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Chapter 179.

Personal Property Forfeited. Lost Goods. Stray Beasts.

Personal Property Forfeited.

Sec. 1. Seizure of forfeited personal property.—When personal property is forfeited for an offense and no special mode is prescribed for recovering it, any person entitled to the whole or part thereof may seize and keep it until final judgment unless restored on the bond as herein provided. (R. S. c. 165, § 1.)

See c. 37, § 126, re seizure of game for violation of law; c. 38, § 135, re seizure of lobsters, shell fish, etc., for violation of law; c. 97, § 43, re seizure of gunpowder, etc., for violation of law; c. 100, §§ 167, 169, 175, 177, 180, 181, 188, re seizure of wood, bark, lumber, etc., for violation of law; c. 133, § 20, re seizure of horses entered for premiums in violation of law.

Sec. 2. Restoration to claimant, on giving bond.—If the person claiming it for himself or another gives bond to the party seizing, with sufficient surety, to pay the appraised value when it is decreed forfeited, it shall be restored to him. (R. S. c. 165, § 2.)

Sec. 3. Appraisal.—The value shall be ascertained by the appraisement of 3 disinterested men mutually chosen by the parties; or, if they cannot agree, by a justice of the peace in the county. (R. S. c. 165, § 3.)

Sec. 4. Inventory and appraisal, if no claimant.—If no person claims the property after such seizure, the party seizing shall cause an inventory and appraisement thereof to be made by 3 disinterested persons, under oath, appointed by a justice of the peace in the county; which shall be the rule for deciding in what court the libel shall be filed. (R. S. c. 165, § 4.)

Sec. 5. If value exceeds $20, libel filed in superior court; notice.—If the value of the property seized exceeds $20, the party seizing, within 20 days, shall file a libel in the clerk's office of the superior court in the county where the offense was committed, stating the cause of seizure and praying for a decree of forfeiture. The clerk shall thereupon make out a notice to all persons to appear at such court at the time appointed to show cause why such decree should not be passed, which notice shall be published in some newspaper printed in the county, if any, if not, in the state paper, at least 14 days before the time of trial. (R. S. c. 165, § 5.)

Stated in Dunn v. Burleigh, 62 Me. 24.

Sec. 6. Court may order party seizing to give bond.—When there is a claimant, the court may order the party seizing to give bond to him with sufficient surety for the safekeeping of the property seized, compliance with the decree of court for restoration, and the payment of costs and damages, if not forfeited, and may hear and determine the cause by a jury, or without, if the parties agree, and may allow costs against the claimant; if there is no claimant, the court shall decree the forfeiture and disposal of the property according to law, and a sale and distribution of the proceeds, after deducting all proper charges. (R. S. c. 165, § 6.)

Sec. 7. If libel not supported, property restored with damages.—If the libel is not supported or is discontinued, the court shall decree a restoration of the property, with costs. If the jury or court finds the seizure without prob-

able cause, reasonable damages shall be decreed for the claimant. (R. S. c. 165, § 7.)

Sec. 8. If value less than $20, libel filed before trial justice.—When the value of the property seized does not exceed $20, the libel shall be filed before a trial justice or municipal court of the county where the offense was committed; and after notice as aforesaid has been posted at 2 or more public places in the county, 7 days at least before the day of trial, such justice or the judge of such court shall try and decide the cause and make such decree therein as law requires. (R. S. c. 165, § 8.)

Sec. 9. Appeal; if not prosecuted, decree affirmed. — Either party may appeal to the next superior court in the county recognizing as in other cases of appeal; if the appeal is not prosecuted, the court, on complaint, may affirm the decree appealed from, with costs. (R. S. c. 165, § 9.)

Lost Goods and Stray Beasts.

To justify a taking under §§ 10-17 inclusive, a defendant must show full compliance with the statute. If he does not he becomes a trespasser ab initio. Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

The provisions of §§ 10-19 have no reference to the law of treasure-trove. Weeks v. Hackett, 104 Me. 264, 71 A. 858.

