

CHAPTER 559

ACTIONS TO DETERMINE ADVERSE CLAIMS TO REAL ESTATE

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559.01 ACTION TO DETERMINE ADVERSE CLAIMS. Any person in possession of real property by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property, may bring an action against any person who claims an estate or interest therein, or a lien thereon, adverse to him, for the purpose of determining such adverse claim and the rights of the parties, respectively.

[R. L. s. 4424] (9556)

559.02 UNKNOWN DEFENDANTS. In any action brought under section 559.01, the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, estate, interest, or lien in or on the real property in controversy, the following: "Also all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against non-resident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action under section 559.01, and if in addition to the above known or unknown defendants, the heirs of a deceased person are proper parties defendant, and their names are unknown, and such affidavit shall further state that the heirs of such deceased person are proper parties to such action, and that their names and residences cannot with reasonable diligence be ascertained, then service of summons may be made on such unknown heirs by publication thereof in the same manner as against non-residents, and in such case the plaintiff may insert in the title thereof the following: "Also the unknown heirs of (naming him) and all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described in the complaint herein." The plaintiff shall, before the commencement of such publication, file with the register of deeds a notice of the pendency of the action, a copy of which shall be published in the same newspaper with, and immediately following, the summons, but on publishing such notice of *lis pendens* it shall not be necessary to republish the names of the parties to the action and shall be sufficient to state in lieu thereof the following: "same parties as in summons immediately preceding this notice." All such unknown persons so served shall have the same rights to appear and defend before and after judgment as would named defendants upon whom service is made by publication, and any order or judgment in the action shall be binding upon them, whether they be of age or minors; but, if they be minors when judgment is rendered, they may be allowed to defend at any time within two years after becoming of age.

[R. L. s. 4425; 1919 c. 344 s. 1; 1923 c. 434 s. 1] (9557)

559.03 DISCLAIMER; DEFAULT; COSTS. If the defendant, in his answer, disclaims any interest in the property, or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs; but if the summons has been served upon the defendant personally, and it is made to appear that after the accrual of the cause of action, and before commencement thereof, the plaintiff

demand in writing of the defendant, and the defendant neglected to execute within a reasonable time thereafter, a good and sufficient quitclaim deed of the property described in the complaint, upon tender of such deed ready for execution, the plaintiff shall nevertheless recover his costs.

[R. L. s. 4426] (9558)

559.04 CLAIMANTS UNDER COMMON GRANTOR; JOINDER. When lots or tracts of real estate are claimed in severalty by two or more persons from or under conveyance from the same grantor, as the common source of title, and an adverse claim of title thereto is made by some person as against the title of such grantor, any one claiming under such grantor may bring an action in behalf of himself and all others who may come in and become parties thereto against such adverse claimant, to have the title to such grantor perfected or quieted as to such lots or tracts claimed by the plaintiff and the others who may become parties. Any person who so claims under the same grantor as the plaintiff, and whose title is controverted by the same defendant upon the same ground as the title of the plaintiff, may become a party, as of course, by filing a complaint setting forth the property he claims and his source of title, and may have his rights adjudicated with those of the original plaintiff. The answer of the defendant shall be taken as an answer to all who may thus become parties. ,

[R. L. s. 4427] (9559)

559.05 ACTION AGAINST COTENANT; DENIAL OF RIGHT. In an action by a tenant in common or joint tenant of real property against a cotenant, the plaintiff shall show, in addition to the evidence of his right, that the defendant either denied the plaintiff's right, or did some act amounting to such denial.

[R. L. s. 4428] (9560)

559.06 TERMINATION OF PLAINTIFF'S RIGHT PENDING ACTION. In an action for the recovery of real property, when the plaintiff shows a right to recover at the time the action was commenced, but it appears that such right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

[R. L. s. 4429] (9561)

559.07 EJECTMENT; TRIAL, HOW CONDUCTED; NO SECOND TRIAL. The trial of all actions of ejectment or of any other action in the courts of this state involving the possession of real estate shall be conducted as are other civil actions, and the right to a second trial of such actions is hereby abolished.

