

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.

This section referred to in construing Sec. 78. *Brandt, Inc. v. Y. W. C. A.*, 169 Md. 614.

In order to recover in ejectment, plaintiff must prove that it has title and right of possession to land described in declaration. Abandonment of portion of railroad right of way not made out. *Green v. Pennsylvania R. R. Co.*, 141 Md. 132.

The plaintiff may not claim rent or other profits in ejectment and, upon a failure to recover, recover them in another suit. Damages recoverable as well in ejectment as in trespass. See notes to sec. 98. *Strathmore Min. Co. v. Bayard Co.*, 139 Md. 370.

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

Under act of 1872, ch. 346, plaintiff in ejectment may recover *mesne* profits and damages for ejectment and detention of premises, as well as 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 secs. 76 to 90 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 incorporeal right, or interest in land created by license. *Nicolai v. Baltimore*, 100 Md. 585.

Plea of "not guilty" admits possession and ejectment, and puts in issue the title to premises, right of possession, and amount of damages. Admission of evidence held not reversible error. *Abromatis v. Amos*, 127 Md. 397; *Mullen v. Brydon*, 117 Md. 558.

An instruction which informs the jury as to the legal effect of a plea of "not guilty" is proper. *Wallis v. Wilkinson*, 73 Md. 131.

The act of 1872, ch. 346, only authorizes a judgment by default against certain defendants where others have appeared and made defense, so that as against them trial can proceed. Judgment by default held to be unauthorized. Old ejectment practice. The act of 1872, ch. 346, criticised. *MacKenzie v. Renshaw*, 55 Md. 296.

For cases involving the recovery of *mesne* profits prior to the act of 1872, ch. 346, see *Tongue v. Nutwell*, 31 Md. 302; *Mitchell v. Mitchell*, 21 Md. 585.

See sec. 26 and notes to sec. 78 and to art. 75, sec. 153.

An. Code, 1924, sec. 77. 1912, sec. 72. 1904, sec. 72. 1900, ch. 559, sec. 69A.

**77.** An outstanding mortgage shall not prevent the real owner as mortgagor of said property from maintaining an action of ejectment against any person or persons other than the mortgagee, or his, her or their assigns.

See notes to sec. 76.

Cited but not construed in *Williams v. Safe Dep. & Tr. Co.*, 167 Md. 504.

An. Code, 1924, sec. 78. 1912, sec. 73. 1904, sec. 73. 1888, sec. 70. 1872, ch. 346, sec. 2. 1929, ch. 406.

**78.** In all cases between landlord and tenant, as often as it shall happen that one-half year's rent shall be in arrear and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a copy of a declaration in ejectment for the recovery of the demised premises; or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then he shall affix the same upon the door of any demised messuage, or in case such action of ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in such declaration in ejectment; and such affixing shall be deemed legal service thereof, which service or affixing such declaration in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for non-appearance, if it shall be made to appear