

# MAINE STATE LEGISLATURE

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DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

**A. D. 1834.**

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FOURTEENTH LEGISLATURE.

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NO. 31.

SENATE.

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STATE OF MAINE.

IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED  
AND THIRTY-FOUR.

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AN ACT concerning Pounds, Beasts impounded,  
stray Beasts and lost Goods.

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SECT. 1. *Be it enacted by the Senate and  
2 House of Representatives in Legislature as-  
3 sembled,* That each town shall constantly keep  
4 and maintain a sufficient pound or pounds in  
5 such place or places therein, as the town shall  
6 direct: and every town that shall neglect for the  
7 space of six months to provide and maintain  
8 such pound, shall forfeit and pay a sum not less  
9 than fifty dollars nor more than one hundred

10 dollars, to be recovered by presentment of the  
11 Grand Jury in the Court of Common Pleas,  
12 for the same County, for the use of said town,  
13 to build or maintain such pound or pounds.

SECT. 2 *Be it further enacted,* That if  
2 any horse, or horse-kind, ass, mule, swine, goat,  
3 sheep, or neat beast shall, at any time, be found  
4 going at large, without a keeper, in the high-  
5 ways, roads, town-ways, or commons of the  
6 town, the owner thereof shall forfeit seventy five  
7 cents for every horse, horse-kind, ass or mule;  
8 twenty five cents for every swine, goat, or neat  
9 beast; and ten cents for every sheep; recovera-  
10 ble by action of debt to the use of the prosecu-  
11 tor; or the same beasts may be impounded, and  
12 restrained in any pound of the town, till the for-  
13 feiture, with the charges for impounding and  
14 keeping such beasts, and all fees shall be paid by  
15 the owner or claimant. And if such horse kind  
16 so found be an ungelded mule of one year old  
17 and upwards, the owner thereof shall forfeit a  
18 further sum of four dollars; and if any ram or  
19 he-goat shall be so found going at large in any  
20 place out of the owner's inclosure between the  
21 tenth day of August and the twentieth day of

22 November, he shall forfeit and pay three dollars,  
 23 *Provided, however,* That any town may by vote  
 24 thereof at the annual meeting for the choice of  
 25 officers, allow and permit cows, and any other  
 26 particular description of neat beasts, to go at  
 27 large within such town, or any part thereof, at  
 28 any, or all times, within one year from the  
 29 meeting.

SECT. 3. *Be it further enacted,* That any  
 2 person endamaged or injured in his tillage, gar-  
 3 den, mowing, or other lands under improvement,  
 4 that are inclosed with a legal and sufficient fence,  
 5 by any of the beasts aforesaid, may maintain an  
 6 action of trespass against the owner of the beast  
 7 for the damage done; or he may impound the  
 8 beasts doing the damage, or some of them, at  
 9 his election, in one of the town pounds, there  
 10 to be restrained, till the damages, the charges  
 11 for impounding and keeping them and all fees  
 12 shall be paid. But if such beast should break  
 13 into a person's inclosure through such part of  
 14 the fence as was not sufficient by law, being  
 15 lawfully on the opposite side thereof; no such  
 16 beast shall be impounded, nor action be main-  
 17 tainable, for a breach over or through such insuf-

18 ficient part : Yet should such beast, either be  
 19 clandestinely turned in; or, being unlawfully on  
 20 the opposite side of such insufficient part should  
 21 break through the same; or should break through  
 22 such part as was sufficient by law, though other  
 23 parts of the fence around the same inclosure  
 24 were not by law sufficient; then in either case  
 25 the person endamaged shall have a right to sue  
 26 or impound, at his election, as previously pro-  
 27 vided in this section.

