

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
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1884.

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ERRATA:

**The following two leaves are
inserted because one or more pages
in this chapter have errors
noticed and corrected here.**

ERRORS.

ERROR IN THE TEXT OF THE REVISED STATUTES.

Page 63, § 3, line one.—Erase the last word “may.”

ERROR IN THE TEXT OF THE REPEALING ACT.

Page 999.—Transfer “Chapter 48, Section 6, of an act to facilitate the prompt administration of justice by establishing a superior court in Kennebec County,” from the year 1879 to 1878.

ERROR IN THE COMMISSIONER'S NOTES.

Pages 177, 178.—Erase the last two lines of page 177, and the first three lines of page 178.

ERRORS IN THE MARGINAL REFERENCES.

- Page 59, § 6, ¶ xx.—Erase “*R. S.*, c. 1, ¶ xx”, and supply, at the bottom of the page, “*R. S.*, c. 1, § 4”
- “ 66, § 24.—Erase “*Resolve of 1837, c. 52.*”
- “ 69, § 44.—Supply “*Resolve of 1840, c. 107.*”
- “ 72, § 68.—Erase “*See c. 6, §§ 40-67.*”
- “ “ § 70.—Erase “*R. S.*, c. 2, § 66.”
- “ 79, § 12, (note b).—“*See c. 18, § 73*” should read “*See c. 18, § 75.*”
“*See c. 30, § 15*” should read “*See c. 30, § 16.*”
- “ “ § 14.—Supply “*See c. 18, § 75.*”
- “ 83, § 40.—“*R. S.*, c. 3, § 34” should read “*R. S.*, c. 3, § 33.”
- “ 84, § 46.—“*See c. 18, § 67*” should read “*See c. 18, § 59.*”
- “ 86, § 59, ¶ i, (note b).—“*See c. 17, §§ 25-29*” should read “*See c. 17, §§ 27, 28.*”
- “ “ “ ¶ vi, (note e).—“*See c. 18, § 15*” should read “*See c. 18, § 17.*”
- “ 92, note.—“*c. 18, §§ 39, 103*” should read “*c. 18, §§ 39, 97.*”
- “ 97, § 16.—Erase “*R. S.*, c. 4, § 16.”
- “ 108, § 86.—“*Art. ii, § 2*” should read “*Art. ii, § 1, ¶ 2.*”
- “ 117, § 28.—Erase the first reference to “1878, c. 31, § 1.” Also erase “*R. S.*, c. 5, § 26.”
- “ 176, § 27.—“*Resolve of 1883, c. 20*” should read “*Resolve of 1883, c. 86.*”
- “ 183, § 5.—“*See § 93, ¶ 6*” should read “*See § 93, ¶ v.*”
- “ 202, § 102.—“1883, c. 229” should read “*See c. 115, § 1.*”
- “ 209, § 1.—Supply “1880, c. 215.”
- “ 210, § 7.—Supply “1880, c. 215.”
- “ 249, § 44.—“1875, c. 25, § 6” should read “1875, c. 25, § 6.”
- “ 270, § 16.—Supply “1880, c. 215.”
- “ 330, § 26.—“*See c. 40, § 77*” should read “*See c. 40, § 74.*”
- “ “ § 28.—“*See c. 40, § 38*” should read “*See c. 40, §§ 33, 40.*”
- “ 374, § 23.—“*See § 17*” should read “1880, c. 234, § 1.”
- “ 384, § 74.—Add “1883, c. 138, § 3.”
“1883, c. 144, § 4.”
- “ 506, § 1.—Supply “*See 1880, c. 215.*”
- “ 642, § 80, bottom of the page.—Supply “1878, c. 48, § 6.”
- “ 709, § 105.—“*See c. 134, § 13*” should read “*See c. 134, § 19.*”
- “ 773, § 42.—Supply “1883, c. 198, § 2.”
- “ 804, § 35.—“*See c. 134, § 26*” should read “*c. 134, § 26.*”
- “ 861, § 1.—“*R. S.*, c. 2, § 20.” } should read “1883, c. 221.”
“*R. S.*, c. 115, § 1.” }
- “ 862, § 4.—“*See c. 63, §§ 32 to 39*” should read “*See c. 63, § 35.*”

ERRORS IN CITATIONS OF CASES.