[1911 c. 139 s. 1] (9562)

559.08 EJECTMENT; DAMAGES; IMPROVEMENTS. Damages for withholding the property recovered shall not exceed the fair value of the use of the property, exclusive of the use of improvements made by the defendant, for a period not exceeding six years; and, when permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value thereof shall be allowed as a set-off against the damages of the plaintiff.

[R. L. s. 4432] (9563)

559.09 REMOVAL OF BUILDING ERECTED IN GOOD FAITH. When any person, in good faith and under color of title, and with good reason to believe that the legal title to land is vested in him, has erected any building or other structure thereon, when the legal and equitable title thereto was vested in another, such person may remove the same, doing no unnecessary damage, and in so doing shall be liable only for the actual damage to the land. Such removal shall be made within 60 days after the determination adversely to him of any action or proceeding respecting the title, or within 60 days after notice from the holder of the legal title to remove the same; provided, if, within 60 days after receiving such notice, such person brings action to try such title, he may make such removal within 60 days after the determination thereof.

[R. L. s. 4433] (9564)

559.10 OCCUPYING CLAIMANT; COMPENSATION FOR IMPROVEMENTS. When any person, under color of title in fee and in good faith, has peaceably taken possession of land for which he has given a valuable consideration, or when any person has taken possession of land under the official deed of any person or officer empowered by law or by any court of competent jurisdiction to sell land, and such deed is regular upon its face, and he has no actual notice of any defects invalidating

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the same, neither such person, nor his heirs, representatives, or assigns, shall be ejected from such land, except as hereinafter provided, until compensation is tendered him or them for such improvement which he or they have made upon such land previous to actual notice of the claim upon which the action is founded, or, in case of possession under an official deed, previous to actual notice of defects invalidating the same. The word "improvement" shall be construed to include all kinds of buildings and fences, and ditching, draining, grubbing, clearing, breaking, and all other necessary or useful labor of permanent value to the land. When the occupant holds as heir, devisee, or grantee, either immediate or remote, of any person who is not a resident of the state, the good faith of the original taker shall be presumed.

[R. L. s. 4434] (9565)

559.11 PLEADINGS; TRIAL; VERDICT. In an action to try the title to land, brought by any person claiming title thereto against the occupant, the occupant may, in addition to other defenses, allege the amount and value of all improvements made, and the amount of all taxes and assessments paid, by himself or those under whom he claims, and, if the claim be under an official deed, the purchase money paid therefor; and the claimant may reply, alleging the value of the premises without improvements at the commencement of the action, and also the value of the yearly rent of the land without improvements during the possession of the occupant. In any such action brought by the occupant against a claimant to quiet title or to determine any adverse claim, the claimant, in his answer in addition to setting up his title, may allege the value of the premises without improvements at the commencement of the action, and also the value of the yearly rent of the land without improvements during the possession of the occupant; and the occupant may, in addition to other proper matters of reply, allege the amount and value of all improvements made, and the amount of all taxes and assessments paid by himself or those under whom he claims, and, if the claim be under an official deed, the purchase money paid therefor. In case the title be found to be in the claimant, the jury, or, if the case be tried without a jury, the court, shall assess the value of all improvements made and taxes and assessments paid upon the land by the occupant, or those under whom he claims, with interest at six per cent, and, if he claims under an official deed, regular upon its face, and without actual notice of any defect invalidating it, shall also find the purchase money paid by him, or those under whom he claims, with interest at six per cent; and the jury or court shall also assess the value of the land at the commencement of the action, without improvements, and also the value of the yearly rent thereof during the occupant's possession. If the land has depreciated in value since its purchase at an official sale, the jury or court may allow such part only of the purchase money as, in their discretion, they may see fit.

[R. L. s. 4435] (9566)

559.12 COMPENSATION BEFORE EXECUTION. If the claimant succeed in the action, execution for possession shall not issue, except as herein provided, unless, within one year from entry of judgment on the verdict or findings, the claimant pay into court for the occupant the amount so found as the value of the improvements, and also the amount of the taxes and assessments, and also the purchase money, if the occupant claim under an official deed as aforesaid, with interest thereon, as aforesaid, less the assessed value of the yearly rent of the land without the improvements during the occupant's possession.

