freehold therein, may be considered a disseizor for the purpose of trying the right.

#### **§6802. Defendant ousting plaintiff deemed disseizor**

If the person in possession has actually ousted the plaintiff or withheld the possession, he may, at the plaintiff's election, be considered a disseizor for the purpose of trying the right, although he claims an estate therein less than a freehold.

## **SUBCHAPTER 4**

### **SURVEYORS**

#### **§6851. Court may appoint and protect surveyors**

The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action, or in an action in which the title to land is involved, as shown by the pleadings filed, on motion of either party. If he is prevented by force, menaces or fear from performing the duties assigned him, the court may issue a warrant to the sheriff, commanding him with suitable aid to prevent such opposition. In the execution of such warrant, he may exercise all the power pertaining to his office. All persons refusing their aid when called for by him are liable to the same penalties as in like cases.

#### **§6852. Fees of surveyor; determination of amount paid by parties**

The amount of the fees and necessary expenses of the surveyor shall be fixed and determined by the court upon the acceptance of the report, and shall be paid as follows: After notice to all parties and a hearing held thereon, the court may fix and determine the amount to be paid by the parties to the action, or by either of the parties, and the amount determined to be due from the parties, or by either of the parties, shall have the force and effect of a judgment in favor of the surveyor against the parties or

either of the parties and any execution upon the judgment may run against the body of the party or of either of the parties. [PL 1983, c. 191 (AMD).]

#### SECTION HISTORY

PL 1977, c. 72 (AMD). PL 1983, c. 191 (AMD).

### SUBCHAPTER 5

#### PROOF

##### **§6901. Proof of seizin**

The plaintiff need not prove an actual entry under his title; but proof that he is entitled to an estate in the premises and that he has a right of entry therein is sufficient proof of his seizin.

##### **§6902. Degree of proof to recover**

If the plaintiff proves that he is entitled to an estate in the premises and had a right of entry therein when he commenced his action, he shall recover the premises, unless the defendant proves a better title in himself.

### SUBCHAPTER 6

#### RENTS, PROFITS AND IMPROVEMENTS

##### **§6951. Meaning of possession and improvement**

A possession and improvement of land by a defendant are within the meaning of this chapter, although a portion of it is woodland and uncultivated, and although not wholly surrounded by a fence or rendered inaccessible by other obstructions, if they have been open, notorious, exclusive and comporting with the usual management and improvement of a farm by its owner.

##### **§6952. Determination of rents and profits**

The rents and profits for which the defendant is liable are the clear annual value of the premises while he was in possession, after deducting all lawful taxes paid by him and the necessary and ordinary expenses of repairs, cultivation of the land or collection of the rents and profits.

##### **§6953. Allowance for improvements**

In estimating the rents and profits, the value of the use by the defendant of improvements made by himself or by those under whom he claims shall not be allowed to the plaintiff.

##### **§6954. Defendant not liable for over 6 years' rents**

The defendant is not liable for the rents and profits for more than 6 years, nor for waste or other damage committed before that time, unless the rents and profits are allowed as an offset to his claim for improvements.

##### **§6955. Recovery of damages against other persons**

Nothing herein contained shall prevent the plaintiff from maintaining an action for mesne profits or for damage to the premises against any person, except the defendant in a real action who has had possession of the premises or is otherwise liable to such action.

##### **§6956. Betterments allowed after 6 years' possession**

When the demanded premises have been in the actual possession of the defendant or of those under whom he claims for 6 successive years or more before commencement of the action, such defendant shall be allowed a compensation for the value of any buildings and improvements on the premises made by him or by those under him whom he claims, to be ascertained and adjusted as provided.

**§6957. Tenant ousted after 6 years may recover for improvements**

When a person makes entry into lands or tenements of which the tenant in possession, or those under whom he claims, have been in actual possession for 6 years or more, and withholds from such tenant the possession thereof, the tenant may recover of the person so entering, or of his executor or administrator, the increased value of the premises by reason of the buildings and improvements made by the tenant or by those under whom he claims, to be ascertained by the principles hereinbefore provided. These provisions extend to the grantee or assignee of the tenant in dower and of any other life estate. A lien is created on the premises in favor of such claim, to be enforced by an action commenced within 3 years after such entry. It is no bar to such action if the tenant, to avoid cost, yields to the superior title.

