

ACT 90

H. B. NO. 2042-72

A Bill for an Act Relating to Remedies, Amending Chapters 654, 658, 659, 660, 664, 665, 666, 667, 668, and 669 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 654 of the Hawaii Revised Statutes is amended as follows:

(a) Section 654-21 is amended to read as follows:

“Sec. 654-21. Information required. (a) An action may be brought to secure the immediate possession of personal property in any court of competent jurisdiction by filing a verified complaint showing:

- (1) That the plaintiff is entitled to the immediate possession of the property claimed;
- (2) A particular description of the property claimed; if the property claimed is a portion of divisible property of uniform kind, quality, or value, that such is the case, and the amount thereof which the plaintiff claims;
- (3) The actual value of the property claimed;

- (4) That the property has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or an attachment against the plaintiff or his property, or if so seized that it is by statute exempt from such seizure;
 - (5) That the property is in the possession of a named defendant, and the facts and circumstances relating to the possession thereof by the defendant, according to the plaintiff's best knowledge and belief;
 - (6) The names of all persons other than the defendant in possession of the property, having or claiming or who might have or claim to have an interest in the property according to the best belief of plaintiff, all of whom shall be joined as defendants in the action.
- (b) If the action already has been commenced, an affidavit may be filed at any time before the case is at issue, containing the information required by subsection (a)."

(b) Section 654-22 is amended to read as follows:

"Sec. 654-22. Bond. When the plaintiff desires the immediate delivery of the property, he shall execute a bond to the defendant in possession of the property, and to all persons having an interest in the property, of such amount and with such sureties as are approved by the court, conditioned that he will prosecute his action to judgment without delay, and deliver the property to the defendant in possession or any other person, if such delivery is adjudged, and pay all costs and damages that may be adjudged against him. Upon the filing of the verified complaint or affidavit with the bond and a motion for immediate consideration of the matter, the court shall forthwith inquire into the matter, ex parte or otherwise, as in its discretion it determines. If thereupon the court finds that a prima facie claim for relief has been established, it shall issue an order directed to the sheriff, or his deputy, or the chief of police, or an authorized police officer of any county, to take the property therein described and deliver the same to the plaintiff.

Copies of the verified complaint or affidavit, and, if a bond for immediate seizure has been filed, of the bond, and, if an order for the taking has been issued on an ex parte hearing, of the order, shall forthwith be served upon the defendant in possession and each person having or claiming a possessory interest in the property, in the same manner as is provided for service of summons unless the party to be served has appeared in the action, in which case service may be made in the same manner as is provided for service of papers other than the summons. In a proper case, either before or after issuance of an order for the taking, the required service may be combined with the publication of the summons, in which event the giving of notice of the substance of the proceeding shall be sufficient.

Upon the application of any party, the proceeding shall be advanced and assigned for hearing at the earliest possible date."

(c) Section 654-24 is amended by changing the period at the end of the section to a semicolon and adding the following: "provided that no property shall be so taken if the court issuing the order is without jurisdiction to execute process at the place at which the property is found."

(d) Section 654-25 is amended by changing the word "judge" in the fourth line to read "court".

(e) Section 654-26 is amended to read as follows:

"Sec. 654-26. Delivery. The officer, having taken possession of the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless before the actual delivery to him, the defendant who had possession, or any person claiming an interest therein and a right to the possession thereof upon making an affidavit of his interest and of his right to the possession stating the grounds thereof, executes a bond to the plaintiff in such amount and with such sureties as are approved by the court, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff, if the plaintiff recovers judgment therefor, in as good condition as it was when the action was commenced, and that he will pay all costs and damages that may be adjudged against him for the taking or detention of the property. Upon the furnishing of the bond the property shall be relinquished to the defendant who had possession, unless the bond is furnished by another person who has, by proper pleadings, presented an affirmative claim to the property and has complied with the provisions of this chapter applicable to a plaintiff, in which case the court shall determine the custody of the property."

(f) Section 654-29 is amended by changing the word "part" in the third line to read "chapter".

(g) Section 654-30 is amended by changing the word "part" in the second line to read "chapter".

(h) Sections 654-1 to 654-14, and section 654-23, are deleted.

(i) The part headings are deleted and the chapter heading is changed to read "Special Proceedings for Immediate Possession of Personal Property".

SECTION 2. Chapter 658 of the Hawaii Revised Statutes is amended as follows:

(a) Section 658-1 is amended by deleting from the sixth line the words "at law or in equity".

(b) Section 658-3 is amended by deleting from the seventh line the words "by law" and by inserting in the first line of the second paragraph after the word "before" the words "or at the time of".

(c) Section 658-3 is further amended by amending the last sentence of the first paragraph to read as follows: "If the making of the agreement or the default is in issue, the court shall proceed summarily to the trial thereof."