[R. L. s. 4436] (9567)

559.13 OCCUPANT TO PAY VALUE OF LAND, WHEN. Unless the occupant claims under an official deed given either to himself or those under whom he claims, as hereinbefore provided, or under an entry in the land office of the United States, or the official certificate, duplicate or receipt thereof, or unless the claimant has had notice, actual or constructive, of the occupant's possession, the claimant may, within 30 days after entry of judgment on the verdict or findings in his favor, serve upon the occupant a written demand that within one year he pay the claimant the sum assessed as the value of the land without the improvements, less the taxes and assessments paid thereon as aforesaid, with interest as aforesaid. Such demand shall be served, and the service proved, as in the case of a summons, and shall then be filed with the clerk. If the occupant do not within one year after such service pay into court the amount so demanded, he shall forfeit all claim

to compensation, and execution may then issue for the possession of the land; but, if he do so pay, the court shall by judgment confirm the title in him.

[R. L. s. 4437] (9568)

559.14 MAY REMOVE CROPS. In case of ejection, the occupant shall be entitled to enter upon the land, and gather and remove all crops sown thereon prior to entry of judgment against him.

[R. L. s. 4438] (9569)

559.15 OCCUPANT NOT IN ACTUAL POSSESSION; ACTIONS IN OTHER FORM. All the provisions of sections 559.10 to 559.14 shall apply to cases where the occupant is not, as well as where he is, in actual possession. In case an action is brought for damages for trespass upon such land, or for the rents and profits or use and occupation thereof, or in any other form, if the action is one in effect to test the validity of the title thereto, all said sections shall, so far as possible, be complied with; and the value of all improvements, taxes, and assessments, and the purchase money in case the occupant claims under an official deed, with interest as aforesaid, shall be set off against any judgment for money that the claimant may obtain; and, if any excess remain in favor of the occupant after such set-off, such excess may be set off against any judgment that the claimant, or those claiming under him, may subsequently obtain in any such or similar action relating to the same land.

[R. L. s. 4439] (9570)

559.16 ORDER FOR SURVEY. When an action for the recovery of real property is pending, upon motion of either party, and for cause shown, the court may make an order describing the property, and allowing such party to enter thereon and make survey thereof for the purpose of the action. A copy of the order shall be served on the owner or occupant, and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey; but, if any unnecessary injury is done to the property, he is liable therefor.

[R. L. s. 4440] (9571)

559.17 MORTGAGEE NOT ENTITLED TO POSSESSION. A mortgage of real property is not to be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure.

[R. L. s. 4441] (9572)

559.18 CONVEYANCE BY MORTGAGOR TO MORTGAGEE. No conveyance absolute in form between parties sustaining the relation of mortgagor and mortgagee, whereby the mortgagor or his successor in interest conveys any right, title or interest in real property theretofore mortgaged, shall be presumed to have been given as further security, or as a new form of security, for the payment of any existing mortgage indebtedness, or any other indebtedness, or as security for any purpose.

[1913 c. 209 s. 1] (9573)

559.19 ACTION TO DECLARE MORTGAGE; LIMITATION. No action to declare any such conveyance a mortgage shall be maintained unless commenced within 15 years from the time of execution thereof.

[1913 c. 209 s. 2] (9574)

559.20 TO WHAT CONVEYANCES APPLICABLE. Sections 559.18 and 559.19 shall apply to all conveyances past and future.

[1913 c. 209 s. 3] (9575)

559.21 NOTICE TO TERMINATE CONTRACT OF SALE; SERVICE AND RETURN; REINSTATEMENT OF CONTRACT. When default is made in the conditions of any contract for the conveyance of real estate or any interest therein, whereby the vendor has a right to terminate the same, he may do so by serving upon the purchaser, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that such contract will terminate 30 days after the service of such notice unless prior thereto the purchaser shall comply with such conditions and pay the costs of service. Such notice must be given notwithstanding any provisions in the contract to the contrary, and shall be served within the state in the same

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manner as a summons in the district court, without the state, in the same manner, and without securing any sheriff's return of not found, making any preliminary affidavit, mailing a copy of said notice or doing any other preliminary act or thing whatsoever. Service of the notice without the state may be proved by the affidavit of the person making the same, made before an authorized officer having a seal, and within the state by such an affidavit or by the return of the sheriff of any county therein.

