

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

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the Laws of 1866.

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CHAPTER XIX.

ESTRAYS.—UNCLAIMED PROPERTY AND BEASTS DOING DAMAGE.

ESTRAYS.	SECTION
1. Person taking up estray to give notice.	21. Constable to give notice of sale.
2. Notice to be filed with town clerk.	22. To make return.
3. Clerk to record notice—fees.	23. Proceeds of sale, how disposed of.
4. Fence viewers to be notified to appraise value of estray.	24. Duty of county treasurer.
5. Fees for keeping estray.	25. Money deposited to be delivered to owner.
6. Clerk to send certified copy of notice to register—fees, notice to be recorded.	26. If not claimed by owner, to go to county.
7. Estray may be sold, when.	27. Perishable property, how sold.
8. Fence viewers to fix expense of keeping estray.	28. Fees of justice and constable.
9. Fees of fence viewers.	DISTRAINING BEASTS DOING DAMAGE.
10. Money received for estray, how disposed of.	29. Beasts may be distrained, when—what is a legal fence.
11. To be paid to county treasurer, if owner does not appear.	30. Distress may be made before beasts escape from inclosure.
12. County treasurer to dispose of money, how.	31. Duty of appraisers.
13. Penalty for driving away estray.	32. To certify damage and fees.
14. Penalty for failure to comply with the provisions of this chapter.	33. Beasts distrained may be impounded.
UNCLAIMED PROPERTY.	34. Duty of pound master.
15. Consignee to keep record of personal property.	35. If there is no pound, beasts may be kept elsewhere, until sold—purchaser to keep animal two months for owner to redeem—owner to be notified, when.
16. To notify owner, when.	36. Fees of distrainer and others.
17. Property may be sold, when.	37. Owner to receive surplus.
18. Notice of sale, how given.	38. Owner of beasts liable to action, when.
19. Affidavit to be made.	39. Taking away beasts distrained—penalty.
20. Justice to take inventory.	

TITLE I.

ESTRAYS.

SECTION 1. Any person who takes up any estray horse, mule, ass, neat cattle, hog, sheep or goat, or who has at any time upon his inclosed land, an estray horse, mule, ass, neat cattle, hog, sheep or goat, shall within five days thereafter post up a written notice in three of the most public places in the town where such estray was taken up or found, giving a particular description of such estray, its age, color and marks, natural and artificial, as near as may be, together with his own name and place of residence.

Person taking up estray to give notice.

SEC. 2. If within ten days after the posting of such notice, the owner does not claim such estray, and pay all reasonable charges and damages which the taker up has sustained by reason of any depredations committed by such estray, on the inclosed land of the taker up, the latter shall file with the clerk of the town where such estray was taken up or found, a notice in writing, containing his name and place of abode, and the age, color, and marks, natural and artificial, of such estray, as near as may be.

Notice to be filed with town clerk.

SEC. 3. The town clerk shall enter said notice at large in a book to be provided by him for that purpose, for which entry he shall receive ten cents each, for all horses, mules, asses, and neat cattle, and five cents each for all hogs, sheep, and goats, to be paid by the person delivering the notice.

Clerk to record notice—fees.

SEC. 4. The taker up shall within ten days after the taking up or finding such estray, notify two of the fence viewers of the town wherein such estray was taken up or found, who shall immediately proceed to the place where such estray is kept, and appraise the value of such estray,

Fence viewers to be notified to appraise value of estray.

1874-193

Repealed
1871-97

1869-33

and also all damages which the taker up has sustained by reason of depredations committed by such estray, and shall certify the same in writing to the taker up.

SEC. 5. The person delivering the notice shall receive therefor, ten cents each for all horses, mules, asses, or neat cattle, and five cents each for all hogs, sheep, or goats, described therein, and he may detain such estray until the owner thereof appears and pays such fees, together with the fees paid or due the clerk, the fees which he may have paid or which may be due the fence viewers, and all damages appraised as aforesaid, and reasonable compensation for keeping such estray, as hereinafter provided.

Fees for keeping estray.

