

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

4628

PASSED BY THE

TWENTY-SECOND LEGISLATURE

OF THE

**S T A T E O F M A I N E ,**

**A . D . 1 8 4 2 .**

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840, and  
March 16, 1842.

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*AUGUSTA:*

Wm. R. SMITH & Co., PRINTERS TO THE STATE.

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1842.

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PUBLIC LAWS

OF THE

STATE OF MAINE,

**1842.**

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**ERRATA:**

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

## ERRATA.

### PUBLIC LAWS.

- Page 1, chap. 1, ninth line, for "depositions" read "deposition"  
7, chap. 10, in enacting clause, for "*enncted*" read "*enacted*"  
23, chap. 31, section 7, fourth line, before the word "court" insert "the"  
24, chap. 31, bottom line, for "SECT. 15." read "SECT. 13."  
27, chap. 32, section 1, tenth line, for "whatever" read "whatsoever"

### PRIVATE AND SPECIAL LAWS.

- Page 6, chap. 5, section 1, fourth line, for "the" read "this"  
16, chap. 17, fifth line from the bottom, for "agricultural" read "agricultural"  
32, chap. 41, seventh line, for "building" read "buildings"

### RESOLVES.

- Page 42, chap. 52, in the title and in second line, for "Brown" read "Brawn"  
58, chap. 69, thirteenth line from the bottom, for "township" read "townships"

ERRATUM. Page 154. For "Hancock" read "Aroostook."

signed by the selectmen of the town where he has his residence, which certificate shall be attached to the license granted.

SECT. 6. All acts and parts of acts, inconsistent with the provisions of this act, are hereby repealed.

Acts, &c. inconsistent, repealed.

[Approved March 18, 1842.]

### Chapter 30.

AN ACT additional to an act establishing the county of Franklin.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

All officers within and for the county of Franklin, having authority to commit any prisoner or debtor to jail, are hereby authorized and required, for the term of five years from and after the passage of this act to commit such prisoner or debtor to the jail in the county of Somerset; and the keeper of said jail is hereby authorized and required to receive and detain in his custody all such prisoners and debtors; and all persons so committed from the county of Franklin, shall be entitled to the same rights and privileges as though they lived and had their homes in the said county of Somerset; and it is hereby required and made the duty of all magistrates and civil officers of the county of Somerset, to perform all acts and duties relating to such prisoners and debtors as they are authorized and required by law to do and perform for other prisoners or debtors arrested or committed within the county of Somerset. *Provided,* that the county of Franklin shall be liable to pay to the county of Somerset all expense or damage which may arise or accrue from such commitments; and that the right so to commit prisoners and debtors to the jail in the county of Somerset shall cease, whenever a jail shall be erected and made ready for the reception of prisoners and debtors, by the county commissioners of the county of Franklin.

Officers of the county of Franklin, authorized to commit prisoners or debtors to the jail in the county of Somerset for five years.

Rights and privileges of persons so committed.

Duties of magistrates and civil officers of the county of Somerset, in the premises.

Proviso.

When right to cease.

[Approved March 18, 1842.]

### Chapter 31.

AN ADDITIONAL ACT to amend the revised statutes.

*Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the act passed on the twenty second day of October, in the year one thousand eight hundred and forty,

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entitled an act for revising, arranging and amending the public laws of the state, be amended as follows :

R. S. ch. 14, § 133.

SECT. 1. The fourteenth chapter shall be amended in section one hundred and thirty three, by striking out the words "where the distress is made," and inserting the words "of commitment"; so that said one hundred and thirty third section, as amended, will be as follows :

Officers fees in case of commitment for taxes.

"Sect. 133. In case of commitment of a person for non payment of taxes, the officer shall be entitled to the same fees, to which sheriffs by law are entitled for levying executions, except that his travel shall be computed only from his dwelling house to the place of commitment."

E. S. ch. 19, § 9.

SECT. 2. The nineteenth chapter shall be amended in section nine, by inserting after the word "applicants," the words "or, if they refuse or neglect, the justice who called the meeting"; so that the said ninth section, as amended, will be as follows :

Of meeting houses.  
Mode of proceedings in relation to the division of time, &c.

