

# MAINE STATE LEGISLATURE

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THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

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PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

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1841.

## CHAP. 30.

## CHAPTER 30.

## OF POUNDS AND IMPOUNDING BEASTS.

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Each town to keep a pound. 1834, 137, § 1.

Penalty for neglect. 1834, 137, § 1.

Penalty for beasts going at large. May be impounded. 1834, 137, § 2.

Penalty for ungelded horses and rams, going at large. 1834, 137, § 2.

Towns may permit beasts to go at large. 1834, 137, § 2.

SECTION 1. Each town shall constantly keep and maintain, in such places therein, as the inhabitants thereof shall direct, one or more sufficient pounds for the reception of such beasts, as may be, by law, liable to be impounded.

SECT. 2. Every town that shall neglect, for six months, to provide and maintain such pound, shall forfeit a sum, not less than fifty dollars; to be recovered by indictment before the district court, and to be expended by an agent, to be appointed by said court, for the use of said town, to build or maintain such pound or pounds.

SECT. 3. If any horse or horse kind, ass, mule, swine, goat, sheep, or neat beast, shall, at any time, be found going at large, without a keeper, in the highways, roads, town ways or commons of the town, the owner thereof shall forfeit seventy five cents for every horse, horse kind, ass or mule; twenty five cents for every swine, goat or neat beast; and ten cents for every sheep; recoverable by action of debt, as hereinafter provided: or the same beasts may be impounded in any pound of the town, till the forfeiture aforesaid, with the charges of impounding and keeping such beasts, and all fees, shall be paid by the owner or claimant.

SECT. 4. If such horse be an ungelded male, of one year old or upwards, the owner thereof shall forfeit a further sum of four dollars. If any ram or he goat shall be found going at large, in any place out of the owner's inclosure between the tenth day of August and the twentieth day of November, the owner thereof shall forfeit a further sum of five dollars.

SECT. 5. Any town, notwithstanding the provisions of the third and fourth sections of this chapter, may, by vote thereof at the annual meeting, permit cows, and any other particular description of neat beasts, to go at large within such town, or any specified part thereof, at any, or all times, within one year from the meeting.

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SECT. 6. When any person is injured in his land, by sheep, swine, horses, asses, mules, goats or neat cattle, whether in a common or general field, or in a close by itself, he may recover his damages, in an action of trespass against the owner of the beasts, or by distraining the beasts, or any of them, doing the damage, and proceeding therewith, as hereinafter directed; provided, that if the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom, in consequence of the neglect of the person, who had suffered the damage, to maintain his part of the partition fence, the owner of the beasts shall not be liable for such damage.

SECT. 7. There shall be annually chosen, in every town, a suitable person, to keep each pound therein, and he shall be sworn to a faithful discharge of his trust.

SECT. 8. Said pound keeper shall keep a book, wherein he shall record, at length, the certificates, he shall receive from persons committing beasts to the pound, or finding stray beasts, and a single copy of all advertisements, by him posted, or published; and shall note therein the time, when a beast was impounded, and when, and by whom, the same was taken away; which book shall be legal evidence of the doings aforesaid; thus recorded and noted, and shall be transmitted to his successor in office.

SECT. 9. It shall be the duty of the pound keeper, to restrain the beasts impounded, in the town pound, or such other place, after the first day, as shall be more for the comfort of the beasts, or more convenient for their safety, and for giving them food and drink; which shall be furnished by him, at the expense of the impounder. Unless payment be made in advance, or sufficient security for the same tendered, the pound keeper shall not be obliged to receive such beasts into pound.

SECT. 10. Before the pound keeper shall be required to receive any beast into pound, the impounder shall furnish the said pound keeper with a certificate, under his hand, briefly describing the beast, the cause of impounding, the amount of damages or forfeiture claimed, and charges of impounding, then accrued, of the following purport: "To the pound keeper of \_\_\_\_\_:

The undersigned A. B. of B. herewith commits to pound (a horse or cow, as the case may be, with a short description of the beast), taken up (in the highway or inclosure of said A. B. in B. as the case may be), and the said A. B. demands \_\_\_\_\_ dollars and \_\_\_\_\_ cents, for (damages, or forfeiture, as the case may be), and the unpaid charges for impounding the same.

