

# 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.

CHAPTER 139.

OF TIMBER AND CORD WOOD, AND HOW IT MAY BE DISPOSED OF, IN CERTAIN SPECIFIED CASES.

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| <p>SECT. 1. On application of the owners of certain interests in wood land, the supreme judicial court, after notice and hearing, may grant leave to sell the wood.</p> | <p>SECT. 2. Commissioners to be appointed therefor, and to give bond.</p> <p>3. Proceeds, how invested. Appropriation of income.</p> <p>4. Court to appoint trustees of such proceeds, who shall give bond.</p> |
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On application of the owners of certain interests in wood land, the supreme judicial court, after notice and hearing, may grant leave to sell the wood. 1821, 34, § 1.

SECTION 1. Any person, seized of a freehold estate, or of a remainder or reversion, in fee simple or fee tail, in a lot or tract of wood land, or timber land, on which the trees are of an age and growth, fit to be cut, may apply to the supreme judicial court in any county, for leave to fell and sell such trees, and invest the proceeds of the sale for the use of the persons interested in such wood land; and such court, after due notice, given to all interested therein, and a hearing of the parties, if any appear, may appoint one or more persons to examine the land, and make a report of their examination to the court; and, thereupon, the court, if they think proper, may license and order, on such terms and condition, as they shall impose, the whole or a part of such trees to be felled and sold, and the proceeds of the sale to be brought into court, subject to its further orders.

Commissioners to be appointed therefor, and to give bond. 1821, 34, § 2.

SECT. 2. The court shall appoint one or more commissioners, who shall superintend the felling of said trees, and the sale of them, and account to the court for the proceeds; and, who shall also give bond to the clerk of the court, or such other person as they shall appoint, for the faithful performance of the trust.

Proceeds, how invested. Appropriation of income. 1821, 34, § 2.

SECT. 3. The court may cause the net proceeds of the sale, after deducting necessary expenses, to be invested in other real estate in this state or in public stocks at their discretion, to be held to the same uses, and subject to the same limitation, as the land; and the income or profits thereof to be paid to the persons, entitled to the income and profits of the land, or apportioned among the several persons interested in the estate, as the court shall deem just and equitable.

Court to appoint trustees of such proceeds, who shall give bond. 1821, 34, § 2.

SECT. 4. The court may appoint one or more trustees to take and hold such estate or stocks for the said uses; who shall give bond, with sufficient sureties, to said clerk, or other person as aforesaid, for the faithful discharge of their duty; and they shall be removable by said court at pleasure.

CHAPTER 140.

OF HABEAS CORPUS.

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| <p>SECT. 1. Who may prosecute the writ, as matter of right.</p> | <p>SECT. 2. Who are not so entitled, as of right.</p> |
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- SECT. 3. Application, how made, by persons not entitled, of right.
4. Where to be made returnable.
  5. Form of application.
  6. When the writ shall not issue.
  7. Proceedings, if excessive bail be demanded.
  8. If the officer refuse a copy of the precept, the writ shall issue forthwith.
  9. Form of writ, in cases mentioned in the second section.
  10. Time of service and return. Tender of fees.
  11. Officer to bring the person restrained, when he makes return.
  12. Proceedings, if the person be sick, and cannot be brought.
  13. Examination of the causes of restraint.
  14. Persons interested to be notified, before discharge.
  - 15, 16, 17. Proceedings, and decision upon the application.
  18. Form of writ, if the restraint be not by an officer.
  19. By whom it may be issued.
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  31. Conveyance to prison of persons ordered to be committed. Penalty, for eluding the service of a writ of habeas corpus.
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  34. Supreme court, or any justice thereof, may allow bail at discretion. Exception.
  35. Admission of a person to bail, when committed for not finding sureties.
  36. Habeas corpus may issue, to bring in a prisoner, as a witness.
  37. Minors, enlisting into the army or navy, entitled to the benefits of this chapter.

SECTION 1. Every person, deprived of his personal liberty by the act of another, except in the cases mentioned in the following section, shall be entitled to, and have a right to prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief, if unlawfully confined.

Who may prosecute the writ, as matter of right.  
1821, 64, § 1.

SECT. 2. The following persons shall not, of right, be entitled to demand and prosecute such writ:

Who are not so entitled, as of right.  
1821, 64, § 1.  
2 Pick. 172, 445.  
8 Pick. 138.  
10 Pick. 434.