"Sect. 9. At such meeting, the owners who may not be applicants, or, if they refuse or neglect, the justice who called the meeting may designate another justice of the peace of the county, and the two justices may appoint a third person, who shall be disinterested, and not an inhabitant of the town in which the house is located, or belonging to the denomination of either of the parties interested; and such justices and third person shall constitute a board, before which the several owners may exhibit the amount they respectively own in the house; and the minority, owning at least ten pews, and wishing to occupy the house some part of the time, shall have that part allotted to them, as nearly as may be, in proportion to the amount owned in the house by the minority; and the board shall designate, precisely, which weeks in each year the minority shall occupy the house, if they see fit so to do; if not, the majority may occupy the house."

R. S. ch. 20, § 12.

SECT. 3. The twentieth chapter shall be amended in section twelve, by inserting after the word "ministerial," the words "or school": so that said twelfth section, as amended, will be as follows :

Incorporated trustees of ministerial or school fund, may transfer the same to selectmen, clerk and treasurer, by consent of the town.

"Sect. 12. The trustees of any ministerial or school fund in this state, who were incorporated by the legislature of Massachusetts, may, by consent of the town, for whose use the fund was established, transfer the same to the selectmen, clerk and treasurer of such town; and those officers are hereby made, ex officio, trustees of the same; and the income thereof shall be annually applied by them to the support of primary schools in such town; to be expended in the same manner, and subject to the same provisions, as are contained in the preceding section."

**SECT. 4.** The twenty fifth chapter shall be amended by striking out of the title of article six, the words "for repair of roads"; so that the title of said sixth article, as amended, will be as follows:

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R. S. ch. 25.

"Article 6. Of the liability of occupants of state lands."

Title of art. 6.

**SECT. 5.** The sixty first chapter shall be amended in section fifteen, by inserting after the word "weirs," the words "in any river or stream"; so that said fifteenth section, as amended, will be as follows:

R. S. ch. 61, § 15.

"Sect. 15. All weirs, in any river or stream, shall be stripped, so as to admit a free passage of fish through the same, by the fifteenth day of July in each year. And the owner of any such weir, who shall neglect so to strip the same, shall forfeit not less than five nor more than ten dollars, for every day, until the same is stripped as aforesaid. The penalties named in this and the preceding sections shall be recovered in an action of debt, in the name and to the use of the county."

All weirs for taking fish to be stripped by the 15th July.

Penalty for neglect.

**SECT. 6.** The seventy third chapter shall be amended in section nine, by striking out the words "all which measures he shall cause," and inserting in place thereof the words "and the treasurer of each town shall cause all beams, weights and measures belonging to such town"; so that said ninth section, as amended, will be as follows:

R. S. ch. 73, § 9.

"Sect. 9. Any town treasurer may procure a wooden half bushel, peck and half peck measure, conformable, as to breadth and contents, to the copper or pewter measure of the same denomination, in lieu of such copper or pewter measure. And the treasurer of each town shall cause all beams, weights and measures belonging to such town, to be proved and sealed by the state or county standard, once in every ten years, computing from the first day of July, eighteen hundred and forty; and if the same has not been done, since the second day of March, in the year eighteen hundred and thirty nine, he shall have the same done immediately."

Town standards to be regulated by the state or county standards every ten years.

**SECT. 7.** The ninety sixth chapter shall be amended in section eight, by striking out the words "the first," and insert "any;" so that said eighth section, as amended, will be as follows:

R. S. ch. 96, § 8.

"Sect. 8. All writs and processes of court shall be in the name of the State of Maine; bear test of any justice who is not a party to, or interested in the suit; and shall be under the seal of the court, and signed by the clerk."

Certain essentials in all writs and processes.

**SECT. 8.** The ninety sixth chapter shall be amended in section sixteen, by adding at the close of said sixteenth section, the following words: "and if, in any civil action, originally commenced before the supreme judicial court, except actions of replevin, tres-

R. S. ch. 96, § 16.

Damages to be recovered by the plaintiff in any civil action not to exceed \$200.



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pass on lands, actions by or against towns, writs of dower, and real actions, the plaintiff shall not recover more than two hundred dollars damage—he shall not recover any costs.”

R. S. ch. 115, § 78.

SECT. 9. The one hundred and fifteenth chapter shall be amended in section seventy eight, by striking out the words “where the conditions of the same are different from those above mentioned,” and inserting the words “conditioned for the performance of any covenants or agreements”; so that the last paragraph of said seventy eighth section, as amended, will be as follows :

In relation to damages and judgment in trials on debtors' and other bonds.