SECT. 4. *Be it further enacted,* That  
 2 there shall be annually chosen in every town a  
 3 suitable person to keep each pound therein, who  
 4 shall be sworn to the faithful discharge of his  
 5 trust. And he shall have and keep a book,  
 6 wherein he shall enter at length, the certificates  
 7 he shall receive from the persons, committing  
 8 beasts to the pound, or finding stray beasts or  
 9 lost goods and other property; shall record a sin-  
 10 gle copy of all advertisements by him posted or  
 11 published, and shall note thereon the time when  
 12 a beast was impounded, and the time when and  
 13 the person by whom taken away; which book  
 14 of records shall have the same validity in law  
 15 as town records; and shall be delivered over by  
 16 him to his successor. And it shall be the duty

17 of the pound keeper to restrain the beasts im-  
 18 pounded in the town pound, or such other place  
 19 after the first day as shall be more for the com-  
 20 fort of the beast or more convenient for its safe-  
 21 ty or for giving it food and drink, which shall  
 22 be furnished by him at the expense of the im-  
 23 pounder. And if the person impounding will  
 24 not pay in advance, or give sufficient security  
 25 for the keeping such beast in pound, till taken  
 26 away by the owner or disposed of according to  
 27 law, the said pound keeper shall be under no  
 28 obligations to receive such beast into pound, till  
 29 such payment or security be offered.

SECT. 5. *Be it further enacted,* That be-  
 2 fore any pound keeper shall be required to re-  
 3 ceive any beast into pound, the impounder shall  
 4 send or deliver to the pound keeper a certificate  
 5 of the following purport :

6           To the pound keeper of B——.

7     The undersigned A— B— of B— herewith  
 8 commits to pound [a horse, or cow, as the case  
 9 may be, with a short description of the beast]  
 10 taken up [in the highway, or the inclosure of said  
 11 A— B— in B—, as the case may be] and the  
 12 said A— B— demands           dollars and  
 13 cents for damages or forfeiture [as the case may

14 be] and the unpaid charges for impounding the  
 15 same. Witness my hand. A— B—.

16 B—, [date] 183 .

17 And no action shall be brought against the  
 18 pound keeper for restraining or detaining such  
 19 beast or beasts, till the forfeiture, or the dam-  
 20 ages, charges of impounding and keeping the  
 21 same, and all lawful costs and fees are paid to  
 22 him. But if the person, whose beast is im-  
 23 pounded, *damage feasant*, shall think the dam-  
 24 ages demanded are unreasonable, or if no claim-  
 25 ant appear before the beasts or property be  
 26 libelled, the pound keeper, in either case, shall  
 27 issue a warrant of the following purport :

28 P. ss. To E. F. and G. H., two disin-  
 29 terested freeholders of said County, Greeting.

30 You are hereby appointed to view and esti-  
 31 mate, upon oath, according to your best judg-  
 32 ment the damages done to A. B. by the [horse,  
 33 oxen, as the case may be] owned or claimed by  
 34 C. D. and make due return to me within twen-  
 35 ty four hours, with your doings therein; first  
 36 giving the said A. B. reasonable notice of the  
 37 time when you will view the place where the  
 38 damages were done.—Given under my hand  
 39 this day of A. D. 18 .



41       Return of the appraisers:—Pursuant to this  
 42 warrant, we the undersigned, being first sworn  
 43 to the faithful performance of the trust to which  
 44 we have been appointed, and having given said  
 45 A. B. reasonable notice as required, do hereby  
 46 certify, that we have viewed and do estimate  
 47 the said damages at               dollars and  
 48 cents and no more.

49       B. [date] 183.               E. F. } Appraisers.  
   G. H. }

50 And the sum thus reported shall be taken instead  
 51 of that first demanded. Such warrant is to be  
 52 granted at any time within ten days after the  
 53 day of impounding and not afterwards; and the  
 54 oath to the appraisers may be administered by  
 55 the pound keeper or any Justice of the Peace,  
 56 and must be certified on the same warrant.

