

MAINE STATE LEGISLATURE

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ditioned to enter the suit and to pay all intervening costs and such reasonable rent of the premises, as the magistrate shall adjudge, if the judgment is not reversed.

36 Me. 432; 68 Me. 120; 97 Me. 313.

Sec. 9. When judgment is rendered for claimant, he shall have immediate possession, on filing recognizance. R. S. c. 96, § 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.

97 Me. 313.

Sec. 10. Sums due for rent and damages, how recovered. R. S. c. 96, § 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.

76 Me. 497; 84 Me. 538; 93 Me. 187; 96 Me. 103, 373; 112 Me. 479.

Note. Tenancies may be terminated on account of maintenance of nuisance as defined in c. 23, § 1, c. 23, § 3; upon conviction of keeping house of ill fame, c. 126, § 22.

Tenancies of mills may be terminated on account of unlawful obstruction of streams, c. 97, § 34.

CHAPTER 100.

Waste and Trespass on Real Estate.

Sec. 1. Remedy, if tenant commits waste. R. S. c. 97, § 1. If a tenant in dower, by curtesy, for life, or for years, commits 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.

12 Me. 436; 19 Me. 291; 51 Me. 436.

Sec. 2. Jury assess damages; action may be on the case. R. S. c. 97, § 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.

37 Me. 365; 51 Me. 436; 52 Me. 143.

Sec. 3. Remainder man or reversioner may sue. R. S. c. 97, § 3. The remainder man, or reversioner for life or for 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.

37 Me. 365; 51 Me. 436.

Sec. 4. Action lies against executor, etc. R. S. c. 97, § 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. Part owners shall not commit waste, without giving notice; treble damages in such cases. R. S. c. 97, § 5. If any joint tenant 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.

15 Me. 200; 31 Me. 187; 44 Me. 79; 64 Me. 63; 86 Me. 118; 87 Me. 233;
93 Me. 114; 99 Me. 351; 112 Me. 235.

Sec. 6. Defendant shall pay only single damages in certain cases. R. S. c. 97, § 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. Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached. R. S. c. 97, § 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.

66 Me. 53.

Sec. 8. Treble damages for waste, pending a suit. R. S. c. 97, § 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, timber, trees or poles, standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in an action of trespass.

31 Me. 187.

Sec. 9. Trespass on lands of another; double damages. R. S. c. 97, § 9. 1907, c. 135. 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

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such gates open, or breaks glass in any building, is liable in damages to the owner in an action of trespass. And if said acts are committed wilfully or knowingly, the defendant is liable to the owner in double damages.

See c. 8, § 14; c. 129, § 17; 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. 10. Trespasses on property of county, town, parish, actions for. R. S. c. 97, § 10. Where trespasses are committed on buildings, enclosures, 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.

Sec. 11. Trespass on improved or ornamental grounds. R. S. c. 97, § 11. Whoever enters on any grass land, dooryard, 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.

66 Me. 50; 112 Me. 236. See c. 129, §§ 19, 21.

Sec. 12. Trespass on islands in salt waters, after notice; both exemplary and actual damages are imposed; evidence. R. S. c. 97, § 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.

Sec. 13. Notices, how to be given; penalty for injuring sign-boards. R. S. c. 97, § 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.

Sec. 14. Damages and penalties, how and where to be recovered. R. S. c. 97, § 14. Actions to recover any of the sums or penalties named in the two preceding sections, may be brought before the supreme judicial court, or either superior court, or any 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.

Sec. 15. Imprisonment for non-payment. R. S. c. 97, § 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.

Note. The provisions of sections twelve to fifteen inclusive are applicable to Petit Menan Point in the town of Steuben, special laws of 1875, c. 65.

Sec. 16. Penalty for waste on lands of an insolvent deceased. R. S. c. 97, § 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.

10 Me. 370; 15 Me. 206; 77 Me. 247.

Sec. 17. Liability of executor or administrator for waste. R. S. c. 97, § 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.

See c. 68, §§ 11, 22; c. 71, § 22.

Sec. 18. One or more tenants in common may join in actions; notice to others. R. S. c. 97, § 18. All or any of the tenants in common 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 cotenants, if known, and the court may order notice to be given in such actions to all other cotenants 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.

29 Me. 204; 43 Me. 253; 57 Me. 409; 93 Me. 115.

Sec. 19. Judgment for damage; execution for plaintiff's share; scire facias by cotenants. R. S. c. 97, § 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 cotenants 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.

83 Me. 103; 93 Me. 115.

Sec. 20. If one or more joint tenants take the whole rent, others may recover. R. S. c. 97, § 20. If any one or more of the joint tenants or tenants in common take the whole rents or income in the joint estate, or more than their share, without the consent of their cotenants, and refuse, for a reasonable time after demand, to pay such cotenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing cotenants, to recover their proportion thereof.

64 Me. 465; 72 Me. 406; 79 Me. 89; 92 Me. 604.