“And in all actions upon any bond or penal sum conditioned for the performance of any covenants or agreements, and in all actions in the supreme judicial court on a recognizance entered into in the district court, to prosecute an appeal with effect, if the jury shall find that any of the conditions of such bond or penal sum have been broken, they shall estimate the damages the plaintiff has sustained; and judgment thereupon shall be entered for the penal sum aforesaid, and execution shall issue for the damages assessed and costs.”

§ 101.

Court to award double or treble costs, if of opinion that a motion to set aside a verdict was frivolous.

SECT. 10. The same chapter shall be further amended in section one hundred and one, by adding at the end of said section, the following words: “but if the whole court are of opinion that the motion was intended merely for delay, or for frivolous causes, they may award double or treble costs against the party filing the motion, at their discretion.”

R. S. ch. 117, § 33.

Proviso in relation to lien on real estate, seized on execution.

SECT. 11. The one hundred and seventeenth chapter shall be amended in section thirty three, by adding at the close of said section, the following words: “provided the officer, making such seizure of real estate, within five days thereafter, shall file in the office of the register of deeds in the county or district in which such real estate is situated, a copy of his return of the seizure, with the names of the parties, the court at which judgment was recovered, and the date and amount of the execution; and the register shall file and enter the same of record, as in case of attachment of real estate on writs; and like fees shall be allowed to the officer and register therefor.”

§ 40.

SECT. 12. The same chapter shall be further amended in section forty, by striking out the words “attached and”; so that said fortieth section, as amended, will be as follows :

Property may be sold subject to claim of the mortgagee.

“Sect. 40. Such plaintiff may have the same seized and sold on the execution, as in other cases, subject to the rights and interest of such mortgagee, pledgee or holder, without paying or tendering payment of the debt due to the mortgagee, pledgee or holder.”

R. S. ch. 119, § 33.

SECT. 15. The one hundred and nineteenth chapter shall be

amended in section thirty three, by inserting after the word "chargeable," the words "until the contrary is proved;" so that said thirty third section, as amended, will be as follows :

"Sect. 33. The answers and statements, sworn to by any person, summoned as a trustee, shall be considered as true, in deciding how far he is chargeable, until the contrary is proved; but the plaintiff or trustee may allege and prove any other facts, not stated nor denied by the supposed trustee, which may be material in deciding that question."

Plaintiff may prove other facts, not stated or denied in the disclosure on a trustee process.

SECT. 14. The one hundred and twenty first chapter shall be amended in section sixteen, by striking out the words "claiming under a common ancestor;" so that said sixteenth section, as amended, will be as follows :

R. S. ch. 121, § 16.

"Sect. 16. Tenants in common, joint tenants and copartners may, all, or any two or more of them, join, or sever, in petitions for partition; and whenever they join, and either petitioner shall de- cease, or convey his share, pending the petition, the court may allow an amendment of the petition; and his name may be erased, and the names of his heirs, devisees or grantees, respectively, inserted in his stead; and they, with the other petitioners may proceed in the cause for their respective shares; and the heirs, devisees or grantees of a several petitioner may be inserted, as petitioners instead of the deceased or grantor."

Who may join in a petition for partition of real estate. Proceedings, if a petitioner die, or his share be alienated.

SECT. 15. The one hundred and twenty ninth chapter shall be amended in section seven, by inserting at the close of said seventh section, the following words :

R. S. ch. 129, § 7

"The notice required by this section shall be given both to mort- gagors and mortgagees, if any of the persons interested shall stand in that relation; and if any of the persons interested and to be notified be unknown, or if their residence be out of the state or unknown, notice to such persons may be given by publishing the same in the paper published by the printer to the state, three sev- eral times, the first publication to be forty days before such entry upon the land."

Notice in relation to waste and trespass to be given to mortga- gors and mortga- ges. How no- tice shall be giv- en if persons in- terested are un- known.

SECT. 16. The one hundred and thirty third chapter shall be amended in section four, by striking out the word "defendant," in the second specification, and inserting the word "deponent;" so that the second specification in said fourth section will be as fol- lows :

R. S. ch. 133, § 4.

"Second, when the deponent resides out of, or is absent from, the state."

