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Chapter 142.

Timber upon Rivers, Streams and Adjacent Lands.

Sec. 1. Unlawful conversion of lumber.—Whoever takes, carries away or otherwise converts to his own use, without the consent of the owner, any log suitable to be sawed or cut into the boards, clapboards, shingles, joists or other lumber, or any mast or spar the property of another, whether the owner is known or unknown, lying in any river, pond, bay, stream or inlet, or on or near the bank or shore thereof, or cuts out, alters or destroys any mark made thereon, without the consent of the owner and with intent to claim the same, forfeits for every such log, mast or spar, $20, to be recovered on complaint; ½ for the state and ½ for the complainant. (R. S. c. 129, § 1.)

Knowledge of true owner not prerequisite to liability. — In an action under this section it is not necessary that the person committing the trespass should know the true owner of the logs; and of course it is not necessary for the plaintiffs to state in the declaration that they were known by the defendants to be the true owners of the logs therein mentioned. Frost v. Rowse, 2 Me. 130.

But purchaser of unlawfully appropriated logs with knowledge thereof is liable.— The purchaser of a log, taken by another from a river against the provisions of this section, is liable under this section to the penalties thereof, where such purchaser had full knowledge of the unlawful appropriation. See Howes v. Shed, 3 Me. 202.

Section not applicable to corporations.— Under an earlier form of this section in which the words "any person" were used in place of the present term "whoever" in the first clause, it was held that, while undoubtedly the word "person" may include a body corporate, it was not the legislative intention that it should do so. The fair and natural construction to be given to the language used negatives any such idea. And since the provisions of acts imposing penalties are not to be extended by construction beyond their obvious meaning and intent, as manifest upon the face of a statute, corporations are not to be included in this section. Androscoggin Water Power Co. v. Bethel Steam Mill Co., 64 Me. 441.

Log taken from bank 12 feet from water held not within section.—Where a log was taken from the bank of a river, twelve or fifteen feet from the water, where grass grew, which was annually mown, it was held that the taking was not within this section. State v. Adams, 16 Me. 67.

Sec. 2. Such unlawful conversion declared larceny.—Whoever fraudulently and willfully takes and converts to his own use, either by himself or by another in his employment, any such log, mast or spar lying, as aforesaid, for the purpose of being driven to a market or place of manufacture is guilty of larceny and shall be punished accordingly. (R. S. c. 129, § 2.)

Cross reference.—See c. 132, §§ 1, 7, re larceny.

Section not applicable to corporations.— A corporation cannot be indicted under this section. The intent, with which the act prohibited is done, is individual, not corporate intent. Larceny cannot, by any existing law, be predicated of any corporate action of a corporation, nor is there any provision for its punishment for the crime, if it were one which it is capable of committing. It is manifest, therefore, that a corporation is not, and was not intended to be included within the word "whoever," but that the section applies only to personal criminality. Androscoggin Water Power Co. v. Bethel Steam Mill Co., 64 Me. 441.

Sec. 3. Presumptive evidence of guilt; double damages.—In prosecutions under the provisions of sections 1 and 2, if such log, mast or spar is found in the possession of the accused partly destroyed, partly sawed or manufactured, or with the marks cut out or altered, not being his property, it is presumptive evidence of his guilt; and the burden of proof is then on him; and whoever is guilty of the offense described in either section is also liable to the owner, in an

action of debt, for double the value of the log, mast or spar so dealt with. (R. S. c. 129, § 3.)

Liability is joint and several.—Although debt lies to recover the penalty under this section yet the debt arises from a trespass, which in its nature is several as well as joint. The action may therefore be sued against one or more of the joint defendants, but the plaintiff can have but one satisfaction. Frost v. Rowse, 2 Me. 130.

Section not applicable to corporations.—Under this section the "accused" in whose possession the property is found, must be one against whom the accusation of the crime of larceny could be made. He must be one who could "be guilty of the offence described in either section 1 or section 2 of this chapter," and could be punished for such guilt. A corporation could not be. Androscoggin Water Power Co. v. Bethel Steam Mill Co., 64 Me. 441.

This section applies to both of the preceding sections equally. Androscoggin Water Power Co. v. Bethel Steam Mill Co., 64 Me. 441.

Sec. 4. Right of owner to search mill, boom or raft for lost logs.—The owner of such logs, masts or spars may at any time, by himself or his agent, enter in a peaceable manner upon any mill, mill-brow, boom or raft of logs or other timber in search of such lost property; and whoever willfully prevents or obstructs such search forfeits for each offense not less than $20 nor more than $50, to the person by whom or on whose account such entry was claimed, to be recovered in an action of debt. (R. S. c. 129, § 4.)

