

TITLE 6  
ACTIONS IN PARTICULAR CASES

CHAPTER 4

QUIETING TITLE -- OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL  
ESTATE

6-401. ACTIONS TO QUIET TITLE. An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim, provided that all actions to adjudicate water rights and obtain a decree as to water source, quantity, point of diversion, place of use, nature of use, period of use, and priority as against other water users shall be brought under the provisions of chapter 14, title 42, Idaho Code.

[(6-401) C.C.P. 1881, sec. 476; R.S., R.C., & C.L., sec. 4538; C.S., sec. 6961; I.C.A., sec. 9-401; am. 1937, ch. 22, sec. 1, p. 32; am. 1981, ch. 265, sec. 1, p. 561.]

6-402. DISCLAIMER OR DEFAULT -- COSTS. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff can not recover costs.

[(6-402) C.C.P. 1881, sec. 477; R.S., R.C., & C.L., sec. 4539; C.S., sec. 6962; I.C.A., sec. 9-402.]

6-403. TERMINATION OF PLAINTIFF'S RIGHT. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

[(6-403) C.C.P. 1881, sec. 478; R.S., R.C., & C.L., sec. 4540; C.S., sec. 6963; I.C.A., sec. 9-403.]

6-404. VALUE OF IMPROVEMENTS AS SET-OFF. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages.

[(6-404) C.C.P. 1881, sec. 470; R.S., R.C., & C.L., sec. 4541; C.S., sec. 6964; I.C.A., sec. 9-404.]

6-405. ORDER FOR SURVEY AND EXAMINATION. Any person having a bona fide claim to the possession, title of, or interest in, any real property or mining claim, including any ledges thereof, which is, or which he has good reason to believe is, in the possession of another, either by surface or underground holdings or workings, and it is necessary for the ascertainment, enforcement or protection of such rights or interests, that an examination or survey of such property be had, and the person so in the possession thereof fails or refuses for three (3) days after demand on him made in writing, to permit such examination or survey to be made, the party desiring the same may apply to the court or the judge thereof, whether he have an action concerning such property pending in such court or not, for an order for such examination and survey.

Such application must be made upon written petition or statement under oath, setting out a description of the property, interest of the party therein, that the premises are in the possession of a party, naming him, the reason why such survey or examination is asked, the demand made for same, and refusal thereof.

The court or judge must appoint a time and place for hearing, of which notice, with a copy of the petition, must be served upon the adverse party at least three (3) days before the hearing and one (1) additional day for each twenty-five (25) miles between the place of service of notice and the hearing, and such hearing must be had and the testimony must be produced in the same manner as provided by section 8-411 for hearings on injunctions.

If upon such hearing the court or judge is satisfied that either party is entitled to any relief or order for examination or survey of any property in the possession of the other, which has, by the papers in the proceedings been put in controversy, an order must be granted for such examination, survey and other privileges as the court or judge may deem just, and the order must specify as nearly as possible what the person in whose favor such order is granted may do.

Thereupon, such person may have free access, with such agents and assistants as may be allowed, to all parts of such property, with right to remove any loose rock, debris or other obstacle, when the same is necessary to the making of a full inspection or survey of such property, but no such removal must be made without the consent of the adverse party or the order of the court or judge permitting the same.

The court or judge may also, upon proper showing with a view of producing such evidence as may be needed to determine the rights of the parties, allow work to be done on such property, but any work so permitted must be allowed only after the same is particularly defined, and must not be allowed in such manner as to interfere with the workings of the adverse party, and then only when the court is satisfied the adverse party is acting in bad faith and is infringing or attempting so to do, upon the rights of the party asking to do such work, and when there is no other reasonable or convenient mode for the production of the evidence necessary to settle the rights of the parties.

The party so asking to do work upon the premises of, or in the possession of another, must give good and sufficient security for the payment of all damages he may do the adverse party by reason of such work, and the court or judge must at every stage of the proceedings have due regard for the rights of all parties in interest.

[(6-405) Act Feb. 10, 1887; R.S., R.C., & C.L., sec. 4542; C.S., sec. 6965; I.C.A., sec. 9-405.]

6-406. FORM AND SERVICE OF ORDER -- RIGHTS UNDER. The order must describe the property, and a copy thereof must 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 and measurement, but if any unnecessary injury be done to the property he is liable therefor.

[(6-406) C.C.P. 1881, sec. 481; R.S., R.C., & C.L., sec. 4543; C.S., sec. 6966; I.C.A., sec. 9-406.]

6-407. INJURY PENDING FORECLOSURE OR CONVEYANCE AFTER EXECUTION SALE -- INJUNCTION. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property dur-

ing the foreclosure of a mortgage thereon, or after a sale on execution before a conveyance.

[(6-407) C.C.P. 1881, sec. 483; R.S., R.C., & C.L., sec. 4544; C.S., sec. 6967; I.C.A., sec. 9-407.]

