

MAINE STATE LEGISLATURE

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L A W S

OF THE

S T A T E O F M A I N E ;

TO WHICH ARE PREFIXED

THE

C O N S T I T U T I O N O F T H E U . S T A T E S

AND OF SAID STATE,

IN TWO VOLUMES,

W I T H A N A P P E N D I X .

.....
VOL. II.
.....

Published according to a resolve of the State, passed
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BRUNSWICK.

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.....
1821.

ERRATA:

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

VOLUME THE SECOND.

<i>Page.</i>		<i>Page.</i>	
463	Line 7 of page, dele the word <i>whole</i>	663	S. 2 L. 6 of S. dele <i>of</i>
464	Sec. 8 L. 12 of Sec. for <i>towns</i> read <i>town</i>	666	5 2 after the word <i>Governor</i> insert, and <i>Council</i>
484	27 6 at the end of the line insert the word <i>that</i>	666	5 last for <i>his</i> read <i>the</i>
492	43 11 after the word <i>owing</i> insert to	667	L. 3 of the page, dele <i>who</i>
496	47 25 for <i>duty</i> read <i>body</i>	668	S. 10 L. 1 of S. for <i>where</i> read <i>when</i>
500	54 3 at the end of the line dele <i>the</i>	669	L. 3 of p. for <i>effect</i> read <i>affect</i>
506	7 6 after the word or dele to	670	S. 5 L. 7 of S. for <i>the</i> read <i>such</i>
515	L. 28 of p. for <i>highway</i> read <i>highways</i>	671	L. 2 of p. for <i>in</i> read <i>on</i>
517	S. 16 L. 11 of S. after the word <i>be</i> insert <i>the</i>	672	S. 9 L. 3 of S. for <i>make</i> read <i>mark</i>
518	18 9 for <i>of</i> read <i>or</i>	672	11 2 for <i>and</i> read <i>or</i>
520	23 11 before the word <i>proprietors</i> insert <i>the</i>	674	11 8 before the word <i>each</i> insert <i>for</i>
523	L. 6 of p. after the word <i>person</i> insert <i>of</i>	674	2 7 before the word <i>drying</i> insert <i>the</i>
523	last for <i>cannot</i> read <i>can</i>	676	L. 5 of p. for <i>not</i> read <i>none</i>
526	9 for <i>laws</i> read <i>law</i>	677	4 for <i>quality</i> read <i>quantity</i>
533	16 for <i>assessments</i> read <i>assessment</i>	681	Sec. 4 last line of Sec. after the word <i>owner</i> insert <i>or owners</i>
534	13 for <i>appears</i> read <i>appear</i>	682	Sec. 5 L. 2 of Sec. dele <i>away</i>
535	4 at the end of the line insert <i>of</i>	684	2 3 for <i>galo</i> read <i>golo</i>
535	3 from bottom of p. for <i>causes</i> read <i>cause</i>	686	4 2 for <i>on</i> read <i>or</i>
537	S. 12 L. 2 of S. for <i>in</i> read <i>of</i>	687	3 6 before the word <i>stamped</i> insert <i>not</i>
539	L. 11 of p. between the words <i>the</i> and <i>day</i> should be a '—'	688	L. 24 of p. before the word <i>arms</i> at the beginning of the line insert <i>the</i>
539	15 for <i>where</i> read <i>wherein</i>	694	L. 15 of p. after the word <i>shall</i> insert <i>also</i>
543	S. 18 L. 13 of S. dele <i>the</i> before the word <i>said</i>	694	16 after the word <i>of</i> insert <i>the</i>
545	21 7 for <i>and</i> read <i>or</i>	695	12 for <i>usage</i> read <i>usages</i>
546	1 6 for <i>this</i> read <i>thus</i>	716	8 for <i>fixed</i> read <i>affixed</i>
547	2 7 for <i>this</i> read <i>thus</i>	723	6 from bottom of p. dele <i>in</i>
547	2 11 for <i>in capacity</i> read <i>incapacity</i>	734	Sec. 51 L. 4 of Sec. before the word <i>auditing</i> insert <i>the</i>
