

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.

CHAP. 103. divided without damage to the whole; the dower may be assigned of the rents and profits thereof, to be received by the defendant as tenant in common with the other owners of the profits in certain cases.
R. S., c. 144, § 9.

CHAPTER 104.

REAL ACTIONS.

- SEC. 1. Recovery of estates by writ of entry; mode of service.
2. Defendant to declare on his own seizin, within twenty years, and disseizin by tenant.
3. To set forth the estate he claims in the premises.
4. Proof of seizin.
5. Defendant must have right of entry; such right 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, though he claims less than a freehold.
8. Proof to entitle the demandant to recover on trial.
9. Joinder of demandants.
10. 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 not liable for more than six years.
15. Recovery of damages against other persons.
16. Real actions not to abate by death or intermarriage of a party.
17. Appointment of guardians, for minors. Amendments.
18. Writs of possession to conform to the case; judgment conclusive against all persons interested, who were notified.
19. Allowance of costs, and stay of execution, in such cases.
20. Betterments allowed after six years possession.
21. The premises to be clearly defined and described, in such action.
22. Tenant may consent that demandant may recover a specified part; effect thereof.
23. Tenant may have betterments upon demurrer or default.
- Request of tenant for appraisal of improvements, and by demandant for appraisal of the land; the jury to allow for no improvements, except those made by tenant, or those under whom he claims, and that were judicious and proper.
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, to be taken for the value of betterments.
26. Demandant may elect to abandon; and if so must give bond to tenant, to refund fund, if ousted by better title.
27. Tenant 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. And at the end of three years, he may pay the balance, or the demandant 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, till he pays for the improvements.
32. Restriction of the right to betterments.

- SEC. 33. Tenant not to commit waste after judgment against him.
 34. Parties may agree as to value of improvements.
 35. Tenant may propose a sum at which the value may be estimated. Effect thereof.
 36. Set-off of costs, against the appraised value of improvements in certain cases.
 37. Jurors disqualified, if interested in similar questions.
 38. What constitutes a possession and improvement.
 39. Proceedings, if either party dies before the cause 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. The value of improvements in such case to be estimated, under the provisions of this chapter.
 44. Cases, in which defendant may impeach the plaintiff's title deeds.
 45. If tenant and those under whom he claims have been in possession forty years, defendant to recover no costs.
 46. Court may appoint and protect surveyors.

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 this state, the service on the tenant shall be sufficient notice to the defendant, or the court may order further notice.

Recovery of estates by writ of entry; mode of service.
 6 Greenl. 436.
 7 Greenl. 232.
 17 Maine, 219.
 20 Maine, 278.
 24 Maine, 520.
 32 Maine, 174.
 R. S., c. 145,
 § 3.
 1842, c. 31, § 18.

SEC. 2. The defendant 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 allege a disseizin by the tenant.

Demandant to declare on his own seizin, &c.
 20 Maine, 281.
 R. S., c. 145,
 § 4.

SEC. 3. He shall set forth the estate 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 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 defendant to file an informal statement of his title, and its origin.

To set forth the estate he claims in the premises.
 R. S., c. 145,
 § 5.

SEC. 4. He need not prove an actual entry under his title; but proof that he is entitled to such an estate in the premises, as he claims, and that he has a right of entry therein, shall be sufficient proof of his seizin.

Proof of seizin.
 23 Maine, 417.
 24 Maine, 520.
 R. S., c. 145,
 § 6.

SEC. 5. No such action shall be maintained, unless, at the time of commencing it, the defendant 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, &c.
 R. S., c. 145,
 § 7, 8.

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 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 en-

Who may be considered a disseizor.
 Disclaimer.
 17 Maine, 14.
 22 Maine, 312.
 24 Maine, 308.
 R. S., c. 145,
 § 9.
 1846, c. 221, § 1.

CHAP. 104. larged; 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 defendant shall recover judgment for no more than such part.

If defendant has ousted defendant, &c.
34 Maine, 79.
R. S., c. 145,
§ 10.

Proof to entitle the defendant to recover.
R. S., c. 145,
§ 11.

Joinder of defendants.
R. S., c. 145,
§ 12.

Demandant may recover on proof of title.
R. S., c. 145,
§ 13.