*First.* Persons committed to and confined in prison for treason or felony, or suspicion thereof; or as accessories, before the fact, to a felony, when the same is plainly and specially expressed in the warrant of commitment;

*Second.* Persons convicted, or in execution upon legal process, criminal or civil;

*Third.* Persons committed on mesne process in any civil action, on which they are liable to be arrested and imprisoned.

SECT. 3. Every application from a person, described in the preceding section, for such writ, shall be made to the supreme judicial court, if in session in the county where the applicant is confined; and, if not, then to any justice of such court; and, when issued by the court, it shall be made returnable thereto; but if, at the time of such return, the court shall have been adjourned without day, or for more than seven days, it may be returned before any justice of said court, and be heard and determined by him.

Application how made, by persons, not entitled, of right.  
1821, 64, § 1.

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Where to be made returnable.  
1821, 64, § 2.

Form of application.  
1821, 64, § 1.

When the writ shall not issue.

Proceedings, if excessive bail be demanded.  
1821, 64, § 5.

If the officer refuse a copy of the precept, the writ shall issue forthwith.  
1821, 64, § 6.

Form of writ in cases mentioned in the second section.  
1821, 64, § 2.

SECT. 4. When issued by a justice of said court, it may be made returnable before said court, or before himself or any other justice of the court.

SECT. 5. The application shall be in writing, signed by the applicant, and under oath. He shall state therein the place, where he is imprisoned or confined, and by whom he is deprived of his liberty; and shall produce, to the said court or justice, a copy of the precept by virtue of which he is restrained of his liberty, under the attestation of the officer, holding the precept.

SECT. 6. If, on inspection of the copy of such precept, it shall appear to such court or justice, that such applicant is lawfully imprisoned, or restrained of his liberty by virtue thereof, a writ of habeas corpus shall not be granted.

SECT. 7. If, by the copy of such precept, it shall appear that the applicant is committed and imprisoned on mesne process for want of bail, and; if such court or justice thereof shall be of opinion, that excessive bail is demanded, such court or justice shall decide what bail is reasonable, and he shall, on giving such bail to the plaintiff, be discharged.

SECT. 8. If the prison keeper or other officer having the custody of the applicant, shall refuse or unreasonably delay to deliver to such applicant an attested copy of the precept, by which he restrains him, on demand thereof being made, such court, or justice thereof, on proof of such demand and refusal, shall forthwith issue the writ of habeas corpus, as prayed for.

SECT. 9. When such writ is issued by the supreme judicial court, on the application of any person described in the second section of this chapter, it shall be substantially as follows; that is to say:

## "STATE OF MAINE.

C ———, ss. To A. B. of ———;

[L. s.]

Greeting.

We command you, that the body of C. D., in our prison, at ———, under your custody," (or "by you imprisoned and restrained of his liberty," as the case may be), "as it is said, together with the day and cause of his taking and detaining, by whatsoever name the said C. D. shall be called or charged, you have before our supreme judicial court, holden at ———, in and for our county of ———, immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf: and have you there this writ.

Witness ———, at ———, this ——— day of ———, in the year ———.

—————, clerk."

The like form shall be used by any justice of said court, changing what should be changed, when such writ shall be awarded by him.

Time of service and return.  
Tender of fees.  
1821, 64, § 3.

SECT. 10. When such writ shall be offered to the officer to whom it is directed, he shall receive the same; and, on payment or tender of such sum as said court, or justice thereof, shall direct, shall make due return thereof, within three days after receiving it, if the place of return be within twenty miles of imprisonment; and, if it is more than twenty miles, and less than one hundred

miles, he shall return it within seven days; and, if more than one hundred miles, he shall return it within fourteen days; provided, that if the writ was issued against such officer, on his refusal or neglect to deliver on demand to the applicant a copy of the precept, by which he restrained such applicant of his liberty, then the officer shall be bound to obey the writ without payment or tender of expenses, as above mentioned in this section.

SECT. 11. The person making the return shall, at the same time, bring the body of the party, if in his custody or power, or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party.

SECT. 12. When, by reason of sickness or infirmity of the party, he cannot, without danger, be brought to the place appointed in the writ, that fact shall be stated in the return, and, if proved to the satisfaction of the court or justice thereof to be true, any justice of the court may proceed to the place where the party is confined, and there make his examination, or may adjourn the same to another time, or make such other order in the case, as law and justice may require.

