

MAINE STATE LEGISLATURE

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REPORT 1

OF THE

COMMISSIONER

APPOINTED TO

REVISE THE PUBLIC LAWS

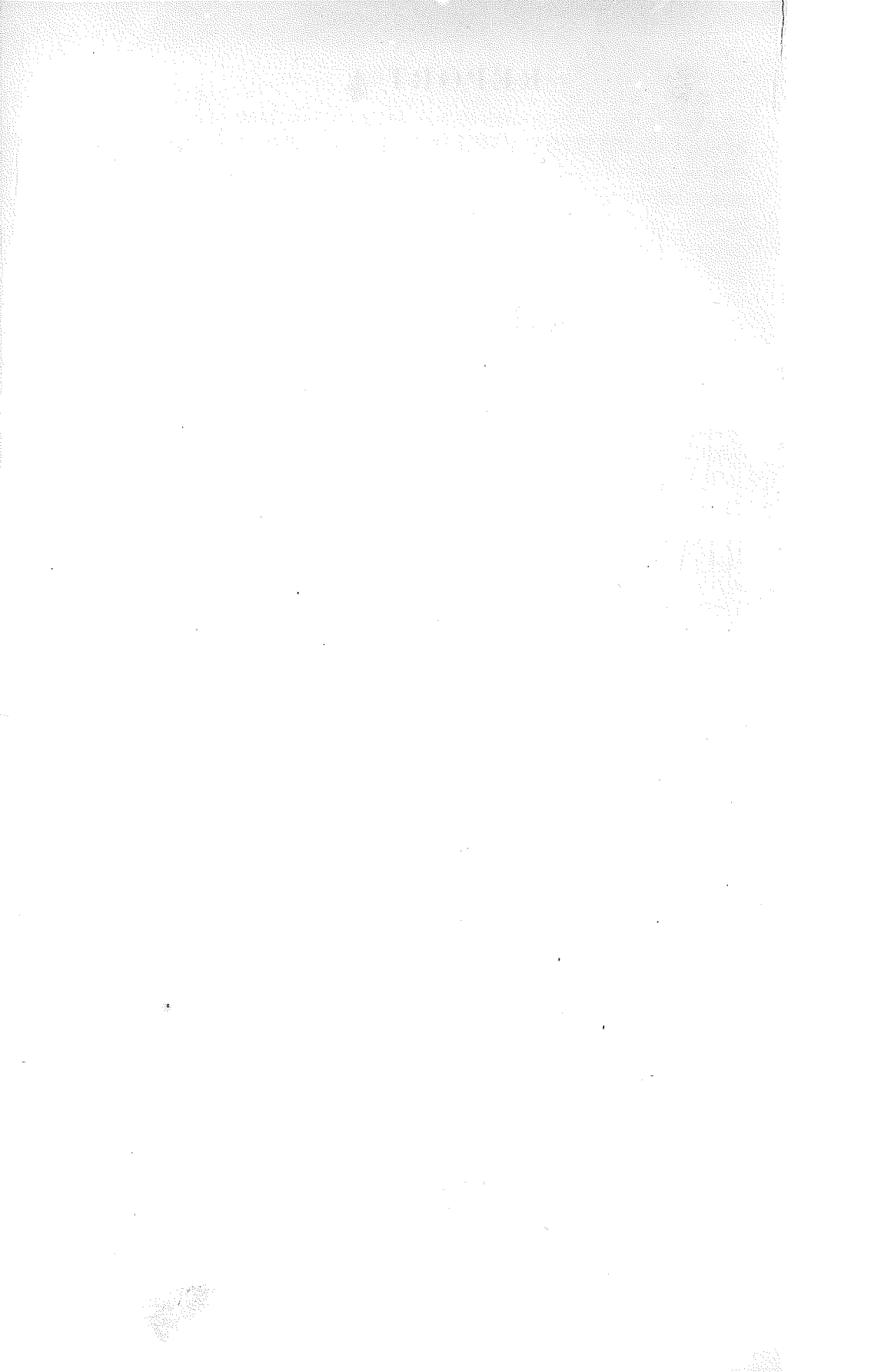
OF THE

STATE OF MAINE.