Demandant may recover damages in the same action.
34 Maine, 79.
36 Maine, 440.
R. S., c. 145,
§ 14.

Estimation of rents and profits.
R. S., c. 145,
§ 15.

Same subject.
R. S., c. 145,
§ 16.

Tenant not liable for rents and profits, &c.
R. S., c. 145,
§ 17.

Recovery of damages against other persons.
R. S., c. 145,
§ 18.

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

SEC. 8. In the trial upon such writ, on the general issue, if the defendant 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. (a)

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.

SEC. 10. The defendant may recover a specific part or undivided portion of the premises to which he proves a title, though less than he demanded.

SEC. 11. When a defendant recovers judgment in a writ of entry, he may therein recover damages for the rents and profits of the premises from the time 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.

SEC. 12. The rents and profits, for which the tenant is liable, is the clear annual value of the premises while he was in possession, after deducting all lawful taxes paid by him, and the necessary and ordinary expenses of repairs, cultivating the land, or collecting 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 those under whom he claims, shall not be allowed to the defendant.

SEC. 14. The tenant shall not be liable for the rents and profits for more time 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 shall prevent the defendant from maintaining an action for mesne profits, or for damage to the premises, against any person except the tenant in a writ of entry, who has had possession of the premises, or is otherwise liable to such action.

(a) 5 Maine, 224; 12 Maine, 346; 19 Maine, 383; 22 Maine, 312; 23 Maine, 234; 27 Maine, 357; 31 Maine, 143, 306, 583; 33 Maine, 355, 541; 38 Maine, 78.

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 duly served upon all interested in his estate, personally, or by publication in some newspaper.

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 defendant recovers judgment in any such case, the court may order one or more writs of possession to issue, as are necessary; and a writ of possession may issue, and judgment shall be conclusive against all such as have been so notified, whether they appeared and defended or not.

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 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 those under whom he claims, to be ascertained and adjusted as hereinafter provided.

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 defendant 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 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 defendant may recover a specified part of the demanded premises, by consent of the defendant 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.

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 is determined in favor of the defendant upon demurrer, default, or by verdict, including all real actions brought

CHAP. 104.
Real actions
not to abate by
death, &c.
2 Greenl. 127.
23 Maine, 234.
33 Maine, 174.
R. S., c. 145,
§ 19.

Appointment
of guardians,
&c.
R. S., c. 145,
§ 20.
Writs of pos-
session to con-
form to the
case, &c.
R. S., c. 145,
§ 21.

Allowance of
costs, &c.
R. S., c. 145,
§ 22.

Betterments
allowed after
six years pos-
session.
12 Maine, 373.
21 Maine, 521.
22 Maine, 110.
23 Maine, 192.
25 Maine, 411.
R. S., c. 145,
§ 23.

The premises
to be clearly
defined and
described in
such action.
R. S., c. 145,
§ 24.

Tenant may
consent that
defendant
may recover a
specified part;
effect thereof.
R. S., c. 145,
§ 25.

Tenant may
have better-
ments upon
demurrer or
default.

CHAP. 104. 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.

R. S., c. 145,
§ 26.
1843, c. 6, § 1.

Request of
tenant for ap-
praisal of im-
provements,
&c.

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 defendant 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 of the case.

The difference
between the
appraised val-
ue of the land,
when tenant
entered, &c.

1843, c. 76, § 1.
1853, c. 34, § 1.

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.

Demandant
may elect to
abandon, &c.
1 Greenl. 309.
3 Greenl. 377.
4 Greenl. 297.
16 Maine, 124.
R. S., c. 145,
§ 28.
1853, c. 34, § 2.

SEC. 26. If the defendant 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 defendant, then judgment shall be rendered against the tenant for the sum so estimated by the jury and costs.

Tenant al-
lowed to pay
one-third the
value of the
land, &c.
R. S., c. 145,
§ 29.

At the end of
two years, he
may pay an-
other third,
with interest.

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 has then deposited with the clerk of the court or in his office for the defendant'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.

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. CHAP. 104.

SEC. 29. If the tenant, within three years after the rendition of 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 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; and 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, though it is more than a year after the rendition of judgment.