(d) Section 658-5 is amended by deleting from the first and fourth lines the word "suit", by inserting in lieu thereof in each said line, the word "action", and by inserting in the fifth line after the word "action" the words "or proceeding".

(e) Section 658-6 is amended by deleting from the third line the words "by law".

(f) Section 658-8 is amended to read as follows:

"Sec. 658-8. Award; confirming award. The award shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and delivered to one of the parties or his attorney. A copy of the award shall be served by the arbitrators on each of the other parties to the ar-

bitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court specified in the agreement, or if none is specified, to the circuit court of the judicial circuit in which the arbitration was had, for an order confirming the award. Thereupon the court shall grant such an order, unless the award is vacated, modified, or corrected, as prescribed in sections 658-9 and 658-10. The record shall be filed with the motion as provided by section 658-13, and notice of the motion shall be served upon the adverse party, or his attorney, as prescribed for service of notice of a motion in an action in the same court."

(g) Section 658-11 is amended to read as follows:

"Sec. 658-11. Notice of motion to vacate, modify, or correct; stay. Notice of a motion to vacate, modify, or correct an award, shall be served, in the manner prescribed for service of notice of a motion in an action, upon the adverse party or his attorney within ten days after the award is made and served. For the purposes of the motion any judge who might make an order to stay the enforcement of a judgment, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. The record shall be filed with the motion as provided by section 658-13."

(h) Section 658-12 is amended to read as follows:

"Sec. 658-12. Entry of judgment. Upon the granting of an order, confirming, modifying, or correcting an award, the same shall be filed in the office of the clerk of the circuit court and this shall constitute the entry of judgment. An appeal may be taken from such judgment as hereinafter set forth."

(i) Section 658-13 is amended to read as follows:

"Sec. 658-13. Record to be filed with motion.

(a) The party moving for an order confirming, vacating, modifying, or correcting an award shall at the time the motion is filed with the clerk also file the following papers with the clerk:

- (1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award; and
- (2) The award.

(b) Each notice, affidavit, or other paper, used or to be used upon an application to confirm, vacate, modify, or correct the award, and a copy of each order of the court upon such an application, shall be filed with the clerk the same as in a civil action."

(j) Section 658-14 is amended by deleting from the first line the word "so" and by inserting after the word "entered" in the first line the words "in accordance with section 658-12".

SECTION 3. Chapter 659 of the Hawaii Revised Statutes is amended as follows:

(a) Section 659-46 is amended by changing the word "judge" in the second line to "court".

(b) Section 659-47 is amended to read as follows:

“Sec. 659-47. Against corporations, by attorney general. It may also be granted upon the application of the attorney general against individuals acting as a corporation without being legally incorporated.”

(c) A new section 659-47.5 is added, to read as follows:

“Sec. 659-47.5. Forfeiture of franchise. The several circuit courts shall have jurisdiction of all proceedings in, or in the nature of, quo warranto, brought by or in the name of the public utilities commission, or the state, for the forfeiture of the franchise of any corporate body offending against any law relating to such corporation, for misuser, for nonuser, for doing or committing any act or acts amounting to a surrender of its charter and for exercising rights not conferred upon it.”

(d) Section 659-48 is amended by changing the word “judge” in the second line to read “court”, and by changing the period at the end of the sentence to a comma, and adding “or is made by the attorney general as provided by section 659-51.”

(e) Section 659-49 is amended to read as follows:

“Sec. 659-49. Answer. The person to whom the order is directed shall file his answer in writing, within the time limited by the order as determined by the court in its discretion, and state the authority under which he claims to act.”

(f) Section 659-51 is amended to read as follows:

“Sec. 659-51. Judgment as to offices; burden of proof. If a person to whom an order is directed with respect to an office of which he performs the duties does not answer within the time allowed or the answer is insufficient or it is found that he has usurped the office or continues in it unlawfully, the court in addition to declaring him not qualified to fill the office and forbidding him to perform the duties of the office any longer, may direct that a new appointment be made and may grant other appropriate relief.

If the proceeding is commenced by verified petition of the attorney general and concerns a public office, the respondent shall have the burden of proof.”

(g) Section 659-52 is amended to read as follows:

“Sec. 659-52. Judgment according to nature of complaint. In all cases contemplated by sections 659-46 to 659-54, judgment shall be given according to the nature of the complaint made.”

(h) Section 659-53 is amended to read as follows:

“Sec. 659-53. Service. The writ or order shall be served in the same manner as is provided by the rules of court with respect to process in a civil action.”

(i) A new section 659-55 is added, to read as follows:

“Sec. 659-55. Other actions. Nothing in this chapter shall preclude the obtaining of relief available by quo warranto by other appropriate action.”