SEC. 6. When the value of such estray exceeds the sum of ten dollars, the town clerk shall transmit by mail or otherwise, forthwith, to the register of deeds of the county where such estray is detained, a certified copy of the notice and description of the estray on file in his office. For which certificate the town clerk shall receive the sum of twenty-five cents, to be advanced by the person detaining such estray, together with the fee of fifty cents; which fee shall be forwarded by the town clerk to the register of deeds with the notice; and upon the receipt of said notice and description, with the fee accompanying it, the register of deeds shall cause the notice and description, to be recorded in a book kept for that purpose, to be designated "Estray Book;" and put on file in his office: *provided, the register of deeds shall not be entitled to more than the sum of fifty cents for recording any estray notice and description, whether said notice includes a description of one or more animals.*

Notice to be sent to register of deeds for record —fees.

1867 - 6 -

SEC. 7. If no owner appears and claims such estray, and pays charges and expenses, as provided for herein, the person detaining such estray may proceed to sell the same at public auction, to the highest bidder, after posting notices thereof in three of the most public places in the town, at least twenty days previous to such sale: *provided, that if the value of such estray is less than twenty-five dollars, the estray shall be sold within three months from the date of filing the notice with the town clerk; and if the value is twenty-five dollars or upwards, then such estray shall be sold after the expiration of four months from the date of the filing of the notice with the register of deeds.*

Estray may be sold, when.

SEC. 8. Whenever notice of sale is given, the taker up, if he has complied with all the provisions of this chapter, and such estray is not meantime claimed and redeemed, shall, within the twenty days allowed for notice of sale, notify the fence viewers who shall ascertain and fix the value of the expense of keeping such estray up to and including the day of sale and give a certificate thereof to the person applying for the same.

Expense of keeping estray, how fixed.

SEC. 9. Each supervisor or fence viewer shall receive six cents for every mile he is obliged to travel from his house to the place where such estray is kept, and twenty-five cents for the certificate of the charges and damages, and twenty-five cents for a certificate of appraisal, as ascertained or appraised by him, such fees to be paid by the owner of the estray.

Fees of fence viewers.

SEC. 10. Upon sale of the estray as provided herein, the taker up shall retain out of the moneys arising therefrom for his own use, the sums charged on such estray, according to the provisions of this chapter, and the expenses of sale which shall be the same as on sales under execution issued by a justice. He shall pay the residue of said money, on demand, to the owner of the estray, if he appears and demands the same.

Money received for estray, how disposed of.

SEC. 11. If the owner does not appear, and demand the residue of such money at the time of such sale, he shall deposit the same with the treasurer of the county where such estray was kept, taking a receipt therefor, which shall be a legal discharge to the keeper of such estray.

To be paid to county treasurer if owner does not appear.

Treasurer to dispose of money, how.

SEC. 12. The county treasurer shall, after deducting two per cent. for his fees, pay such surplus money, if claimed within one year after such sale, to the owner of such estray; if not claimed within that time, to the school fund of the town in which the estray was kept.

Penalty for driving away estray.

SEC. 13. If any person claiming the ownership of an estray, when the taker up has complied with the provisions of this chapter, drives away such estray, or causes it to be driven away from the place where the same is kept, without first paying all charges and damages against such estray as provided herein, he shall be guilty of a misdemeanor, and upon conviction before any justice of the peace having jurisdiction, shall be fined double the sum of said charges and damages, and imprisoned in the county jail not less than ten nor more than thirty days.

Penalty for failure to comply with provisions of this chapter.

SEC. 14. Any person taking or detaining any estray, who fails or neglects to comply with the provisions of this chapter, shall be subject to a fine of not less than ten or more than one hundred dollars, or be imprisoned in the county jail not less than ten days or more than three months, and shall be precluded from all claim to damages or compensation for keeping such estray, and the town clerk and register of deeds shall be subject to a like fine for a refusal or neglect to comply with their duties.

TITLE II.

UNCLAIMED PROPERTY.

Consignee to keep record of personal property.

SEC. 15. Whenever any personal property is consigned to, or deposited with, any forwarding merchant, wharf-keeper, warehouse-keeper, tavern-keeper, express company, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of the reception thereof.

To notify owner, when.

SEC. 16. If such property is not left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received by such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property are known to the consignee or bailee, he shall immediately notify the owner, by letter directed to him and deposited in the post office, of the reception of such property.