Sec. 5. Logs or timber in Saco river or tributaries.—If any boom on the Saco river, or any of the waters connected therewith, is so placed or constructed as to prevent the free and usual passage of timber down the river, the owner or occupant thereof, at his own expense, shall release and turn out the timber so detained, when requested to do so by the owner thereof, if it can be done with safety; and if, for 2 days after request, he neglects or refuses to do so, he is liable to the owner of the timber in an action on the case for all damages by him sustained. (R. S. c. 129, § 5.)

Sec. 6. Logs and timber of different owners intermixed; lien for expenses; libel.—Any person whose timber in any waters of the state is so intermixed with the logs, masts or spars of another, that it cannot be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all timber with which his own is so intermixed toward such market or place, when no special and different provision is made by law for driving it; and is entitled to a reasonable compensation from the owner, to be recovered after demand therefor on said owner or agent, if known, in an action on the case; he has a prior lien thereon until 30 days after it arrives at its place of destination to enable him to attach it; and if the owner cannot be ascertained, the property may be libeled according to law and enough of it disposed of to defray the expenses thereof, the amount to be determined by the court hearing the libel. (R. S. c. 129, § 6.)

Purpose of section.—The purpose of this section was to give those using the waters of the state to float the wood product of our forests, suited for manufacture, to market, equal rights and a convenient remedy under circumstances and conditions, where the common-law remedy was inadequate, and compass a result in futherance of the interests of all concerned. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

The purpose of this section is to prevent the useless expense, and to avoid the vexatious delay, that would be occasioned in separating intermixed logs and timber in the floatable waters of the state. It authorizes a log owner to do what otherwise he would have no right to do, that is, to drive the logs of other owners, which become so intermixed with his that they cannot be conveniently separated, towards their place of destination, whether the owner assents or not, and it also secures to him a reasonable compensation for so doing. Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150.

And scope thereof.—The benefits of this section are equally useful whether the drives be of saw logs, ship timber, pulp wood, or any other wood product suitable for commerce or manufacture that may be

conveniently driven to market; and whoever encumbers our rivers with material of this sort for the purpose of floating it to market ought to come within the provisions of this section, and the legislature must have intended that they should. It could not have intended the legislation for some classes and not for all. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

Meaning of "timber."—By the use of the word "timber" in this section, the purpose of the legislature was to comprise all products of the forest conveniently floatable to market. This word indicates an intent to include not only logs but other wood products. The word "timber" was intended to have a comprehensive meaning suited to the purpose of the section. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

Section must be strictly construed.—This section gives to a party a right to enforce a claim for services, supposed to be rendered for the benefit of another, but without his request, and sometimes without his knowledge, and possibly against his wishes. Such a statute is in derogation of the common law, and must have a strict construction. Lord v. Woodward, 42 Me. 497; Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150. But see Bearce v. Dudley, 88 Me. 410, 34 A. 260.

The object of this section is to secure payment from the owners for driving their logs, when they have left them in such a position that they become mixed with others and cannot conveniently be separated. Tibbets v. Tibbets, 46 Me. 365.

Owner's liability grounded on services performed.—It can make no difference to an owner whether the person claiming payment for driving has an absolute or a qualified ownership or possession of the other logs. The ground of his liability is, that another person has performed valuable services in relation to his property. Tibbets v. Tibbets, 46 Me. 365.

And does not involve any element of tort.—Undoubtedly logs of different owners may and do become intermixed in the waters of the state, so that they cannot be conveniently separated, without the fault of either owner. This provision, giving an owner of logs the right to drive towards their destination other logs which have become so intermixed with his that they cannot be conveniently separated, and to have a right of action against the owner thereof to recover reasonable compensation therefor, does not involve any element of tort or active wrong on the part of the defendant in such an action. The defendant in such action may be wholly blameless for the intermixing of the logs and lumber, and yet the provisions of the section be applicable just the same. Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150.

There is no provision in this section the violation of which by a log owner would be a tort. It does not provide that a log owner must so control and drive his logs that they will not become intermixed with the logs of another. It merely provides that when the logs of different owners do become intermixed, from whatever cause, so that it is reasonably necessary that they should be driven along together as one drive, they may be so driven, and the owner who does it may recover of the other a reasonable compensation therefor. Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150.

The remedy by "an action on the case," provided for in this section to recover reasonable compensation, is not predicated upon the idea of negligence or the neglect of any duty, statutory or otherwise, on the part of the defendant log owner. Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150.

