

MAINE STATE LEGISLATURE

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PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

FOURTEENTH LEGISLATURE,

At its Session, held in January, 1834.

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 23, 1820.

AUGUSTA :

I. BERRY & CO., PRINTERS TO THE STATE.

1834.

board for preparing lists of Jurors to be laid before said towns respectively for their approval, and the said towns shall have power by a majority of the legal voters in legal town meeting assembled to make alterations in such lists, by striking out such names therefrom, as they may deem proper, but shall not be allowed to insert any other names therein.

Clerk to form a board for preparing lists of Jurors.

SECT. 2. *Be it further enacted*, That so much of the act, to which is additional, as is inconsistent herewith be and the same is hereby repealed.

Part of former act repealed. Chap. 84, vol. 1, page 378.

[Approved by the Governor, March 12, 1834.]

Chapter 137.

AN ACT concerning Pounds, Beasts impounded and stray Beasts.

SECT. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That each town shall constantly keep and maintain a sufficient pound or pounds in such place or places therein, as the town shall direct : and every town that shall neglect for the space of six months to provide and maintain such pound, shall forfeit and pay a sum not less than fifty dollars nor more than one hundred dollars, to be recovered by presentment of the Grand Jury in the Court of Common Pleas, for the same County, for the use of said town, to build or maintain such pound or pounds.

Towns required to keep and maintain sufficient pounds.

Penalty for neglect.

How recovered.

SECT. 2. *Be it further enacted*, That 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 to the use of the prosecutor; or the same beasts may be impound-

Penalties for horses, mules, swine, goats, sheep, &c. going at large in highways without a keeper.

ed, and restrained in any pound of the town, till the forfeiture, with the charges for impounding and keeping such beasts, and all fees shall be paid by the owner or claimant. And if such horse kind so found be an ungelded male of one year old and upwards, the owner thereof shall forfeit a further sum of four dollars; and if any ram or he-goat shall be so 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, he shall forfeit and pay five dollars. *Provided, however,* That any town may by vote thereof at the annual meeting for the choice of officers, allow and permit cows, and any other particular description of neat beasts, to go at large within such town, or any part thereof, at any, or all times, within one year from the meeting.

Proviso.

Persons suffering damage from any of the beast aforesaid, may maintain action of trespass or impound the beasts.

SECT. 3. *Be it further enacted,* That any person endamaged or injured in his tillage, garden, mowing, or other lands under improvement, that are inclosed with a legal and sufficient fence, by any of the beasts aforesaid, may maintain an action of trespass against the owner of the beast for the damage done; or he may impound the beasts doing the damage, or some of them, at his election, in one of the town pounds, there to be restrained, till the damages, the charges for impounding and keeping them and all fees shall be paid. But if such beast should break into a person's inclosure through such part of the fence as was not sufficient by law, being lawfully on the opposite side thereof; no such beast shall be impounded, nor action be maintainable, for a breach over or through such insufficient part: But should such beast, either be clandestinely turned in; or, being unlawfully on the opposite side of such insufficient part should break through the same; or should break through such part as was sufficient by law, though other parts of the fence around the same inclosure were not by law sufficient; then in either

Where fence is insufficient action not to be maintained nor beast impounded.

case the person endamaged shall have a right to sue or impound, at his election, as previously provided in this section.

SECT. 4. *Be it further enacted*, That there shall be annually chosen in every town a suitable person to keep each pound therein, who shall be sworn to the faithful discharge of his trust. And he shall have and keep a book, wherein he shall enter at length, the certificates he shall receive from the persons, committing beasts to the pound, or finding stray beasts; shall record a single copy of all advertisements by him posted or published, and shall note therein the time when a beast was impounded, and the time when and the person by whom taken away; which book of records shall have the same validity in law as town records; and shall be delivered over by him to his successor. And 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 beast or more convenient for its safety or for giving it food and drink, which shall be furnished by him at the expense of the impounder. And if the person impounding will not pay in advance, or give sufficient security for the keeping such beast in pound, till taken away by the owner or disposed of according to law, the said pound keeper shall be under no obligations to receive such beast into pound, till such payment or security be offered.

Pound keeper to be chosen annually.

His duties.

Validity of his records.

To restrain beasts impounded and provide them food and drink.

Not obliged to receive beast till expenses are paid or secured.

SECT. 5. *Be it further enacted*, That before any pound keeper shall be required to receive any beast into pound, the impounder shall send or deliver to the pound keeper a certificate of the following purport:

Certificate to be delivered pound keeper by impounder of beasts.

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 the 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

Form of certificate.

POUNDS, BEASTS IMPOUNDED, &c.

[as the case may be] and the unpaid charges for impounding the same. Witness my hand A— B—

B—, [date] 183 .

No action to be brought against pound keeper till legal expenses are paid.