Property may be sold, when.

SEC. 17. If any such property is not claimed and taken away within one year after the time it is so received, the consignee or bailee may at any time thereafter proceed to sell the same in the manner provided in this chapter.

Notice of sale, how given.

SEC. 18. Before any such property is sold, if the name and residence of the owner thereof are known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner are unknown, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there is one printed and published in the same county; if there is no such newspaper, then said notice shall be published in a newspaper printed and published at the capital of the state; the last publication of such notice shall be at least eighteen days previous to the time of sale.

Affidavit to be made and delivered to justice.

SEC. 19. If the owner or person entitled to such property does not take the same away and pay the charges thereon, after sixty days' notice

1869-49

have been given, the consignee or bailee, his agent or attorney, shall make and deliver to a justice of the peace of the same county an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown.

SEC. 20. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made and shall annex to such inventory an order under his hand, that the property therein described shall be sold by any constable of the county, at public auction. Justice to take inventory.

SEC. 21. The constable receiving such inventory and order, shall give ten days' notice of the sale by posting up written notices thereof in three or more places in such county, and shall sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under executions from justices' courts. Constable to give notice of sale.

SEC. 22. Upon completing the sale, the constable shall indorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of the sale after deducting his fees. To make return.

SEC. 23. From the proceeds of such sale, the justice shall pay all legal charges incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale are not sufficient to pay all the charges; and the balance, if any, he shall immediately pay over to the treasurer of the county in which the same is sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale and the amount of costs, charges and expenses paid to each person. Proceeds of sale, how disposed of.

SEC. 24. The county treasurer shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by the justice. Duty of county treasurer.

SEC. 25. If the owner of the property sold, or his legal representatives, shall at any time within five years after such money is deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he shall receive from such treasurer the amount so deposited with him. Money deposited to be delivered to owner.

SEC. 26. If the amount so deposited with any county treasurer, is not claimed by the owner thereof or his legal representatives, within the said five years, the same shall belong to the county, and may be disposed of as the board of county commissioners direct. If not claimed by owner to go to county.

SEC. 27. Property of a perishable kind and subject to decay by keeping, consigned or left in the manner before mentioned, if not taken away within thirty days after it is left, may be sold by giving ten days' notice thereof; the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: *provided*, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace after inspection thereof, as provided in section twenty of this chapter. Perishable property, how sold.

SEC. 28. The fees allowed to any justice of the peace under the provisions of this chapter, shall be one dollar for each days' service, and to any constable the same fees as are allowed by law for sale upon an execution, and ten cents per folio for making an inventory of property. Fees of justice and constable.

1874-193

TITLE III.

DISTRAINING BEASTS DOING DAMAGE.

Beasts may be
distrained, when.

SEC. 29. The owner or occupant of lands may distrain all beasts doing damage upon his lands during the night time, from eight o'clock in the evening until sunrise, and when any such distress is made, the distrainer shall keep such beasts in some secure place, other than the public pound, until his damages are appraised, and within twenty-four hours after such distress, unless the same is made on Sunday, in which case before the Tuesday morning thereafter, he shall apply to a justice of the peace of the town, who shall appoint three disinterested inhabitants of such town to appraise the damages. No damage shall be recovered by the owner of any lands for damage committed thereon by any beasts during the day time, until it shall first be proved that said lands were inclosed by a lawful fence; every three rail fence, four and a half feet high, constructed of such materials and in such a manner as to constitute a good and sufficient fence as against cattle, horses, asses and mules two or more years old that are not breachy, or any fence equal thereto in efficiency, shall for all purposes of this act (title 3?) be deemed a lawful fence; but it is not intended that the word "cattle" as used in this section shall be so construed as to include either sheep or swine or any other domestic animals not exceeding the same size.

1890-95

What is a legal
fence.

Distress, when
made.

Duty of apprais-
ers.

To certify dam-
age and fees.

Beasts distrained
may be impound-
ed until fees are
paid.

Duty of pound-
master.

SEC. 30. Such distress may be made at any time before such beasts doing damage as aforesaid, escape from said lands, and without regard to the sufficiency of the fences thereon.