Augusta:

FULLER & FULLER, PRINTERS TO THE STATE.

1856.



REPORT OF THE COMMISSIONER.

The Commissioner appointed by "Resolves to provide for the further revision of the public laws," submits the following Report:

The first duty required was "to compare the revision made under said resolves [of March 12, 1855,] with the existing laws."

To ascertain that all existing public laws had been included in the revision made by Messrs. Hill, Baker, and Bell; and what provisions were contained in that revision not found in existing laws; and to distinguish them, so that the legislature might readily perceive them, and decide, whether they ought to become portions of the law; the following course was adopted.

Comparison of
first revision
with existing
laws.

That revision was read: and the references made to existing laws as the authority for each section were examined and when found to be in conformity to that revision, they were marked. Having proceeded in this manner through their revision each chapter and section of the existing laws was examined to ascertain what remained without any mark. When a section or part of one was found without a mark showing, that it had been incorporated into their revision, an examination was made, to ascertain, whether it had been repealed, or having accomplished its purpose had ceased to be operative.

Course pursued.

This part of the service was one of delicacy and sometimes of difficulty. The practice having been frequent to make new enactments without any express repeal of any existing laws, and with a repeal of all laws inconsistent with the new enactments, it became necessary to consider carefully and to determine, what laws were inconsistent with each other. In doing this caution has been observed to retain in the second revision all, which were not found to be clearly repealed either expressly or by necessary implication; and to exclude all which were considered to be so.

By a comparison of the two revisions, which the legislature will have opportunity to make, there will be found in this respect a few differences.

The next duty required was to "make such further revision and new arrangement thereof, including the public laws passed at the present (now last) session, as may be necessary to present the same in the most complete form for the consideration of the Legislature."

Further revision; remarks respecting it.

Upon coming to the consideration of this part of the service, it became necessary to determine, what was desirable, and what could probably be done within the time prescribed.

On examination of the first revision some of the chapters appeared to have been entirely rewritten from the existing statutes; others partially; and others to have been incorporated without much, if any, alteration.

Course concluded upon.

It appeared to be desirable to have a more symmetrical work; but this could not be accomplished, except partially, without rewriting the whole; and that could not be done within the time prescribed. The course concluded upon was to examine each chapter to ascertain how far it might be satisfactory; its importance; whether of frequent use; whether the language was concise or otherwise; and the meaning clearly or otherwise expressed; and thus determine what should be rewritten.

The purpose in this most important part of the work has been to make the enactment in language so concise, and so clearly expressed, as to avoid, if possible, the frequent and expensive litigation, which has existed, to ascertain its true construction.

To attempt its accomplishment many of the more important chapters of frequent use have been entirely rewritten; changes more or less frequent have been made in the language of others; while others have been found in a condition requiring no change. It would be tedious to attempt to designate all these changes. They can be ascertained, if desirable, by a comparison of the first and second revisions.

Public laws of last session included.

The public laws passed at the last session of the legislature have been, as required, included in chapters deemed most appropriate.

New arrangement; remarks respecting it.

To make any important changes in the arrangement, as ascertained by some attempts to do it, would have required that all, or nearly all, the chapters should have been rewritten; and the arrangement was not regarded as so defective and of such importance as to require it, even had there been sufficient time. The only important change in this respect will be found in the omission of chapter six of the first revision prescribing the "boundaries of counties" and the insertion in the second revision

One chapter omitted. One new one included.

of a chapter respecting the "Society and Board of Agriculture and local agricultural societies."

The bounds of counties in the second revision are established as existing, and the acts establishing them are not repealed. They are left in the same position as those of towns.

The importance of the subject, and the more systematic legislation, respecting agriculture, seemed to require a separate chapter.

There have been some other changes in the position of chapters and of sections with the design to give them a more appropriate or connected position.

Another duty required was "to consider and recommend such alterations and amendments in the general laws, as he may deem suitable and necessary, and to incorporate the same with proper distinguishing marks or notes into the revised code."

Alterations and amendments.