Witness my hand, A. B.

B. (date) 18—."

SECT. 11. The pound keeper shall not be liable to any action, for receiving or detaining any beast, so committed, till the several sums, claimed by such certificate, and all other due expenses and costs and fees shall have been paid to him, except under the provisions of the next section.

SECT. 12. If the claimant of such beast object to the amount, stated as damages, or if no claimant appear, the pound keeper shall, within ten days, and not afterwards, issue a warrant under his hand to two disinterested persons of said county, to the following purport:

Persons, injured by beasts, may sue for damages, or distress.

1821, 44, § 2.  
1834, 137, § 3.  
4 Mass. 471.  
6 Mass. 90.  
16 Mass. 33.  
2 Greenl. 72,  
408.

5 Greenl. 356.  
14 Maine, 419.  
15 Maine, 237.  
18 Pick. 227,  
422.

Pound keepers.  
1834, 137, § 4.

To keep a book of records.  
1834, 137, § 4.

To restrain beasts impounded.  
1834, 137, § 4.

Impounder, to furnish a certificate of the cause of impounding.  
1834, 137, § 5.  
14 Maine, 419.  
21 Pick. 187.

Pound keeper, not to deliver beasts, till damages and costs are paid.  
1834, 137, § 5.

Proceedings, if claimant object to amount demanded.  
1834, 137, § 5.  
18 Pick. 422.

CHAP. 30. P. ss: To E. F. and G. H., two disinterested persons of said county: Greeting:

You are hereby appointed to view and estimate, upon oath, according to your best judgment, the damages done to A. B. by the (horse, or oxen, as the case may be), owned or claimed by (C. D. or by owner unknown,) and make due return to me, within twenty-four hours, with your doings therein; first giving the said A. B. reasonable notice of the time, when you will view the place, where the damages were done.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.  
O. P. Pound keeper."

RETURN OF THE APPRAISERS.

"Pursuant to this warrant, we the undersigned, being first sworn to the faithful performance of the trust, to which we have been appointed, and having given said A. B. reasonable notice, as required, do hereby certify, that we have viewed and do estimate the said damages at \_\_\_\_\_ dollars and \_\_\_\_\_ cents and no more.

E. F. } Appraisers.  
G. H. }

B. (date) 18—."

And said persons, being first sworn, shall give reasonable notice to the person impounding, and the owner of such beast, if known and resident in the same town, of the time appointed for the view, and proceed to estimate damages accordingly; and make return to the pound keeper of their doings, in writing under their hands. The oath may be administered, either by said pound keeper, or a justice of the peace, and must be certified on the same warrant.

Proceedings,  
when beasts are  
taken up as es-  
trays.  
1834, 137, § 6.  
15 Maine, 237.  
4 Pick. 249, 258.

SECT. 13. Whoever shall take up in any public way or commons, or within his inclosure or possessions, any such beast, as before mentioned, as estrays, he shall within ten days, if no owner calls for the beast, commit the same to a pound keeper of the same town, with a certificate, as described in the tenth section of this chapter; which beast the pound keeper shall carefully keep, till called for by the owner, and all due charges paid, or until the beast shall be disposed of, as is hereinafter prescribed.

Penalty, for not  
delivering es-  
tray to pound  
keeper.  
1834, 137, § 6.

SECT. 14. If the possessor of such stray beast shall not deliver the same to a pound keeper, with a certificate as aforesaid, within said ten days, he shall for every week, after the ten days aforesaid, lose the expense of keeping, and forfeit one per cent. of the value of such stray beast, until he shall deliver the same to the pound keeper, with such certificate, or until such forfeiture shall amount to the value of the beast.

Pound keeper  
to advertise.  
1834, 137, § 7.

SECT. 15. Whenever any pound keeper shall have received any beast, as aforesaid, he shall forthwith post, and keep posted, for three days, at his dwelling house, and in two other public places, in the same town, advertisements by him subscribed; stating the name of the impounder or finder, the time and cause of impounding, and a brief description of the beast; and notifying the owner to pay what is legally and justly demandable, and to take the beast away; and shall give the like public notice by the town crier, if such there be within the town. If the value of the beast exceed ten dollars, a copy of such advertisement shall be inserted in some newspaper, if any, printed in the county.