(j) Sections 659-1, 659-2, 659-3, 659-4, 659-5, 659-6, 659-7, 659-8, 659-9, 659-16, 659-17, 659-18, 659-19, 659-20, 659-21, 659-22, 659-23, 659-24, 659-31,

659-32, 659-33, 659-34, 659-35, 659-36, 659-37, 659-38, 659-39, 659-40, 659-50, and all part headings are deleted.

(k) The chapter heading is changed to read "Quo Warranto".

SECTION 4. The repeal or deletion of statutory provisions as to any writ shall not signify the abolition of that writ.

SECTION 5. Chapter 660 of the Hawaii Revised Statutes is amended as follows:

(a) Section 660-3 is amended to read as follows:

"Sec. 660-3. Issuable by whom. The supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty; provided that persons committed or detained by order of the family court or under chapter 334 may, and if the jurisdiction of the family court is exclusive, shall, prosecute their applications in the family court."

(b) Section 660-4 is amended by deleting from the sixth line the word "suit" and inserting in lieu thereof "action", and by inserting in the ninth line after the word "issued" the words "for such purposes".

(c) Section 660-5 is amended by inserting in the first line preceding the word "order" the word "an", by deleting from the second line of paragraph numbered (1) the word "prisoner" and by inserting in lieu thereof "party", by changing the semicolon at the end of paragraph numbered (4) to a period, and by deleting from the last paragraph the numeral designation "(5)".

(d) Section 660-6 is amended by deleting from the second line the words and punctuation ", whenever a writ of habeas corpus is prosecuted as of right," and by deleting the period from the fourth line and adding the following: "or an order to show cause is issued under section 660-7."

(e) Section 660-7 is amended by deleting from the second and third lines the words and punctuation ", whenever the writ of habeas corpus is not demandable as of right," and by changing the period at the end of the section to a semicolon and adding the following: "provided, that whenever the record shows that there is a material issue of fact to be resolved by the taking of evidence the court shall order that the person detained be produced for the hearing."

(f) Section 660-12 is amended to read as follows:

"Sec. 660-12. By supreme court; to whom returnable. Whenever the writ or order to show cause is issued by the supreme court or a justice thereof, it may be made returnable before the supreme court or a circuit court."

(g) Section 660-13 is amended by deleting from the second line the word "prisoner" and inserting in lieu thereof "party".

(h) Section 660-15 is amended by deleting from the fourth line the words "of imprisonment" and inserting in lieu thereof the words "where he is imprisoned or restrained".

(i) Section 660-15 is further amended by deleting the last two sentences and inserting in lieu thereof the following:

"This section is subject to section 607-3, pursuant to which prepayment of the expense may be waived, or the sum required may be reduced or remitted."

(j) Section 660-16 is amended by inserting in the next to the last line after the word "court" the following: "designated to hear the return".

(k) Section 660-17 is amended by inserting in the third line, after the word "execution" and preceding the comma, the words "if ordered by the court", and by changing the word "thereof" in the fourth line to read "there-to".

(l) Section 660-18 is amended by deleting from the paragraph numbered (1) the words "that person" and by inserting in lieu thereof the following: "the person designated,".

(m) Section 660-20 is amended by inserting in the second line after the word "return" the following: "to a writ of habeas corpus".

(n) Section 660-21 is amended by deleting from the fourth line the words "or judge".

(o) Section 660-24 is amended by changing the word "of" in the first line to read "to", and by deleting from the second line the words and punctuation "or judge,".

(p) Section 660-25 is amended to read as follows:

"Sec. 660-25. Notice to other parties, when. If the person is detained on any process under which any other person has an interest in his detention, and the other person or his attorney is within the State and can be notified without unreasonable delay, the person detained shall not be discharged until the other person or his attorney has had an opportunity to be heard."

(q) Section 660-28 is amended to read as follows:

"Sec. 660-28. Bail, etc., before judgment. Except as otherwise provided:

(1) Until judgment is given the court may remand the party or accept bail for his appearance from day to day, or may place him under special care and custody, as circumstances may require.

(2) After judgment is given, an order made by the court under paragraph (1) shall be continued in effect during a stay of enforcement of judgment, unless the trial court, or the supreme court after taking of the appeal, shall terminate the order or make other provision in the circumstances."

(r) Section 660-30 is amended to read as follows:

"Sec. 660-30. Admitted to bail, when. If the person is detained for any cause or offense and admittance to bail is a matter of right, he shall be admitted to bail, or bail may be dispensed with as provided by the State Constitution. If the person cannot furnish the bail ordered, then he shall be remanded with an order of the court, expressing the sum in which he is held to bail and the court at which he is required to appear."