New provisions were introduced in the first revision. These have been carefully considered and most of them, but not all, have been retained; sometimes with modification; and they have as far as practicable been designated by being printed in italics. When not so designated, a statement of the fact, that the section contains new provisions, and an explanation of their character, will be found in a note at the bottom of the page.

New provisions by first revision.

Further alterations and amendments have been introduced in the second revision designated by being printed in italics. Many of them have been briefly explained by notes at the bottom of the page. The effect of others will be perceived by reading without any explanation.

New provisions by second revision.

It may be useful to explain here briefly some of the more important new provisions introduced by the second revision.

The supreme judicial court has jurisdiction in equity of cases arising between partowners of vessels for the adjustment of their interests in the property and of their accounts respecting it. A new provision will be found in chapter seventy-seven and section eight giving the court the same jurisdiction when other property real or personal is owned in like manner. When two or more persons own personal property, they have now, as between themselves, no satisfactory remedy to determine their respective rights in it, their rights to possession of it, or their accounts and claims arising out of it. Much property is thus owned and a more satisfactory mode of adjusting their conflicting claims seems desirable.

Jurisdiction of the court in equity, extended.

The same remarks with less force apply to such an ownership of real estate.

The jurisdiction of the court is proposed by the same section and seventh specification to be further extended for the construction of wills; and to determine whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and to determine the mode of executing a trust; and the expediency of making investments and changes of the trust property.

Executors and other persons interested in the execution of a will may differ respecting its true meaning and construction; and if there be no mode to determine this difference, the result must be, that the executor must execute it, as he is advised will be correct, at the risk of being called to account for misconduct; and this may produce much litigation, delay, and difficulty, which might have been avoided by obtaining a judicial construction before its execution.

It is most important, that an executor should be enabled to know with certainty, whether he is by the law to be regarded as a trustee; for in such case he will have other duties and obligations than those assumed by being only an executor.

Trustees in the execution of their trusts cannot in many cases be assured of safety, unless they can obtain the direction and sanction of the court, by which those interested will also be enabled to have a hearing, respecting the mode of executing a trust for their benefit.

Jurisdiction as
a court of law,
extended.

The jurisdiction of the court as a court of law is extended by a new provision to be found in the seventeenth section of the same chapter to enable it to dissolve injunctions in certain cases.

Dissolution of
injunctions.

One member of the court may issue an injunction after notice and hearing, or continue one after a hearing. Injunctions may operate seriously upon the most valuable rights and interests; and it is in accordance with the general spirit and provisions of our laws to afford a party, thinking himself aggrieved by the decision of one judge, an opportunity to obtain a revision of it by the court of law. The interest involved may be so great, that a party would be justly entitled to such a privilege.

Husband's
rights in the
estate of a
wife deceased
intestate.

Other new provisions will be found in chapter sixty-one and sections five and six. By the first revision it was proposed that the husband of a wife deceased intestate should be entitled to the use of one third part of her real estate during his life and to the same proportion of her personal property absolutely, if she left lineal descendants; and if she did not, to the use of one

half of her real estate for life and to the same proportion of her personal property absolutely. The provision respecting her real estate has in this revision been preserved. Her children or legal heirs will not thereby be ultimately deprived of any portion of it. But if the husband takes absolutely any portion of her personal property, that may never come to her own children or relatives. It may pass from hers to another blood or family. When she could have so disposed of it by will and did not, the justice or expediency of such a provision of law is not sufficiently apparent. Especially when it is proposed by the sixth section to authorize the parties to an intended marriage to make a marriage settlement, by which their rights in each other's property will be determined. This power it seems desirable to give, since females are likely to become the owners of so much property under the operation of our laws.

A new provision for the attachment and sale of estates for a term of years will be found in chapter eighty-one and section twenty-eight. These estates are now subject to attachment and sale as other personal property. They may be held by lease for so long a term as to be nearly as valuable as a title in fee to the estate would be. It does not appear to be in accordance with the general spirit of our laws to authorize a sale of such estates after a seizure and notice of four days or less. It is therefore proposed to have them sold, as rights to redeem lands mortgaged may be sold; and that their attachment should be preserved as in case of goods, that cannot be removed.

