

MAINE STATE LEGISLATURE

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CHAPTER 111.

WASTE AND TRESPASS ON REAL ESTATE.

Sec. 1. Remedy, if tenant commits waste. R. S. c. 109, § 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. 109, § 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. 109, § 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 of waste 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. 109, § 4. Such action of waste 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 not to commit waste, without giving notice; treble damages in such cases. R. S. c. 109, § 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 30 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 3 times, the first publication to be 40 days before such entry; or if he does any such acts pending a process for partition of the premises, he shall forfeit 3 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 to pay only single damages in certain cases. R. S. c. 109, § 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 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.

Sec. 7. Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached. R. S. c. 109, § 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 to do so, any justice of the supreme judicial court or of the superior 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. 109, § 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. 109, § 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. If said acts are committed wilfully or knowingly, the defendant is liable to the owner in double damages.

See c. 32, § 47, re suit for damages to public land brought for benefit of individual; c. 118, § 33, re malicious damage to trees, etc.; 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; 119 Me. 79, *367; 120 Me. 437; 132 Me. 477.

Sec. 10. Trespasses on property of county, town, parish, actions for. R. S. c. 109, § 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. 109, § 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.

See c. 118, §§ 30, 39, re damage and trespass on improved lands and orchards, etc.; 66 Me. 50; *112 Me. 236; 132 Me. 477.

Sec. 12. Trespass on islands in salt waters after notice; both exemplary and actual damages are imposed; evidence. R. S. c. 109, § 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 \$20, nor more than \$50, in addition to all actual damage sustained by said owner, occupant, or lessee, and shall also 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 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. 109, § 13. Notices referred to in the preceding section shall be given by erecting and maintaining sign-boards at least 1 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 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 \$100, 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. 109, § 14. 1933, c. 118, § 1. Actions to recover any of the sums or penalties named in the 2 preceding sections may be brought in the superior court, or any municipal court, or before a 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. 109, § 15. On non-payment of any of the penalties aforesaid, the defendant shall be punished by imprisonment for not less than 5 days, and at the rate of 1 day for each dollar of the amount of the judgment, if it is over \$5.

Sec. 16. Penalty for waste on lands of an insolvent deceased. R. S. c. 109, § 16. 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 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. 109, § 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. 141, §§ 11, 22, re bonds of executors and administrators; c. 144, § 22, re waste and trespass on real estate of insolvent intestate.

Sec. 18. One or more tenants in common may join in actions; notice to others. R. S. c. 109, § 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 plaintiffs' share; scire facias by cotenants. R. S. c. 109, § 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. 109, § 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.

CHAPTER 112.

REPLEVIN OF BEASTS AND GOODS.

Sections 1- 7 Replevin of Beasts.

Sections 8-19 Replevin of Goods.

Replevin of Beasts

Sec. 1. Owners of beasts distrained may replevy. R. S. c. 110, § 1. 1933, c. 118, § 1. Any person, whose beasts are distrained to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the distrainer, before any trial justice or judge of any municipal court in the county, in the form prescribed by law; or, if the value of the beasts distrained is more than \$20, in the superior court.

See 1821, c. 63, § 9; 17 Me. 189; 18 Me. 249; *28 Me. 489.

Sec. 2. Writ, service, and return. R. S. c. 110, § 2. 1933, c. 118, § 1. The writ shall be sued out, served, and returned, and the cause heard and determined like other civil actions before a trial justice or municipal court, except as otherwise prescribed.

114 Me. 225.

Sec. 3. Bond must be given before service; when new sureties must be furnished. R. S. c. 110, § 3. The writ shall not be served unless the plaintiff, or some one in his behalf, executes and delivers to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, or with a surety company authorized to do business in this state, as surety, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ, and to be returned with the writ for the use of the defendant; and, if it afterwards becomes insufficient, the court may require additional surety or sureties to be furnished, who shall be held as if they had been original parties