SECT. 13. On the return of the writ, the said court, or justice thereof, shall, without delay, proceed to examine the causes of imprisonment or restraint; but may adjourn such examination, from time to time, as circumstances may require.

SECT. 14. When it appears, that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged, until notice has been given to such other person, or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object if he see cause; and, if imprisoned on any criminal accusation, he shall not be discharged, until sufficient notice shall have been given to the attorney general or other attorney for the state, that he may appear and object, if he should think fit.

SECT. 15. The party, imprisoned or restrained, may deny any of the facts, stated in the return or statement, and may allege any other facts, that are material; and the court, or justice thereof, may, in a summary way, examine the cause of imprisonment or restraint, and hear evidence, produced by any person interested, both in support of such imprisonment or restraint, and against it; and thereupon may dispose of the party, as law and justice shall require.

SECT. 16. If no legal cause be shown for the imprisonment or restraint of the party, the court or justice thereof shall discharge him; but this section shall not be construed, as applying to the case of a person, committed on mesne process, where excessive bail is demanded, as mentioned in the seventh section of this chapter.

SECT. 17. If the party is imprisoned and detained for any offence, which is bailable, he shall be admitted to bail, if sufficient bail be offered; and, if not, he shall be remanded with an order of the said court or justice thereof, expressing the sum in which he shall be held to bail, and the court at which he shall be bound to appear; and any justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

Officer to bring the person restrained, when he makes return.

1821, 64, § 3.

Proceedings, if the person be sick, and cannot be brought.

Examination of the causes of restraint.

1821, 64, § 8.

Persons interested, to be notified, before discharge.

Proceedings, and decision upon the application.

1821, 64, § 8.

Same subject.

1821, 64, § 1.

Same subject

1821, 64, § 5.

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Form of the writ, if the restraint be not by an officer.

SECT. 18. In cases of imprisonment or restraint of personal liberty by any person, not a sheriff, deputy sheriff, coroner, constable or jailer, or marshal, deputy marshal or other officer of the courts of the United States, the writ shall be in the following form, viz :

## "STATE OF MAINE.

(Seal.) To the sheriffs of our several counties, and their respective deputies, Greeting.

We command you, that the body of C. D. of \_\_\_\_\_, imprisoned and restrained of his liberty, as it is said, by A. B. of \_\_\_\_\_, you take and have before our supreme judicial court, holden at \_\_\_\_\_, immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A. B. then and there to appear before our said court, to show cause of the taking and detaining of the said C. D.; and have you there this writ with your doings thereon. Witness our \_\_\_\_\_ at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, Clerk."

By whom it may be issued.

SECT. 19. Such writ may be issued by the supreme judicial court, or district court, when sitting in any county, in which the applicant for the writ shall be restrained, or by any justice of either of said courts, and the above form of the writ shall be changed so far as is necessary, when issued by the district court, or any justice of either of said courts.

Where served.

SECT. 20. The writ may be served in any county of the state.

Person restraining, how designated if unknown.

SECT. 21. The person, having custody of the prisoner, may be designated by the name of his office, if he have any, or by his own name; or, if both are unknown or uncertain, he may be described by an assumed name; and any one who is served with the writ, shall be deemed the person thereby intended.

Person detained, how designated, if unknown.

SECT. 22. The person detained, and to be produced, shall be designated by his name, if known; and, if unknown or uncertain, he may be described in any other way, so as to make known, who is intended.

Form of return, in the cases mentioned in the 10th and 13th sections.

SECT. 23. In cases, provided for in the tenth section of this chapter, the person who makes the return, and; in the cases provided for in the eighteenth section thereof, the person, in whose custody the prisoner shall be found, shall state in writing to the court, or justice thereof, before whom the process is to be returned, plainly and unequivocally :

*First.* Whether he has, or has not, the party in his custody or power, or under restraint ;

*Second.* If he has, he shall state, at large, the authority and the true and whole cause of such imprisonment or restraint, upon which the party is detained; and,

*Third.* If he has had the party in his custody or power, or under his restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

How authenticated.

SECT. 24. Such return or statement shall be signed by the person making it, and sworn to by him, unless he is a sworn public officer, and makes his return in his official capacity.

SECT. 25. Until judgment be given by the court or justice thereof, the party may be bailed to appear from day to day, or be remanded, or committed to the sheriff of the county, or placed in such custody, as the case may require. CHAP. 140.