553	L. 2 of p. at the end of the line insert <i>such</i>	742	L. 4 of p. after the word <i>orders</i> insert <i>to be</i>
556	S. 1 L. 18 of p. for <i>master</i> read <i>masters</i>	744	L. 3 from bottom of p. before the word <i>refuse</i> insert <i>shall</i>
557	L. 16 of p. for <i>in</i> read <i>of</i>	745	Sec. 1 L. 6 of Sec. before the word <i>good</i> insert <i>six</i>
560	S. 7 L. 4 of S. for <i>Court of Sessions</i> read <i>Courts of Sessions</i>	746	2 15 before the word <i>advice</i> dele <i>the</i>
566	1 7 for <i>every</i> read <i>any</i>	751	5 11 for <i>owners</i> read <i>owner</i>
570	9 5 after the word <i>them</i> insert <i>as</i>	751	5 15 for <i>taking</i> read <i>taken</i>
572	12 5 after the word <i>fine</i> insert <i>of</i>	751	5 25 for <i>owners</i> read <i>owner</i>
573	1 3 for <i>and</i> read <i>or</i>	753	8 23 for <i>spurs</i> read <i>spar</i>
576	L. 18 of p. for <i>pounds</i> read <i>ounces</i>	754	10 3 after the word <i>or</i> insert <i>any</i>
576	last line of the page dele <i>and</i>	758	L. 2 of p. for <i>sales</i> read <i>sale</i>
591	S. 5 L. 2 of S. before the word <i>action</i> insert <i>an</i>	759	24 for <i>minor</i> read <i>minors</i>
592	3 3 for <i>time</i> read <i>times</i>	761	19 for <i>another</i> read <i>any other</i>
601	L. 11 of p. at the end of the line insert <i>drawn</i>	761	last dele <i>other</i>
	After p. 604 read p. '605' instead of '506'	762	22 before the word <i>fish</i> insert <i>any</i>
604	S. 12 L. 2 of S. after the word <i>passing</i> insert <i>on</i>	766	6 after the word <i>notice</i> insert <i>is</i>
606	for Sec. 14 read Sec. 16	766	Sec. 5 L. 6 of Sec. for <i>damages</i> read <i>damage</i>
608	S. 22 L. 5 of S. for <i>monies</i> read <i>money</i>	769	4 14 dele <i>to the</i>
610	3 18 dele <i>any</i>	772	first word of the p. for <i>damage</i> read <i>damages</i>
614	4 4 for <i>funnel</i> read <i>fund</i>	774	Sec. 2 L. 7 of Sec. for <i>and</i> read <i>or</i>
617	L. 5 of the page dele <i>a</i>	774	2 14 for <i>any</i> read <i>every</i>
617	S. 1 L. 6 of S. for <i>purpose</i> read <i>purposes</i>	775	1 3 for <i>paasing</i> read <i>passing</i>
621	1 9 for <i>such</i> read <i>said</i>	777	L. 17 of p. for <i>these</i> read <i>their</i>
622	3 16 for <i>or</i> read <i>on</i>	780	14 for <i>ninth</i> read <i>twenty ninth</i>
624	2 12 after the word <i>returns</i> insert <i>as</i>	780	35 for <i>sixteenth</i> read <i>seventeenth</i>
626	3 6 before the word <i>Cashier</i> insert <i>the</i>	788	25 for <i>eight</i> read <i>eighth</i>
631	4 3 before the end of the S. for <i>course</i> read <i>course</i>	790	28 after the word <i>Act</i> insert <i>providing</i>
634	16 5 of S. for <i>inspected</i> read <i>uninspected</i>	791	13 after the word <i>for</i> dele <i>the</i>
635	17 last for <i>and</i> read <i>or</i>	791	14 after the word <i>idle</i> dele <i>and</i>
638	L. 9 of p. for <i>and</i> read <i>or</i>	793	5 for <i>galo</i> read <i>golo</i>
642	7 dele <i>who</i>	793	27 after the word <i>Act</i> dele <i>for</i>
643	S. 4 L. 6 of S. dele <i>are</i> after <i>and</i>	797	4 at the end of the line for <i>eight</i> read <i>eighth</i>
650	4 14 before the word <i>also</i> insert <i>as</i>	808	34 for <i>from</i> read <i>upon</i>
656	12 3 for <i>on</i> read <i>or</i>		
658	in the title, after the word <i>Act</i> insert <i>for</i>		

