

THE 79
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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CHAPTER 19.

ESTRAYS, UNCLAIMED PROPERTY, AND BEASTS
DOING DAMAGE.

1. Estrays, §§ 2080-2089.
2. Unclaimed Property, §§ 2090-2112.
3. Distraining Beasts Doing Damage, §§ 2113-2129.

TITLE 1.

ESTRAYS.

§ 2080. Who may take up estrays.

No person shall take up any estray, except horses and mules, unless such person shall be at the time a resident of the same town wherever such estray shall be found, nor unless such estray shall be found upon the lands owned or occupied by the finder.

(1874, c. 54, § 1; G. S. 1878, c. 19, § 1.)

This and the remaining sections of this title are not inconsistent with § 1004 in relation to fees and duties of pound-masters, nor with §§ 2113, 2117, 2118. *Johnston v. Kirchoff*, 31 Minn. 451, 18 N. W. Rep. 315.

§ 2081. Notice to be given to owner.

Any person taking up an estray shall, within seven days thereafter, notify the owner, if to him known, and request such owner to pay all reasonable charges and take such estray away.

(1874, c. 54, § 2; G. S. 1878, c. 19, § 2.)

§ 2082. Duty of finder when owner is unknown.

If the owner of any estray be unknown, the finder shall, within ten days after taking up the same, file a notice thereof with the town clerk; and if the estray or estrays so taken up are of the value of less than five dollars, he shall also post up notices of the taking up of such estray in two or more public places in such town; but if the estray or estrays so taken up are of the value of more than five dollars, the town clerk shall transmit to the county register a copy of the notice filed by the taker up in said town clerk's office, to be by the county register filed in a book kept by him for that purpose. Such notice shall contain a brief description of the estray, describing the same by giving marks natural and artificial, as near as practicable, the name and residence of the finder, and, as near as may be, the time at which the same was taken up, and the value of said estray or estrays. For making such entry the clerk shall receive from the taker up of any estrays ten cents each for all horses, mules, asses and meat [neat] cattle, and five cents each for all hogs, sheep and goats described in said notice.

(1874, c. 54, § 3; G. S. 1878, c. 19, § 3.)

§ 2083. Appraisement to be made—Notice to be recorded.

Every finder of any estray or estrays, which, when taken up, are of the value of ten dollars or more, shall, within one month after taking up of the same, procure an appraisement thereof by a justice of the peace of his town, which appraisal shall be certified to by such justice, and, within the time before mentioned filed in the office of the town clerk of such town; and he shall pay to such justice fifty cents for such appraisement, [and certificates] and six cents for every mile necessarily traveled in such service. 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 in his office, kept for that purpose, designated "estray book;" 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. It shall be the duty of said register to answer all letters of inquiry addressed to him, provided such letters contain a postage stamp to pay postage on said answer.

(1874, c. 54, § 4; G. S. 1878, c. 19, § 4.)

§ 2084. All charges to be paid before restoration.

If the owner or person entitled to the possession of any estray shall appear at any time within one year after the notice is filed with the town clerk of the aforesaid town, and make out his right thereto, he shall have such estray restored to him, upon paying all lawful charges which have been incurred in relation to the same.

(1874, c. 54, § 5; G. S. 1878, c. 19, § 5.)

§ 2085. Adjustment of charges—Lien on estray.

If the owner and finder cannot agree upon the amount of such charges, or for the use of such estray, either party may make application to any justice of the peace of the town, or adjoining town, where such estray was taken up, to settle the same; and the party making such application shall give notice thereof to the other party; and if any amount shall be found due to the finder by the said justice, over the value of the use of such estray, the same shall, together with the costs of the justice, be a lien on such estray until paid by the owner.

(1874, c. 54, § 6; G. S. 1878, c. 19, § 6.)

§ 2086. When finder to have perfect title to estray.

If the owner or person entitled to the possession of any estray shall not appear and make out his right thereto, and pay the charges thereon, within one year from the time the notice is filed with the town clerk as aforesaid, and if such estray shall not have been appraised at a greater value than ten dollars, the finder shall have a perfect title to the same; but if the appraisal of such estray shall have been adjudged to be more than ten dollars, as provided in fourth section of this chapter, such estray shall be sold at the request of the finder by any constable of the town, at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in said town at least ten days before such sale; and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid, the fees of the constable, which shall be the same as on a sale on an execution, the finder shall deposit the remainder of the money with the treasurer of the county where such estray was kept, taking a receipt therefor, which shall be a legal discharge of the finder of such estray from all liability therefor.

