

Ejectment.

1904, art. 75. sec. 71. 1888, art. 75. sec. 69. 1870, ch. 420. 1872, ch. 346, sec. 46, sub-sec. 1. 1888, ch. 547.

71. The action of ejectment shall be commenced by filing a declaration in which the real claimant shall be named as plaintiff and the tenant in possession or the party claiming adversely to the plaintiff shall be defendant; it shall be sufficient to state in the declaration that the plaintiff was in possession of the land or premises described in the declaration and that the defendant ejected him therefrom and retains possession thereof and the amount of damages claimed by the plaintiff; a copy of the declaration, with a writ of summons, as in other cases, addressed to the defendant, shall be served on each of the defendants, or if they cannot be found, upon the person or persons in actual possession of the land described in the declaration, and if there be no person in possession of the premises, or if the same be unimproved vacant property, a copy of the declaration and summons shall be conspicuously posted and set up upon the premises and notice of the object of the suit and of the substance of the declaration shall be published as the court shall direct, giving notice to the said defendants to appear to and defend the said action by a day to be named by the court not less than twenty days from the first publication of said notice; to this declaration the defendant or any other person, with leave of the court, may appear and plead not guilty to the action, which plea shall be held a confession of the possession and ejectment, and shall only put in issue the title to the premises and right of possession and the amount of damages claimed by the plaintiff, but any defendant may refuse to appear or file a disclaimer of title to the land or any part thereof, in which case the plaintiff shall recover judgment against the defendant so disclaiming or refusing to defend for the land or so much thereof as shall not be defended, but the costs shall be subject to the discretion of the court, and the trial shall then proceed against the party making the defense under the rules and practice of the court as the same existed prior to the year eighteen hundred and seventy, except so far as the same are changed by this article, and the plaintiff shall also recover as damages in this action the *mesne* profits and damages sustained by him and caused by the ejectment and detention of the premises up to the time of the determination of the case.

Under this section the action of ejectment is resolved into a simple inquiry into the validity of the plaintiff's claim to the possession of the land, and the judgment is conclusive. Changes in the law of ejectment made by this section. *Brooke v. Gregg*, 89 Md. 236.

Under the act of 1872, ch. 346, the plaintiff in ejectment may recover *mesne* profits and damages for the ejectment and detention of the premises, as well as the land itself. As respects rents and profits, ejectment affords as ample relief as could be obtained in equity. *Hecht v. Colquhoun*, 57 Md. 567. And as to *mesne* profits, see *Johnson v. Hines*, 61 Md. 132.

While sections 71 to 85 relating to ejectment speak uniformly of land only as recoverable in ejectment, that action will lie for any estate or interest in land, such as an upper room in a building, a pew in a church, a coal mine, etc. Ejectment, however, will not lie for an incorporeal right, or an interest in land created by license. *Nicolai v. Baltimore*, 100 Md. 585.