And no action shall be brought against the pound keeper for restraining or detaining such beast or beasts, till the forfeiture, or the damages, charges of impounding and keeping the same, and all lawful costs and fees are paid to him. But if the person, whose beast is impounded, *damage feasant*, shall think the damages demanded are unreasonable, or if no claimant appear before the beasts be libelled, the pound keeper, in either case, shall issue a warrant of the following purport:

Pound keeper to issue his warrant in certain cases.

Form of warrant.

P. ss. To E. F. and G. H., two disinterested freeholders 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, 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

A. D. 18 .

O. P. Pound Keeper.

Return of appraisers.

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. }
G. H. } Appraisers.

B. [date] 183 .

Warrant to be granted within ten days.

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

Oath, by whom administered.

SECT. 6. *Be it further enacted*, That whoever shall take up in the highway, town-way, road, or commons, or within his inclosure or possessions, any of the aforementioned beasts as estrays, he shall,

within ten days, if no owner calls for the beast, send the same to the pound keeper of the same town, with a certificate like the preceding one, sent or delivered where a beast is impounded, which beast the pound keeper shall carefully keep till called for by the owner, and till the charges of keeping, removing and advertising the same are paid, or the same be disposed of as hereinafter prescribed. And if the possessor of such stray beasts shall fail to certify and deliver the same to a pound keeper, within said ten days, then shall he for every week after ten days, lose the keeping and forfeit and pay one *per centum* of the value of such stray beast until the whole value thereof shall be recovered of him with costs; or until he shall so certify and deliver the same to a pound keeper.

Beasts and estrays if no claimant appears within ten days, to be sent to pound keeper and kept till called for or disposed of.

Forfeiture for neglect to deliver.

SECT. 7. *Be it further enacted*, That in all cases, whether the beasts be impounded, or committed to the pound keeper as estrays, be delivered to him, he shall forthwith advertise the same, stating the name of the impounder or finder, and the time and cause of committing the same to his custody—describing the beast, and requesting the owner to pay what is legally and justly demandable, and take the same away; which advertisement shall be kept posted at or in the pound keeper's dwelling house, and also be posted in two other public places in the same town, and also cried on three several days, if there be a town crier; and in case the beast shall exceed the value of ten dollars, he shall also cause the same to be published in a newspaper, (if any) printed in the same county. And if the owner thereof shall not, within twenty days next, after the posting or publishing such notice, appear and claim such beast aforesaid, and also pay what is by this act lawfully demandable, including charges, fees and costs, then shall the pound keeper, within the succeeding twenty days, and not afterwards, proceed to libel the same in the name of the impounder or

Pound keeper forthwith to advertise beasts impounded or committed as estrays;

and cause them to be cried by town crier;

and in case owner does not appear within 20 days and pay charges, libel the same.

Ch. 81, vol 1,
page 369.

No appeal
allowed.

finder, in manner directed by "An Act prescribing the mode of recovering forfeitures of personal property, *liable thereto by law*;" in which process, the pound keeper may be a witness. But no appeal shall be allowed from any judgment or decree of the Court of Common Pleas, in any case of libel under this Act. The libel shall be of the following purport:

Form of Libel. P. ss. To the Hon. Court of Common Pleas, next to be holden at _____ within and for the County of _____ on the _____ day of _____ in the year of our Lord, [or, as the case may be,] To _____ Esquire, one of the Justices of the Peace within and for the County of _____

The libel and complaint of A— B— of _____ in the County of _____ by O— P—, a pound keeper in said _____ humbly shows, that he, the said A— B— at _____ on _____ impounded or found [as the case may be,] the following beasts, [as the fact may be] to wit, [here describe them] doing damage in his inclosure, going at large, or found, [here describe the place] and that the same have been advertised as the law directs; and no person has appeared and made claim thereto, and paid the demands for which the same is holden and detained; wherefore your libellant prays the Court to decree a sale thereof, as the law in such cases provides.

B. [date] A— B—. By O— P—, pound keeper.

And after notice proved, as required to be given in the case of libels for forfeitures, and a decree or judgment of sale, which the Court shall have power to award, for the causes in this act mentioned;—a writ or precept shall be issued for the execution of such decree in form following:

Writ of execu-
tion to issue on
decree of sale.

STATE OF MAINE.

Form of
execution.

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 Court of Common Pleas, 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, [the close to be like that of other executions.]

And the pound keeper shall retain sufficient to remunerate himself, his lawful charges and fees; pay to others interested, their lawful dues respectively; and deliver over the balance to the County Treasurer of the same county, within thirty days; which balance the latter shall pay over, at any time within *six years*, to such one on his written request, as shall satisfactorily make out his right thereto, as having been the true owner of the property before it was sold; but if the County Treasurer shall refuse to pay the same to the claimant, the claimant may appeal to the next Court of County Commissioners, whose decision shall be conclusive and final in the case. If the said County Treasurer shall not so pay over the same to a claimant, within six years, he shall immediately after the expiration of that period, pass the same to the credit of the county.