SECT. 6. *Be it further enacted*, 'That  
 2 whoever shall take up in the highway, town-  
 3 way, road, or commons, or within his inclosure  
 4 or possessions, any of the aforementioned beasts  
 5 or estrays, or shall find any money, goods, chat-  
 6 tels, or other personal property lost, of the val-  
 7 ue of five dollars or more, he shall, within ten  
 8 days, if no owner calls for the beast or property,

9 send the same to a pound keeper of the same town,  
 10 with a certificate like the preceding one, sent or  
 11 delivered where a beast is impounded, which beast  
 12 or other property the pound keeper shall carefully  
 13 keep and feed till called for by the owner, and  
 14 till the charges of keeping, removing and adver-  
 15 tising the same are paid, or the same be dispo-  
 16 sed of as hereinafter prescribed. And if the  
 17 possessor of such stray beasts, or finder of such  
 18 lost goods, or other personal property shall fail to  
 19 certify and deliver the same to a pound keeper,  
 20 within said ten days, then shall he for every week  
 21 after ten days, forfeit and pay one *per centum* of  
 22 the value of such stray beast or other property,  
 23 until the whole value thereof shall be recovered  
 24 of him with costs; or until he shall so certify  
 25 and deliver the same to a pound keeper.

SECT. 7. *Be it further enacted,* That in  
 2 all cases, whether the beasts be impounded, or  
 3 committed to the pound keeper as estrays, or  
 4 lost goods or other personal property found, be  
 5 delivered to him, he shall forthwith advertise  
 6 the same, stating the name of the impounder or  
 7 finder, and the time and cause of committing  
 8 the same to his custody—describing the beast,  
 9 or other property, and requesting the owner to

10 pay what is legally and justly demandable, and  
11 take the same away; which advertisement shall  
12 be kept constantly posted at or in the pound  
13 keeper's dwelling house, and also be posted in  
14 two other public places in the same town, and  
15 also cried in three several days, if there be a  
16 town crier; and in case the beast or property  
17 shall exceed the value of ten dollars, he shall  
18 also cause the same to be published in a news-  
19 paper, (if any) printed in the same county:  
20 And if the owner thereof shall not, within twen-  
21 ty days next, after the posting or publishing such  
22 notice, appear and claim such beast or other  
23 property aforesaid, and also pay what is by this  
24 act lawfully demandable, including charges, fees  
25 and costs, then shall the pound keeper, within  
26 the succeeding twenty days, and not afterwards,  
27 proceed to libel the same in the name of the im-  
28 pounder or finder, in manner directed by "*An*  
29 *Act prescribing the mode of recovering forfeit-*  
30 *ures of personal property, liable thereto by*  
31 *law*; in which process, the pound keeper may  
32 be a witness. But no appeal shall be allowed  
33 from any judgment or decree of the Court of  
34 Common Pleas, in any case of libel under this

35 Act. The libel shall be of the following pur-  
 36 port :

37 P. ss. To the Hon. Court of Common  
 38 Pleas, next to be holden at within and for  
 39 the County of on the day of in the  
 40 year of our Lord, [or, as the case may be.]

41 To Esquire, one of the Justices of the  
 42 Peace within and for the County of

43 The libel and complaint of A— B— of in  
 44 the County of by O— P—, a pound keeper  
 45 in said humbly shows, that he, the said A—  
 46 B— at on impounded or found [as the  
 47 case may be,] the following beasts or articles, [as  
 48 the fact may be] to wit, [here describe them]  
 49 doing damage in his inclosure, going at large, or  
 50 found, [here describe the place] and that the  
 51 same have been advertised as the law directs;  
 52 and no person has appeared and made claim  
 53 thereto, and paid the demands for which the  
 54 same is holden and detained; wherefore your  
 55 libellant prays the Court to decree a sale there-  
 56 of, as the law in such cases provides. A— B—.  
 57 By O— P—, pound keeper B—[date.]  
 58 And after notice proved, as required to be given  
 59 in the case of libels for forfeitures, and a decree

60 or judgment of sale, which the Court shall have  
 61 power to award, for the causes in this act men-  
 62 tioned;—a writ or precept shall be issued for  
 63 the execution of such decree in form following:

State of Maine.