Sec. 10. Duty of finder of money or goods worth $3 or more. — Whoever finds lost money or goods of the value of $3 or more shall, if the owner is unknown, within 7 days give notice thereof in writing to the clerk of the town where the money or goods are found and post a notification thereof in some public place in said town. If the value is $10 or more, the finder, in addition to the notice to the town clerk and the notification to be posted as aforesaid, shall, within 1 month after finding, publish a notice thereof in some newspaper published in the town, if any, otherwise in some newspaper published in the county. (R. S. c. 165, § 10.)

Cited in Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 11. Notice given when stray beasts taken up.—Whoever takes up a stray beast shall, within 7 days, give notice thereof in writing, containing a description of its color and its natural and artificial marks, to the clerk of the town where such beast is taken, and shall cause a notice thereof, containing a like description of the beast, to be posted, and if such beast is of the value of $10 or more, to be published in the manner provided in the preceding section; otherwise he shall not be entitled to compensation for any expenses which he may incur relative thereto. (R. S. c. 165, § 11.)

This section is intended for the benefit of the owner of the beasts. Varney v. Bowker, 63 Me. 154.

Cited in Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 12. Appraisal, if value $10 or more.—Every finder of lost goods or stray beasts of the value of $10 or more shall, within 2 months after finding and before using them to their disadvantage, procure a warrant from the town clerk or a justice of the peace, directed to 2 persons appointed by said clerk or justice, not interested except as inhabitants of the town, returnable at said clerk's office within 7 days from its date, to appraise said goods under oath. (R. S. c. 165, § 12.)

Cited in Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 13. If owner appears.—If the owner of such lost money or goods appears within 6 months, and if the owner of such stray beasts appears within 2

months after said notice to the town clerk and gives reasonable evidence of his ownership to the finder, he shall have restitution of them or the value of the money or goods, paying all necessary charges and reasonable compensation to the finder for keeping, to be adjudged by a justice of the peace of the county, if the owner and finder cannot agree. (R. S. c. 165, § 13.)

"Charges" includes damages arising out of trespass.—The word "charges" as it appears in the phrase "paying all necessary charges" as used in this section includes such damages as may arise from a trespass, and if the owner and finder cannot agree on the amount, the same will be adjudged by a justice of the peace of the county as required by this section and § 16. Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 14. If no owner of money or goods appears.—If no owner appears within 6 months, such money or lost goods shall belong to the finder by paying one-half their value after deducting all necessary charges to the treasurer of said town; but if he neglects to pay it on demand, it may be recovered in an action brought by said treasurer in the name of the town. (R. S. c. 165, § 14.)

Cited in Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 15. Sale of strays, if owner does not appear.—If the owner does not appear and prove his title to the beasts within said 2 months, the finder may sell them at public auction, first giving notice of such sale at least 4 days before the time of sale in 2 public places in the town in which the beasts were taken up; and the proceeds of the sale, after deducting all lawful charges, shall be deposited in the town treasury. (R. S. c. 165, § 15.)

For former provisions of this section pertaining to time allowed for redemption, see Rounds v. Stetson, 45 Me. 596.

Cited in Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 16. If owner of strays appears.—If such owner appears within 6 months after such notice is filed with the town clerk and proves his title to the beasts, he shall, if they have not been sold, have restitution of the same after paying the charges arising thereon as provided in section 13; and if the beasts have been sold, he shall be entitled to receive the money so deposited in the treasury from the proceeds of the sale. If no owner appears within 6 months, the beasts or the value or price thereof after deducting said charges shall, as prescribed in section 14, be equally divided between the finder and the town. (R. S. c. 165, § 16.)