(s) Section 660-31 is amended to read as follows:

"Sec. 660-31. Bail reduced, when. If the person is committed because he cannot furnish the bail ordered, and the bail which is required appears to be excessive or unreasonable, the court shall decide what bail is reasonable, and shall order that upon furnishing such bail the person shall be discharged from custody."

(t) Section 660-32 is amended to read as follows:

“Sec. 660-32. Remanded, when. If the person is lawfully imprisoned or restrained, and is not entitled to be admitted to bail, he shall be remanded to the person or officer having lawful authority to detain him.”

(u) Sections 660-1, 660-2, 660-8, 660-10, and 660-11 are deleted.

SECTION 6. Chapter 664 of the Hawaii Revised Statutes is amended as follows:

(a) Section 664-1 is amended by deleting from the third and fourth lines the words “in chambers” and inserting in lieu thereof “without a jury”.

(b) Section 664-7 is amended by inserting in the third line, after the words and punctuation “those of the land adjoining,” the words and punctuation “and the attorney general,” and by deleting from the second sentence all that follows the words “date and place of hearing”.

(c) Section 664-9 is amended by deleting from the fourth line the words “to accrue” and inserting in lieu thereof “as in other cases”.

(d) Section 664-10 is amended by changing the caption to read “Powers of commissioner; procedure.”, by deleting from the last line the word “judges” and inserting in lieu thereof “courts”, and by adding a new sentence to read as follows: “The Hawaii Rules of Civil Procedure shall apply to proceedings under this part, except insofar as and to the extent that the rules are inconsistent with the provisions of this part.”

(e) Section 664-21 is amended to read as follows:

“Sec. 664-21. Petition. Any person owning, leasing, or occupying land under an agreement with the owner or lessee, who desires to fence the land, or who, having fenced the land, desires to provide for the maintenance of the fence, may file a petition in the circuit court of the circuit in which the land is situated praying for the hearing and determination of the matter.

The petition shall designate the land by name or description, the location thereof, and the boundary or boundaries desired to be fenced or the fence desired to be maintained; and shall designate the adjoining land or lands and state the name or names of the owners, lessees, and occupants thereof. Upon the filing of the petition, summons shall issue to the adjoining owners, lessees, and occupants as in other proceedings before circuit courts.”

(f) Section 664-22 is amended by deleting from the first line the word “judges” and inserting in lieu thereof “courts”, and by inserting in the second line after the word “determine” a comma and the following: “without the intervention of a jury,”.

(g) Section 664-23 is amended by deleting from the second, third, tenth, twenty-first, twenty-ninth, and thirty-fourth lines the word “judge” and inserting in lieu thereof in each such line the word “court”.

(h) Section 664-23 is further amended by inserting in the fifth line of the last paragraph preceding the word “part” the following: “defaulting party’s”.

(i) Section 664-24 is amended to read as follows:

“Sec. 664-24. Pasturage in lieu of fences. In case the court finds it to be inequitable or inexpedient to establish a fence between adjoining lands, either because of the nature or situation of the lands, the shortness of the un-

expired term of a lease or agreement, the scarcity of fencing materials, or the conflicting rights of the parties; it may, if the lands are grazing lands, in lieu of fencing, decide how many animals each owner, lessee, or occupant shall be at liberty to pasture upon his land under a penalty to be specified in the decree."

(j) Section 664-25 is amended to read as follows:

"Sec. 664-25. Appeal. Any party aggrieved by the decree of the court may appeal therefrom to the supreme court in the manner and within the time provided by the rules of court."

(k) Section 664-26 is amended to read as follows:

"Sec. 664-26. Government lands. This part shall not be so construed as to allow any person owning or otherwise interested in land adjoining government land to compel the government to join in the cost of erecting or maintaining a fence on the boundary line between such lands. However, the government or any lessee or occupant of government land, with the consent of the governor, shall have the same right accorded to others to compel action according to this part by any person owning, leasing, or occupying land adjoining government land, or by any lessee or occupant of adjoining government land, and every lessee or occupant of government land shall be subject to the duties and obligations of other lessees and occupants as provided by this part."

(l) Section 664-31 is amended to read as follows:

"Sec. 664-31. Definitions. Wherever used in this part:

"Controversy" means the matter or question at issue before the court.

"Private individuals or persons" means either individuals, companies, or corporations, or any others except the State."

(m) Section 664-32 is amended to read as follows:

"Sec. 664-32. Jurisdiction. The circuit courts shall have jurisdiction to hear and determine, without the intervention of a jury, all controversies respecting rights of private way and water rights, as in this part provided."

(n) Section 664-33 is amended to read as follows:

"Sec. 664-33. Procedure; notice. The circuit courts shall hear and determine all controversies respecting rights of private way and water rights, between private individuals, or between private individuals and the State. Any person interested, or the State, may apply for the settlement of any rights involved hereunder by filing a complaint in the circuit court of the circuit in which the property affected is situated. Thereupon the court shall issue a summons to each land owner or occupant having an interest in the controversy. A notice of the pending action may be published in any case in the discretion of the court."