- Page 10, § 8, ¶ iii, (note c).—"14 *Pet.*, 504" should read "14 *Pet.*, 540."
 " 16, § 1, (note b).—"10 *Me.*, 483" should read "10 *Me.*, 283."
 " 78, § 5, (note a).—"13 *Me.*, 472, 489" should read "13 *Me.*, 472."
 " " § 7, (note b).—"12 *Me.*, 589" should read "12 *Me.*, 489."
 " 147, § 97.—"58 *Me.*, 528" should read "58 *Me.*, 532."
 " 166, § 1.—"64 *Me.*, 549" should read "64 *Me.*, 599."
 " 200, § 93, ¶ iv.—Erase "20 *Me.*, 545."
 " 211, § 19.—"3 *Me.*, 347" should read "3 *Me.*, 249."
 " 241, § 5, (note b).—"68 *Me.*, 28" should read "63 *Me.*, 28."
 " 257, § 80, (note a), Construction of ways.—"26 *Me.*, 340" should read "26 *Me.*, 240."
 " 397, § 1, (note a).—Erase "66 *Me.*, 526."
 " 521, § 2, (note a).—Erase "60 *Me.*, 377."
 " " § 9.—Erase "60 *Me.*, 533."
 " 563, § 10.—"31 *Me.*, 286" should read "31 *Me.*, 254."
 " 597, § 23.—"4 *Me.*, 19" should read "4 *Me.*, 8."
 " 705, § 78.—"43 *Me.*, 438" should read "48 *Me.*, 438."
 " 728, § 12.—Erase "68 *Me.*, 30."
 " 750, § 5.—Erase "20 *Me.*, 325."
 " 765, § 1, (note a).—Erase "73 *Me.*, 228."
 " 814, § 19, (note c).—Erase "71 *Me.*, 543."
 " 817, § 8, (note b).—"27 *Me.*, 363" should read "27 *Me.*, 362."
 " 885, § 1.—Erase "62 *Me.*, 285."
 " 886, § 8.—"36 *Me.*, 225" should read "36 *Me.*, 227."
 " 933, § 4.—"34 *Me.*, 478" should read "39 *Me.*, 478."

OMISSION IN REFERENCE INDEX TABLE, PART I.

Page 1060.—Supply "1878, c. 48, § 6," with a reference to "R. S., c. 77, § 80."

to be assigned and set out to her by three disinterested persons, to be appointed by the plaintiff, defendant, and officer, as in the levy of an execution on land; who shall be sworn to set it out equally and impartially, as conveniently as may be, and according to their best skill and judgment; and the officer shall make return of the writ and doings thereon to the court, with the assignment of dower indorsed thereon, or annexed thereto; which, being accepted, is conclusive. (a)

SEC. 23. When the estate, out of which the dower is to be assigned, consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents and profits thereof, to be received by the demandant as tenant in common with the other owners of the estate.

SEC. 24. In actions of dower, when it appears to the court that there has been no refusal to set out dower, the costs accruing on the assignment of dower shall be apportioned according to the interests of the parties.

CHAP. 103.
in setting off
dower.
R. S., c. 103,
§ 23.
See c. 76, § 1.

Assignments
of rents and
profits in
certain cases.
R. S., c. 103,
§ 24.

Costs in
action of
dower, how
apportioned.
1861, c. 31.

CHAPTER 104.

REAL ACTIONS.

