

# MAINE STATE LEGISLATURE

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THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

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PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....  
1841.

justice shall enter judgment, as in case of nonsuit or default, against the party, so neglecting or refusing. Either party may appeal from the judgment of the justice, upon issue joined, to the next district court, recognizing, as aforesaid, to pay such costs as may be adjudged against him; and, if the defendant shall appeal, he shall recognize to pay such reasonable intervening rent for the premises, as such justice shall adjudge, in case his judgment shall not be reversed on such appeal.

SECT. 5. Whenever a tenant, whose estate in the premises is determined, shall unlawfully refuse to quit the same, after thirty days' notice in writing, given by the lessor for that purpose, he shall be liable to the provisions of this act; provided, he shall not have been in quiet possession of the premises three whole years, next preceding the filing of such complaint.

SECT. 6. Every municipal and police court, now established, or which may be established, in any city or town, shall have exclusive jurisdiction of all cases of forcible entry and detainer, arising in the city or town, where such court is or shall be established; and concurrent jurisdiction with justices of the peace and quorum, in such cases, arising in the counties in which they are or shall be respectively established.

CHAP. 128.

Appeal.  
12 Pick. 118.

Cases, in which this process lies, for unlawful detention. 1824, 368, § 4. 10 Mass. 403. 13 Maine, 162, 209.

Jurisdiction of municipal and police courts. 1826, 324, § 1.

## CHAPTER 129.

## OF WASTE, AND TRESPASSES ON REAL ESTATE.

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| <p>SECT. 1. Remedy, if tenant for life or years commit waste.</p> <p>2. Heir may sue for waste committed in his ancestor's time.</p> <p>3. Proceedings in court thereon.</p> <p>4. Action on the case may be brought.</p> <p>5. Reversioner and remainder man may sue.</p> <p>6. Such action will lie against executors or administrators.</p> <p>7. Part owners not to commit waste, without giving thirty days notice.</p> <p>8. Treble damages in such case, how recovered and appropriated.</p> <p>9. Qualification of these provisions.</p> <p>10. Trespass on lands of another, without his consent.</p> <p>11. Waste on lands, pending an action therefor.</p> | <p>SECT. 12. Trespasses on public buildings or property.</p> <p>13. Trespasses, by taking grass, fruit or other vegetables from improved land.</p> <p>14. Injunction, to prevent waste on lands under attachment.</p> <p>15. Penalty, for waste on lands of a person deceased insolvent.</p> <p>16. Liability of executor or administrator for committing such waste.</p> <p>17. One or more tenants in common may join or sever, in actions for damages.</p> <p>18. Notice to the other cotenants, who may become parties.</p> <p>19. Mode of entering judgment, and awarding execution.</p> <p>20. Scire facias by the other cotenants, on such judgment.</p> |
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SECTION 1. If any tenant in dower, or by the curtesy, or tenant for life or years shall commit or suffer any waste on the premises, the person, having the next immediate estate of inheritance therein, may have an action of waste against such tenant, wherein he shall recover the place wasted, and the amount of damages done to the premises.

Remedy, if tenant for life or years commit waste. 8 Pick. 309.

## CHAP. 129.

Heir may sue for waste done in his ancestor's time.

Proceedings in court thereon.

Action on the case may be brought.

Reversioner or remainder man may sue.

Such action will lie against executors or administrators.

Part owners not to commit waste, without giving thirty days' notice. 1821, 35, § 2. 15 Maine, 198. 22 Pick. 495.

Treble damages in such case, how recovered and appropriated. 1821, 35, § 2.

Qualification of these provisions. 1837, 288.

Trespass on lands of another without his consent. 1821, 33, § 1.

SECT. 2. An heir may bring an action for waste done in the time of his ancestor, as well as in his own time.

SECT. 3. If any issue of fact be joined in the cause, it shall be tried by a jury in court in the usual manner, with or without a view of the premises, as the court may order; and, in all cases, the jury, that inquire of the waste, shall assess the damages.