(o) Section 664-34 is amended to read as follows:

"Sec. 664-34. Same; decision. The court shall hear the evidence offered relative to the right in controversy, and may, if deemed desirable to the rendering of a correct decision, visit the locality where the controversy arose. It shall give such decision as may in each particular case appear to be in conformity with vested rights and shall be just and equitable between the parties.

The decision shall state expressly the findings of fact on the evidence, and shall in cases of right of way clearly indicate the location (if possible) and nature of the way; if on a water right, it shall state the proportion of time for use, and any other things necessary to the right. It may also regulate the methods by which water may be obtained, and by which its supply can be controlled. As far as possible, the rights of parties served by publication who have not appeared in the action shall be ascertained. Judgment shall be entered in accordance with the decision.”

(p) Section 664-35 is amended to read as follows:

“**Sec. 664-35. Costs.** Costs may, in the discretion of the court, be divided, or taxed to the losing party.”

(q) Section 664-36 is amended to read as follows:

“**Sec. 664-36. Appeal.** Any party aggrieved by the judgment of the court may appeal therefrom to the supreme court in the manner and within the time provided by the rules of court.”

(r) Section 664-37 is deleted.

SECTION 7. Chapter 665 of the Hawaii Revised Statutes is amended as follows:

(a) Section 665-1 is amended by amending the second and third sentences thereof to read as follows:

“Summons shall be issued as in other actions. The attorney general shall cause the summons to be served upon any person in possession of the property, and shall also cause a copy thereof to be published once a month for three months in a newspaper of general circulation in the State.”

(b) Section 665-5 is amended to read as follows:

“**Sec. 665-5. Claim to proceeds.** Any person claiming the proceeds of sale of escheated property may present his claim by commencing an action in the circuit court of the first circuit. Service shall be made upon the attorney general who may appear and defend on behalf of the State. If the court renders a judgment in favor of the plaintiff, the director of finance shall pay the proceeds to the plaintiff, with interest as allowed by the court, not to exceed six per cent a year.”

SECTION 8. Chapter 666 of the Hawaii Revised Statutes is amended as follows:

(a) “Sec. 666-1 is amended by changing the word “determination” in the fourth line to read “termination”, by changing the word “efflux” in the fifth line to read “passage”, and by changing the word “any” in the sixth line to read “a”.

(b) Section 666-5 is amended by inserting a comma in the second line after the word “tenant”, by deleting the word “in” from the third line, and by inserting in the third line after the word “action” the words “in the nature of an action”.

(c) Section 666-6 is amended to read as follows:

“**Sec. 666-6. Summary possession proceedings; venue.** In the case of summary possession proceedings, the person entitled to the possession of the

premises shall bring and prosecute his action in the district court of the circuit wherein the lands and premises in question are situated.”

(d) Section 666-7 is amended by changing the caption to read “Jurisdiction; joinder”, by deleting the word “actions” from the second line and inserting in lieu thereof “claims”, and by deleting from the fourth and fifth lines the words “the possession of which is sought, and such joinder may be made”.

(e) Section 666-8 is amended to read as follows:

“Sec. 666-8. Service. The summons shall be served as provided by the rules of court.

In the event that any defendant cannot be served within the circuit, service may be made in any part of the State.

If any defendant cannot be served with process within the State, and the facts shall appear by affidavit or otherwise to the satisfaction of the court, service as to such defendant may be made according to the special order of the court, but such order shall in any case include a direction to the officer to leave a certified copy of the complaint and summons with some agent or employee of mature years of the defendant, provided the agent or employee can be found upon the premises or elsewhere within the circuit, and also to affix in a conspicuous place upon the premises (as upon the wall of any store, shop, dwelling, or other building thereon, and if there is no such building, then upon some other permanent object thereon, as a tree or fence) a certified copy of the complaint and summons. The order shall further require that a certified copy of the complaint and summons be sent to the defendant by certified or registered mail, postage prepaid, unless it is shown by affidavit or otherwise to the satisfaction of the court that the address of the defendant is unknown and cannot be ascertained.”

(f) Section 666-11 is amended to read as follows:

“Sec. 666-11. Judgment; writ of possession. If it is proved to the satisfaction of the court that the plaintiff is entitled to the possession of the premises, he shall have judgment for possession, and for his costs. Execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding him to remove all persons from the premises, and to put the plaintiff, or his agent, into the full possession thereof.”

(g) Section 666-14 is amended by changing the caption to read “Writ stayed how, in proceedings for non payment of rent.”, and by deleting from the sixth, seventh and eighth lines the words and punctuation “; or gives such security for the payment thereof, within five days, as is satisfactory to the judge or to the plaintiff”.