Attachment and sale of estates for a term of years.

There has been a change of the language of laws providing for the punishment by imprisonment of persons convicted of offenses in the chapters of title eleven and in some other chapters. As no new provisions have been thus introduced the change of language has not been designated by printing.

Change of language respecting imprisonment.

The laws provide in many cases for an imprisonment in county jails not exceeding or more than one year. In the revision it is for less than one year. There is therefore a possibility that such imprisonment may be less by one day than formerly. The change was made to avoid frequent repetitions, and any inconsistency between provisions authorizing imprisonment not less than one year in the state prison and not more than one year in a county jail, so that a person could be imprisoned in certain cases for precisely one year in either. This is avoided by making the imprisonment in a county jail less than one year.

Some amendments are proposed by omitting provisions in the existing laws. These and many other new provisions are believed to be sufficiently explained by notes.

The commissioner was instructed "to consider and report, whether any chapters or parts of the existing general laws of the state have become obsolete or are now unnecessary."

Obsolete or unnecessary laws.

Sections forty-two to forty-eight of chapter twenty-four, and most of the provisions of the first thirty-five sections of chapter fifty, are so regarded. The reasons for it are briefly stated in notes.

He was also instructed to report "whether it is expedient to adopt any additional chapters upon any subjects not hitherto embraced in the general statutes of the state."

Additional chapters not recommended.

While performing the service he has been favored with many suggestions, frequently valuable, respecting new provisions and modifications of the laws; and although he had no time to answer all or to discuss with them the expediency of their adoption, he has been thankful for them, and has derived valuable assistance from some of them, while he has not felt authorized to adopt many of them. Nor is he prepared to recommend the adoption of any additional chapters on subjects not embraced in the existing laws.

Explanations.

Act of June 10, 1850, not revised.

"An act additional to chapter twenty four of the revised statutes," approved June 10, 1850, respecting drains has not been included in this revision; but it is not proposed, that it should be repealed. The ninth section of that act provides, that it "shall not take effect in any town or city in this State, until the same shall have been accepted by said town at a town meeting called for that purpose, or by the mayor aldermen and common council of any city." It is not known, whether it has been so accepted. If it has been in particular towns or cities, it does not thereby become a public law operative upon all the citizens of the State.

Act to repeal laws revised, prepared.

An act has been prepared and printed to accompany this revision providing for the repeal of the public laws included in it, and for the continuance in force of those not included.

List of errors existing in this revision.

A printed list of errors now existing in this revision, which should be corrected, will also accompany it.

An explanation of the occasion of so many errors may reasonably be expected. They have been mostly occasioned by the great disadvantages for accuracy, under which the service has necessarily been performed. As soon as the three first titles were ready, they were forwarded to the printers. No copy was or could be retained without a consumption of time, that could not be spared. When other titles were prepared, they were forwarded in like manner. When titles subsequent to the three

first were prepared, he could not be certain, that references to preceding chapters and sections would be correct having nothing but loose minutes for reference; and could not be certain, that reference to future chapters and sections would be correct, for they might be greatly changed by the revision and the incorporation into it of the public acts of the year 1856. If all the titles could have been retained, till the revision was completed, these errors should not have existed.

When the printed proofs were forwarded to him at a distance from the printers for correction, he had only a small number of the chapters in his possession by which to attest the accuracy of the references, until considerable progress had been made in the printing. He has not therefore been surprised on finding so many errors still existing; and does not expect, that other errors will not be discovered. For it is only under the most favorable circumstances for accuracy, that so many printed pages can be found without errors. Some existing in the present revised statutes since their enactment have been discovered, and have been corrected in this revision.

He was required to cause his report of the revision "to be completed and printed" by the fifteenth day of November, 1856. By an unusually and steadily devoted service for the accomplishment of the purposes named in the resolves, this revision could not be completed and printed by the time required. It has been so soon thereafter, that no essential inconvenience, it is hoped, will be experienced.

Revision not completed as soon as required.

It will be understood of course, that this revision could not have been completed as soon, as it has been, without the very great benefits and advantages of the first revision.

Great advantages of first revision.