Three weeks' published notice, and if the premises described in the contract are actually occupied, then in addition thereto, the personal service of a copy of the notice within ten days after the first publication of the notice, and in like manner as the service of a summons in a civil action in the district court upon the person in possession of the premises, shall have the same effect as the personal service of the notice upon the purchaser, his personal representatives or assigns, either within or without the state as herein provided for. In case of such service by publication, as herein provided, the notice shall specify the conditions in which default has been made and state that such contract will terminate 90 days after the service of such notice, unless prior thereto the purchaser comply with such conditions and pay the costs of service, and the purchaser, his personal representatives or assigns, shall be allowed 90 days from and after the service of such notice to comply with the conditions of such contract.

If, within the time mentioned, the person served complies with such conditions and pays the costs of service, the contract shall be thereby reinstated; but otherwise shall terminate. A copy of the notice with proof of service thereof, and the affidavit of the vendor, his agent or attorney, showing that the purchaser has not complied with the terms of the notice, may be recorded with the register of deeds, and shall be prima facie evidence of the facts therein stated; but this section shall in no case be held to apply to contracts for the sale or conveyance of lands situated in another state or in a foreign country.

[R. L. s. 4442; 1913 c. 136 s. 1; 1915 c. 200 s. 1; 1925 c. 163 s. 1] (9576)

559.22 CONVEYANCE BY DEFENDANT IN EJECTMENT; LIABILITY OF PURCHASER. An action for the recovery of real property against a person in possession or in receipt of the rents and profits thereof cannot be prejudiced by an alienation made by him either before or after the commencement of the action; but in such case, if the defendant has no property sufficient to satisfy the damages recovered for the withholding of possession, such damages may be collected by action against the purchaser.

[R. L. s. 4443] (9577)

559.23 ACTION TO DETERMINE BOUNDARY LINES. An action may be brought by any person owning land or any interest therein against the owner, or persons interested in adjoining land, to have the boundary lines established; and when the boundary lines of two or more tracts depend upon any common point, line, or landmark, an action may be brought by the owner or any person interested in any of such tracts, against the owners or persons interested in the other tracts, to have all the boundary lines established. The court shall determine any adverse claims in respect to any portion of the land involved which it may be necessary to determine for a complete settlement of the boundary lines, and shall make such order respecting costs and disbursements as it shall deem just.

[R. L. s. 4454] (9590)

559.24 PLEADINGS; ADDITIONAL PARTIES. Such actions shall be governed by the rules governing civil actions, except as herein otherwise provided, but every allegation in every answer shall be deemed in issue without further pleading. When in any such action it appears to the court that any owner, lienholder, or person interested in any of the tracts involved ought, for a full settlement and adjudication of all the questions involved, to be made a party, the court shall stay the proceedings and issue an order requiring such persons to come in and plead therein within 20 days after service of the order, which shall be served upon them in the same manner as a summons in a civil action. Any person so served who shall fail to file an answer within 20 days thereafter shall be in default. All pleadings or copies thereof shall be filed before such order is made. The court may also, in its discretion, in like manner, order the owners and persons interested

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in other tracts than those originally involved to come in and plead, in which case the order shall describe such additional tracts, and state that the purpose of the action is to establish the boundary lines thereof.

[R. L. s. 4455] (9591)

559.25 JUDGMENT; LANDMARKS. The judgment shall locate and define the boundary lines involved by reference to well-known permanent landmarks, and, if it shall be deemed for the interest of the parties, after the entry of judgment, the court may direct a competent surveyor to establish a permanent stone or iron landmark in accordance with the judgment, from which future surveys of the land embraced in the judgment shall be made. Such landmarks shall have distinctly cut or marked thereon "Judicial Landmark." The surveyor shall make report to the court, and in his report shall accurately describe the landmark so erected, and define its location as nearly as practicable.

[R. L. s. 4456] (9592)