Pound keeper to retain remuneration for his lawful charges and fees—pay others interested and deliver balance to county treasurer, to be paid to lawful owner if claimed in six years—if not, to be passed to credit of the county.

Provided always, That the owner of such beast aforementioned, shall at any stage of the proceedings, before final decree therein (and not afterwards) have the same delivered to him, on his payment of all lawful claims and dues thereon, up to the time of demand.

Providso.

SECT. 8. *Be it further enacted*, That 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, though a copy of the writ shall be served on him as also on the defendant; and the process shall, in other respects be regulated by "*An Act directing the mode of process to be adopted in replevying of cattle or beasts distrained, and also of goods and chattels.*" 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 holden in the same manner and to the same extent, as though he had himself signed and sealed it, and he may add his signature and seal thereto, at any time before trial. If the property shall be replevied,

Action of replevin to be brought against impounder—

mode of service.

Ch. 80, vol. 1, page 366.

Writ may be served in absence of plaintiff.

Libel to be continued till action of replevin is decided.

while the process under the libel is pending, the latter shall be continued in Court till the action of replevin be decided. But no such action of replevin shall be sustained, unless the writ be served before a decree is awarded on the libel.

SECT. 9. *Be it further enacted,* That whoever shall rescue or release any beast after being taken into custody or being in the possession of any person, for the causes in this act mentioned, or prevent in any way the impounding of any beast, or occasion the escape thereof, so that the law be evaded; the wrong doer shall forfeit a sum not exceeding twenty dollars nor less than five dollars, according to the circumstances and aggravations of the case; and shall be further liable to pay to the party injured in an action of the case, the full damages with charges and costs, which he might have received by impounding the beast.

Party so doing liable for damages.

Penalty for making pound breach.

How recovered.

Liable also for damages.

Proceeding when pound breach or rescue is effected by minors or apprentices.

SECT. 10. *Be it further enacted,* That if any person shall make any pound breach, or by any indirect way and 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 less than *ten dollars* and not more than *fifty dollars* to be recovered by a presentment of the Grand Jury, to the use of the town; and the person offending as aforesaid, shall be liable to pay the party injured, or impounding such beast or beasts, double the damage or forfeitures he may be entitled to by the impounding of such beasts, to be recovered in an action of the case, and such party or impounder, when the pound breach or rescue is effected by an apprentice or minor, may prosecute for 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 beasts 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.

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

Forfeitures,
how recovered.

Limitation
of actions.

SECT. 12. *Be it further enacted*, That the fees which the said pound keeper shall receive shall be *twenty five cents* for turning the key upon any beast or beasts impounded, at one and the same time; *twelve cents and a half*, for recording every certificate and advertisement, and the same for each advertisement posted or published; and for his necessary travel, his fees shall be the same as a witness. And 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; not however in any case to exceed one half of the respective forfeitures in the second section of this act mentioned. And 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, and be binding until altered by the like officers.

Pound keeper's
fees.

Compensation
to party im-
pounding beast.

Price for keep-
ing beasts to be
prescribed by
Selectmen and
recorded in
town books.

SECT. 13. *Be it further enacted*, That all Acts and parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed.—Particularly “An Act respecting pounds and impounding beasts going at large or damage feasant,” passed March 20, 1821; “An Act extending the powers of towns to restrain cattle running at

Repeal of for-
mer acts.

Ch. 128, vol. 2,
page 566.

Ch. 129, vol. 2,
page 575.

Ch. 130, vol. 2, large," passed June 27, 1820; and "An Act respecting lost goods and stray beasts," passed January 27, 1821, so far as it regards stray beasts.

[Approved by the Governor, March 12, 1834.]

Chapter 138.

AN ACT providing for the use of broad rimmed wheels in certain towns in the County of Penobscot.

Inhabitants of certain towns entitled to a bounty on procuring broad rimmed wheels.

Proviso.

SECT. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That every inhabitant of the towns hereinafter named, in the county of Penobscot, who shall before the first day of April one thousand eight hundred and thirty five, procure and become the owner of a pair of iron bound ox cart or wagon wheels, with felloes not less than six inches wide, or a double horse wagon with wheels with felloes not less than four inches wide, shall on exhibiting to the treasurers of the respective towns thereof where such owner resides, satisfactory evidence thereof, be entitled to receive out of the treasury of said town such a bounty as said towns at a legal meeting of the inhabitants thereof may agree to allow for said ox cart or wagon wheels—*Provided,* That no more than one bounty shall be paid on the same pair of wheels, nor to any person who manufactured or altered them for the purpose of sale and not for his own use.

SECT. 2. *Be it further enacted,* That after the first day of April one thousand eight hundred and thirty six, no person who shall be an inhabitant or residing within the towns of Levant, Corinth, Charleston, Dover, Foxcroft, Guilford, Atkinson and Sebec, shall use on the County Road, commencing at Levant village and continuing through said towns of Corinth, Charleston, Dover, Fox-