The revision with this report and the accompanying documents is now most respectfully submitted for the consideration of the legislative department of the government for the year 1857.

ETHER SHEPLEY.

REPEALING ACT.

An act to repeal the acts consolidated in the revised statutes of the year 1857.

Be it enacted by the senate and house of representatives, in legislature assembled, as follows :

- SECT. 1. The public acts passed during the years hereafter
- | | |
|----|--|
| 2 | named and herein designated are repealed, except so far as |
| 3 | they are preserved or excepted in the two following sec- |
| 4 | tions : |
| 5 | 1840. All the chapters of the revised statutes numbered |
| 6 | one to one hundred seventy-eight. |
| 7 | “ An act in relation to elections. |
| 8 | 1841. “ to amend the revised statutes with all the |
| 9 | chapters numbered one to eleven. |
| 10 | 1842. Chapters numbered one to forty. |
| 11 | 1843. “ “ one to thirty-nine. |
| 12 | 1844. “ “ eighty to one hundred and |
| 13 | twenty-nine. |
| 14 | 1845. “ “ one hundred and thirty to one |
| 15 | hundred and seventy-four. |
| 16 | 1846. “ “ one hundred and seventy-five to |
| 17 | two hundred and twenty-six. |
| 18 | 1847. “ “ one to thirty-four. |
| 19 | 1848. “ “ thirty-five to ninety. |
| 20 | 1849. “ “ ninety-one to one hundred and |
| 21 | fifty-one. |
| 22 | 1850. “ “ one hundred and fifty-two to two |
| 23 | hundred and seven. |
| 24 | 1851. “ “ two hundred and eight to two |
| 25 | hundred and seventeen. |
| 26 | 1852. “ “ two hundred and eighteen to two |
| 27 | hundred and ninety-five. |
| 28 | 1853. “ “ one to fifty-four. |
| 29 | 1854. “ “ fifty-five to one hundred and ten. |
| 30 | 1855. “ “ one hundred and eleven to one |
| 31 | hundred and eighty-nine. |

32 1856. Chapters numbered one hundred and ninety to two
 33 hundred and seventy-nine,—and an act to preserve the har-
 34 bor of Portland. Inclusive of all the numbers named.

SECT. 2. The repeal of the acts aforesaid does not revive
 2 any of the acts repealed by them. Acts of incorporation
 3 declared to be public acts are not repealed. The acts de-
 4 clared to be repealed remain in force for the trial and pun-
 5 ishment of all past violations of them; and for the recovery
 6 of penalties or forfeitures already incurred; and for the pres-
 7 ervation of all rights and their remedies existing by virtue
 8 of them; and so far as they apply to any office, trust, judi-
 9 cial proceeding, right, contract, limitation, or event, already
 10 affected by them. (a)

SECT. 3. The following described acts and parts of acts
 2 are not included in the revised statutes of the year 1857
 3 and are not thereby repealed; all acts respecting the estab-
 4 lishment and the bounds of counties, districts, and towns.

5 1821. An act prescribing the forms of writs and other
 6 process in the cases therein mentioned.

7 1842. Chapter 2. An act to secure the rights of owners of
 8 logs, spars and other lumber in Ken-
 9 duskeag stream.

10 “ “ 28. An act to establish the shire town of the
 11 county of Piscataquis.

12 “ “ 30. An act additional to an act establishing
 13 the county of Franklin.

14 “ “ 39. An act to make valid the doings of towns
 15 in certain cases.

16 1843. “ 4. An act additional to an act establishing
 17 the county of Piscataquis.

18 “ “ 10. An act to prevent obstructions in East
 19 Machias river.

20 “ “ 26. An act to prevent obstructions in the
 21 navigation of Union river.

22 1844. “ 80. An act to prevent obstructions in Goose
 23 River harbor.

24 “ “ 90. An act additional to an act to regulate the
 25 jurisdiction and proceedings of the court
 26 of probate in the county of Lincoln.

27 “ “ 105. An act in addition to an act regulat-
 28 ing the alewife fishery in the town of
 29 Bristol.