65 P. ss. To the Sheriff of our County of  
 66 or his deputy, or any Constable of the several  
 67 towns in the same County. Greeting.  
 68 [Seal] Whereas, A— B— of within the  
 69 County of by O— P— pound keeper, by  
 70 the consideration of our Justice Court, holden  
 71 at on by Esquire, a Justice of the  
 72 Peace for said County, or [as the case may be]  
 73 of our Justices of our Court of Common Pleas,  
 74 holden at on within our County of  
 75 obtained a decree for the sale of the following  
 76 [here insert a description of the property as in  
 77 the libel] with costs taxed at as to us ap-  
 78 pears of record, whereof execution remains to  
 79 be done: We command you, therefore, to make  
 80 sale of the same in manner prescribed by law for  
 81 the sale of goods and chattels in satisfaction of  
 82 executions; and after deducting your lawful fees,  
 83 you will pay over the residue to the said pound  
 84 keeper and take his receipt thereon for the same:

85 Hereof fail not, and make due return, with your  
86 doings therein, within thirty days.—Witness,  
87 [the close to be like that of other executions.]  
88 And the pound keeper shall retain sufficient to  
89 remunerate himself, his lawful charges and fees;  
90 pay to others interested, their lawful dues re-  
91 spectively; and deliver over the balance to the  
92 County Treasurer of the same county, within  
93 thirty days; which balance the latter shall pay  
94 over, at any time within *six years*, to such one  
95 on his written request, as shall satisfactorily  
96 make out his right thereto, as having been the  
97 true owner of the property before it was sold;  
98 but if the County Treasurer shall refuse to pay  
99 the same to the claimant, the claimant may  
100 appeal to the next Court of Road Commis-  
101 sioners, whose decision shall be conclusive and  
102 final in the case. If the said County Treasurer  
103 shall not so pay over the same to a claimant,  
104 within six years, he shall immediately after the  
105 expiration of that period, pass the same to the  
106 credit of the County. *Provided always, That*  
107 the owner of such beast or other property afore-  
108 mentioned, shall at any stage of the proceed-  
109 ings, before final decree therein (and not after-

110 wards,) have the same delivered to him, on his  
 111 payment of all lawful claims and dues thereon,  
 112 up to the time of demand.

SECT. 8. *Be it further enacted, That*  
 2 whenever any person shall replevy the beasts or  
 3 other property herein mentioned, he shall bring  
 4 his action against the impounder or finder, and  
 5 not against the pound keeper, though a copy of  
 6 the writ shall be served on him as also on the  
 7 defendant; and the process shall, in other re-  
 8 spects be regulated by "*An Act directing the*  
 9 *mode of process to be adopted in replevying*  
 10 *of cattle or beasts distrained, and also of goods*  
 11 *and chattels."* And if the Plaintiff in replevin  
 12 be absent when the writ is served out, it may be  
 13 served; and his bondsmen in the replevin-bond,  
 14 shall be holden in the same manner and to the  
 15 same extent, as though he had himself signed  
 16 and sealed it, and he may add his signature and  
 17 seal thereto, at any time before trial. If the  
 18 property shall be replevied, while the process  
 19 under the libel is pending, the latter shall be  
 20 continued in Court till the action of replevin be  
 21 decided. But no such action of replevin shall  
 22 be sustained, unless the writ be served before a  
 23 decree is awarded on the libel.

SECT. 9. *Be it further enacted,* That who-  
 2 ever shall rescue or release any beast, or take  
 3 away or remove any article of property, after  
 4 being taken into custody or being in the pos-  
 5 session of any person, for the causes in this act  
 6 mentioned, or prevent in any way the impound-  
 7 ing of any beast, or occasion the escape there-  
 8 of, so that the law be evaded ; the wrong doer  
 9 shall forfeit a sum not exceeding twenty Dollars  
 10 nor less than five Dollars, according to the cir-  
 11 cumstances and aggravations of the case; and  
 12 shall be further liable to pay to the party injur-  
 13 ed in an action of the case, the full damages  
 14 with charges and costs, which he might have  
 15 received by impounding the beast.