- SEC. 1. Recovery of estates by writ of entry; mode of service.
2. Demandant shall declare on his own seizin, within twenty years, and allege a disseizin by tenant.
3. Demandant shall set forth the estate that he claims in the premises.
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5. Demandant must have a right of entry; such right is not defeated by descent or discontinuance.
6. Who may be considered a disseizor. Disclaimer.
7. If defendant has ousted demandant, he may be considered a disseizor, although he claims less than a freehold.
8. Proof to entitle the demandant to recover on trial.
9. Joinder of demandants.
10. What demandant may recover, on proof of title.
11. Demandant may recover damages in the same action.
- 12, 13, 14. Estimation of rents and profits. Tenant is not liable for more than six years' rent, unless by set-off.
15. Recovery of damages against other persons.
16. Real actions do not abate by death or intermarriage of a party, but shall be tried after notice.
17. Appointment of guardians for minors. Amendments.
18. If demandant prevails, writ of possession shall issue; judgment is conclusive against all persons interested, who were notified.
19. Allowance of costs, and stay of execution in such cases.
20. Betterments shall be allowed after six years' possession.
21. The premises shall be clearly defined and described, in such action.
22. Tenant may consent that demandant may recover a specified part; effect.
23. Tenant may have betterments upon demurrer or default.
24. Request of tenant for appraisal of improvements, and by demandant for appraisal of the land; the jury shall allow for no improvements, except those made by tenant, or those under whom he claims, and such as were judicious and proper.

(a) 16 Me., 81; 27 Me., 394; 38 Me., 449; 45 Me., 30; 69 Me., 519, 546; 72 Me., 313.

CHAP. 104.

- SEC. 25. The difference between the appraised value of the land, when tenant entered, and the value of it with improvements, at the time of trial, shall be taken for the value of the betterments.
26. Demandant may elect to abandon; and if so, must give bond to tenant, to refund, if ousted by better title.
27. Tenant is allowed to pay one third the value of the land the first year, interest on the whole, and costs.
28. At the end of two years he may pay another third, with interest.
29. At the end of three years he may pay the balance, or the demandant may have his execution, and a lien on the premises. When execution or writ of possession may issue.
30. Tenant's remedy, if he is evicted.
31. If the demandant does not abandon, he cannot have writ of possession, until he pays for the improvements.
32. Restriction of the right to betterments.
33. Tenant shall not commit waste after judgment against him.
34. Parties may agree upon a reference, as to value of improvements.
35. Tenant may propose a sum at which value may be estimated. Effect.
36. Set-off of costs, against appraised value of improvements, in certain cases.
37. A juror is disqualified, if interested in similar questions.
38. What constitutes a possession and improvement.
39. Proceedings, if either party dies before the case is disposed of.
40. How writ of possession shall issue in such case.
41. Either party may have a view by the jury.
42. Proceedings, if a life estate is demanded.
43. If tenant is ousted after six years' possession, he may recover for his buildings and improvements. Value, how to be estimated.
44. Cases in which the defendant may impeach the plaintiff's title deeds.
45. If tenant, and those under whom he claims, have been in possession for forty years, demandant shall recover no costs.
46. Court may appoint and protect surveyors.
47. How supposed claimant to real estate may be compelled to try title. Enjoyment of an easement is a sufficient possession for such purpose.
48. Notice to supposed claimant. Proceedings, in case of default. Proceedings may be by petition. Costs.

Recovery of estates by writ of entry; mode of service.

R.S., c.104, § 1.
6 Me., 439.
7 Me., 232.
17 Me., 220.
20 Me., 279.
24 Me., 527.
32 Me., 175.
51 Me., 366.
66 Me., 250.

Declaration.
R.S., c.104, § 2.
20 Me., 284.
58 Me., 335.

Demandant shall set forth the estate that he claims in the premises.
R.S., c.104, § 3.

Proof of seizin.

SEC. 1. Any estate of freehold, in fee simple, fee tail, for life, or any term of years, may be recovered by a writ of entry; and such writs, and the writ in an action of dower, shall be served by attachment and summons, or copy of the writ, on the defendant, but if he is not in possession, the officer shall give the tenant in hand, or leave at his place of last and usual abode, an attested copy of the writ; and if the defendant is not an inhabitant of the state, the service on the tenant shall be sufficient notice to the defendant, or the court may order further notice.

SEC. 2. The demandant shall declare on his own seizin within twenty years then last past, without naming any particular day or averring a taking of the profits, and shall allege a disseizin by the tenant.

SEC. 3. He shall set forth the estate which he claims in the premises, whether in fee simple, fee tail, for life, or for years; and if for life, then whether for his own life or that of another; but he need not state in the writ the origin of his title, or the deduction of it to himself; but, on application of the tenant, the court may direct the demandant to file an informal statement of his title, and its origin. (a)

SEC. 4. He need not prove an actual entry under his title; but

(a) 50 Me., 143; 57 Me., 344; 58 Me., 105; 59 Me., 133, 254; 63 Me., 415; 64 Me., 57; 73 Me., 472.

proof that he is entitled to such an estate in the premises as he claims, and that he has a right of entry therein, is sufficient proof of his seizin. (a)

CHAP. 104.
R.S., c. 104, § 4.