SECT. 17. The same chapter shall be further amended, in sec- tion nine, by striking out the word "trial," and inserting the word

§ 9.

**CHAP. 31.** "caption;" so that said ninth section, as amended, will be as follows:

Time of notice to adverse party when a deposition is to be taken.

"Sect. 9. No written notice, as aforesaid, shall be valid, unless the adverse party be allowed between the service of the notice and time appointed for taking the deposition, time for him to travel from his usual place of abode to the place of caption, not less than at the rate of one day for every twenty miles' travel, exclusive of Lord's day."

R. S. ch. 145, § 3.

SECT. 18. The one hundred and forty fifth chapter shall be amended in section three, by inserting after the word "life," the words "and any term of years;" so that said third section, as amended, will be as follows:

Recovery of estates by writ of entry. Mode of service.

"Sect. 3. Any estate of freehold, whether in fee simple, fee tail, or for life, and any term of years, may be recovered by a writ of entry; and such writs, and also the writ in an action of dower, shall be served, not only in the usual manner, by attachment and summons, or by copy of the writ, upon the defendant, but, if the defendant be not tenant in possession, by a delivery, by the officer to the tenant, or by leaving at his last and usual place of abode, an attested copy of the writ; and if the defendant be not an inhabitant of this state, the service on the tenant shall be sufficient notice to the defendant, or the court may order such further notice as they may deem proper."

R. S. ch. 148, § 23.

SECT. 19. The one hundred and forty eight chapter shall be amended in section twenty three, by inserting after the word "abode," the words "or by giving him an attested copy thereof in hand;" so that said twenty third section, as amended, will be as follows:

Citation to creditors, how served.

"Sect. 23. The notification shall be served on the creditor, by reading it to him, or by leaving an attested copy thereof at his last and usual place of abode, or by giving him an attested copy thereof in hand, fifteen days at least before the time appointed for the examination, if the creditor be alive and within the state; otherwise, it shall be served in like manner on the person who was his attorney in the suit, the executor or administrator of a deceased creditor, or some known authorized agent; and if no such representative can be found in the state, a copy of the notification shall be left in like time with the clerk of the court or justice of the peace from whom the execution issued."

R. S. ch. 151, § 13.

SECT. 20. The one hundred and fifty first chapter shall be amended in section thirteen, by inserting at the close of said thirteenth section, the following words:

Full costs to be taxed in actions

"And in all actions originally commenced in either of said courts

by or against towns, for the support of paupers, full costs may be taxed."

CHAP. 31.  
against towns for  
the support of  
paupers.  
§ 2.

SECT. 21. The same chapter shall be further amended in section two, by inserting after the words "towards his salary," the words "including ten cents for the blank writ in every action entered before him;" so that the second paragraph of said second section will be as follows:

"Whenever any such judge shall receive a stated salary for his services from the treasury of any county, he shall account under oath to the treasurer of said county for all fees accruing to him in said capacity towards his salary, including ten cents for the blank writ in every action entered before him; and if such fees exceed the amount of his salary for any such quarter, the excess shall be by him paid over to such treasurer."

Judges of municipal and police courts to account to county treasury for excesses of fees.

[Approved March 18, 1842.]

### Chapter 32.

AN ACT in relation to institutions for savings.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. Whenever any institution for savings within this state, duly incorporated as such, shall not have sufficient assets belonging to the same to pay and discharge in full all just and legal claims upon it; and also all sums of money received by it on deposit, it shall be the duty of the supreme judicial court acting as a court of equity, and in the exercise of its equity jurisdiction, on a bill of complaint or petition duly filled, of the trustees of such institution, or of any depositor, due notice having been first ordered and given, as hereinafter provided, to sequester by a decretal order the whole assets of every name and nature whatever belonging to such institution and the same to place in the hands of a receiver, to be by him managed and disposed of as said court shall direct, to the end that by the definitive decree of said court a just and equitable distribution of such assets, and of the proceeds of the same, may be made to and among all the depositors in such institution according to the respective amounts justly due them, for the sums of money by them severally deposited. And such decree of sequestration so made shall operate at law and in equity as a dissolution and discharge of any and all attachments of any goods, effects, rights and credits of such institution which shall be or may have been

Proceedings to be had when any institution for savings have not sufficient assets to discharge all legal claims upon it.