

Measure of Damages for Abstracting Minerals from Plaintiff's Land.

An. Code, 1924, sec. 98. 1912, sec. 92. 1904, sec. 92. 1894, ch. 287, sec. 87A.

98. In the absence of fraud, negligence or wilful trespass, the measure of damages for the wrongful working and abstracting of another's minerals is the value of the minerals in their native state, before severance, to the person from whose property they were taken at the time of the taking; but if one furtively or in bad faith works and abstracts minerals from the land of another, the party so offending may be charged with the whole value of the minerals taken and allowed no deduction in respect of his labor and expenses in getting them.

Measure of damages prior to this section for wrongful trespass upon plaintiff's lands, and mining and carrying away his coal. This section does not relieve parties guilty of negligence from measure of damages fixed by prior decisions. Measure of damages not affected by proceeding being in equity. Evidence shows negligence on part of defendant. Bill and answer in equity. *Mt. Savage George's Creek Coal Co. v. Monahan*, 132 Md. 660. *Strathmore Mining Co. v. Bayard C. & C. Co.*, 139 Md. 371. (Action of ejectment; prayers, see notes to sec. 76.)

Cited but not construed in *Castleman v. Du Val*, 89 Md. 659.

Possession—Writ of.

An. Code, 1924, sec. 99. 1912, sec. 93. 1904, sec. 93. 1888, sec. 88. 1825, ch. 103, sec. 1. 1864, ch. 283. 1878, ch. 141. 1886, ch. 504. 1890, ch. 635, ch. 310.

99. Whenever any lands or tenements shall be sold by any sheriff, constable, coroner, or elisor by virtue of any process or execution from any court or justice of the peace of this State, or by any trustee under the decree of any court of this State, by any trustee by appointment of an insolvent court, by any trustee under any voluntary deed of trust, by any mortgagee under any power in any mortgage, by any executor or executors or any other person under any power in a will, and the debtor named in such execution or decree, his widow or heirs who are parties to the proceedings in which such execution was issued or such decree passed, the insolvent grantor or mortgagor in said deed of trust or mortgage, or any person holding under said debtor, insolvent, grantor or mortgagor by title subsequent to the date of the judgment, decree, insolvent proceedings, deed of trust of mortgage respectively, or any person claiming under the devisor of said will, shall be in actual possession of the lands and tenements sold and shall fail or refuse to deliver possession of the same to the purchaser thereof, excepting, however, cases of tenancies created in the lifetime of the devisor, which shall be fulfilled as now allowed by law, the judge of the circuit court for the county in which said lands or tenements may be situate, or if situate in the city of Baltimore, the judge of the circuit courts or of the superior court of Baltimore City shall, on application in writing, to be verified by the affidavit of the purchaser or his attorney, unless good cause to the contrary be shown by the party or parties in actual possession, as aforesaid, his or their agents or attorneys, or other persons concerned, within not less than fifteen days nor more than thirty days from the filing of such application, as aforesaid, issue a writ in the nature of a writ of *habere facias possessionem* reciting therein the proceedings which may have been had in said process, thereby commanding the sheriff of the county, coroner or elisor to deliver possession of the said lands or tenements to the purchaser thereof, and in cases of sales made by virtue of power contained in wills, the judge shall grant such writs, if it appear on such application that the contract of tenancy entered into between the devisor and tenant in possession has expired, and