

# MAINE STATE LEGISLATURE

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# L A W S

OF THE

## STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....  
VOL. I.  
.....

Published according to a resolve of the State, passed  
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

.....  
1821.

**ERRATA:**

**The following leaf is  
inserted because one or more pages  
in this chapter have errors  
noticed and corrected here.**

VOLUME THE FIRST.

Page.  
 40 L. 12 of the page for 'preceding' read 'presiding'  
 54 Sec. 4 L. 14 of Sec. for 'time' read 'term'  
 55 7 2 for 'a' read 'or'  
 55 7 9 before the word 'said' insert 'the'  
 56 9 3 for 'the' read 'her'  
 57 1 6 for 'to' read 'in'  
 58 1 5 for 'and' after the word 'house'  
 read 'or'  
 61 in the title of the act, ch. vi. insert 'the' before the  
 word 'crimes'  
 62 Sec. 2 L. 9 of S. before the word 'offender' insert 'such'  
 69 16 8 for 'Treasurer' read 'Treasury'  
 73 1 15 after the word 'for' insert 'the'  
 77 13 6 for 'to' read 'of'  
 78 first line of the page, dele the word 'by'  
 80 L. 2 of the p. after the word 'willingly' insert 'aid or'  
 80 17 for 'counterfeited' read 'counterfeit'  
 82 1 after the word 'in' insert 'all'  
 82 Sec. 7 L. 4 of Sec. after the word 'devised' dele 'or'  
 and insert '  
 83 Sec. 7 L. last of S. for 'aggravations' read 'aggravation'  
 84 10 6 for 'and' read 'or'  
 90 1st L. of p. for 'Commissioner' read 'Commissioners'  
 90 L. 20 before the word 'Commissioner' insert 'said'  
 97 6 for 'assumst' read 'assumpsit'  
 97 14 for 'cover' read 'covin'  
 98 at the end of the act for 'January' read 'February'  
 99 L. 17 of p. after the word 'year' dele ' ; ' & insert ' , and '  
 100 15 at the end of the line insert 'the'  
 105 at the end of the Act for '1820' read '1821'  
 108 L. 14 of page, for 'nuisances' read 'nuisance'  
 108 20 after the word 'each' insert 'one'  
 111 25 after the word 'fail' insert 'of'  
 113 11 for 'on' read 'or'  
 144 last for 'performance' read 'performing'  
 145 Sec. 2 L. 9 of Sec. after the word 'of' insert 'the'  
 147 7 6 before the word 'release' for 'to'  
 read 'a'  
 150 Sec. 6 L. 2 of Sec. for 'in' read 'is'  
 151 in the title, before the word 'Lands' insert 'reserved'  
 153 1st line of the p. for 'whenever' read 'wherever'  
 155 last before the word 'Court' for 'a' read 'any'  
 156 Sec. 4 L. 26 of Sec. for 'notification' read 'notifications'  
 159 9 8 for 'purpose' read 'purposes'  
 167 14 5 for 'votes' read 'vote'  
 193 4 10 dele 'such'  
 199 17 1 for 'when' read 'where'  
 202 22 6 after the word 'near, dele 'to'  
 202 23 10 for 'be' read 'he'  
 203 24 16 for 'of' read 'in'  
 203 25 16 for 'meeting' read 'meetings'  
 205 L. 18 of p. before the word 'estate' insert 'other'  
 210 2 before the word 'tenement' insert 'other'  
 215 4 before the word 'guardians' insert 'guard-  
 dian or'  
 226 Sec. 73 L. 6 of Sec. dele 'a'  
 229 3 last for 'agreeably' read 'agreeable'  
 230 7 19 for 'agreeably' read 'agreeable'  
 231 8 6 for 'resided' read 'reside'  
 242 2 5 for 'sentence' read 'sentences'  
 245 7 3 after the word 'herein' insert 'be-  
 fore'  
 247 L. 7 of the act, ch. 56, after the word 'otherwise' in-  
 sert 'interested'  
 247 11 for 'statement' read 'statements'  
 247 Sec. 1 L. 2 of Sec. for 'whenever' read 'wherever'  
 248 3 1 for 'whenever' read 'wherever'  
 248 3 14 for 'Justice' read 'Justices'