SEC. 5. No such action shall be maintained, unless, at the time of commencing it, the demandant had such right of entry; and no descent or discontinuance shall defeat any right of entry for the recovery of real estate.

Demandant must have right of entry.
R.S., c. 104, § 5.

SEC. 6. Every person alleged to be in possession of the premises demanded in such writ, claiming any freehold therein, may be considered a disseizor for the purpose of trying the right; but the defendant may plead in abatement, but not in bar, that he is not tenant of the freehold, or he may plead it by a brief statement under the general issue, filed within the time allowed for pleas in abatement, unless by leave of court the time therefor is enlarged; and he may show that he was not in possession of the premises when the action was commenced, and disclaim any right, title, or interest therein, and proof of such fact shall defeat the action; and if he claimed, or was in possession of only a part of the premises when the action was commenced, he shall describe such part in a statement, signed by him or his attorney and filed in the case, and may disclaim the residue; and if the facts contained in such statement are proved on trial, the demandant shall recover judgment for no more than such part.

Who may be considered a disseizor: disclaimer in abatement, but not in bar.
R.S., c. 104, § 6.
17 Me., 16.
22 Me., 317.
24 Me., 308.
34 Me., 174.
43 Me., 281.
44 Me., 48.
49 Me., 103.
58 Me., 335.
68 Me., 21.
69 Me., 52.
71 Me., 543.

SEC. 7. If the person in possession has actually ousted the demandant or withheld the possession, he may, at the demandant's election, be considered a disseizor for the purpose of trying the right, although he claims an estate therein less than a freehold.

Defendant ousting demandant may be deemed disseizor.
R.S., c. 104, § 7.
3 Me., 324.

SEC. 8. In the trial upon such writ, on the general issue, if the demandant proves that he is entitled to such estate in the premises as he has alleged, and had a right of entry therein when he commenced his action, he shall recover the premises, unless the tenant proves a better title in himself. (b)

Proof to entitle the demandant to recover.
R.S., c. 104, § 8.

SEC. 9. Persons claiming as tenants in common, joint tenants, or coparceners, may all, or any two or more, join in a suit for recovery of lands, or one may sue alone.

Joinder of demandants.
R.S., c. 104, § 9.
30 Me., 359.
59 Me., 324.

SEC. 10. The demandant may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded. (c)

What demandant may recover.
R. S., c. 104, § 10.

SEC. 11. When a demandant recovers judgment in a writ of entry, he may therein recover damages for the rents and profits of the premises from the time when his title accrued, subject to the limitation herein contained; and for any destruction or waste of the buildings or other property, for which the tenant is by law answerable.

May recover damages in same action.
R. S., c. 104, § 11.

SEC. 12. The rents and profits, for which the tenant is liable, are the clear annual value of the premises while he was in possession, after

34 Me., 84.
36 Me., 443.
63 Me., 546.
72 Me., 126.
Estimation of rents and profits.

(a) 23 Me., 419; 24 Me., 526; 38 Me., 79; 58 Me., 335; 59 Me., 450.

(b) 5 Me., 225; 12 Me., 349; 19 Me., 386; 22 Me., 317; 23 Me., 237; 27 Me., 363; 31 Me., 148, 311, 587; 33 Me., 356, 542; 38 Me., 79; 44 Me., 120; 50 Me., 63; 52 Me., 568; 53 Me., 275; 55 Me., 549; 56 Me., 96; 57 Me., 344; 58 Me., 335; 63 Me., 104; 64 Me., 57.

(c) 56 Me., 95; 63 Me., 542; 64 Me., 57.

CHAP. 104.

R. S., c. 104,
§ 12.

Same
subject.
R. S., c. 104,
§ 13.

Tenant not
liable for
over six
years' rents;
exception.
R. S., c. 104,
§ 14.