SECT. 16. If the owner of such beast shall not, within twenty days next after the posting or publishing such notice, appear and claim the beast, and pay what is demandable under this chapter, including charges, fees and costs, then the pound keeper shall, within the succeeding twenty days and not afterwards, proceed to libel the same, in the name of the impounder or finder, in the manner directed in chapter, one hundred and thirty two; in which process the pound keeper may be a witness.

When pound keeper may libel the estray. 1834, 137, § 7.

SECT. 17. After due notice and examination, the court or justice of the peace, having jurisdiction of the case, may decree a sale of such beast, if they find that such beast has been lawfully impounded and detained; and may issue under the seal of the court, or of the said justice, a precept, in form following:

Court may decree a sale. 1834, 137, § 7.

“STATE OF MAINE.

P. ss: To the sheriff of our county of \_\_\_\_\_ or his deputy, or any constable of the several towns in the same county,

Greeting:

(Seal.) Whereas A. B., of \_\_\_\_\_, within the county of \_\_\_\_\_, through his agent, O. P., pound keeper, by the consideration of (our justice court, holden at \_\_\_\_\_, on \_\_\_\_\_, by \_\_\_\_\_, Esquire, a justice of the peace for said county, or, as the case may be, of our justices of our district court, holden at \_\_\_\_\_, on \_\_\_\_\_, within our county of \_\_\_\_\_) obtained a decree for the sale of the following (here insert a description of the property, as in the libel) with costs, taxed at \_\_\_\_\_, as to us appears of record, whereof execution remains to be done; we command you, therefore, to make sale of the same, in manner prescribed by law, for the sale of goods and chattels in satisfaction of executions; and after deducting your lawful fees, you will pay over the residue to the said pound keeper, and take his receipt, thereon, for the same: hereof fail not, and make due return, with your doings therein, within thirty days.

Witness, \_\_\_\_\_.” (close to be like that of other executions.)

And the officer shall make sale of the property, in the manner prescribed, by law, for the sale of goods and chattels in satisfaction of executions, and be entitled to like fees out of the proceeds of the sale; and shall pay over the residue to the pound keeper, and take his receipt for the same. He shall be required to make return of his doings to said court or justice in thirty days. The precept shall be similar, in form, to common executions or [on] judgments, with such alterations, as the nature of the case may require.

SECT. 18. The pound keeper shall retain the amount of his lawful charges and fees, and pay, to others interested, their lawful dues, respectively. The balance he shall within thirty days pay over to the treasurer of the same county; which balance the latter, or his successor, shall pay over at any time within six years, to such one, on his written request, as shall, satisfactorily to him, make out his right thereto, as having been the owner of the property before it was sold. In case of refusal, on the part of the treasurer, to pay over the same to any claimant, he may appeal to the county commissioners, whose decision thereon shall be final. If such balance remain in the treasury for six years, not claimed and paid

Disposal of proceeds of sale. 1834, 137, § 7.

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Owner may redeem, at any time before decree. 1834, 137, § 7.

Replevin of beasts impounded. 1834, 137, § 8.

Same subject. 1834, 137, § 8.

Rescue, and punishment thereof. 1834, 137, § 9. 17 Mass. 342.

Pound breach, and punishment thereof. 1834, 137, § 10. 5 Pick. 514. 17 Pick. 415.

Masters and parents, liable for minors. 1834, 137, § 10.

Restriction as to defence, in such cases. 1834, 137, § 10. 4 Mass. 471.

over, as aforesaid, it shall become absolutely the property of the county.

SECT. 19. The owner of such beast may, at any stage of the proceedings, before a final decree for sale, as aforesaid, redeem the same on payment of all lawful claims and dues thereon, up to the time of his demand to redeem.

SECT. 20. Whenever any person shall replevy the beasts, herein mentioned, he shall bring his action against the impounder, or finder, and not against the pound keeper, and the copy of the writ shall be served on the latter, as also on the defendant. The process, in other respects, shall be regulated by the provisions of chapter, one hundred and thirty. And if the plaintiff in replevin be absent, when the writ is sued out, it may be served, and his bondsmen, in the replevin bond, shall be held in the same manner, as though he had himself signed and sealed it; and he may add his signature and seal before trial.

