

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

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Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

appeals, he shall recognize in like manner to the plaintiff, conditioned to enter the action and to pay all intervening costs and such reasonable rent of the premises, as the magistrate shall adjudge, if the judgment is not reversed. (R. S. c. 109, § 8. 1959, c. 317, § 266.)

Effect of amendment.—The 1959 amendment substituted “as in other civil actions” for “next to be held in the county” at the end of the first sentence, substituted “plaintiff” for “claimant” in the second and third sentences, substituted “otherwise”

for “hereinafter” in the second sentence and substituted “action” for “suit” in the second and third sentences.

Effective date of 1959 amendment.—See note to § 4.

Sec. 10. Sums due for rent and damages.—Sums due for rent on leases under seal or otherwise and claims for damages to premises rented may be recovered in an action, specifying the items and amount claimed, but no action shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns or tenant, contained in a lease or written agreement to hire or occupy any building, buildings or part of a building, during a period when such building, buildings or part of a building, which the lessee, his assigns, legal representatives or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use or habitation. No agreement contained in a lease of any building, buildings or part of a building or in any written instrument shall be valid and binding upon the lessee, his legal representatives or assigns to pay the rental stipulated in said lease or agreement during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use and habitation. (R. S. c. 109, § 10. 1959, c. 317, § 267.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, deleted “of assumpsit on account annexed to the writ” following the words “recovered in an action,” near the beginning of the section and deleted “or suit at

law in assumpsit, debt, covenant broken or otherwise” preceding the words “shall be maintained” also near the beginning of the section.

Effective date of 1959 amendment.—See note to § 4.

Chapter 123.

Petitions and Actions of Review.

Secs. 1-15. Repealed by Public Laws 1959, c. 317, § 268.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

Chapter 124.

Waste and Trespass on Real Estate.

Sec. 1. Remedy, if tenant commits waste. — 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 against him. An heir may recover in the same action for waste done in his own time and in the time of his ancestor. (R. S. c. 111, § 1. 1959, c. 317, § 269.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and deleted “of waste” following the word “action” near the end of the first sentence.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought

after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

Sec. 2. Damages.—Any issue of fact shall be tried by a jury, with or without a view of the premises, as the court orders. The jury that inquires of the waste shall assess the damages. (R. S. c. 111, § 2. 1959, c. 317, § 270.)

Effect of amendment.—The 1959 amendment deleted the former last sentence reading “An action on the case in the nature of waste may be substituted for the action of

waste” and divided the remainder of the section into two sentences.

Effective date of 1959 amendment.—See note to § 1.

Sec. 3. Remainder man or reversioner may sue.—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. (R. S. c. 111, § 3. 1959, c. 317, § 271.)

Effect of amendment.—The 1959 amendment deleted the words “of waste” after the word “action.”

Effective date of 1959 amendment.—See note to § 1.

Sec. 4. Action lies against executor, etc.—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. (R. S. c. 111, § 4. 1959, c. 317, § 272.)

Effect of amendment.—The 1959 amendment deleted the words “of waste”, formerly appearing after the word “action.”

Effective date of 1959 amendment.—See note to § 1.

Sec. 6. Defendant to pay only single damages in certain cases.—If the jury finds that the defendant in such action 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 exclusive possession thereof, claiming it as their own, for 3 years next before the acts complained of were committed, only single damages shall be recovered. (R. S. c. 111, § 6. 1961, c. 317, § 437.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in this section.

Sec. 7. Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached.—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 to do so, any justice of the supreme judicial court or of the superior court 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. The court may enforce obedience by such process as may be employed in other cases and dissolve it when deemed proper. (R. S. c. 111, § 7. 1959, c. 317, § 273.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, deleted “in vacation or term time” following “superior court” in the first sen-

tence, and substituted “other cases” for “an equity case” in the second sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 8. Treble damages for waste, pending an action.—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 a civil action. (R. S. c. 111, § 8. 1961, c. 317, § 438.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of trespass” at the end of this section.

Sec. 9. Trespass on lands of another.—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 a civil action. If said acts are committed willfully or knowingly, the defendant is liable to the owner in double damages. (R. S. c. 111, § 9. 1961, c. 317, § 439.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of trespass” at the end of the first sentence of this section.

“**Willfully**” as used in this section is intended to embrace conduct on the part of the defendant which displays an utter and complete indifference to and disregard for

the rights of others. *Blaisdell v. Daigle*, 155 Me. 1, 149 A. (2d) 904.

The word “or” suggests that willfulness without actual knowledge of wrongdoing will suffice to justify the imposition of double damages. *Blaisdell v. Daigle*, 155 Me. 1, 149 A. (2d) 904.

Sec. 11. Trespass on improved or ornamental grounds. — 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 a civil action to the party injured in treble damages. (R. S. c. 111, § 11. 1961, c. 317, § 440.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of trespass” in this section.

Applied in *Brawn v. John Lucas Tree Co.*, 157 Me. 242, 170 A. (2d) 694.

Sec. 12. Trespass on islands in salt waters after notice. — Whoever, after notice by the owner, occupant or lessee in any of the ways provided in section 13, 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 \$20 nor more than \$50, in addition to all actual damage sustained by said owner, occupant or lessee, and shall forfeit to said owner, occupant or lessee, \$5 for each bird of any kind shot, caught, taken or killed on such island, all to be recovered in a civil action. 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. (R. S. c. 111, § 12. 1961, c. 317, § 441.)

Effect of amendment.—The 1961 amendment substituted “section 13” for “the following section” near the beginning of the first sentence of this section, deleted “also”

preceding “forfeit” near the end of such sentence and substituted “a civil action” for “an action of debt” at the end of such sentence.

Sec. 13. Notices; injuring signboards.—Notices referred to in section 12 shall be given by erecting and maintaining signboards at least one foot square in at least 2 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 signboards herein named are erected and maintained or

not. Whoever tears down or in any way defaces or injures any such signboard forfeits \$100, to be recovered by the owner, occupant or lessee of such island in a civil action. (R. S. c. 111, § 13. 1961, c. 317, § 442.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “section 12” for “the preceding section” in the present first sen-

tence, and substituted “a civil action” for “an action of debt” at the end of the present second sentence.

Sec. 16. Waste on lands of an insolvent deceased.—If an heir or devisee of a person deceased, after the estate of the decedent is represented insolvent and before sale of the real estate for payment of debts or before all the debts are paid, removes or injures any building or any trees, except such trees as are 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 a civil action. (R. S. c. 111, § 16. 1961, c. 317, § 443.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of trespass” at the end of this section.

Sec. 18. One or more tenants in common may join in actions; notice to others.—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 action for the benefit of all concerned. (R. S. c. 111, § 18. 1961, c. 317, § 444.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” near the end of this section.

Sec. 19. Judgment for damage; execution for plaintiffs' share.—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. The remaining cotenants may afterwards jointly or severally intervene in the action and on motion obtain execution for their proportion of the damages adjudged therein. (R. S. c. 111, § 19. 1959, c. 317, § 274.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and rewrote what is now the second

sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 20. If one or more joint tenants take whole rent, others may recover.—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 against the refusing cotenants to recover their proportion thereof. (R. S. c. 111, § 20. 1959, c. 317, § 275.)

Effect of amendment.—The 1959 amendment deleted the words “of special assumpsit,” formerly appearing after the

word “action” near the end of the section.

Effective date of 1959 amendment.—See note to § 1.