Recovery of
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against other
persons.
R. S., c. 104,
§ 15.

Real actions
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shall be tried
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R. S., c. 104,
§ 16.

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R. S., c. 104,
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Writs of
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shall issue;
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R. S., c. 104,
§ 18.

Allowance of
costs and
stay of
execution in
such cases.
R. S., c. 104,
§ 19.

Betterments
shall be
allowed after
six years'
possession.
R. S., c. 104,
§ 20.

Premises
must be
clearly
defined and
described.
R. S., c. 104,
§ 21.
61 Me., 367.

deducting all lawful taxes paid by him, and the necessary and ordinary expenses of repairs, cultivation of the land, or collection of the rents and profits.

SEC. 13. In estimating the rents and profits, the value of the use by the tenant of improvements made by himself or by those under whom he claims, shall not be allowed to the demandant.

SEC. 14. The tenant is not liable for the rents and profits for more than six years, nor for waste or other damage committed before that time, unless the rents and profits are allowed in set-off to his claim for improvements.

SEC. 15. Nothing herein contained prevents the demandant from maintaining an action in a writ of entry for mesne profits or for damage to the premises, against any person who has had possession of the premises, or is otherwise liable to such action, except the tenant.

SEC. 16. No real action shall be abated by the death or intermarriage of either party after its entry in court; but the court shall proceed to try and determine such action, after such notice as the court orders has been served upon all interested in his estate, personally, or by publication in some newspaper. (a)

SEC. 17. In such case, if any heir is a minor, the court shall order notice to the guardian, and may appoint a guardian ad litem, if necessary, and direct all necessary amendments in the forms of proceeding.

SEC. 18. If the demandant recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment is conclusive on them.

SEC. 19. The prevailing party shall recover full costs in all such cases, and the court may order one or more executions to be issued therefor against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties, and may stay any such execution, if the situation of the estate requires it.

SEC. 20. When the demanded premises have been in the actual possession of the tenant or of those under whom he claims, for six successive years or more before commencement of the action, such tenant shall be allowed a compensation for the value of any buildings and improvements on the premises, made by him or by those under whom he claims, to be ascertained and adjusted as hereinafter provided. (b)

SEC. 21. In such action, the demanded premises shall be clearly described in the declaration, otherwise the court may direct a nonsuit. If the tenant, or person under whom he claims, has been in possession of a tract of land lying in one body, for six years or more before the commencement of the action, and only part of it is demanded, and the tenant alleges that the demandant has as good a title to the whole as to such part, he may request the jury to inquire and decide that fact; and if they so find, they shall proceed no farther; but the court shall enter

(a) 2 Me., 128; 23 Me., 236; 33 Me., 175.

(b) 12 Me., 376; 21 Me., 523; 22 Me., 111; 23 Me., 194; 25 Me., 413.

judgment that the writ abate, unless the declaration is amended so as to include the whole tract, which the court may allow without costs.

SEC. 22. If the tenant enters notice on record in open court, that the demandant may recover a specified part of the demanded premises, by consent of the demandant judgment may be rendered in his favor for such part, and for the tenant for the residue; but if he does not consent, and recovers only such part, he shall recover no costs, but the tenant shall recover his costs from the time of such notice.

Tenant may consent that demandant may recover a specified part; effect thereof.
R. S., c. 104, § 22.

SEC. 23. The tenant shall have the benefit of the provisions in the following sections as to the increased value of premises, when the cause including all real actions brought by a reversioner or remainder man, or his assigns, after the termination of a tenancy in dower, or any other life estate, against the assignee or grantee of the tenant of the life estate, or against his heirs or legal representatives, is determined in favor of the plaintiff upon demurrer, default, or by verdict.

Tenant may have betterments, upon demurrer or default.
R. S., c. 104, § 23.
58 Me., 563.
68 Me., 571.
72 Me., 45.

SEC. 24. The tenant may file a written claim to compensation for buildings and improvements on the premises, and a request for an estimation by the jury of the increased value of the premises, by reason thereof; and the demandant may file a request, in writing, that the jury would also estimate what would have been the value of the premises, at the time of trial, if no buildings had been erected, improvements made, or waste committed; both these estimates they shall make, and state in their verdict; and the jury shall allow for no buildings or improvements, except those that they find were made by the tenant, his grantor, or assignor, and were judicious and proper under the circumstances.