SECT. 4. Any person entitled to such action of waste, may, instead of it, bring an action of the case in nature of waste; in which he shall recover the damages he has sustained by reason of the waste.

SECT. 5. Such an action may also be maintained by one, who has the remainder or reversion in fee simple or fee tail, after an intervening estate for life, and also by one who has a reversion or remainder for life or years only; and each of them shall recover such damages, as it shall appear he has suffered by the waste.

SECT. 6. An action on the case for waste, may be originally commenced against the executors or administrators of the tenant, or may be prosecuted against them after the death of the tenant, when the action was brought against him.

SECT. 7. If any joint tenant, coparcener, or tenant in common of undivided lands shall cut down, destroy, or carry away any trees, timber, wood or underwood, standing or lying on such lands, or dig up or carry away any ore, stone or other valuable thing found thereon, or commit any strip or waste thereon, without first giving thirty days' notice in writing, under his hand to all other persons interested therein, or to their respective agents or attorneys, of his intention to enter thereon, and improve the land, or if he shall do any of said acts thereon, pending a petition or other suit for a partition of the same premises, he shall forfeit and pay three times the amount of the damages, that shall be assessed therefor; to be recovered and appropriated, as mentioned in the following section.

SECT. 8. The above mentioned damages may be recovered by any one or more of the cotenants, without naming any one but the plaintiff; and the damages shall be appropriated, one half to the person who shall sue for the same, and the other half to the same person, together with all the other cotenants, except the defendant in the action; to be divided among them in proportion to their respective interests in the land.

SECT. 9. If, in the trial of such cause, the jury shall find, that the defendant had good reason to believe, that he was owner of the land, on which the alleged trespass was committed, in severalty, or if he had been in the exclusive possession of the same, claiming it as aforesaid, for three years next before the time when the alleged trespass was committed, and preventing the plaintiff to occupy in common, according to his asserted right, single damages only shall be recovered in such action.

SECT. 10. If any person shall cut down, destroy, injure or carry away any fruit or ornamental trees, timber, wood, underwood, stones, gravel, ore or goods or property of any kind, from land not his own, and without license of the owner, or shall injure or throw down any fences, bars or gates, or leave such gates open, or break any glass in any building, he shall be liable in damages to the owner, to be recovered in an action of trespass.

SECT. 11. If, during the pendency of any action for the recovery of land, the tenant shall make any strip or waste, by cutting, felling or destroying any wood, timber, trees or poles standing on said lands, he shall, for each offence, pay to the aggrieved party treble damages, to be recovered in an action of trespass.

SECT. 12. Where any trespasses are committed on any buildings or inclosures, monuments or mile stones belonging to any county, town or parish, the treasurer of such corporation may sue for the damages in the name of the corporation; and, if the property injured belongs to a school district, the treasurer of the town, in which the district is contained, may sue in the name of such district.

SECT. 13. If any person shall enter on any grass land, orchard or garden, and take therefrom without permission of the owner any grass, hay, fruit, vegetable or shrub, he shall be liable to the party injured; in a sum, equal to three times the value of the articles so taken away, in an action of trespass.

SECT. 14. If any person, whose real estate is attached in any civil action, shall do any act of waste thereon, or shall threaten or make preparations to commit waste; the court, in which the suit is pending, or any justice thereof in vacation or term time, may issue an injunction to stay such waste, with or without notice at discretion; and the court may enforce obedience to such injunction by all such process, as the supreme judicial court may legally employ in an equity case, pending in such court, and dissolve such injunction, whenever it may be deemed proper.

SECT. 15. If any of the heirs or devisees of any person deceased, whose estate may be represented insolvent, shall, between the time when such representation shall be made, and the time of the conveyance of the real estate of the deceased, on sale for the payment of debts, in case the estate shall be absolutely insolvent, remove or destroy any building, or cut down, destroy or carry away any trees, standing on said land, or lying on it, for timber or fire wood, except what may be necessary for fuel and repairs, or commit any strip or waste on the land, afterwards sold and conveyed as aforesaid, he shall forfeit and pay treble the value thereof; to be recovered by the executor or administrator on said estate, in an action of trespass.