**§6958. Defendant may have betterments**

The defendant shall have the benefit of this chapter as to the increased value of premises when the cause, including all real actions brought by a reversioner or remainderman, or his assigns, after the termination of a tenancy in dower, or any other life estate, against the assignee or grantee of the tenant of the life estate, or against his heirs or legal representatives, is determined in favor of the plaintiff.

**§6959. Request of either party for appraisal of improvements**

The responsive pleading of the defendant shall state as a counterclaim any claim which he has to compensation for buildings and improvements on the premises and may request an estimation by the jury of the increased value of the premises by reason thereof. The plaintiff may file a request, in writing, that the jury would estimate what would have been the value of the premises at the time of trial, if no buildings had been erected, improvements made or waste committed. Both these estimates they shall make and state in their verdict. The jury shall allow for no buildings or improvements, except those that they find were made by the defendant, his grantor or assignor, and were judicious and proper under the circumstances.

**§6960. Valuation of betterments**

If the defendant, so claiming, alleges and proves that he and those under whom he claims have had the premises in actual possession for more than 20 years prior to the commencement of the action, the jury may find that fact. In estimating the value of the premises, if no buildings had been erected or improvements made thereon, they shall find and state in their verdict what was the value of the premises when the defendant or those under whom he claims first entered thereon. The sum so found shall be deemed the estimated value of the premises. In estimating the increased value by reason of the buildings and improvements, the jury shall find and state in their verdict the value of the premises at the time of the trial, above their value when the defendant or those under whom he claims first entered thereon. The sum so found and stated shall be taken for the buildings and improvements.

**§6961. No abandonment; payment for improvements**

When the plaintiff does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land unless, within one year from the rendition thereof, he pays to the clerk or to such person as the court appoints for the use of the defendant, the sum assessed for the buildings and improvements, with interest thereon.

**§6962. Restriction of right to betterments**

Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgagor and

mortgagee, their heirs and assigns, or to any case where the defendant or the person under whom he claims entered into possession of the premises and occupied under a contract with the owner, which was known to the defendant when he entered.

**§6963. Agreement on reference as to value of improvements**

When the parties agree that the value of the buildings and improvements on the land demanded, and the value of the land, shall be ascertained by persons named on the record for that purpose, their estimate, as reported by them and recorded, is equal in its effect to a verdict.

**§6964. Proposal of value for premises and betterments by defendant; effect**

When the defendant, at any stage of such action, files a statement in open court consenting to a sum at which the buildings and improvements and the value of the demanded premises may be estimated, if the plaintiff consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the plaintiff does not consent, and the jury does not reduce the value of the buildings and improvements below the sum offered, nor increase the value of the premises above the sum offered, he shall recover no costs after such offer; but the defendant shall recover his costs after such offer and have judgment and execution therefor, subject to section 6965.

**§6965. Setoff of costs against improvements**

In all cases where the plaintiff does not abandon the premises to the defendant, the court may, on written application of either party during the term when judgment is entered, order the costs recovered by the plaintiff to be setoff against the appraised value of the buildings and improvements on the land. A record of this order shall be made, and the court shall thereupon enter judgment according as the balance is in favor of one party or the other.

## SUBCHAPTER 7

### COSTS

**§7051. Allowance and execution**

Execution shall issue as in other cases for such damages as have been recovered and for full costs to the prevailing party. The court may order execution for costs to be issued against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties.

**§7052. Prevailing defendant entitled to costs**

A defendant who by answer defends for a part only and succeeds in his defense as to all of such part shall be entitled to all costs accruing from the time of the answer.

**§7053. No costs to plaintiff where 40 years' possession**

In all real and mixed actions in which the defendant proves that he and those under whom he claims have been in the open, notorious, adverse and exclusive possession of the demanded premises, claiming in fee simple, for 40 years preceding the commencement of the action, and the jury so finds, the plaintiff recovers no costs.

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