(h) Sections 666-10, 666-15, 666-16, 666-17, 666-18, and 666-19 are deleted.

SECTION 9. Chapter 667 of the Hawaii Revised Statutes is amended as follows:

(a) Section 667-1 is amended to read as follows:

“Sec. 667-1. Foreclosure by action. The circuit court may assess the amount due upon a mortgage, whether of real or personal property, without

the intervention of a jury, and shall render judgment for the amount awarded, and the foreclosure of the mortgage. Execution may be issued on the judgment, as ordered by the court.”

(b) Section 667-2 is amended to read as follows:

“**Sec. 667-2. Other mortgages joined.** All prior and subsequent mortgage creditors, whose names are or can be discovered by the party foreclosing a mortgage, shall be made parties to the action.”

(c) Section 667-3 is amended by deleting from the third line the word “decrees” and inserting in lieu thereof “judgments”, and by changing the word “enforcing” in the fourth line to read “forcing”.

(d) Section 667-4 is amended to read as follows:

“**Sec. 667-4. Defenses.** The mortgagor, or any subsequent mortgagee, may defend the action for foreclosure, and may show any matter in legal or equitable avoidance of the mortgage.”

(e) Section 667-5 is amended to read as follows:

“**Sec. 667-5. Foreclosure under power of sale; notice; affidavit after sale.** When a power of sale is contained in a mortgage, the mortgagee, or his successor in interest, or any person authorized by the power to act in the premises, may, upon a breach of the condition, give notice of his intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property lies; and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage. A copy of the notice shall be posted on the premises not less than twenty-one days before the day of sale.

Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on his behalf. He shall, within thirty days after selling the property in pursuance of the power, file a copy of the notice of sale and his affidavit, setting forth his acts in the premises fully and particularly, in the bureau of conveyances.

The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

This section is inapplicable if the mortgagee is foreclosing as to personal property only.”

(f) Section 667-6 is amended to read as follows:

“**Sec. 667-6. Notice to mortgage creditors.** Whenever a mortgage creditor having a mortgage lien on certain premises desires notice that another mortgage creditor having a mortgage lien on the same premises intends to foreclose the mortgage and sell the mortgaged property pursuant to a power of sale under section 667-5, he may submit a written request to the mortgagee foreclosing or who may foreclose the mortgage by power of sale, to receive notice of the mortgagee’s intention to foreclose the mortgage under power of sale. This request for notice may be submitted any time after the recorda-

tion or filing of the subject mortgage at the bureau of conveyances or the land court, but must be submitted prior to the completion of the publication of the mortgagee's notice of intention to foreclose the mortgage and of the sale of the mortgaged property. This request shall be signed by the mortgage creditor, or its authorized representative, desiring to receive notice, specifying the name and address of the person to whom the notice is to be mailed. The mortgagee receiving the request shall thereafter give notice to all mortgage creditors who have timely submitted their request. The notice shall be sent by mail or otherwise communicated to the mortgage creditors, not less than seven calendar days prior to the date of sale.

No request for copy of any notice pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to real property or be deemed notice to any person that any party requesting copy of the notice has or claims any right, title, or interest in, or lien or charge upon the property described in the mortgage referred to therein."

(g) Section 667-8 is amended to read as follows:

"Sec. 667-8. Affidavit as evidence, when. If it appears by the affidavit that the affiant has in all respects complied with the requirements of the power of sale and the statute, in relation to all things to be done by him before selling the property, and has sold the same in the manner required by the power, the affidavit, or a duly certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed."

(h) Section 667-9 is amended to read as follows:

"Sec. 667-9. Dower barred, when. If the mortgage was executed by a man having at the time no lawful wife, or if the mortgagor being married, his wife joined in the deed in token of her release of dower, the sale of the property in the mode aforesaid shall be effectual to bar all claim and possibility of dower in the property."

(i) Section 667-10 is amended by changing the period at the end of the first sentence to a comma and adding the following: "except as otherwise provided by chapters 501 and 502."

(j) Section 667-10 is further amended by inserting after the word "remainder" in the sixth line, preceding the comma, the words "of the proceeds".

(k) Sections 667-11, 667-12, and 667-13, are deleted.

SECTION 10. The repeal of sections 667-11, 667-12, and 667-13, and any amendments of sections 501-118, 502-33, and 667-6 of the Hawaii Revised Statutes, related thereto, shall not affect any entry made or other action taken thereunder before the time when the repeal and amendments take effect, or any duty to give notice thereof, and in case of such entry or other action all persons concerned shall have the same right to act further in the premises, including the right of redemption, as if such repeal and amendments had not taken effect.

