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THE

PUBLIC STATUTES

OF THE

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(1849—1858.)

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CHAPTER 64.

ACTIONS CONCERNING, AND TO DETERMINE CONFLICTING CLAIMS TO, REAL PROPERTY.

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amended by addition - Chap 60 p 232 - 1860
 [Chapter 74, Revised Statutes.]

(1.) SEC. I. An action may be brought by any person in possession, by himself or his tenant of real property, against any person who claims an estate or interest therein, adverse to him, for the purpose of determining such adverse claim, estate or interest. An action allowed to determine adverse claim to real property.

(2.) SEC. II. If the defendant in such action, disclaim in his answer, any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs. If defendant disclaim no cost allowed.

(3.) SEC. III. In an action for the recovery of dower, before admeasurement, or by a tenant in common, or joint tenant of real property, against a co-tenant, the plaintiff, must show, in addition to the evidence of his right, that the defendant either denied the plaintiff's right, or did some act amounting to such denial. In an action to recover dower, a denial of the right must be shown.

(4.) SEC. IV. In an action for the recovery of specific real or personal property, when the plaintiff shows a right to recover, at the time the action was commenced, but it appears that such right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property. Where right has terminated during pendency of action.

(5.) SEC. V. Any person against whom a judgment for the recovery of specific real property is rendered, may within six months after written notice of the judgment, upon the payment of all costs and damages recovered thereby, demand another trial, by notice in writing to the adverse party, or to his attorney in the action, and thereupon the action may be brought to trial by either party. New trial may be had in actions to recover real property.

(6.) SEC. VI. If on a second trial, as provided in the last section, judgment be to the same effect as on the first, no further trial can be had, unless the court in its discretion, on motion by the party, as to whom the judgment last rendered is less favorable than the first, order a third trial. When court may allow third trial.

(7.) SEC. VII. The judgment given on a trial to be had under the last two sections, must be annexed to the judgment roll of the former trial, and the judgment last given shall be the final determination of the rights of the parties. If a prior judgment shall have been executed, restitution must be ordered as the last judgment may determine the rights of the parties, and the same may be enforced by execution. How judgment entered after new trial.

May recover profits only for six years

(8.) SEC. VIII. Damages for withholding the property recovered, can in no case exceed the fair value of the property, exclusive of the use of improvements, made by the defendant for a period not exceeding six years; and when permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value thereof must be allowed as a set-off against the damages of the plaintiff for the use of the property.

Survey of property in dispute allowed.

(9.) SEC. IX. The court in which an action is pending for the recovery of real property, may on motion, upon notice by either party, and for cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof for the purpose of the action.

Order for the survey, what to contain.

(10.) SEC. X. The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and make such survey and measurement, but if any unnecessary injury be done to the property, he is liable therefor.

A mortgage not a conveyance.

(11.) SEC. XI. A mortgage of real property is not to be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure.

Purchaser of land may recover for injury after sale.

(12.) SEC. XII. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after the sale, and before possession is delivered under the conveyance.

A sale of land pending action does not prejudice rights.

(13.) SEC. XIII. An action for the recovery of real property, against a person in possession or in receipt of the rents and profits thereof, cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action, but in such case if the defendant have no property sufficient to satisfy the damages recovered for the withholding of possession, such damages may be collected by action against the purchaser.

Action for possession of land against tenant.

(14.) SEC. XIV. When in case of a lease of real property, and the failure of the tenant to pay rent, the landlord has a substituting right to re-enter for such failure, he may bring an action to recover possession of the property, and such action is equivalent to a demand of the rent and a re-entry upon the property; but if at any time before the expiration of six months after possession obtained by the plaintiff on recovery in the action, the lessee or his successor in interest, as to the whole or part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and the costs of the action, and perform the other covenants on the part of the lessee, he may be restored to the possession, and hold the property according to the terms of the original lease.

ACTIONS FOR NUISANCES, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY.

Nuisance defined, action therefor.

(15.) SEC. XV. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action; such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment, the nuisance may be enjoined or abated, as well as damages recovered.

(16.) SEC. XVI. If a guardian, tenant by the curtesy in dower, for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person injured by the waste may bring an action against him therefor, in which action there may be judgment for treble damages, forfeiture of the estate of the party offending, and eviction from the property. Waste defined,
action therefor.

(17.) SEC. XVII. Judgment of forfeiture and eviction, can only be given in favor of the person entitled to the reversion, against the tenant in possession, when the injury to the estate in reversion is adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice. What judgment
allowed.

(18.) SEC. XVIII. Every person who cuts down or carries off any wood or underwood, tree, or timber, or girdles, or otherwise injures any tree, timber, or shrub, on the land of another person, or in the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons, or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction, except as provided in the next section. Damages for will-
fully cutting
trees.

(19.) SEC. XIX. If upon trial of such action it appears that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own, or that of the person in whose service, or by whose direction the act was done, judgment must be given for only the single damages assessed in the action. When damages
mitigated.

(20.) SEC. XX. Nothing in the last two sections authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it. Cutting timber
for highway.

(21.) SEC. XXI. If a person be put out of real property in a forcible manner without lawful authority, or being so put out, be afterwards kept out by force, recover damages therefor, judgment may be entered for three times the amount at which the actual damages are assessed. Damages for
forcible eviction.

(22.) SEC. XXII. In case of forcible entry or forcible detention, if a person claiming in good faith under color of title to be rightfully in possession so put out, or kept out, recover damages therefor, judgment may be entered in his favor for three times the amount at which the actual damages are assessed. Damages for
three times
amount may be
recovered.