Request of either party for appraisal of improvements, and its effect.
R. S., c. 104, § 24.

SEC. 25. If the tenant, so claiming, alleges and proves that he, and those under whom he claims, have had the premises in actual possession for more than twenty years prior to the commencement of the action, the jury may find that fact; and in estimating the value of the premises, if no buildings had been erected, or improvements made thereon, they shall find, and state in their verdict, what was the value of the premises when the tenant, or those under whom he claims, first entered thereon. The sum so found shall be deemed the estimated value of the premises; and in estimating the increased value by reason of the buildings and improvements, the jury shall find and state in their verdict, the value of the premises at the time of the trial, above their value when the tenant or those under whom he claims, first entered thereon; and the sum, so found and stated, shall be taken for the buildings and improvements.

The difference between the appraised value of the land when tenant entered, and at the time of trial, shall be the value of the betterments.
R. S., c. 104, § 25.

SEC. 26. If the demandant after such verdict, at the same, or a subsequent term of the court, if the cause is continued, makes his election on record to abandon the premises to the tenant at the value estimated by the jury, and files with the clerk for the use of the tenant a bond, in the penal sum of three times the estimated value of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the tenant, his heirs or assigns, if they are evicted from the land within twenty years by a title better than that of the demandant, then judgment shall be rendered against the tenant for the sum so estimated by the jury, and costs.

When and how, demandant may elect to abandon.
R. S., c. 104, § 26.
1 Me., 314.
3 Me., 377.
4 Me., 297.
16 Me., 127.
50 Me., 322.

CHAP. 104.

Tenant may pay one third the value of land, interest and costs, the first year.
R. S., c. 104, § 27.

SEC. 27. At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the tenant shall have deposited with the clerk of the court, or in his office for the demandant's use, one year's interest of said sum, and one third of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time.

At the end of two years, another third with interest.
R. S., c. 104, § 28.

SEC. 28. If within two years after the rendition of judgment, the tenant pays one year's interest on the balance of the judgment due, and one third of the original judgment, execution shall be further stayed; otherwise it may issue for two thirds of the original amount of the judgment and interest thereon.

And at the end of three years, he may pay the balance, and effect thereof.
R. S., c. 104, § 29.

SEC. 29. If the tenant, within three years after judgment, pays into the clerk's office the remaining third and interest thereon, having made the other payments as aforesaid, execution shall never issue; otherwise, it may issue for the third aforesaid and one year's interest thereon; and the premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until sixty days after an execution might have issued as aforesaid, notwithstanding any intermediate conveyance, attachment, or seizure upon execution; and such execution may be extended on said land or any part of it; or it may be sold on execution like an equity of redemption; in either case, subject to the right of redemption as in those cases. An execution or writ of possession may issue at any time within three months after default of payment by the tenant, in cases mentioned in this and the two preceding sections, although it is more than a year after the rendition of judgment.

Tenant's remedy, if he is evicted.
R. S., c. 104, § 30.

SEC. 30. If the tenant or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the demandant or his heirs to aid him in his defence against such title, they, their executors, or administrators, may recover back the money so paid, with lawful interest, of said demandant or his representatives; but if no notice was given, the tenant, in an action against the original demandant to recover the price paid for the premises, may show that he was evicted by a title better than that of the demandant.

If demandant does not abandon, he cannot have writ of possession until he pays for improvements.
R. S., c. 104, § 31.

SEC. 31. When the demandant does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land, unless, within one year from the rendition thereof, he pays into the clerk's office, or to such person as the court appoints, for the use of the tenant, the sum assessed for the buildings and improvements, with interest thereon.

Restriction of the right to betterments.
R. S., c. 104, § 32.
70 Me., 240.

SEC. 32. Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgagor and mortgagee, their heirs and assigns; or to any case where the tenant, or the person under whom he claims, entered into possession of the premises and occupied under a contract with the owner, which was known to the tenant when he entered.

Tenant shall not commit

SEC. 33. No tenant, after judgment is entered against him for the

appraised value of the premises, shall unnecessarily cut wood, take away timber, or make any strip or waste on the land, until the amount of such judgment is satisfied.