SECT. 21. If the property shall be replevied, while the aforesaid process, under the libel, is pending, the latter shall be continued in court, till the action of replevin be decided; but no action of replevin shall be sustained, unless the writ be served, before a decree is awarded on the libel.

SECT. 22. Whoever, in order to prevent the impounding of any beast, lawfully in possession of any person, and taken for the causes, in this chapter mentioned, shall rescue the same, or, directly or indirectly, shall occasion the escape thereof, shall forfeit not less than five, nor more than twenty dollars; and he shall be liable in an action on the case, to pay to the party injured, the full damages with charges and costs, which he might have received by impounding the beast.

SECT. 23. If any person shall make any pound breach, or in any other way, directly or indirectly, convey or deliver any beast, impounded as aforesaid, from the pound or place, where said beast may be restrained, he shall forfeit and pay, to the use of the town, a fine, not less than ten dollars, nor more than fifty dollars, to be recovered by indictment. The person, so offending, shall also be liable to pay the party injured, or impounding said beast or beasts, double the damage or forfeiture, he may be entitled to, by the impounding of such beast, to be recovered in an action on the case.

SECT. 24. When the rescue or pound breach, mentioned in the twenty third section of this chapter, is effected by an apprentice, legally bound by deed, or a minor, the party injured, or impounder, may prosecute for damages or forfeitures, either the master of such apprentice, or the parent of said minor, under whose care he may then be, or the apprentice or minor, at his election.

SECT. 25. The defendant in any action, brought for rescuing beasts, distrained or impounded, shall not be allowed to allege, or give in evidence, the insufficiency of the fences, or any other fact or circumstance, to show that the distress or impounding was illegal; but if there is any such ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin, to be brought as provided in chapter, one hundred and thirty.

SECT. 26. All forfeitures, mentioned in this chapter, where no other mode of recovery is prescribed, shall be by action of debt to the use of the prosecutor. All civil actions for forfeitures, mentioned in this chapter, without other express limitation, shall be barred, unless commenced within ninety days, from the time the forfeitures accrued.

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Limitation of actions for forfeitures. 1834, 137, § 11.

SECT. 27. The fees, which the pound keeper shall receive, shall be twenty five cents, for impounding one or more beasts, at one time; twelve cents and one half for recording each certificate, or advertisement; and the same, for each advertisement posted or published, with four cents, a mile, for his necessary travel.

Pound keeper's fees. 1834, 137, § 12.

SECT. 28. The party impounding such beast, or delivering the same to the pound keeper, shall have a reasonable sum for his trouble, to be determined by the pound keeper; but not exceeding one half of the respective forfeitures mentioned in the third section of this chapter, besides what forfeitures, he may be entitled to, under such section.

Compensation to impounder. 1834, 137, § 12.

SECT. 29. The price, which the pound keeper shall be allowed, for keeping and feeding the beasts, committed to pound, or to his custody, for causes aforesaid, shall be prescribed by the selectmen of his town, and recorded on the town books by the town clerk, and be binding until altered by such selectmen, or their successors.

Expense of keeping beasts impounded. 1834, 137, § 12.

## CHAPTER 31.

### OF KEEPING WATCH AND WARD IN TOWNS, AND OF DISORDERS IN STREETS AND PUBLIC PLACES.

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- SECT. 9. Penalty for neglect of constable or officer.
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  14. Fines, how recovered and appropriated.
  15. Masters and parents, liable for minors.

SECTION 1. Every male person, of the age of twenty one years or upwards, being able of body, or having estate sufficient to hire a substitute, and not being a minister of the gospel, shall, when duly warned, be liable to watch and ward in his town, either in person or by a sufficient substitute; unless such person reside more than two miles from the place, where the watch or ward is kept.

Who are liable to keep watch and ward. 1821, 125, § 1.

SECT. 2. The justices of the peace resident in any town, together with the selectmen of such town, shall have power, from

Power of selectmen and justices, to or