Every householder to give notice to selectmen, if the small pox be in his family, &c.

Penalty for neglect.

SEC. 20. *Be it further enacted,* That whenever any householder shall know that any person within his or her family is taken sick of the small pox, such householder shall immediately give notice thereof to the Selectmen of the town of which such householder shall be an inhabitant or resident, on pain that every householder who shall refuse or neglect to give such notice, shall forfeit and pay for such offence, a sum not exceeding thirty dollars nor less than ten dollars, to be recovered in the same manner as is provided for recovering the forfeitures mentioned in the sixteenth section of this Act, and to be appropriated and paid in the same manner.

[Approved March 10, 1821.]

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CHAPTER CXXVIII.

An Act respecting Pounds and impounding Beasts going at large, or damage feasant.

Each town to keep sufficient pounds.

Penalty for neglect.

Pound keepers and field drivers to be chosen annually. Field drivers to be sworn: their duty.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That each town shall keep and maintain a sufficient pound or pounds, in such place or places therein as the town shall direct; wherein horses, asses, mules, swine, goats, sheep and neat cattle may be impounded and kept, for the causes hereinafter mentioned; and every town that shall neglect, for the space of six months, to provide and maintain such a pound shall forfeit and pay the sum of fifty dollars, for the use of the county; to be recovered by presentment of the Grand Jury in any Court in the county; and there shall be chosen in each town, at the annual meeting for the choice of town officers, a suitable person to keep each pound, and three or more suitable persons for field drivers within such town, who shall severally be sworn to the faithful discharge of their duty; and it shall be the duty of the field drivers, thus chosen and sworn, to take and impound any such beasts found going at large, contrary to the provisions of this Act, or damage feasant; and the pound keeper shall restrain all beasts impounded within the pound, and furnish them with suitable and sufficient food and drink at the expense of the person impounding them.

SEC. 2. *Be it further enacted,* That no horses, asses, or mules, of one year old or upwards, or swine, not under the care of a keeper, shall at any time be permitted to go at large on the commons or highways in any town; and no goats, or sheep, not under the care of a shepherd, shall be permitted to go at large, on the commons or highways aforesaid, between the first day of April and the fifteenth day of November in any year; and neat cattle may go at large on such commons or highways, at any and all times: *Provided however,* That any town may, by a vote thereof at the annual meeting for the choice of town officers in any year, prohibit neat cattle, not under the care of a keeper, from going at large as aforesaid, within such town or any part thereof at any or all times within one year from the meeting.

Horses, mules and swine not to go at large, &c.

Nor goats and sheep between April 1, and November 15.

Towns may restrict the right, at all times.

SEC. 3. *Be it further enacted,* That if any horses, asses, mules, swine, goats, or sheep shall be found going at large contrary to the second section of this Act, or any neat cattle, when prohibited by a vote of the town, as is provided in said section, shall be found going at large as aforesaid, the owner or owners thereof shall forfeit and pay the sum of seventy five cents for every horse, ass, or mule; twenty cents for every swine; twenty five cents for every goat; six cents for every sheep; and fifty cents for every neat creature, so going at large; or the beasts so going at large, may be taken and impounded by a field driver in any pound in the town, and restrained in such pound until the owner or owners thereof shall pay the pound keeper, for the use of such field driver, the sum of seventy five cents for every horse, ass, or mule; twenty cents for every swine; twenty five cents for every goat; six cents for every sheep; and fifty cents for every neat creature so found going at large and impounded; together with the pound keeper's fees, and a reasonable sum for furnishing said beasts with food and drink; or until the same shall be replevied, or dealt with as is herein after directed: *Provided,* That no mare or gelding of the horse kind, or neat creature shall be so taken, and impounded when the owner of such beast is unknown.

Penalty for horses, &c. or neat cattle going at large, contrary to this act:

or such beasts may be impounded, &c.

Pound keeper to receive fees for field-drivers, and his own fees, &c.

Proviso.

Penalty for
ungelded
horse going at
large.

Penalty for
rams going at
large between
August 10, and
November 20.

Or such horses
and rams may
be impounded,
&c.

Penalties, how
recovered and
limitation as to
time.

Persons injur-
ed by sheep,
swine, horses,
&c. may main-
tain trespass,
or impound
the beasts.

How beasts
may be im-
pounded or
secured.

SEC. 4. *Be it further enacted,* That if the owner of any ungelded horse of the male kind, more than one year old, shall, at any time, suffer the same to go at large on the common or highways in any town, such owner shall forfeit and pay the sum of four dollars for each time such horse shall be so found going at large; and if the owner of any ram or he goat shall suffer the same to go at large, or out of his or her enclosure between the tenth day of August, and the twentieth day of November, the owner thereof shall forfeit and pay the sum of two dollars for each time every such ram or he-goat shall be found going at large out of his or her enclosure; or such male horse, ram, or he-goat, may be taken and impounded, by a field driver or any other person, in any pound in the town and restrained in such pound until the owner thereof shall pay to the pound keeper for the use of the field driver or other person, impounding the same, four dollars for every such male horse, and two dollars for every ram or he-goat thus taken and impounded, together with the pound keeper's fees and a reasonable sum for furnishing said male horse, ram or he-goat, with food and drink; or until the same shall be releived or dealt with, as is hereinafter directed.