SECT. 16. If such executor or administrator, being heir or devisee as aforesaid, shall commit any of said trespasses or wastes, within the time limited as aforesaid, on proof before the judge of probate of the same, he shall be liable in damages to the same extent, as mentioned in the preceding section; and in both cases, the damages, when recovered by the executor or administrator; or found and adjudged against him by the judge of probate, shall be accounted for in the administration account.

SECT. 17. All or any one or more tenants in common, coparceners, or joint tenants of any lands, may join or sever in personal actions for injuries done to the same; setting forth in the declaration the names and additions of all the other cotenants, if known.

SECT. 18. Whenever any such cotenant shall bring such action, he shall, before trial thereof, give to all the other cotenants such notice as the court shall order; and all or any of them may, at any

## CHAP. 129.

Waste on lands pending an action therefor. 1821, 35, § 4. 8 Pick: 514.

Trespasses on public buildings or property. 1821, 33, § 2, 4.

Trespasses, by taking grass, fruit, or other vegetables from improved land. 1821, 35, § 6.

Injunction, to prevent waste on lands under attachment.

Penalty for waste on lands of a person deceased, insolvent. 1835, 191, § 4. 1 Fairf. 365. 15 Maine, 205.

Liability of executor or administrator for committing such waste. 1835, 191, § 4.

One or more tenants in common may join or sever, in actions for damages.

Notice to the other cotenants, who may become parties.

CHAP. 129.

Mode of entering judgment, and awarding execution.

Scire facias by the other cotenants on such judgment.

time before final judgment, become parties to the action; and the plaintiff, with such of the other cotenants as shall thus become parties, may prosecute the suit for the benefit of all concerned.

SECT. 19. The court shall enter up judgment for the whole amount of the injury, proved to have been done to such lands; but shall award execution only for the proportion thereof sustained by the plaintiffs, actually prosecuting the suit.

SECT. 20. The remaining cotenants may, afterwards, either jointly or severally, sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages, adjudged in the original suit.

CHAPTER 130.

OF REPLEVIN OF BEASTS AND CHATTELS.

- SECT. 1. Owner of beasts distrained, may replevy them.
- 2. The process.
- 3. Bond to be given, before service of writ.
- 4. Judgment, if the beasts be lawfully distrained.
- 5. Judgment, if unlawfully distrained.
- 6. Appeal.
- 7. In what cases, a cause may be transferred from a justice to the district court.
- 8. Any goods, unlawfully detained, may be replevied.
- 9. In what courts, replevin may be brought.
- 10. Bond to be given, before service.

- SECT. 11. Judgment for a return.
- 12. Assessment of damages on judgment for return of property to an attaching officer.
- 13. Disposal of the money recovered by the officer.
- 14. Appropriation of the moneys received by the creditor in such cases.
- 15. Judgment for damages and costs, if plaintiff recover.
- 16. Continuance of attachment, if the goods be replevied.
- 17. When writ of reprisal shall issue.
- 18. Defendant's remedy on the replevin bond.
- 19. Limitation of surety's liability on a replevin bond.

Owner, of beasts distrained, may replevy them. 1821, 80, § 1. 1834, 137, § 8.

SECTION 1. Any person, whose beasts are distrained or impounded, in order to recover any penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for any damages, alleged to have been done by them, may maintain a writ of replevin against the impounder or finder therefor, to be sued out and prosecuted before any justice of the peace for the county, in the form prescribed in chapter, one hundred and fourteen.

The process.

SECT. 2. The writ shall be sued out, served and returned, and the cause shall be heard and determined, in like manner as is provided in the case of other civil actions before a justice of the peace, except as otherwise prescribed.

Bond to be given, before service of the writ. 1834, 137, § 8.

SECT. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, shall execute and deliver to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as stated in the prescribed form of the writ, and to be returned with the writ, for the use of the defendant.