6-408. INJURY PENDING CONVEYANCE AFTER SALE -- DAMAGES. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, or any redemptioner, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

[(6-408) C.C.P. 1881, sec. 484; R.S., R.C., & C.L., sec. 4545; C.S., sec. 6968; I.C.A., sec. 9-408.]

6-409. ALIENATION PENDING SUIT. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

[(6-409) C.C.P. 1881, sec. 485; R.S., R.C., & C.L., sec. 4546; C.S., sec. 6969; I.C.A., sec. 9-409.]

6-410. MINING CUSTOMS ADMISSIBLE IN EVIDENCE. In actions respecting mining claims, proof must be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claim, and such customs, usages or regulations, when not in conflict with the laws of this state, must govern the decision of the action.

[(6-410) C.C.P. 1881, sec. 486; R.S., R.C., & C.L., sec. 4547; C.S., sec. 6970; I.C.A., sec. 9-410.]

6-411. QUIET TITLE ACTION -- MAINTENANCE AGAINST MORTGAGE BARRED BY STATUTE OF LIMITATIONS. An action may be maintained to quiet title to lands against any mortgage, the enforcement and collection of which is barred by the Statute of Limitations of the State of Idaho, and which, except for the fact that its collection and enforcement is so barred, would constitute a lien upon such lands.

[6-411, added 1951, ch. 117, sec. 1, p. 272.]

6-412. QUIET TITLE ACTION -- MAINTENANCE AGAINST JUDGMENT BARRED BY STATUTE OF LIMITATIONS. An action may be maintained to quiet title to lands against any judgment, the enforcement and collection of which is barred by the Statute of Limitations of the State of Idaho and which, except for the fact that its collection and enforcement is so barred by the Statute of Limitations, would constitute a lien upon said lands.

[6-412, added 1951, ch. 117, sec. 2, p. 272.]

6-413. QUIET TITLE ACTION -- DECREE. The party seeking to maintain such action shall be entitled to a decree quieting title to his lands against the lien of any such judgment or mortgage upon proof that the collection and enforcement of such judgment or mortgage is barred by the Statute of Limitations and without the necessity of proving that any such judgment or the indebtedness secured by any such mortgage has been paid.

[6-413, added 1951, ch. 117, sec. 3, p. 272.]

6-414. OCCUPANT OF REAL ESTATE -- STAY OF EXECUTION FOR POSSESSION -- WHEN AUTHORIZED. Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in a proper action found not to be the owner, no execution shall issue to put the owner in possession of the same after the filing of an action as hereinafter provided, until the provisions of this act have been complied with; provided said occupant may elect, after filing of the action, to exercise his right to remove such improvements if it can be done without injury otherwise to such real estate.

[6-414, added 1972, ch. 118, sec. 1, p. 234.]

6-415. OCCUPANT OF REAL ESTATE -- OWNER'S COMPLAINT FOR POSSESSION -- CONTENTS -- TRIAL. Such complaint must set forth the grounds on which the owner seeks relief, stating as accurately as practicable the value of the real estate, exclusive of the improvements thereon made by the claimant or his grantors, and the value of such improvements. The issues joined thereon must be tried by the court, and the value of the real estate and of such improvements must be separately ascertained on the trial.

[6-415, added 1972, ch. 118, sec. 2, p. 234.]

6-416. OCCUPANT OF REAL ESTATE -- DETERMINATION OF RIGHT TO POSSESSION -- TENANTS IN COMMON -- PARTITION PROCEDURE. The owner in the main action may thereupon pay the value of the improvements determined on trial and take the property, but should he fail to do so after a reasonable time not to exceed one (1) year, to be fixed by the court, the claimant may take the property upon paying its value determined on trial, less any amount paid by claimant or his predecessor on a judicial or tax sale, exclusive of the improvements. If this is not done within said time, to be fixed by the court, the parties will be held to be tenants in common of all the real estate, including the improvements, each holding an interest proportionate to the values ascertained on the trial; provided, further, that thereafter, upon the motion of either party, proceedings may be had for partition thereof in accordance with chapter 5, title 5, Idaho Code.

[6-416, added 1972, ch. 118, sec. 3, p. 234.]

6-417. COLOR OF TITLE -- DEFINITION. For definition in this act, a person having color of title shall include (a) a purchaser in good faith at any judicial or tax sale made by the proper person or officer, whether such person or officer has sufficient authority to sell or not, unless such want of authority was known to such purchaser at the time of the sale; and (b) a person who has occupied a tract of real estate if he, or those under whom he claims, have at any time during such occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements thereon; a person's rights shall pass to his assignees or representatives; but nothing in this act shall be construed to give tenants color of title (i) against their landlords or (ii) against the state of Idaho or any subdivision thereof.

[6-417, added 1972, ch. 118, sec. 4, p. 234.]

6-418. OCCUPANT OF REAL ESTATE -- OWNER'S RIGHT TO POSSESSION -- LIMITATIONS. The owner in the main action is entitled to an execution to put him in possession of his property in accordance with the provisions of this act, but not otherwise.

[6-418, added 1972, ch. 118, sec. 5, p. 234.]