SEC. 5. *Be it further enacted,* That any or either of the forfeitures aforesaid shall be recovered by action of debt in any Court competent to try the same, by and for the use of any person who shall sue therefor: *Provided,* That the action therefor shall be commenced within sixty days from and after the forfeiture was incurred, and not afterwards.

SEC. 6. *Be it further enacted,* That any person injured in his tillage, mowing, or other lands under improvement, that are inclosed with a legal and sufficient fence, whether such improved lands be in common or general field, or in a close by itself; by swine, sheep, goats, horses, mules, asses, or neat cattle, may have and maintain an action of trespass, *quare clausum fregit,* against the owner of the beasts, for his damages; or he may impound the beasts doing the damage, or some of them, at his election, with or without the aid of a field driver; and in case he impound the beasts, he may restrain them in one of the town pounds, or in some other place, under his immediate care and inspection, as may be

IMPOUNDING.

most convenient for relieving them with suitable food and drink; which relief it shall be the duty of the person impounding to furnish, or cause to be sufficiently furnished, during their confinement; and no action of trespass *quare clausum fregit* shall be had and maintained against the owner of any neat cattle for damages, nor shall such cattle be taken damage feasant and impounded, when such cattle broke into such close, or common or general field from the commons or highways in any town, in a part where the fence of such close or field was not good and sufficient, according to law: *Provided*, That such neat cattle, shall, at the time of such breaking, be lawfully going at large on the commons or highways aforesaid.

No action, or impounding to be allowed if the beasts entered a field where the fence was not sufficient.

SEC. 7. *Be it further enacted*, That when an action of trespass shall be brought against the owner of any of the beasts aforesaid, for damages by them done upon his enclosed lands under improvement; or when such creatures, taken damage feasant and impounded, shall be replevied, it shall be in the power of the Justice or Court before whom the cause shall be determined, to render judgment in favour of the person demanding damages for the injury sustained, upon satisfactory evidence being produced, that such creatures were clandestinely turned in, or broke into the close in a part where the fence was good and sufficient, according to law; some other parts of the fence round the same close being deficient notwithstanding.

Otherwise, if the cattle were secretly turned in, or broke through the fence where it was sufficient, though some parts of the fence be insufficient.

SEC. 8. *Be it further enacted*, That when any of the beasts aforesaid shall be impounded, whether it be done for being at large out of the owner's enclosure; or on the commons or highways; or for doing damage as aforesaid, the person impounding, shall inform the owner of the beasts impounded (if known) within the space of twenty four hours, by giving him a notification thereof in writing, describing the creatures, and specifying the time, place, and cause of impounding the same: and in case the owner of the beasts impounded be absent, such written notification shall be left at his house or usual place of abode. And the person impounding shall also leave with the pound keeper, if such beasts are impounded in a town pound, at the time they are committed to his custody, a memorandum, in writing, under

Proceedings where beasts are impounded, and notice to be given.

his hand, of the cause of impounding, and the sum he demands as a forfeiture, or in damages from the owner before they are liberated; and no action shall be maintained against the pound keeper for detaining such beasts, until that sum, with his lawful fees, and the reasonable expense of furnishing them with food and drink, shall be paid: *Provided*, That if the person, whose beasts are impounded damage feasant, shall think the damages mentioned in the memorandum left with the pound keeper, are unreasonable, he may within twenty four hours after notice given as aforesaid, procure from the Clerk of the town, or a Justice of the Peace, a warrant directed to two such disinterested judicious persons as the Clerk or Justice shall appoint, to estimate the amount of such damages upon oath, according to their best judgment; and the persons thus appointed, shall within twenty four hours, estimate and certify to the pound keeper the amount of damages; and the sum thus certified shall be taken instead of the sum first left with the pound keeper.

Mode of estimating damages in certain cases.

If owner do not pay damages and fees, or replevy cattle in 2 days, what proceedings are to be had.