Cited in Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Sec. 17. If finder neglects to give notice.—If the finder of lost money or goods of the value of $3 or more or if the person taking up such stray beast neglects to give notice to the town clerk and to cause them to be advertised as herein provided, he forfeits to the owner the full value thereof unless he delivers or accounts therefor to the owner, in which case he shall forfeit not more than $20, ½ to the town and ½ to the prosecutor. (R. S. c. 165, § 17.)

Sec. 18. Taking away strays without paying charges. — Whoever takes away a beast held as a stray, without paying all lawful charges incurred in relation to the same, shall forfeit to the finder double the amount of said charges, not exceeding the value of the beast, and in addition thereto shall be liable for any trespass committed by him in so doing. (R. S. c. 165, § 18.)

Sec. 19. Damages recovered by sufferers; beasts taken up; lien.—Any person injured in his land by sheep, swine, horses, asses, mules, goats or neat cattle, in a common or general field, or in a close by itself, may recover his damages by taking up any of the beasts doing it, and giving the notice provided in section 11, or in an action of trespass against the person owning or having pos-

session of the beasts at the time of the damage, and there shall be a lien on said beasts, and they may be attached in such action and held to respond to the judgment as in other cases, whether owned by the defendant or only in his possession. If the beasts were lawfully on the adjoining lands, and escaped therefrom in consequence of the neglect of the person suffering the damage to maintain his part of the partition fence, their owner shall not be liable therefor. (R. S. c. 165, § 19.)

History of section.—See Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

This section is not unconstitutional because it denies an action of trespass against the owner of cattle lawfully on an adjoining enclosure and breaking into plaintiff's enclosure, where there is no legal fence separating such enclosures. See Gooch v. Stephenson, 13 Me. 371.

Section abrogates common-law impounding when land unenclosed.—The common-law right to impound cattle, damage feasant, in the absence of any legal fence, is expressly taken away by this section. Eastman v. Rice, 14 Me. 419; Cutts v. Hussey, 15 Me. 237.

But the rights of the owners of lands, adjoining highways, remain as they were at common law, unaffected by this section. Lord v. Wormwood, 29 Me. 282.

"Neglect" presupposes division of fence.—The defense of the neglect of plaintiff to maintain his part of the partition fence was intended by this section to apply to those cases where there had been a division of the fence between owners of adjoining lands. And until a division takes place, there cannot be said to be any neglect. Lord v. Wormwood, 29 Me. 282; Webber v. Closson, 35 Me. 26.

The neglect of the plaintiff to maintain his part of the partition fence, which is made a bar to recovery in an action under this section, can arise only from a division of the fence, either by fence-viewers, acting under c. 96, § 187, or by a valid and binding agreement between the parties owning adjoining lots, or by prescription. Knox v. Tucker, 48 Me. 373.

To prove by prescription whether the defective fence was the part belonging to the defendant, proof of usuage is correct and pertinent in an action under this section. Heath v. Ricker, 2 Me. 72; Knox v. Tucker, 48 Me. 373.

A prescription to fence is established by long continued occupation, although there may be no direct evidence of any actual division in fact. Knox v. Tucker, 48 Me. 373.

But division of fence must be certain.—The division of fence contemplated by this section must be such as imposes the obligation upon the party injured to build and maintain wholly a legal fence upon a certain well defined portion of the line. Knox v. Tucker, 48 Me. 373.

Plaintiff may distrain cattle, damage faisant, or have trespass with attachment.—Where cattle of the defendant enter upon plaintiff's land not by reason of any neglect upon plaintiff's part to maintain a partition fence, he has various remedies within the scope of this section. He might distrain the cattle, damage feasant; or, in an action of trespass against the owner or possessor of the beasts at the time of the damage, he might preserve his lien by attachment of them. Brown v. Howard, 86 Me. 342, 29 A. 1094.