Action may be in form ex delicto or assumpsit.—Under this section there is no element of tort or active wrong on which the statutory obligation to pay the reasonable compensation is predicated, and, therefore, the action need not necessarily be in form ex delicto instead of in form assumpsit. It may be in either form. The action on the case includes both. Its distinguishing characteristic is that all the facts upon which the plaintiff relies must be stated in the declaration. Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150.

And plaintiff must prove demand upon defendant. — To recover the reasonable compensation provided for in this section for driving logs, it is incumbent upon the claimant to prove the demand required by this section. Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150.

Section contemplates recovery from owner as distinguished from contractor.—It may be important to the person who drives, to hold the owner of the logs, rather than a contractor for driving, who may be irresponsible. The section seems to contemplate this distinction, as it provides that "the owner" of the logs shall be responsible, but in reference to the person who drives for another, it does not use the word "owner," but designates him as a person "whose timber" becomes intermixed. Tibbets v. Tibbets, 46 Me. 365.

But contractor has sufficient interest to recover from owner of intermixed logs.—Any person who has a rightful possession of logs for the purpose of driving them, under a contract, has such a qualified interest or right in the logs, arising from that possession, that the timber may be regarded as his, for all purposes connected with the driving, within the meaning of this section, and sufficient to enable him to maintain an action under the provision of this section for driving logs that had become intermixed with those of which he had possession. Tibbets v. Tibbets, 46 Me. 365.

Section does not contemplate recovery where two owners drive their intermixed logs.—To entitle a person to recover under this section, it contemplates that he shall render the entire service of driving his own logs, and those of another intermingled therewith, without any assistance from the latter. This section is not made applicable to a case where the party owning logs intermingled with those in which he has no interest, aids the owner of the latter in a joint operation of driving the whole; and the legislature has not provided a mode of compensation for the excess of the labor of one over that of another, according to the amount of timber driven. Lord v. Woodward, 42 Me. 497.

Possession of the timber must continue in the one entitled to the lien, to secure the object of it; and must, from its nature, exclude the possession of the owner. The lien extends to all logs driven under this provision. And it does not appear to have been intended, that compensation could be enforced thereunder, for services rendered in such a manner, that a lien upon the timber does not attach. Lord v. Woodward, 42 Me. 497.

One may drive only those logs of another that are intermixed.—A plaintiff is allowed only to drive such of a defendant's logs at his expense as become intermixed with his own, so that they cannot be conveniently separated. Such logs he might drive and no others. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

And if one elects to drive them he must exercise care and skill.—The right to drive another's logs under the provisions of this section clearly is a privilege conferred, a permission given and not an obligation imposed. Hence it is optional with the owner, whether to drive the logs so intermixed or otherwise. But having elected to drive them, he becomes a bailee for the owner, and is clearly subject to such care and skill as legally attaches to such a position. Weymouth v. Penobscot Log Driving Co., 71 Me. 29.

And drive them clean.—Under the provisions of this section, when intermixed logs are once taken charge of to be driven at the expense of the various owners, they must be driven clean, all driven. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

He who undertakes to drive logs intermixed with his own, at the expense of the owner of them, must drive them clean, reasonably clean. If he is to recover reasonable compensation under this section, he cannot scatter a part by the way and only drive those logs that may be conveniently driven, perhaps without much expense, and leave the owner to gather those stranded or lose them. Weymouth v. Beatham, 93 Me. 525, 45 A. 519.

If one interjects his logs into another's drive, the latter may drive the mass at expense of both.—Under this section, if the plaintiff acts with reasonable prudence in starting his whole drive, then he subjects the stream to a reasonable use, as he has a right to do, and being the first to operate, he has a right to manage his whole drive as seems most advantageous to himself, provided he does not unreasonably appropriate the stream; if under these circumstances the defendant sees fit to interject his logs in the midst of the plaintiff's logs, then the plaintiff might drive the mass at the expense of both owners, and the defendant cannot prevent this course by attempting to drive his own logs only to increase the expense of driving the whole mass. Megquier v. Gilpatrick, 88 Me. 422, 34 A. 262.

Even though the drive does not benefit the other owner.—If a man turns a part of his logs into the stream and leaves them to themselves, so that the next drive is embarrassed or hindered by them, he becomes liable at common law for obstructing the common way, or under this section to pay for driving the same, and it matters not whether such driving is of benefit to him or not. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

Section allows recovery against property only when owner cannot be ascertained.—This section gives an action on the case against the owner of the logs for the recovery of the amount expended upon them. It permits a recovery thereof by a process against the property only, when "the owner of such logs cannot be ascertained." There is an essential difference between an allegation contained in a libel, that the owners are unknown, and that required by the section, that they

cannot be ascertained. Marsh v. Flint, 27 Me. 475.

And a libel is defective which does not allege that the owner of the logs could not be ascertained. Marsh v. Flint, 27 Me. 475.