SEC. 31. The appraisers shall immediately after their appointment be duly sworn and repair to the place and view the damages done, and they may take the evidence of any person, of the facts and circumstances necessary to enable them to ascertain the extent of such damage, for which purpose the appraisers or either of them are authorized to administer an oath to every such witness.

SEC. 32. The appraisers shall ascertain and certify under their hands the amount of such damage, with fees for their services not exceeding one dollar per day.

SEC. 33. Within twenty-four hours, Sunday excepted, after the damages are so appraised, unless the amount so ascertained and the fees of the appraisers, and fifty cents justice's fees are paid, the distrainer shall cause the beasts distrained to be put in the nearest pound in the same town, if there is one, and if there is no pound within the town, then in some inclosure within the county, there to remain until the same are sold as hereinafter directed, or until the damages so certified, and the fees of the appraisers and justices, and costs of keeping such beasts are paid, and if such beasts are put in any pound the distrainer shall deliver the certificate of the appraisers to the keeper of such pound.

SEC. 34. The poundmaster shall receive and keep the beasts so delivered to him in the public pound, and shall, within five days, sell such beasts, or so many of them as are necessary, at public vendue, giving at least three days' notice of such sale, by posting up the same at such pound and at three of the most public places within the town, when and where such sale is to be made: *provided*, that the poundmaster or the person keeping such beasts, shall furnish them with sufficient and appropriate food, and take good care of such beasts, and shall be paid therefor as part of the fees and costs in such cases.

SEC. 35. If there is no pound within the town where such beasts are distrained, and the same are kept in an inclosure other than the public pound, such beasts, or so many of them as are necessary to pay all damages done by said beasts together with all costs authorized by this chapter, shall be sold as soon as practicable at public vendue, by or under the direction of the sheriff or any constable of the county, after the like notice as is required in the case of constables' sales of goods and chattels taken by execution: *provided*, that any person who purchases any animal so sold, shall keep the same for the period of two months, and any person who owns said animal, may redeem the same within the said two months, by paying all costs and charges and the price at which such animal was sold, and interest at the rate of twelve per cent. per annum: *provided further*, that if the owner of such beasts is known to the person distraining, he shall notify the owner, within twenty-four hours after such distraining, if such owner resides within the same town, and if such owner does not reside within the same town, but in the same or an adjoining county, then within three days after such distraining, Sundays always excepted; such notice shall specify the time when and place where such beasts are distrained, the number of such beasts, and that the same were distrained for doing damage.

When there is no pound, beasts may be kept elsewhere until sold.

Purchaser to keep animal two months for owner to redeem.

Owner to be notified, when.

SEC. 36. From the proceeds of such sale, the person making the same shall retain sufficient to pay the amount of his fees, the cost of keeping such beasts, and the charges of such sale; and he shall pay to the distrainer the damages so certified, with fees of the appraisers and of the justice, and if there is any surplus, the same shall be paid to the owner of such beasts, if known. If no owner appears at the time of such sale, or within one week thereafter, and claims such surplus, the same shall be paid to the treasurer of the county in which such sale is made.

Fees of distrainer and others.

SEC. 37. The county treasurer shall, after deducting two per cent. for his fees, pay such surplus money, if claimed within one year after the distress, to the owner of such beasts, if not claimed within that time, to the school fund of that town in which the beasts were distrained.

Owner to receive surplus.

SEC. 38. In case the owner or occupant of lands shall not distrain the beasts doing damage as provided herein, the owner of such beasts shall be liable in an action at law for all damages done by such beasts during the night time, without regard to the sufficiency of the fences on the lands in which damage is done.

Liable to action, when.

1874-191

SEC. 39. If any person, without the authority of law, and without first paying the damages and costs, takes such beasts after being distrained, out of the possession of the person making distress, or out of the possession of the sheriff, constable, or pound master, as the case may be, without his consent, then such person shall be deemed to have committed a misdemeanor, and shall be punished therefor by fine, not exceeding one hundred dollars, or by imprisonment not exceeding three months, and shall also be liable in double the amount of damages committed by such beasts to the person injured thereby.

Taking away beasts distrained, penalty.