30	1844.	Chap. 115.	An act relating to bankrupt defend-
31			ants.
32	"	" 124.	An act in addition to an act to regu-
33			late the survey of lumber in the county
34			of Penobscot.
35	1845.	" 158.	An additional act to regulate the sur-
36			vey of lumber in the county of Penob-
37			scot.
38	"	" 167.	An act additional to an act entitled
39			an act additional to an act establishing
40			the county of Franklin.
41	"	" 169.	An act additional in relation to the
42			survey of lumber in the county of Pe-
43			nobscot.
44	"	" 174.	An act to establish a registry of deeds
45			and one term yearly of the court of pro-
46			bate in the northern district of the
47			county of Aroostook.
48	1849.	" 114.	An act concerning the registry of marks
49			upon certain logs.
50	1850.	" 153.	An act additional to chapter twenty-
51			four of the revised statutes.
52	"	" 186.	An act fixing the salary of the judge
53			of the municipal court in Bath.
54	"	" 195.	An act to establish a municipal court
55			in the town of Brunswick in the county
56			of Cumberland.
57	1851.	" 208.	An act additional to article third of
58			chapter ninety-eight of the revised stat-
59			utes.
60	1852.	" 229.	An act making valid the records of the
61			register of deeds in the county of
62			Hancock.
63	"	" 230.	An act to make valid certain writs.
64	"	" 288.	An act to establish a municipal court
65			in the town of Turner in the county of
66			Oxford.
67	1853.	" 3.	An act to amend chapter one hundred
68			and fifty-three of the public laws ap-
69			proved June tenth eighteen hundred
70			and fifty.
71	"	" 24.	An act additional to amend the seventy-
72			sixth chapter of the revised statutes.

- 73 1853. Chap. 50. An act to amend an act to establish a
74 municipal court in the town of Bruns-
75 wick in the county of Cumberland ap-
76 proved August 28, 1850.
- 77 " " 69. Section two of an act to increase the
78 salary of the judge of probate for the
79 county of Hancock.
- 80 " " 70. An act additional to an act to incorpo-
81 rate the county of Sagadahoc passed
82 April 4, 1854.
- 83 " " 73. An act regulating the jurisdiction of the
84 municipal court for the city of Bath.
- 85 " " 84. An act additional concerning municipal
86 and police courts.
- 87 " " 87. An act additional to an act to establish
88 the county of Androscoggin.
- 89 " " 91. An act to amend an act to incorporate
90 the city of Augusta.
- 91 " " 95. An act in addition to an act to establish
92 the county of Sagadahoc.
- 93 1855. " 112. An act in addition to an act entitled an
94 act to establish the county of Sagada-
95 hoc.
- 96 " " 135. An act to amend an act entitled an act
97 to incorporate the city of Hallowell.
- 98 " " 142. An act to amend an act entitled an act
99 to incorporate the city of Gardiner.
- 100 " " 151. An act to establish a municipal court in
101 the city of Biddeford.
- 102 " " 156. An act additional to an act establishing
103 a municipal court in the city of Bid-
104 deford.
- 105 " " 187. Section one of an act to incorporate and
106 endow the Maine State Agricultural
107 Society and more fully prescribing the
108 powers and duties of agricultural and
109 horticultural societies.
- 110 1856. " 194. An act to make valid the draft and do-
111 ings of the grand jury for the county
112 of Penobscot.
- 113 " " 203. An act to prevent the destruction of fish
114 in Brewer pond.
- 115 " " 204. An act to establish a municipal court in
116 the city of Portland.

- 117 1856. Chap. 207. An act to establish a police court in the
 118 city of Bangor.
- 119 " " 214. An act providing for the appointment
 120 and duties of a recorder of the police
 121 court of Bangor.
- 122 " " 216. An act to prevent the destruction of pick-
 123 erel in Upper and Lower Stone ponds
 124 in Stoneham.
- 125 " " 218. An act to prevent the destruction of pick-
 126 erel in Flying pond.
- 127 " " 235. An act further defining the jurisdiction
 128 and powers of the municipal court of
 129 the city of Biddeford.
- 130 " " 244. An act to limit the jurisdiction of the
 131 municipal court of the city of Calais.
- 132 " " 247. Sections two and three of an act to abol-
 133 ish town courts.
- 134 " " 257. An act additional to an act defining the
 135 jurisdiction and powers of the munici-
 136 pal court of the city of Biddeford, ap-
 137 proved April 1, 1856.
- 138 " " 274. An act enlarging the criminal jurisdic-
 139 tion of the police court of the city
 140 of Belfast.