SECT. 26. If any officer shall refuse or neglect, for four hours, to deliver a true and attested copy of the warrant or precept or process, by which he detains any prisoner, to any person, who shall demand such copy, and tender the fees therefor, he shall forfeit and pay to such prisoner, two hundred dollars.

SECT. 27. If any person or officer, to whom such writ of habeas corpus shall be directed, shall refuse to receive the same, or shall neglect to obey and execute the same as required in this chapter, and no sufficient cause shall be shown for such refusal or neglect, he shall forfeit to the aggrieved party, four hundred dollars; and the court or judge, before whom the writ was returnable, shall proceed forthwith by attachment, as for a contempt, to compel obedience to the writ, and to punish the person guilty of the contempt.

SECT. 28. If such an attachment be issued against a sheriff or his deputy, it may be directed to a coroner or any other person, designated therein, who shall have power to execute the same; and, if the sheriff or his deputy should be committed on such process, he may be committed to the jail in any county, other than his own.

SECT. 29. Upon the refusal of the person, to whom the writ is directed, to obey and execute the same, the court or judge may also issue a precept to any officer, or other person therein named, commanding him to bring forth the person, for whose benefit the writ was issued, before such court or judge; and the prisoner shall thereupon be discharged, bailed or remanded, in like manner, as if he had been brought in upon the writ of habeas corpus.

SECT. 30. No person, who has been enlarged by a habeas corpus writ, shall again be imprisoned or restrained of his liberty for the same cause, unless he shall be indicted therefor, or convicted thereof, or committed for want of bail, or unless, after a discharge for defect of proof or some material defect in the commitment, in a criminal case, he shall be arrested on sufficient proof, and committed by legal process for the same offence.

SECT. 31. Any person, ordered to be committed to prison on any criminal charge, shall be carried to such prison, as soon as may be, and shall not be delivered from one officer to another, except for easy and speedy conveyance; nor removed, without his consent, from one county to another, unless by habeas corpus; and, if any one, who has in his custody, or under his power, any person entitled to a writ of habeas corpus, whether issued or not, shall transfer such person to the custody of another, or change his place of confinement, with intent to elude the service of such writ, he shall forfeit and pay to the party aggrieved, the sum of four hundred dollars.

SECT. 32. No penalty, established by this chapter, shall bar any action at common law for damages, for false imprisonment.

SECT. 33. When any person shall be unlawfully carried out of the state, or imprisoned in a secret place, any other person may

Manner of keeping the party, before judgment.

Penalty, for neglect of an officer, to give a copy of his precept for detaining a prisoner.

1821, 64, § 6.

Punishment, if an officer neglect to serve a writ of habeas corpus.

1821, 64, § 9, 10.

If attachment issue against a sheriff, how served.

Proceedings, in such case, for release of the person, for whose benefit the writ issued.

Person discharged, on habeas corpus, not to be arrested again, except in certain cases.

1821, 64, § 12.

Conveyance to prison of persons ordered to be committed.

Penalty, for eluding the service of a writ of habeas corpus.

1821, 64, § 11.

Penalties, no bar to actions for damages.

1821, 64, § 12.

In certain cases, a third person may appear



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for the party detained. 1821, 64, § 12. Supreme court, or any justice thereof, may allow bail, at discretion. Exception. 1821, 64, § 1.

Admission of a person to bail, when committed for not finding sureties. 1821, 68.

Habeas corpus may issue, to bring in a prisoner, for trial, or as a witness.

Minors, enlisting into the army and navy, entitled to the benefits of this chapter. 1821, 64, § 7.

appear for him in any action, brought therefor in his name, who shall stipulate for the payment of costs, as the court shall order.

SECT. 34. Nothing in this chapter shall be construed to restrain the supreme judicial court in term time; or any justice thereof in vacation, from bailing any person whatever, or for whatever offence committed, at their discretion; whenever the circumstances of the case may require it; excepting persons committed by the governor and council, senate or house of representatives, and for the causes mentioned in the constitution.

SECT. 35. When any person is confined in jail for a bailable offence, or for not finding sureties on a recognizance, any justice of the district court, or two justices of the peace and of the quorum, on application made to them, may inquire into the case, and admit any such person to bail, and exercise the same power concurrently, which any one of the justices of the supreme judicial court may or can do; and may issue a writ of habeas corpus, and cause such person to be brought before them, for the purpose expressed in this section, and may take such recognizance.

SECT. 36. Any court may issue a writ of habeas corpus, when necessary, to bring before them any prisoner for trial in any cause pending in any such court, or to testify as a witness, in a cause therein pending, when his personal attendance may be deemed necessary for the attainment of justice.