SEC. 34. When the parties agree that the value of the buildings and improvements on the land demanded, and the value of the land, shall be ascertained by persons named on the record for that purpose, their estimate, as reported by them and recorded, is equal in its effect to a verdict.

SEC. 35. When the tenant, at any stage of such action, files a statement in open court, consenting to a sum at which the buildings and improvements, and the value of the demanded premises, may be estimated; if the demandant consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the demandant does not consent, and the jury does not reduce the value of the buildings and improvements below the sum offered, nor increase the value of the premises above the sum offered, he shall recover no costs after such offer; but the tenant shall recover his costs after such offer, and have judgment and execution therefor, subject to the following section.

SEC. 36. In all cases where the demandant does not abandon the premises to the tenant, the court may, on written application of either party during the term when judgment is entered, order the costs recovered by the demandant to be set off against the appraised value of the buildings and improvements on the land; a record of this order shall be made, and the court shall thereupon enter judgment according as the balance is in favor of one party or the other.

SEC. 37. No person, who, as proprietor or occupant, is interested in a similar question, shall sit as juror in the trial of a cause, when the value of buildings and improvements made on the demanded premises, and the value of the premises, are to be estimated as aforesaid.

SEC. 38. A possession and improvement of land by a tenant are within this chapter, although a portion of it is woodland and uncultivated, and although not wholly surrounded by a fence, or rendered inaccessible by other obstructions, if they have been open, notorious, exclusive, and comporting with the usual management and improvement of a farm by its owner.

SEC. 39. After judgment has been rendered for the demandant in a writ of entry, if either party dies before a writ of possession is executed, or the cause is otherwise disposed of according to the foregoing provisions, any money payable by the tenant may be paid by him, his executor, or administrator, or by any person entitled to the estate under him, to the demandant, his executor or administrator, with the like effect as if both parties were living.

SEC. 40. The writ of possession shall be issued in the name of the original demandant against the original tenant, although either or both are dead; and when executed, it shall inure to the use and benefit of the demandant, or of the person who is then entitled to the premises under him, as if executed in the lifetime of the parties.

SEC. 41. Either party may have a view by the jury of the place in

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waste after judgment.
R. S., c. 104, § 33.
Parties may agree upon reference as to value of improvements.
R. S., c. 104, § 34.

Tenant may propose a value for premises and betterments; its effect.
R. S., c. 104, § 35.
2 Me., 355.

Set-off of costs against improvements.
R. S., c. 104, § 36.

Juror is disqualified, if interested in similar questions.
R. S., c. 104, § 37.
What constitutes a possession and improvement.
R. S., c. 104, § 38.
2 Me., 281.
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Proceedings, if either party dies before the cause is disposed of.
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How writ of possession shall issue in such case.
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view by the jury.
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Proceedings,
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If tenant is
ousted, after
six years'
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cover for im-
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R. S., c. 104,
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74 Me., 513.

Cases in
which
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title deeds.
R. S., c. 104,
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If tenant and
his grantors
have been in
possession for
forty years,
no costs for
plaintiff.
R. S., c. 104,
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Court may
appoint and
protect
surveyors.
R. S., c. 104,
§ 46.
58 Me., 410.

Supposed
claimant to
real estate
may be
compelled to
bring action
to try title.
1883, c. 146, § 1.

question, if in the opinion of the court it is necessary to a just decision ; the party moving for it shall advance to the jury such sum as the court orders, to be taxed against the adverse party if the cause is decided against him on the merits, or through his default.

SEC. 42. If the demandant claims an estate for life only in the premises, and pays a sum allowed to the tenant for improvements, he, or his executor, or administrator, at the termination of his estate, is entitled to receive of the remainder man or reversioner, the value of such improvements, as they then exist ; and shall have a lien therefor on the premises, as if they had been mortgaged for its payment, and may keep possession until it is paid ; and if the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate.