SECTION 11. Chapter 668 of the Hawaii Revised Statutes is amended as follows:

(a) Section 668-1 is amended to read as follows:

“Sec. 668-1. Actions for partition. When two or more persons hold or are in possession of real property as joint tenants or as tenants in common, in which one or more of them have an estate in fee, or a life estate in possession, any one or more of such persons may bring an action in the circuit court of the circuit in which the property or some part thereof is situated, for a partition of the property, according to the respective rights of the parties interested therein, and for a sale of the same or a part thereof if it appears that a partition cannot be made without great prejudice to the owners. The several circuit courts shall have power, in any action for partition, to proceed according to the usual practice of courts of equity in cases of partition, and according to this chapter in enlargement thereof.”

(b) Section 668-2 is amended to read as follows:

“Sec. 668-2. Necessary parties; unknown owners. Subject to the rules of court and section 668-8.5, plaintiff shall join as a party every person having or claiming to have, as far as known to him, any legal or equitable right, title, or interest in the property described in the complaint or any part thereof or any lien or other claim with respect thereto. Such persons shall be named in the complaint as far as known to the plaintiff.

All persons interested or who may claim any interest in the premises who cannot be identified or whose names are unknown to the plaintiff, shall be made parties as provided by the rules of court.”

(c) Section 668-3 is amended to read as follows:

“Sec. 668-3. Complaint. The complaint shall particularly describe the property sought to be partitioned, and shall set forth the title and rights of all parties interested therein and the extent of their respective interests, as far as known to the plaintiff. In case any person or persons interested are unknown to the plaintiff so that they cannot be named, or if the plaintiff does not know the share or quantity of interest of any party, or if any share or interest is uncertain or contingent or dependent upon some executory devise or provision, so that the same cannot be stated by the plaintiff, the facts shall be stated in the complaint and, if required by the rules of court, a supporting affidavit shall be furnished.”

(d) Section 668-4 is amended to read as follows:

“Sec. 668-4. Pleadings; substitution of heirs in case of death. Each party shall allege the source or derivation and devolution of his title, right, interest, or claim. The answers of the defendants shall state, among other things, the precise nature and extent of their respective interests or claims.

If any suggestion of death of any party is made to the court, the court shall upon ascertainment of the identity of the heirs or devisees of the decedent, order them joined as parties as provided by the rules of court.”

(e) Section 668-5 is amended to read as follows:

“Sec. 668-5. Summons, service. The summons shall be directed to all persons named in the complaint or joined as provided by the rules of court, and may be directed generally to all persons unknown having or claiming to have any interest in the premises described in the complaint, subject to section 668-8.5. Unknown persons and any known persons who do not reside within

the State or cannot for any reason be served with process within the State, shall have notice of the action as provided by sections 634-59, 634-60, and 634-63. If the summons has been directed generally to all persons unknown as above provided, and if service has been made upon persons known and unknown as required, the court shall have jurisdiction to proceed as though all persons interested in the premises were in being and personally served, but any adjudication shall, as regards a defendant served as provided by sections 634-59, 634-60, and 634-63, affect only the property which is the subject of the action except as provided by section 634-59."

(f) Section 668-7 is amended by deleting the first line and inserting in lieu thereof:

"Sec. 668-7. Powers of the court. The court shall have power, subject to section 668-8.5:"

(g) Section 668-7 is further amended by amending paragraph (3) thereof to read as follows:

"(3) To vest titles by judgments, without the form or necessity of conveyance by minors or unknown or absent owners;"

(h) Section 668-7 is further amended by deleting from the fifth line of paragraph (6) thereof the words "decree or decrees" and inserting in lieu thereof "judgment or judgments".

(i) Section 668-7 is amended by adding a new paragraph (7), to read as follows:

"(7) To exercise any other power pertaining to a circuit court in a civil action."

(j) The last paragraph of section 668-7 is amended to read as follows:

"When partition of two or more separate tracts or parcels of land is sought, the whole share of any party in all of them may be set apart to him in any one or more of the tracts or parcels. Any plan for a subdivision shall, before approval of the court, be subject to approval by the planning department of any county having laws and regulations covering subdivisions, applicable thereto. If action by the planning department on the proposed subdivision is unreasonably delayed, the court may order the planning department to appear and show cause why the subdivision should not be approved by the court."

(k) Section 668-8 is amended by deleting the portion of the first sentence preceding the proviso in the eleventh line, and inserting in lieu thereof: "Whenever the legal title of any particular share or interest in the property is controverted, the issue shall be triable of right by a jury;"

(l) A new section 668-8.5 is added, to read as follows:

"Sec. 668-8.5. Adverse claimants. Unless the action is combined with an action under chapter 669, a person who has not appeared and who claims to hold by title paramount to that under which the plaintiff claims as a cotenant shall not be concluded by the judgment, but may maintain an action asserting his title against any or all of the parties, or persons holding under them, within the time in which he might have brought such action if the action for partition had not been filed."