Page.  
 252 L. 3 of p. for 'where' read 'wherein'  
 257 5 after the word 'have' insert 'his or'  
 265 Sec. 39 L. 3 of Sec. for 'when' read 'where'  
 271 L. 1 and 3 of p. for 'affect' read 'effect'  
 271 Sec. 6 L. 2 of Sec. before the word 'execution'  
 insert 'the'  
 278 19 4 for 'on' read 'in'  
 280 L. 2 of p. for 'have' read 'had'  
 281 22 for 'of' read 'on'  
 283 13 for 'lies' read 'lays'  
 283 last before the word 'defendant' insert 'the'  
 284 Sec. 32 L. 2 of Sec. for 'a' read 'any'  
 288 5 18 for 'whenever' read 'wherever'  
 291 9 4 for 'as' read 'or'  
 292 L. 4 of p. for 'examinations' read 'examination'  
 293 Sec. 13 L. 5 of Sec. after the word 'article' in-  
 sert 'or articles'  
 297 7 5 for 'and' read 'or'  
 301 L. 8 of p. for 'he' read 'be'  
 309 24 between the words 'the' and 'day' should  
 be a '  
 310 20 for 'debt' read 'debtor'  
 311 2 for 'with' read 'and of'  
 312 7 for 'summon' read 'summons'  
 312 9 between the words 'our' and 'Court'  
 should be a '  
 318 31 for 'writs' read 'writ a'  
 328 Sec. 8 L. 4 of Sec. for 'grieved' read 'aggrieved'  
 353 L. 14 of p. at the end of the line insert 'the'  
 361 Sec. 1 L. 18 of Sec. for 'cause' read 'case'  
 370 3 10 for 'to' read 'of'  
 371 2 7 dele 'to'  
 373 L. 15 of p. before the word 'require' insert 'to'  
 376 Sec. 1 L. 10 of Sec. dele 'the' before the word  
 'payment'  
 378 at the end of the act, for '17' read '20'  
 378 in the title, for 'selection' read 'selecting'  
 379 Sec. 4 L. 5 of Sec. before the word 'divide' in-  
 sert 'shall'  
 394 1 9 for 'part' read 'parts'  
 395 1 8 for 'acceptances' read 'accep-  
 tance'  
 404 1 34 before the word 'authorized'  
 insert 'hereby'  
 407 7 4 dele 'the'  
 414 last word of the 1st act on the page, for 'therein'  
 read 'thereon'  
 423 Sec. 3 L. 15 of Sec. after the word 'assignments'  
 insert 'thereof, and also of the assignments'  
 424 Sec. 6 L. 13 of S. after the word 'papers' insert 'as'  
 425 L. 7 of p. before the word 'action' insert 'an'  
 428 22 for 'twelve' read 'twenty'  
 431 8 for 'fifteen' read 'fifty'  
 432 first line of the page should be put after the third  
 432 L. 5 of the p. dele 'entering'  
 432 between the 28th and 29th lines of the p. insert  
 'Every blank writ of attachment, with a sum-  
 mons thereon, fifteen cents'  
 432 L. 37 of p. for 'judgment' read 'jurymen'  
 435 9 for 'appear' read 'appears'  
 435 10 for 'make' read 'makes'  
 435 18 for 'taking' read 'taxing'  
 444 Sec. 1 L. 6 of Sec. before the word 'records' in-  
 sert 'the'  
 445 1 9 for 'within' read 'of'  
 445 1 19 after the word 'escape' insert  
 'sickness'  
 455 11 1 after the word 'of' insert 'the'

ry offence to the party grieved, the sum of four hundred dollars.

No person discharged on habeas corpus to be again restrained for same cause, unless, &c.

No penalty in this law to prevent recovery of damages at common law.

Any other person may appear for one sequestered, securing costs.

SEC. 12. *Be it further enacted,* That no person enlarged by habeas corpus shall be again imprisoned or restrained of his liberty for the same cause, unless he shall be indicted therefor, or convicted thereof, or shall neglect to find bail when ordered thereunto by some Court of record: *Provided,* That no penalty established by this Act shall be construed to bar any action at common law for false imprisonment or unlawful restraint: And when any person shall be unlawfully carried out of the State, or imprisoned in a secret place, any other person shall be permitted to appear for him in any action brought in his name: *Provided,* Such person shall stipulate for the payment of costs as the Court shall direct.

[Approved February 27, 1821.]

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## CHAPTER LXV.

An Act relating to the Writ of Audita Querela, and the proceedings thereupon.

Audita querela, how and from what Courts to be issued.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That in all cases where by law a writ of audita querela lieth, the same may be sued out in the form of a writ of attachment, or a writ of summons, at the election of the complainant: and in all cases where the said writ is brought to set aside or annul any proceedings had upon a writ of execution, the said writ of audita querela shall be sued out of and be returnable to the Court to which the said writ of execution was returnable: and in all other cases the said writ shall be sued out of and be returnable to the Circuit Court of Common Pleas to be holden in such county whereof one of the parties thereto is an inhabitant or resident, unless where the complainant is not an inhabitant or resident within this State; and in such case the said writ may be sued out of and returnable to any Circuit Court of Common Pleas within this State, at the election of the complainant.

Form of writ.

SEC. 2. *Be it further enacted,* That in all cases the said writ of audita querela shall be under the seal of the Court out of which the same shall issue signed by the Clerk thereof, and tested by the first Justice who is not a party to the

same; and the said writ before the service thereof shall be endorsed by one or more of the complainants, or by his or their attorney, by writing his or their names on the back thereof towards the bottom; and such endorser shall be liable to pay to the respondent such cost as he shall have final judgment for, in that suit, to be recovered by action of debt.

To be endorsed.