SEC. 43. When a person makes entry into lands or tenements, of which the tenant in possession, or those under whom he claims, have been in actual possession for six years or more, and withholds from such tenant, the possession thereof, the tenant may recover of the person so entering, or of his executor, or administrator, in an action of assumpsit for money laid out and expended, the increased value of the premises by reason of the buildings and improvements made by the tenant, or by those under whom he claims, to be ascertained by the principles hereinbefore provided ; these provisions extend to the grantee or assignee of the tenant in dower and of any other life estate ; and a lien is created on the premises in favor of such claim, to be enforced by an action commenced within one year after such entry ; and it is no bar to such action, if the tenant, to avoid cost, yields to the superior title.

SEC. 44. In all actions respecting lands or any interest therein, a title deed, offered in evidence, may be impeached by the defendant as obtained by fraud, where the grantor, if a party, could impeach it, if the defendant has been in the open, peaceable, and adverse possession of the premises for twenty years.

SEC. 45. In all real and mixed actions, in which the tenant proves that he and those under whom he claims, have been in the open, notorious, adverse, and exclusive possession of the demanded premises, claiming in fee simple, for forty years preceding the commencement of the action, and the jury so find, the demandant recovers no costs.

SEC. 46. The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action, on motion of either party ; and if he is prevented by force, menaces, or fear, from performing the duties assigned him, the court may issue a warrant to the sheriff, commanding him, with suitable aid, to prevent such opposition ; and in the execution of such warrant, he may exercise all the power pertaining to his office ; and all persons refusing their aid when called for by him are liable to the same penalties as in other like cases.

SEC. 47. A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than ten years, may file a petition in the supreme judicial court, setting forth his estate, whether of inheritance, for life, or for years, describing the premises, averring that he is credibly informed and believes that persons named

in the petition make some claim adverse to his estate, and praying that such persons may be summoned to show cause why they should not bring an action to try their alleged title. A person in the enjoyment of an easement is in possession of real property within the meaning and for the purposes of this section.

SEC. 48. Upon such petition the court shall order notice to the supposed claimants, returnable at a court to be held in the county where the property, or some portion of it lies, and if upon return of the order of notice duly executed they make default, or, having appeared, disobey the order of the court to bring an action and try their title, the court shall enter a decree that they be forever debarred and estopped from having or claiming any right or title, adverse to the petitioner, in the premises described. If the petitioner prefers, the petition may be inserted like a declaration in a writ, and served by copy like a writ of original summons. If the persons so summoned appear and disclaim all right and title adverse to the petitioner, they recover their costs. If they claim title, they shall by answer show cause why they should not be required to bring an action and try such title; and the court shall make such decree respecting the bringing and prosecuting of such action as seems equitable and just.

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—enjoyment of an easement is a sufficient possession.

Notice to supposed claimant. 1883, c. 146, § 2. —if claimant is defaulted or disobeys order of court to try title; decree to be entered against him. —how petition may be served. —if persons summoned disclaim title, they recover costs. —claimant must show cause why he should not bring action to try title.

CHAPTER 105.

LIMITATION OF REAL ACTIONS, AND RIGHTS OF ENTRY.

- SEC. 1. Rights of entry and of action are barred in twenty years.
2. From what time, such right begins to run.
- 3, 4, 5. When such right shall be deemed to accrue. Any person may enter for forfeiture or condition broken. Cases not specially provided for.
6. When action may be brought by a minister, or other sole corporation.
7. Saving in favor of minors, and certain other disabled persons.
8. Further saving, if the person first entitled, dies during such disability.
9. Consequence, if tenant in tail or remainder man dies before the expiration of the limitation.
10. What constitutes such a disseizin as to bar the right of recovery.
11. Limitation of actions by the State.
12. Limitation shall not take effect in certain cases, where the first suit fails.
13. No right of way, or other easement, can be acquired but by adverse use; and the owner, by notice, may prevent such acquisition.
14. How such notice must be given.
15. No action, for recovery of land, can be maintained, when tenant, and those under whom he claims, have been in possession over forty years.

SEC. 1. No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within twenty years after the right to do so first accrued; or unless within twenty years after he, or those under whom he claims, were seized or possessed of the premises; except as hereinafter provided. (a)

Rights of entry and action are barred in twenty years. R.S., c. 105, § 1.

(a) 20 Me., 211; 21 Me., 204; 25 Me., 471; 35 Me., 463.