SECT. 10. *Be it further enacted,* That if  
 2 any person shall make any pound-breach, or by  
 3 any indirect way or manner whatever, convey  
 4 or deliver any of the beasts aforesaid, impounded,  
 5 from the pound or place where they may be re-  
 6 strained; the person thus offending shall forfeit  
 7 and pay a fine not less than *ten Dollars* and not  
 8 more than *fifty Dollars*, to be recovered by a  
 9 presentment of the Grand Jury, to the use of the  
 10 town; and the person offending as aforesaid, shall  
 11 be liable to pay the party injured, or impounding



12 such beast or beasts, double the damage or  
 13 forfeitures he may be entitled to by the impound-  
 14 ing of such beasts, to be recovered in an action  
 15 of the case, and such party or impounder,  
 16 when the pound-breach or rescue is effected  
 17 by an apprentice or minor, may prosecute for  
 18 his damages or forfeitures the parent or master  
 19 under whose care such apprentice or minor may  
 20 then be, or the apprentice or minor at his elec-  
 21 tion, in which action, as well as, for damages  
 22 occasioned by the rescue of the beasts about to  
 23 be impounded, the defendant shall not be per-  
 24 mitted to give in evidence, the insufficiency of  
 25 the fine, if any such there be; or that the  
 26 beasts, when taken, were under such circum-  
 27 stances as to render the impounding illegal, to  
 28 prevent the party, from recovering his full dam-  
 29 ages or forfeitures.

SECT. 11. *Be it further enacted,* That all  
 2 forfeitures in this act mentioned, where no mode  
 3 of recovery is prescribed, shall be by action of  
 4 debt, to the use of the prosecutor, in any Court  
 5 proper to try the same. But no action shall be  
 6 brought for the recovery of any such forfeitures  
 7 after the lapse of ninety days from the time the  
 8 same occurred.

SECT. 12. *Be it further enacted,* That the  
 2 fees which the said Pound-keeper shall receive  
 3 shall be *twenty-five cents* for turning the key  
 4 upon any beast or beasts impounded, at one  
 5 and the same time; *twelve cents and an half,*  
 6 for recording every certificate and advertisement,  
 7 and the same for each advertisement posted or  
 8 published; and for his necessary travel, his fees  
 9 shall be the same as a witness. And the party  
 10 impounding such beast, or delivering the same  
 11 or any article or articles of property, mentioned,  
 12 to the pound keeper, shall have a reasonable sum  
 13 for his trouble, to be determined by the pound  
 14 keeper; not however in any case to exceed one  
 15 half part of the respective forfeitures in the second  
 16 section of this act mentioned. And the price  
 17 which the the pound keeper shall be allowed  
 18 for keeping and feeding the beasts committed  
 19 to pound or to his custody for causes aforesaid,  
 20 shall be prescribed by the Selectmen of his town,  
 21 and recorded on the town books, and be binding  
 22 till altered by the like officers.

SECT. 13. *Be it further enacted,* That all  
 2 acts and parts of acts inconsistent with the pro-  
 3 visions of this act be and the same are hereby  
 4 repealed.—Particularly “An Act respecting

5 pounds and impounding beasts going at large or  
6 damage feasant," passed March 20, 1821; "An  
7 Act extending the powers of towns to restrain  
8 cattle running at large," passed June 27, 1820;  
9 and "An Act respecting lost Goods and Stray  
10 Beasts," passed January 27, 1821.

STATE OF MAINE.

IN SENATE, February 20, 1884.

ORDERED, That two hundred and fifty copies of the foregoing Bill be printed for the use of the Legislature.

[Extract from the Journal.]

Attest            WILLIAM TRAFTON, *Secretary.*