

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY LORING, SHORT & HARMON
AND
WILLIAM M. MARKS, PRINTER.
1884.

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CHAP. 94.

When judgment is rendered for claimant, he shall in all cases have immediate possession, on filing recognition.
R.S., c. 94, § 9.

SEC. 9. When judgment is rendered for the claimant, a writ of possession shall issue in all cases, if the claimant recognizes to the defendant in the manner before provided, conditioned to pay all such damages and costs as may be awarded against him if final judgment is rendered for the defendant; and if on trial the jury find for the defendant, they shall also find the damages sustained by him; in case of nonsuit his damages shall be assessed by the court; and in either case the claimant may give evidence of any claim for rent of the premises, to be set off against damages claimed by the defendant. If the defendant prevails, the court may or not, as justice requires, issue a writ to restore to him possession of the premises.

Sums due for rent and damages, how to be recovered.
R.S., c. 94, § 10.

SEC. 10. Sums due for rent on leases under seal or otherwise, and claims for damages to premises rented, may be recovered in an action of assumpsit, on account annexed to the writ, specifying the items and amount claimed.

CHAPTER 95.

WASTE AND TRESPASS ON REAL ESTATE.

- SEC. 1. Remedy, if tenant for life or years commits waste; heir may sue for waste committed in his ancestor's time, as well as in his own.
2. Proceedings in court; jury shall assess damages, with or without a view. Action on the case may be brought instead of waste.
3. Reversioner and remainder man may sue for damages.
4. The action will lie against the executor or administrator.
5. Part owners shall not commit waste, without giving thirty days' notice; treble damages in such case; how recovered and appropriated.
6. Defendant shall not pay treble damages in certain cases.
7. Injunction, to prevent waste, pending a process for the recovery of lands, and on lands attached.
8. Treble damages may be recovered for waste on lands, pending a suit therefor.
9. Trespass on lands of another, without his consent.
10. Trespases on public buildings, or on property of county, town, parish or school district; treasurer may sue.
11. Trespases upon improved or ornamental grounds, penalty for.
12. Trespases on islands in salt waters after notice, are liable to actual and exemplary damages. How to be recovered. Evidence.
13. Notices, how to be given. Penalty for injuring sign-boards.
14. Damages and penalties, how and where to be recovered.
15. Imprisonment of trespasser, in default of payment.
16. Penalty for waste, on lands of a person dying insolvent.
17. Liability of executor or administrator, for committing waste.
18. Tenants in common may join or sever in actions for damages. Notice shall be given to the other co-tenants, who may become plaintiffs.
19. Judgment shall be rendered for the whole damage, and execution shall issue for the proportion which plaintiffs have sustained. Scire facias on such judgment, by the other co-tenants, for their shares.
20. If one or more joint tenants take the whole rent, the co-tenants may recover their share, after demand.

Remedy, if

SEC. 1. If a tenant in dower, by courtesy, for life, or for years, com-

mits or suffers any waste on the premises, the person having the next immediate estate of inheritance, may recover the place wasted and the damages done to the premises, in an action of waste against him; and an heir may recover in the same action for waste done in his own time and in the time of his ancestor.

SEC. 2. Any issue of fact shall be tried by a jury, with or without a view of the premises, as the court orders; and the jury that inquires of the waste shall assess the damages. An action on the case in the nature of waste, may be substituted for the action of waste. (a)

SEC. 3. The remainder man, or reversioner for life, or years only, or in fee simple, or fee tail, after an intervening estate for life, may maintain such action, and recover the damages which he has suffered by the waste.

SEC. 4. Such action may be originally commenced against the executors or administrators of the tenant, or if commenced against him, it may be prosecuted against them after his death.

SEC. 5. If any joint tenant, coparcener, or tenant in common of undivided lands, cuts down, destroys, or carries away trees, timber, wood or underwood, standing or lying on such lands, or digs up or carries away ore, stone, or other valuable thing found thereon, or commits strip or waste, without first giving thirty days' notice in writing, under his hand, to all other persons, or to their agents or attorneys, and to mortgagors and mortgagees, if any there are, interested therein, of his intention to enter upon and improve the land; which notice to such persons interested as are unknown, or whose residence is unknown, or who are out of the state, may be published in the state paper three times, the first publication to be forty days before such entry; or if he does any such acts pending a process for partition of the premises, he shall forfeit three times the amount of damages; and any one or more of the cotenants, without naming the others, may sue for and recover their proportion of such damages.