The injured party may distrain the animals doing the mischief, and proceed as thereinafter directed, or he may have an action of trespass. In the former case, the remedy is not by distraint alone, but by that and such subsequent proceedings as are provided in the same chapter. Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Distraint and trespass are mutually exclusive.—By compliance with the several applicable sections of the present law, a lien begun by distraint is by an orderly process reduced to money or property in the hands of the injured party. The remedies of distraint and of suit in trespass are alternative and mutually exclusive. Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

And lien by distraint is lost by commencement of trespass.—The abandonment of a lien by distraint and the commencement of an action of trespass results in a loss of the lien by distraint from its inception and such lien cannot thereafter justify the first taking. Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Remedy by distraint requires compliance with statute provisions.—The historical development of the statutes which now appear as §§ 10-19 inclusive, indicates clearly that one damaged by stray beasts may have a lien by distraint or by attachment in an action of trespass; but if by distraint, there must be compliance with the requisites of notice as required by § 11, appraisal as required by § 12, retention for two months before any sale as required by § 13, sale by public auction after notice as provided by § 15, and deposit and disposition of proceeds as provided by §§ 14

and 16. Bickford v. Bragdon, 149 Me. 324, 102 A. (2d) 412.

Owner of cattle, damage faisant, can defend only by showing plaintiff's neglect to maintain fence.—The general rule is that every man must, at his peril, keep his cattle on his own land; and, it is no defence if he shows that his neighbor had no fence, or an insufficient one. The only defence he can set up, within the meaning of this section, is that his neighbor had neglected to maintain the portion of the dividing fence which had been properly assigned to him. Knox v. Tucker, 48 Me. 373.

Every person may maintain trespass against the owner of cattle, unless such owner can protect himself by the provisions of this section, or by a written agreement, or by prescription. Little v. Lathrop, 5 Me. 356.

But defense fails if cattle not lawfully on adjoining land, or if neglect of plaintiff not shown.—Where plaintiff shows damage to his lands by defendant's cattle and defendant has neither shown that his cattle were lawfully on the adjoining lands, nor any neglect of the plaintiff to maintain his part of the fence, the defendant's defence under this section fails entirely. Lord v. Wormwood, 29 Me. 282.

Owner liable though cattle depastured for hire.—The owner of the cattle is responsible, under this section, although he is not the owner of the close from which the cattle escaped, and although they were depastured on hire by the owner of the close. Knox v. Tucker, 48 Me. 373.

Section obliges tenant to fence only against cattle rightfully on adjoining land.—The legal obligations of the tenants of adjoining lands to make and maintain partition fences, where no prescription exists, and no written agreement has been made, rest on the provisions of this section; but this section obliges a tenant, liable to make the partition fence, or any part of it, to fence only as in the case of prescription at common law, that is, against such cattle as are rightfully on the adjoining land. Little v. Lathrop, 5 Me. 356.

Such cattle are those on adjoining land by consent of owner.—Cattle are lawfully on an adjoining close, within the meaning of this section, when they have a right to be there by the consent of the owner or of one having an interest in it. Lord v. Wormwood, 29 Me. 282.

And though tenant cannot recover for damage done, he can remove cattle.—If an owner were required to fence against cattle lawfully running in the highway, and they should break into his enclosure, although he could maintain no action for the damage done, under this section, yet he could remove them, and guard against their ingress. The owner of the cattle could not claim to have them remain upon the close, because he has no interest in it. They are not rightfully or lawfully on it, and cannot be so, unless by authority of the person owning the close, who may be deprived of redress for any injury that they have done, but no rights accrue to their owner against the tenant of an adjoining close. Lord v. Wormwood, 29 Me. 282.

Tenant not obliged to fence against cattle of a stranger.—If the plaintiff were bound to fence against an adjoining owner's cattle, it would not be inferred from the provisions of this section that he was also bound to fence against those of a stranger. Lord v. Wormwood, 29 Me. 282.

Former provision of section.—For cases relating to a former provision of this section and section 11 providing for impounding of stray beasts, see Mosher v. Jewett, 59 Me. 453; Mosher v. Jewett, 63 Me. 84.