The whole of the property on which expense incurred may be seized.—It is the property on which the expense has been incurred, and not other property that may be seized and libelled. The whole of the property according to the provisions of this section, and not a selected portion of it, is to be seized and libelled. In such case each person may appear and claim his own proportion of property owned in severalty, and receive it, or so much of it as may not be required to pay the sum expended upon it with costs. Marsh v. Flint, 27 Me. 475.

But a separately owned group of logs can be held only for expenses incurred therefor.—Where several groups of logs separately owned become intermixed and are driven to market as provided by this section, logs owned by one person may be seized, libelled, and sold, to pay only the expense incurred in driving them, and not the expense incurred in driving the logs owned by another person. Marsh v. Flint, 27 Me. 475.

The whole cost is to be apportioned.—Joining drives, by authority of law, makes a saving to somebody in the operation, and this section fairly apportions the cost of the whole work. Bearce v. Dudley, 88 Me. 410, 34 A. 260.

Applied in Lewiston Steam Mill Co. v. Androscoggin Water Power Co., 78 Me. 274, 4 A. 555.

Cited in Cleaves v. Stockwell, 33 Me. 341.

Sec. 7. Logs or timber lodged on banks, forfeiture; advertisement.—Logs or other timber carried by freshets or otherwise lodged upon lands adjoining any waters are forfeited to the owner or occupant thereof, after they have so remained for 2 years, if such lands during that time were improved; otherwise, after 6 years; provided that such owner or occupant, within 1 year after the same were found so lodged, advertises, as nearly as practicable, the number of pieces of timber, the time when lodged, together with the marks thereon and the place where found, 3 weeks successively in some newspaper in the county, if any, otherwise in the state paper. (R. S. c. 129, § 7.)

Stated in Treat v. Lord, 42 Me. 552.

Cited in Howe v. Ashland Lumber Co., 110 Me. 14, 85 A. 160.

Sec. 8. Owner may remove timber on tender of damages; otherwise, damages for landowner.—The owner of said timber may enter on said land and remove it at any time before forfeiture, having previously tendered to the owner or occupant thereof a reasonable compensation for all damages occasioned by the lodging, remaining or removal of said timber and the expense of advertising it; but if the timber is removed by the owner, or otherwise, without such tender, the owner of the land may recover, in an action of trespass, the damages aforesaid. (R. S. c. 129, § 8.)

Trespass will not lie against owner who goes upon lands to retrieve logs.—It is not to be inferred that every casual landing upon the bank by those employed in driving a floatable stream, would be the ground of an action by the proprietor of the land. The privilege of going upon adjoining lands, to remove timber lodged thereon, after tender of compensation for damages, which is conferred by this section, would seem to imply that where no actual damage is inflicted in so doing, no action would lie. Hooper v. Hobson, 57 Me. 273.

Where a log in its passage down a floatable stream, without fault of the driver, is caught on the edge of the riparian owner's property, and the driver casually and from incidental necessity enters upon such property and releases the log, doing no appreciable damage, an action of trespass will not lie. Clark v. Gilman, 114 Me. 251, 95 A. 1032.

But landowners may recover for injuries resulting from log jams negligently caused.—When logs are allowed to form jams, and cause flowage more than would otherwise exist, the person or company driving the logs is liable for damages to lands or crops resulting from such excessive flowage when want of ordinary care is shown in not breaking up the jam. An action for damages in these circumstances may be brought under this section. Howe v. Ashland Lumber Co., 110 Me. 14, 85 A. 160.

Applied in Mansur v. Blake, 62 Me. 38. **Cited** in Brown v. Chadbourne, 31 Me. 9; Pearson v. Rolfe, 76 Me. 380.
Stated in Treat v. Lord, 42 Me. 552.

Sec. 9. Unlawful conversion of railroad sleepers, ship knees or cedar lumber on ponds and streams; double damages.—Whoever willfully and fraudulently takes, carries away or otherwise converts to his own use any railroad sleeper, knee or other ship timber or cedar for shingles or other purposes, the property of another, whether known or not, without his consent, lying in any river, stream, pond, bay or inlet, or on or near the shore thereof; or cuts out, alters or destroys any mark thereon, forfeits $10 for each offense, to be recovered and appropriated as provided in section 1; and is liable to the owner in double the amount thereof in an action of debt; and such owner has all the rights and is subject to all the liabilities provided for the owner of logs, masts and spars in the 6 preceding sections. (R. S. c. 129, § 9.)

See c. 131, § 28, re maliciously driving nails into logs intended for manufacture, penalty; c. 118, § 29, re letting loose rafts or logs.