SEC. 6. If the jury finds that the defendant in such suit has good reason to believe himself the owner of the land in severalty, or that he and those under whom he claims had been in the exclusive possession thereof, claiming it as their own, for three years next before the acts complained of were committed, only single damages shall be recovered.

SEC. 7. If a defendant in an action to recover possession of real estate, or a person whose real estate is attached in a civil action commits any act of waste thereon, or threatens or makes preparations so to do, any justice of the supreme judicial court, in vacation or term time, may issue an injunction to stay such waste; but notice shall first be given to the adverse party to appear and answer, unless the applicant files a bond, with sufficient sureties, to respond to all damages and costs; and the court may enforce obedience by such process as may be employed in an equity case, and dissolve it when deemed proper.

SEC. 8. If, during the pendency of an action for the recovery of land, the tenant commits strip or waste by cutting, felling, or destroying wood,

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tenant commits waste. R.S., c. 95, § 1. 12 Me., 436. 19 Me., 291. 51 Me., 436.

Jury assess damages; instead of waste, action may be on the case. R.S., c. 95, § 2.

Remainder man or reversioner may sue. R.S., c. 95, § 3. 37 Me., 365. 51 Me., 436.

Action lies against executor, &c. R.S., c. 95, § 4.

Part owners shall not commit waste, without giving notice. R.S., c. 95, § 5. 15 Me., 200. 31 Me., 187. 44 Me., 79. 64 Me., 63.

—treble damages in such cases, how to be recovered and appropriated.

Defendant shall pay only single damages in certain cases. R.S., c. 95, § 6.

Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached. R.S., c. 95, § 7. 66 Me., 53.

Treble damages for waste, pending a suit.

(a) 37 Me., 365; 51 Me., 436; 52 Me., 143.

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R.S., c. 95, § 8.
31 Me., 187.
Trespass on
lands of
another,
without his
consent.
R.S., c. 95, § 9.

SEC. 9. Whoever cuts down, destroys, injures, or carries away, any ornamental or fruit tree, timber, wood, underwood, stones, gravel, ore, goods, or property of any kind, from land not his own, without license of the owner, or injures or throws down any fences, bars, or gates, or leaves such gates open, or breaks glass in any building, is liable in damages to the owner in an action of trespass. (a)

Trespases
on property
of county,
town, parish,
or district;
treasurer
may sue.
R.S., c. 95, § 10.

SEC. 10. Where trespases are committed on buildings, inclosures, monuments, or mile stones, belonging to a county, town, or parish, the treasurer of such corporation may sue for the damages in its name; if the property injured belongs to a school district, the treasurer of the town may sue in the name of such district.

Penalty for
trespass on
improved or
ornamental
grounds.
1878, c. 18.
66 Me., 50.

SEC. 11. Whoever enters on any grass land, door-yard, ornamental grounds, orchard or garden, and cuts down, defaces, destroys, or takes therefrom, without permission of the owner, any grass, hay, fruit, vegetable, or ornamental tree or shrub, is liable in an action of trespass to the party injured in treble damages.

Trespass on
islands in
salt waters,
after notice.
1874, c. 252, § 1.

SEC. 12. Whoever, after notice by the owner, occupant, or lessee in any of the ways provided in the following section, trespasses upon any island within salt waters, for the purpose of shooting or hunting thereon, is liable to such owner, occupant or lessee, in exemplary damages to an amount not less than twenty, nor more than fifty dollars, in addition to all actual damage sustained by said owner, occupant or lessee, and shall also forfeit to said owner, occupant, or lessee, five dollars for each bird of any kind shot, caught, taken, or killed on such island, all to be recovered in an action of debt. The possession of guns, decoys, or other implements of shooting or hunting, shall be presumptive evidence that the purpose of the trespass was shooting or hunting.

