

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAPTER 95.

WASTE AND TRESPASS ON REAL ESTATE.

- SEC. 1. Remedy if tenant for life or years commits waste; the heir may sue for waste committed in his ancestor's time, as well as in his own time.
2. Proceedings in court; jury in all cases to assess damages, with or without a view of the premises; action of the case may be brought.
3. Reversioner and remainder man may sue.
4. The action will lie against the executor or administrator.
5. Part owners not to commit waste without giving thirty days' notice; treble damages to be awarded in such case; how recovered and appropriated.
6. Defendant not to 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 property.
11. Trespases by taking grass, fruit, or other vegetables from improved lands.
12. Penalty for waste on lands of a person deceased insolvent.
13. Liability of executor or administrator for committing waste.
14. One or more tenants in common may join or sever in actions for damages. Notice to the other co-tenants to be given, who may become plaintiffs.
15. Judgment to be rendered for the whole damage, and execution to issue for the proportion which the plaintiffs have sustained. Scire facias on such judgment by the other co-tenants for their shares.
16. If one or more joint tenant takes the whole rent, the co-tenants may recover their share, after demand.

SEC. 1. If any 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 the time of his ancestor.

Remedy if tenant commits waste, &c.
R. S., c. 129, § 1, 2.

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 nature of waste, may be substituted for the action of waste.

Proceedings in court, &c.
R. S., c. 129, § 3, 4.

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 he has suffered by the waste.

Remainder man may sue, &c.
37 Maine, 363.
R. S., c. 129, § 5.

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

Action will lie against ex'or or adm'r.
R. S., c. 129, § 6.

SEC. 5. If any joint tenant, coparcener, or tenant in common of undivided lands, cuts down, destroys, or carries away any trees, timber, wood or underwood, standing or lying on such lands, or digs up or carries away any ore, stone, or other valuable thing found thereon, or commits any 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 mortgagees and mortgagees, if any there are, interested therein, of his in-

Part owners not to commit waste without giving notice, &c.
15 Maine, 198.
R. S., c. 129, § 7, 8.
1842, c. 31, § 15.
1854, c. 78, § 1.

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tention to enter upon and improve the land; and if any persons interested are unknown, or their residence is unknown, or out of the state, the notice to them 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 co-tenants, without naming the others, may sue for and recover their proportion of such damages.

Defendant to pay only single damages in certain cases.
R. S., c. 129, § 9.
1854, c. 78, § 1.

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.

Injunction to prevent waste pending a process for the recovery of lands, and on lands attached.
R. S., c. 129, § 14.
1846, c. 188, § 12.

SEC. 7. If any defendant in an action to recover possession of real estate, or any person whose real estate is attached in a civil action, does 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 all damages and costs; and the court may enforce obedience to such injunctions by such process as may be employed in an equity case, and dissolve it when deemed proper.

Treble damages recoverable for waste on lands pending a suit therefor.
R. S., c. 129, § 11.

SEC. 8. If, during the pendency of any action for the recovery of land, the tenant makes any strip or waste by cutting, felling, or destroying any wood, timber, trees, or poles, standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in an action of trespass.

Trespass on lands of another without his consent.
R. S., c. 129, § 10.

SEC. 9. If any person cuts down, destroys, injures, or carries away, any ornamental or fruit trees, 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 any glass in any building, he shall be liable in damages to the owner in an action of trespass.

Trespases on public property.
R. S., c. 129, § 12.

SEC. 10. Where any trespases are committed on any 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; and if the property injured belongs to a school district, the treasurer of the town may sue in its name.

Trespases by taking grass, fruit, &c., from improved lands.
R. S., c. 129, § 13.

SEC. 11. If any person enters on any grass land, orchard, or garden, and takes 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.

Penalty for waste on lands of a person deceased insolvent.

SEC. 12. 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 what 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.

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10 Maine, 365.
15 Maine, 205.

SEC. 13. If such executor or administrator is heir or devisee, and 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.

R. S., c. 129,
§ 15.

Liability of executor or administrator for committing waste.

R. S., c. 129,
§ 16.

SEC. 14. All or any of the tenants in common, co-parceners, or joint tenants of any 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, &c.

Notice to other co-tenants, &c.

R. S., c. 129,
§ 17, 18.

SEC. 15. The court shall enter judgment for the whole amount of the injury proved; but 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, &c.
Scire facias by other co-tenants for their shares.

R. S., c. 129,
§ 19, 20.

SEC. 16. 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, in 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, &c.

1848, c. 61,
§ 1, 2.

CHAPTER 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

- SEC. 1. Owner of beasts distrained, may replevy them.
- 2. The mode of proceeding, process, &c.
- 3. Bond to be given before service of writ.
- 4. If the beasts are lawfully distrained, defendant to have judgment for forfeiture or damages, fees, costs and expenses, or for a return.
- 5. If unlawfully distrained, plaintiff to have judgment for damages and costs.
- 6. Either party may appeal.
- 7. In what cases a cause may be transferred from a justice to the supreme judicial court.

REPLEVIN OF GOODS.

- 8. Any goods, unlawfully detained, may be replevied.
- 9. In what courts replevin may be brought.