SECT. 4. This act shall take effect at the time, when the
 2 revision of the statutes, provided for by resolves approved
 3 April 1, 1856, having received the sanction of the legislative
 4 department becomes operative as law.

LIST OF ERRORS.

IN TITLE I.

- Chap. 2, Sect. 4, line 6, erase "nineteen" and insert "eighteen."
2, Sect. 40, line 4, erase "ninth" and insert "sixth."
4, Sect. 95, line 3, erase "to."
5, Sect. 15, line 13, before the word "fund" insert "interest of said."
5, Sect. 21, line 3, erase "thirteenth" and insert "twenty-ninth."
6, Sect. 69, line 16, erase "forty-third" and insert "sixty-seventh."
6, Sect. 99, line 10, erase "seventy-second" and insert "ninety-seventh."
6, Sect. 140, line 4, erase "twenty-ninth" and insert "thirty-eighth."
6, Sect. 173, line 14, erase "one hundred and sixty-second" and insert "preceding."
6, Sect. 174, line 2, erase "one hundred and sixty-third" and insert "preceding."
6, Sect. 187, line 3, erase "fifty-fourth" and insert "seventy-ninth."
7, Sect. 3, line 15, erase "twenty" and insert "seventy."
10, Sect. 8, line 1, erase "un" after word "of."
10, Sect. 52, line 14, erase "eighteenth" and insert "forty-eighth."
10, Sect. 60, line 4, erase "seven" and insert "six."
10, Sect. 111, line 26, erase "six" and insert "three."

IN TITLE II.

- 12, Sect. 1, line 3, erase "of the peace."
16, Sect. 8, line 5, insert "or" after the word "heirs."
17, Sect. 6, lines 12 and 13, erase "one hundred and eleven" and insert "seventy-two."
18, Sect. 32, line 2, erase "third" and insert "fourth."
23, Sect. 22, line 6, erase "five" and insert "six."
24, Sect. 48, line 1, insert "s" after word "case."
26, Sect. 18, line 5, erase "sixteen" and insert "fifteen."
30, after last line of abstract insert "15. Secretary of State's duty."

LIST OF ERRORS.

IN TITLE III.

- Chap. 40, Sect. 56, line 2, erase "first" and insert "preceding."
40, Sect. 56, line 3, erase "of this chapter."

IN TITLE IV.

- 52, Sect. 5, line 7, erase "forty-eight" and insert "thirty-two."
58, Sect. 8, line 3, erase "six" and insert "seven."
58, Sect. 12, line 4, erase "act" and insert "chapter."

IN TITLE V.

- 59, Sect. 2, line 6, erase "mothers."

IN TITLE VI.

- 66, Sect. 11, line 1, erase "division" and insert "decision."
67, Sect. 4, line 12, erase "nineteen" and insert "twenty-two."

IN TITLE VIII.

- 77, Sect. 8, line 12, erase "estate" and insert after other
"property."
78, Sect. 11, line 6, erase "seven" and insert "six."
79, Sect. 17, line 4, erase "fifth" and insert "fourth."
79, Sect. 19, line 4, erase "three" and insert "two."

IN TITLE IX.

- 81, Sect. 37, line 2, erase "three" and insert "five."
82, Sect. 58, line 5, before "than" insert "more."
82, Sect. 98, line 1, erase "plead" and insert "filed."
91, Sect. 19, line 3, erase "by serving" and insert "to be
served on."
104, Sect. 38, line 3, before "twenty-eighth" insert "twenty-
seventh."
104, Sect. 38, line 4, insert "and" before twenty-ninth and
erase "and thirtieth."

IN TITLE XI.

- 118, Sect. 26, line 3, erase "n" after years.

IN TITLE XII.

- 140, Sect. 35, line 5, erase "a" before prison.