SECT. 37. If any minor, under the age of twenty one years, shall be enlisted within this state into the army or navy of the United States, without the consent in writing of his parent, guardian or master, he shall be entitled to all the benefits of this chapter, on the application of such minor or of his parent, guardian or master, to the district court.

CHAPTER 141.

OF THE WRIT OF AUDITA QUERELA.

SECT. 1. Form of the writ.

2. In what court and county to be sued out.

3. Proceedings in court.

SECT. 4. Special damages.

5. Pleadings. Filing exceptions.

6. Proceedings, if plaintiff be in prison.

7. Effect of a surrender to jail.

Form of the writ. 1821, 65, § 1, 2, 4.

10 Mass. 101. In what court and county to be sued out. 1821, 65, § 1.

Proceedings in court. 1821, 65, § 3.

SECTION 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested and indorsed, as other writs.

SECT. 2. When brought to prevent, set aside or annul proceedings, had on a judgment or writ of execution, it shall be sued out of the same court, in which judgment was rendered; but, in all other cases, it shall be sued in the county and court having jurisdiction of the cause, according to the provisions of law, as to personal actions.

SECT. 3. If the defendant, after having been duly served with process, shall not appear, he shall be defaulted; and, if he appear, a trial shall be had, as in common civil actions.

**The following page(s) from  
“An Act to Amend the Revised Statutes”  
include amendments to this chapter.**

same ought to have been entered; and no attachment made, and no bail taken, shall be revived or continued in force, by the entry of any such appeal or complaint by the original plaintiff, as provided in the two preceding sections; but such attachment and bail shall remain discharged.

bail not continued by entry of the appeal. 1821, 57, § 7.

SECTION 23. The one hundred and twenty fifth chapter shall be amended, by adding, at the end of the nineteenth section, the following words: R. S. ch. 125.

When such mortgagee or person claiming under him, being out of the state, or whose residence is unknown, shall have proceeded according to the provisions of the fifth section of this chapter, for the purpose of foreclosure, the mortgager, or other person having a right to redeem, may file his bill or petition, as provided in section, sixteen, and may at the same time pay to the clerk of the court the sum due, and the court shall order such notice to be given as they may judge proper; and such payment shall have the like effect and force, as a tender of payment made before the commencement of the suit.

If mortgagee or his assignee be out of the state, bill in equity may be filed on payment of redemption money to clerk of the court.

SECTION 24. The one hundred and fortieth chapter shall be amended, by inserting, at the end thereof, a new section, in the following words: R. S. ch. 140.

SECT. 38. When any insane person is arrested or imprisoned on mesne process or execution in any civil suit, any judge of the supreme judicial court or district court, or any judge of probate within his county, on application, may inquire into the case, and, if he think proper, may issue a writ of habeas corpus, and cause such person to be brought before him for examination; and, after notice to the creditor or attorney, if either be living in the state, and a hearing thereon, if it shall be proved to the satisfaction of said judge, that the person is insane, he may discharge such person from arrest or imprisonment; and, in that case, the creditor shall have a right to make a new arrest, upon the same demand, whenever such debtor shall become of sound mind. But, if such person be arrested on the same demand a second time before he becomes of sound mind, and be discharged again for the same reason, his body shall forever thereafter be exempted from arrest therefor.

Habeas corpus may issue for discharge of an insane person, arrested on mesne process or execution. Effect thereof.

SECTION 25. The one hundred and forty fourth chapter shall be amended, in section, one, by striking out the words, "to her satisfaction;" so that the said first section, as amended, will be as follows: R. S. ch. 144.

SECT. 1. When a woman is entitled to dower, and it is not set out to her by the heir or tenant of the freehold, according to the intentment of the law, nor assigned to her by the judge of probate, she may recover the same by a writ of dower, in the manner hereinafter prescribed.

Right of a widow to sue for dower.

SECTION 26. The one hundred and fifty sixth chapter shall be amended, by adding at the end of the chapter, a new section, as follows: R. S. ch. 156.

SECT. 16. Upon any conviction of burglary, robbery or larceny, unless it be before a justice of the peace for larceny, the court may order a meet recompense to the prosecutor, and also to the officer, who has secured or kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer, and charged by him to the state.

Compensation for expenses of prosecutor to conviction, for larceny, &c. and officer. 1821, 7, § 16.