R. S., c. 145,
§ 30.

And at the end
of three years,
he may pay the
balance, &c.

R. S., c. 145,
§ 31, 32.

SEC. 30. If the tenant or his heirs are evicted by a better title from the land so abandoned to him, and they notified the defendant 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 defendant or his representatives; but if no notice was given, the tenant, in an action against the original defendant to recover the price paid for the premises, may show that he was evicted by a title better than that of the defendant. Tenant's rem-
edy if he is
evicted.

R. S., c. 145,
§ 33.

SEC. 31. When the defendant 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 of the court, 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. If defendant
does not aban-
don, &c.

R. S., c. 145,
§ 34.

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 mortgager 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. Restriction of
the right to
betterments.

1 Greenl. 358.
R. S., c. 145,
§ 35.

SEC. 33. No tenant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away any timber, or make any strip or waste on the land, till the amount of such judgment is satisfied. Tenant not to
commit waste
after judg-
ment.

R. S., c. 145,
§ 36.

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, shall be equal in its effect to the verdict of a jury. Parties may
agree as to val-
ue of improve-
ments.

R. S., c. 145,
§ 37.

CHAP. 104.

Tenant may propose a sum, &c.
2 Greenl. 352.
R. S., c. 145,
§ 38.

SEC. 35. When the tenant, in 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 defendant consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the defendant 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 provisions of the following section.

Set-off of costs, &c.
R. S., c. 145,
§ 39.

SEC. 36. In all cases where the defendant does not abandon the premises to the tenant, the court may, on the written application of either party during the term when judgment is entered, order the costs recovered by the defendant 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.

Jurors disqualifed, if interested in similar questions.
R. S., c. 145,
§ 40.

SEC. 37. No person shall sit as a 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, who, as proprietor or occupant, is interested in a similar question.

What constitutes a possession and improvement.
2 Greenl. 275.
31 Maine, 345.
R. S., c. 145,
§ 42.

SEC. 38. A possession and improvement of land by a tenant are within the provisions of this chapter, though a portion of it is woodland and uncultivated, and though 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.

Proceedings, if either party dies before the cause is disposed of.
R. S., c. 145,
§ 43.

SEC. 39. After judgment has been rendered for the defendant in a writ of entry, if either party dies before a writ of possession is executed, or the cause 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 defendant, his executor or administrator, with the like effect as if both parties were living.

How writ of possession shall issue in such case.
R. S., c. 145,
§ 44.

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

Either party may have a view by the jury.
R. S., c. 145,
§ 45.

SEC. 41. Either party may have a view by the jury of the place in 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 defendant claims an estate for life only in CHAP. 104.
 the premises, and pays a sum allowed to the tenant for improvements, he, or his executor, or administrator, at the termination of his estate, shall be entitled to receive of the remainder man or reversioner, the value of such improvements, as they then exist; and have a lien therefor on the premises, as if they had been mortgaged for its payment, and may keep possession till 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.

Proceedings if
a life estate is
demanded.
R. S., c. 145,
§ 46.

SEC. 43. When any 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 before such entry, and withholds their possession from such tenant, he shall have a right to recover of him 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 those under whom he claims, to be ascertained by the principles hereinbefore provided; and these provisions shall extend to the grantee or assignee of the tenant in dower and of any other life estate; and a lien is hereby created on the premises in favor of such claim, to be enforced by an action commenced within one year after such entry; and it shall be no bar to such action, if the tenant, to avoid cost, yields to the superior title.

If tenant is
ousted after
six years pos-
session, &c.
R. S., c. 145,
§ 47, 48.
1813, c. 6, § 2.

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.

Cases in which
defendant may
impeach the
plaintiff's title
deeds.
R. S., c. 145,
§ 50.

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 next before the commencement of the action, and the jury so find, the defendant shall recover no costs.

If tenant, &c.,
have been in
possession for
twenty years, &c.:
1854, c. 90, § 1.
1852, c. 240, § 2.

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 cause such opposition to be prevented; and in the execution of such warrant, he may exercise all the power pertaining to his office as sheriff; and all persons refusing their aid when called for by him shall be liable to the same penalties as in other like cases.

Court may ap-
point and pro-
tect surveyors.
R. S. c. 115,
§ 112.