SEC. 9. *Be it further enacted*, That if the owner of any beast or beasts taken and impounded by virtue of this Act, shall not, within two full days, after notice given as aforesaid, pay the forfeiture or damages, and all fees and charges, and the reasonable expense of keeping them aforesaid, or replevy the same, the impounder, if the owner of such beast or beasts be known, and has been notified as aforesaid, shall file an information of the transaction, by him subscribed and sworn to, with the Clerk of the town or a Justice of the Peace, and if it shall appear from such information that such impounder has substantially complied with the directions of the law in such cases, such Clerk or Justice may issue a warrant, returnable into the town Clerk's office, in seven days from the date, directed to any Constable of the same town, or to any other discreet and disinterested inhabitant of said town, if the Constable be the impounder or interested, to sell at public sale to the highest bidder, after giving twenty four hours notice of such sale, by posting up a notification thereof at some public place within said town, all, or so many of such beasts as shall be sufficient to satisfy and pay the forfeitures or damages, and all fees and charges, and the expenses of keeping such beast or beasts, to be taxed and

Sale to be made of cattle sufficient to pay damages, fees, &c.

allowed by the Clerk or Justice; and the Constable or other person to whom such warrant shall be directed, after paying the forfeitures or damages, and the fees and charges, and expense of keeping as aforesaid, and his fees, shall pay the overplus; if any there be, to the owner of the beast or beasts so sold on demand; and the remainder of the beasts if any such there be, shall be liberated by the impounder: *Provided*, That when such beast or beasts are taken and impounded damage feasant, the impounder shall, prior to such sale, procure from the Clerk of the town, or a Justice of the Peace, a warrant directed to two such disinterested, judicious persons as the Clerk or Justice shall appoint, to estimate the amount of such damage upon oath according to their best judgment; and the persons thus appointed shall certify the amount of such damages to the pound keeper; and the sum thus certified shall be the amount of damages to be paid out of the proceeds of the sale instead of the sum first left with the pound keeper.

Damages to be ascertained by appraisement under warrant from Justice of the peace, prior to sale.

SEC. 10. *Be it further enacted*, That if the owner of the beast or beasts impounded be unknown, the person impounding the same shall cause a notification thereof as aforesaid to be posted up in two public places in the same town, and in the two adjoining towns, nearest the place where the same may be taken up; and if no owner or claimer appear within the space of three full days next after the impounding and notifying as aforesaid, then the person so restraining them may proceed with them in all respects as the law provides respecting stray beasts, after having his damages ascertained, in case the beast or beasts be taken damage feasant, in manner as is before provided in the last proviso.

If the owner of beasts impounded be unknown, what proceedings are to be had.

SEC. 11. *Be it further enacted*, That if any person shall rescue any beast or beasts, which may have been taken up for being at large out of the owner's enclosure as aforesaid, out of the hands of the field driver, or from the custody and possession of any other person about to drive or convey them to pound, whereby the field driver or other person shall be prevented from impounding such beast, and the law evaded; every person so offending shall forfeit and pay not more than twelve dollars nor less than three dollars; to be recovered by action of debt in any Court proper to try the

Penalty for rescuing beasts taken up going at large, before they are impounded.

Penalty for rescuing beasts taken up damage feasant, and mode of recovery.

same, by and to the use of the field driver or other persons from whom the rescue may be made; and if any person shall rescue any beasts, taken up damage feasant as aforesaid, out of the hands or care of the field driver, or from the hands of any other person about to drive or convey them to pound, whereby the party injured may be in danger of losing such his remedy, and the law evaded, the person thus offending shall, for such rescue, forfeit and pay not more than twelve dollars, nor less than three dollars, to be recovered by action of debt in any Court proper to try the same, by and to the use of the field driver, or persons from whom the rescue may be made; and shall be further liable to pay the party injured the full damages he might be entitled to recover by impounding such beasts, to be recovered by an action of the case.

Penalty for pound breach and mode of recovery.

SEC. 12. *Be it further enacted,* That if any person shall make any pound breach, or by any indirect way or manner whatever, convey or deliver any of the beasts aforesaid, impounded from the pound or place where they may be restrained; the person thus offending shall forfeit and pay a fine not more than fifty dollars nor less than fifteen dollars; to be recovered by a presentment of the Grand Jury, to the use of the county: And the person offending as aforesaid, shall be liable to pay the party injured or impounding such beasts, double the damage or forfeitures he may be entitled to by the impounding such beasts to be recovered in an action of the case; and such party or impounder, when the pound breach is effected by an apprentice or a minor, may prosecute, for his damages or forfeitures, the parent or master under whose care such apprentice or minor may then be, or the apprentice or minor at his election; in which action, as well as for damages occasioned by the rescue of the cattle about to be impounded, the defendant shall not be permitted to give in evidence, the insufficiency of the fence, if any such there be; or that the beasts, when taken were under such circumstances as to render the impounding illegal, to prevent the party from recovering his full damages or forfeitures.

Parent or master liable for the wrongful act of minor child or apprentice.

In action for penalty or for damages in such cases, defendant not allowed to give in evidence, insufficiency of fence, &c.

[Approved March 20, 1821.]