(m) Section 668-9 is amended to read as follows:

“Sec. 668-9. Unknown and absent owners. The court shall in all cases provide for the protection of the interests of all unknown owners and other owners served under sections 634-59 or 634-60 who do not appear in the action, in the same manner as far as may be as if they were known and had appeared in the action. In every case their rights must appear to the satisfaction of the court, but the court may consider them together in the action without considering them separately. The ascertained share of any such owner in any proceeds of sale shall be paid into court for his benefit, subject to disposition according to law. If there are any unknown owners of any share or interest, or any other owners served under sections 634-59 or 634-60 who do not appear in the action, the court shall have power in making the general partition to allot and set apart for such share such a portion or portions of the property as the owners thereof would respectively be entitled to receive in the partition were they known and had appeared in the action. The portion so set apart for such share shall thereafter alone be the subject of ownership by such owner if he has been served. The remaining portions of the property shall be regarded as belonging to the other parties interested therein.”

(n) Section 688-12 is amended by deleting the comma at the end of the second line, by inserting after the words and punctuation “with respect thereto,” in the third line the words and punctuation “and the person interested has been served,”, and by changing the period at the end of the first sentence to a comma and adding “or inchoate right of dower.”

(o) Section 668-13 is amended by changing the words “of allotment” in the tenth line to read “or allotment”.

(p) Section 668-14 is amended by changing the words “the circuit” at the end of the fourth line to read “each circuit”.

(q) Section 668-16 is amended to read as follows:

“Sec. 668-16. Default. All parties who have failed to plead or otherwise defend as provided by the rules of court shall, when that fact is made to appear, be deemed to be in default, and their default shall be entered. Such parties shall be deemed to have consented to such partition or other disposition of the property as may be decreed in accordance with this chapter.”

(r) Section 668-17 is amended by changing the word “petitioner” in the second line to read “plaintiff”, and by amending the last sentence to read as follows: “When more than ten defendants are named in a complaint for partition, no greater payment for costs shall be required of the plaintiff than would be required if there were but ten defendants.”

(s) Section 668-6 is deleted.

SECTION 12. Chapter 669 of the Hawaii Revised Statutes is amended as follows:

(a) Section 669-1 is amended to read as follows:

“Sec. 669-1. Object of action. (a) Action may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim.

(b) Action for the purpose of establishing title to real property may be brought by any person who has been in adverse possession of the real property for not less than ten years.

(c) Action under subsection (a) or (b) shall be brought in the circuit court of the circuit in which the property is situated.”

(b) Section 669-2 is amended to read as follows:

“**Sec. 669-2. Defendants; unknown persons.** (a) Any person may be made a defendant in the action who has or claims, or may claim, an interest in the property adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the issues involved therein.

(b) Unknown persons may be made parties as provided by the rules of court, if:

(1) It shall be shown by the complaint that there are or may be persons unknown, claiming by, through, or under any named person; or

(2) Other facts shall be shown by the complaint giving rise to an actual controversy between plaintiff and persons unidentified or whose names are unknown.

(c) In any action brought under section 669-1(b):

(1) There shall be joined as defendants, in addition to persons known to have an adverse interest, the adjoining owners and occupants so far as known.

(2) If all persons interested who are known or can be joined as provided by subsection (b) have been made parties, the summons in addition to being directed to such parties, may be directed to unknown persons generally and in such case, after service upon the persons summoned, known and unknown, the court shall have jurisdiction to proceed as though all persons interested were in being and personally served, but any adjudication shall, as regards a defendant served pursuant to section 669-3, affect only the property which is the subject of the action except as provided by section 634-59.”

(c) Section 669-3 is amended to read as follows:

“**Sec. 669-3. Notice by publication or registered mail.** In any action brought under section 669-1(a) or (b), unknown persons and any known persons who do not reside within the State or cannot for any reason be served with process within the State may be served as provided by sections 634-59, 634-60, and 634-63.”

(d) A new section 669-3.5 is added, to read as follows:

“**Sec. 669-3.5. Trial when legal title in controversy.** Whenever in an action brought under this chapter the legal title is in controversy, the issue shall be triable of right by a jury.

(e) Section 669-8 is amended to read as follows:

“**Sec. 669-8. Recording of judgment.** The registrar of conveyances or the assistant registrar of the land court, as the case may be, shall receive and record or file and register every certified copy of judgment quieting title to property rendered by the circuit court under this chapter whenever the certified copy of judgment is presented to him for record or registration.”

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(f) Sections 669-4, 669-5, and 669-7 are deleted.

(g) The chapter heading is changed to read "Quieting Title".

SECTION 13. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 14. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 19, 1972.)