

# MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

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BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :  
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## CHAPTER 97.

## WASTE AND TRESPASS ON REAL ESTATE.

SEC. 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.

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 the nature of waste, may be substituted for the action of waste. (a)

SEC. 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.

SEC. 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. 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 co-tenants, without naming the others, may sue for and recover their proportion of such damages.

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.

SEC. 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.

SEC. 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,

Remedy, if tenant commits waste.  
R. S., c. 95, § 1.  
12 Me., 436.  
19 Me., 291.  
51 Me., 436.

Jury assess damages; action may be on the case.  
R. S., c. 95, § 2.

Remainder man or reversioner may sue.  
R. S., c. 95, § 3.  
37 Me., 365.  
51 Me., 436.

Action lies against executor, etc.  
R. S., c. 95, § 4.

Part owners shall not commit waste, without giving notice.  
R. S., c. 95, § 5.  
15 Me., 200.  
31 Me., 187.  
44 Me., 79.  
64 Me., 63.  
86 Me., 118.  
87 Me., 233.  
93 Me., 114.

—treble damages in such cases, how to be recovered and appropriated.

Defendant shall pay only single damages in certain cases.  
R. S., c. 95, § 6.

Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached.  
R. S., c. 95, § 7.  
66 Me., 53.

Treble damages for waste, pend-

(a) 37 Me., 365; 51 Me., 436; 52 Me., 143.

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ing a suit.  
R. S., c. 95, § 8.  
31 Me., 187.

Trespass on  
lands of  
another,  
without his  
consent.  
R. S., c. 95, § 9.  
See c. 128, § 12.

Trespases  
on property  
of county,  
town, parish,  
actions for.  
R. S., c. 95, § 10.

Trespass on  
improved or  
ornamental  
grounds.  
R. S., c. 95, § 11.  
66 Me., 50.  
See c. 128,  
§§ 14, 16.

Trespass on  
islands in  
salt waters,  
after notice.  
R. S., c. 95, § 12.

—both  
exemplary  
and actual  
damages are  
imposed.

—how  
recovered.

—evidence.

Notices, how  
to be given.  
R. S., c. 95, § 13.

—penalty for  
injuring sign-  
boards.

Damages and  
penalties,  
how and  
where to be  
recovered.  
R. S., c. 95, § 14.

Imprison-  
ment for non-  
payment.  
R. S., c. 95, § 15.

Penalty for  
waste on  
lands of an

timber, trees or poles, standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in an action of trespass.

SEC. 9. 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 an action of trespass. (a)

SEC. 10. Where trespases 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. Whoever enters on any grass land, door-yard, 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.

SEC. 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 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. Actions to recover any of the sums or penalties named in the two preceding sections, may be brought before any supreme judicial, superior, 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. 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.

SEC. 16. If an heir or devisee of a person deceased, whose estate is represented insolvent, afterwards and before sale of the real estate for

(a) 3 Me., 15; 13 Me., 39; 14 Me., 440; 22 Me., 452; 39 Me., 29; 46 Me., 427; 48 Me., 247; 49 Me., 72; 54 Me., 363; 66 Me., 50.

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, as amended by special laws of 1903, c. 311.

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.

SEC. 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.

SEC. 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 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. (a)

SEC. 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 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. (b)

SEC. 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 co-tenants, and refuse, for 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. (c)

(a) 29 Me., 204; 43 Me., 253; 57 Me., 409; 93 Me., 115.

(b) 83 Me., 103; 93 Me., 115.

(c) 64 Me., 465; 72 Me., 406; 79 Me., 89; 92 Me., 604.

insolvent deceased.  
R. S., c. 95, § 16.  
19 Me., 370.  
15 Me., 206.  
77 Me., 247.

Liability of executor or administrator for waste.  
R. S., c. 95, § 17.  
See c. 86,  
§§ 11, 21;  
c. 63, § 22.

One or more tenants in common may join in actions.  
R. S., c. 95, § 18.

—notice to others.

Judgment for the whole damage; execution for plaintiff's share; scire facias by the other co-tenants.  
R. S., c. 95, § 19.

If one or more joint tenants take the whole rent, others may recover.  
R. S., c. 95, § 20.