—both
exemplary
and actual
damages are
imposed.

—how
recovered.

—evidence.

Notices, how
to be given.
1874, c. 252, § 2.

SEC. 13. Notices referred to in the preceding section shall be given by erecting and maintaining sign-boards at least one foot square, in at least two conspicuous places on the premises, one of them near one of the usual landing places on said island, reading as follows: 'All persons are forbidden to shoot or hunt on this island;' with the name of the owner, occupant or lessee; or such notice may be given, verbally or in writing, by the owner, occupant, or lessee of the island, to any person, and shall be binding on the person so notified, whether the sign-boards herein named are erected and maintained or not; and whoever tears down, or in any way defaces or injures any such sign-board, forfeits one hundred dollars, to be recovered by the owner, occupant, or lessee of such island, in an action of debt.

—penalty for
injuring sign-
boards.

Damages and
penalties,
how and
where to be
recovered.
1874, c. 252, § 3.

SEC. 14. Actions to recover any of the sums or penalties named in the two preceding sections, may be brought before any supreme, superior, police or municipal court, or trial justice in the county in which such island is situated, or in any county adjacent thereto, or in the county in which either the plaintiff or defendant resides.

(a) 3 Me., 15; 13 Me., 89; 14 Me., 440; 22 Me., 452; 39 Me., 29; 46 Me., 427; 48 Me., 247; 49 Me., 72; 54 Me., 363; 66 Me., 50.

SEC. 15. On non-payment of any of the penalties aforesaid, the defendant shall be imprisoned not less than five days, and at the rate of one day for each dollar of the amount of the judgment, if it is over five dollars.

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Imprisonment for non-payment.
1874, c.252, §4.

SEC. 16. If an heir or devisee of a person deceased, whose estate is represented insolvent, afterwards and before sale of the real estate for payment of debts, or before all the debts are paid, removes or injures any building or trees, except as is needed for fuel or repairs, or commits any strip or waste on such estate, he shall forfeit treble the amount of damages, to be recovered by the executor or administrator in an action of trespass.

Penalty for waste on lands of an insolvent deceased.
R.S., c.95, § 12.
10 Me., 370.
15 Me., 206.

SEC. 17. If such executor or administrator, being heir or devisee, commits such trespass or waste, on proof thereof before the judge of probate, he shall be liable to the same extent as the heirs or devisees; and in both cases, the damages, when recovered by the executor or administrator, or adjudged against him by the judge of probate, shall be accounted for in the administration account.

Liability of executor or administrator for committing waste.
R.S., c.95, § 13.

SEC. 18. All or any of the tenants in common, coparceners; or joint tenants of lands may join or sever in personal actions for injuries done thereto, setting forth in the declaration the names of all other co-tenants, if known, and the court may order notice to be given in such actions to all other co-tenants known, and all or any of them, at any time before final judgment, may become plaintiffs in the action, and prosecute the suit for the benefit of all concerned.

One or more tenants in common may join in actions.
—notice to other co-tenants.
R.S., c.95, § 14.
29 Me., 204.
43 Me., 253.
57 Me., 409.

SEC. 19. The court shall enter judgment for the whole amount of the injury proved; but shall award execution only for the proportion thereof sustained by the plaintiffs; and the remaining co-tenants may afterwards 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.

Judgment for the whole damage; execution for plaintiff's share: scire facias by the other co-tenants.
R.S., c.95, § 15.

SEC. 20. If any one or more of the joint tenants or tenants in common take the whole rents or income of the joint estate, or more than their share, without the consent of their co-tenants, and refuse, for a reasonable time after demand, to pay such co-tenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing co-tenants, to recover their proportion thereof.

If one or more joint tenants take the whole rent, others may recover.
R.S., c.95, § 16.
64 Me., 465.
72 Me., 406.

CHAPTER 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

- SEC. 1. Owner of beasts distrained, may replevy them.
2. The writ may be sued out, served, returned and tried, like other cases.
3. Bond shall be given before service. When new sureties may be required.