SEC. 3. *Be it further enacted*, That the said writ of audita querela may be served upon the adverse party in the same manner as writs of attachment or scire facias are directed by law to be served; and upon default of the respondent after such service without appearance, the Court may proceed to hear and try the same suit, and thereupon to proceed to final judgment and execution, in the same manner as by law they are authorized when the respondent after appearance becomes defaulted. And in all cases after the said writ is returned served as aforesaid, the Court, in which the suit thereupon is pending, shall have full power to hear and try the said cause, and thereupon to proceed to judgment and execution according as to law and justice doth appertain.

Mode of service.

SEC. 4. *Be it further enacted*, That where the said writ of audita querela shall be issued in the form of a writ of attachment with summons, or by original summons, they shall be in form prescribed by law.

When issued as writ of attachment—form.

SEC. 5. *Be it further enacted*, That the officer to whom such writ of attachment is directed, shall have the same power and authority and be under the same obligations by virtue of said writ, to attach the body of the respondent or his goods, or estate, as he hath or is under by virtue of any other writ of attachment sued out pursuant to the laws of this State and to him directed; and in the same manner and under the same restrictions and regulations, as are by law provided in other cases, the body of the respondent shall be holden to bail and the goods or estate so attached be liable to be taken in execution.

Power and duty of officer.

SEC. 6. *Be it further enacted*, That where the complainant in any writ of audita querela may, by other subsequent action at law, recover of the respondent any recompense in damages or otherwise, for the wrongs done him by the service

Damages may be recovered in certain cases.

of such execution for the setting aside and annulling of the proceedings upon which the said writ of audita querela is brought, in all such cases the complainant may have the same remedy upon his writ of audita querela and in his declaration therein may declare for the same recompense in damages or otherwise, and judgment shall be rendered and execution issue thereupon accordingly.

Form of pleadings.

SEC. 7. *Be it further enacted*, That the general issue in all actions prosecuted on writs of audita querela may be the plea of not guilty; and upon such plea being duly pleaded by the respondent, either party may give any special matter in evidence by which the truth and justice of the cause may be known: *Provided nevertheless*, That the respondent may plead any special matter in bar or the said general issue at his election.

Appeal allowed from C. C. C. Pleas to S. J. Court.

SEC. 8. *Be it further enacted*, That in cases where the writ of audita querela is returnable to the Circuit Court of Common Pleas in any county within this State, and judgment given in said Court, the party grieved thereat may appeal to the Supreme Judicial Court of this State, next to be holden within the same county, the said appeal to be granted and prosecuted under the same regulations and restrictions as appeals in other actions from the judgment of any Circuit Court of Common Pleas, are to be granted and prosecuted; and when the appellant shall fail to prosecute his appeal with effect, the Supreme Judicial Court may upon complaint filed by the appellee affirm the judgment rendered by the Circuit Court of Common Pleas with additional damages and costs, and award execution accordingly.

Court may liberate plaintiff, from prison, on certain conditions.

SEC. 9. *Be it further enacted*, That in cases where the complainant in such writ of audita querela is in gaol by virtue only of such execution, the Court to which such writ is returnable, or the Supreme Judicial Court upon the appeal may at their discretion, according to the circumstances of the case, enlarge and liberate the complainant from gaol and admit him to bail, upon his sureties (being sufficient freeholders within the State to be approved of by the Court,) giving bond, together with the complainant jointly and severally to the respondent, in such penalty as shall be direct-

ed by the Court, conditioned, if final judgment be rendered for the respondent, that the complainant shall within thirty days after the entering such final judgment, surrender himself to the gaol keeper to be detained in custody under the same execution, or within that time satisfy the same execution, and also such final judgment as shall be rendered as aforesaid for the respondent. And if the said complainant shall surrender himself to the gaol keeper as aforesaid, he shall be in custody under said execution, as fully and to all intents and purposes as if the said writ of audita querela had not been brought nor the said complainant admitted to bail.

Approved January 23, 1821.

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## CHAPTER LXVI.

An Act establishing the Right to the Writ for replevying a Person.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That every person within this State, who shall be imprisoned, confined, or held in duress, shall be entitled as of right, to the writ for replevying a person, and to be thereby delivered; unless, while the writ of habeas corpus is suspended by the Legislature, he shall stand committed by the special order of the Supreme Executive Power of the State as dangerous to the public safety, or by the same, or by some subordinate authority of the government, for treason, the death of man, counterfeiting the common currency, house burning, burglary, robbery, or some other offence, for which if he is convicted, he may suffer death or banishment, or unless he is held in execution upon judgment of debt, forfeiture, withernam, or by distress for taxes, or under sentence after conviction, for fine, costs or in punishment. And where any person stands committed by lawful authority for any crime for which he may not suffer death, or otherwise than is above in this Act specified, the writ shall be in form prescribed by law.

Who are entitled to the writ.

SEC. 2. *Be it further enacted,* That if the plaintiff stands committed for any crime not before in this Act mentioned, or for any other offence, whereof if he is convicted, he may not have sentence of death or banishment thereof passed up

Writ in certain cases to issue from S. J. Court—