(1874, c. 54, § 7; G. S. 1878, c. 19, § 7.)

§ 2087. Money received for estray, how disposed of.

If the money be not claimed within one year after the sale by the former owner of the estray after the same was sold under the provisions of this act, the surplus money shall be paid by the county treasurer to the school fund of the county in which such estray was found.

(1874, c. 54, § 8; G. S. 1878, c. 19, § 8.)

§ 2088. Penalty for driving away estray.

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 to be driven away from the place where the same is kept, without first paying all charges and damages and costs 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,

MINNESOTA STATUTES 1894

§§ 2088-2094 ESTRAYS, UNCLAIMED PROPERTY, ETC.

[Ch. 19

damages and costs, and imprisoned in the county jail not less than ten nor more than thirty days.

(1874, c. 54, § 9; G. S. 1878, c. 19, § 9.)

§ 2089. Penalty for failure to comply with foregoing provisions.

Any person taking or detaining any estray, who wilfully 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 nor more than three months, and shall be precluded from all claims 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.

(1874, c. 54, § 10; G. S. 1878, c. 19, § 10.)

TITLE 2:

UNCLAIMED PROPERTY.

§ 2090. Consignee to keep record of personal property.

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.

(G. S. 1866, c. 19, § 15; G. S. 1878, c. 19, § 11.)

§ 2091. To notify owner, when.

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.

(G. S. 1866, c. 19, § 16; G. S. 1878, c. 19, § 12.)

§ 2092. Property may be sold, when.

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.

(G. S. 1866, c. 19, § 17; G. S. 1878, c. 19, § 13.)

§ 2093. Notice of sale, how given.

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.

(G. S. 1866, c. 19, § 18; G. S. 1878, c. 19, § 14.)

§ 2094. Affidavit to be made and delivered to justice.

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

MINNESOTA STATUTES 1894

Tit. 2]

UNCLAIMED PROPERTY.

§§ 2094-2102

tion 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.

(G. S. 1866, c. 19, § 19; G. S. 1878, c. 19, § 15.)

§ 2095. Justice to make inventory.

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.

(G. S. 1866, c. 19, § 20; G. S. 1878, c. 19, § 16.)

§ 2096. Constable to give notice of sale.

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 sale under executions from justices' courts.

(G. S. 1866, c. 19, § 21; G. S. 1878, c. 19, § 17.)

§ 2097. To make return to justice.

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.

(G. S. 1866, c. 19, § 22; G. S. 1878, c. 19, § 18.)

§ 2098. Proceeds of sale, how disposed of.

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.

(G. S. 1866, c. 19, § 23; G. S. 1878, c. 19, § 19.)

§ 2099. Duty of county treasurer.

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.

(G. S. 1866, c. 19, § 24; G. S. 1878, c. 19, § 20.)

§ 2100. Money deposited to be delivered to owner.

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.

(G. S. 1866, c. 19, § 25; G. S. 1878, c. 19, § 21.)

§ 2101. Unclaimed money to belong to county.

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.

(G. S. 1866, c. 19, § 26; G. S. 1878, c. 19, § 22.)

§ 2102. Perishable property, how sold.

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 sum-

MINNESOTA STATUTES 1894

§§ 2102-2107 ESTRAYS, UNCLAIMED PROPERTY, ETC. [Ch. 19

marily sold by order of a justice of the peace, after inspection thereof as provided in section twenty of this chapter.

(G. S. 1866, c. 19, § 27; G. S. 1878, c. 19, § 23.)

§ 2103. Fees of justice and constable.

The fees allowed to any justice of the peace under the provisions of this chapter shall be one dollar for each day's 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.

(G. S. 1866, c. 19, § 28; G. S. 1878, c. 19, § 24.)

2104-2107 71-NW 400 § 2104. Disposition of unclaimed goods by railroad companies.

Whenever any railroad company doing business in this state shall have received personal property for transportation upon or over its road, and shall have transported the same in accordance with the terms upon which it was so received, and the same shall have remained in the possession of such company for one year thereafter, such company may sell the same at public auction, at its principal place of business in this state, upon a notice describing the property or packages to be sold, and specifying the time and place of sale, to be published at least once in each week for four successive weeks immediately preceding the day of sale, in a newspaper printed in the county wherein such principal place of business of the company is situated, and to be posted, at least two weeks prior to the day of sale, at the station to which the property was so transported as aforesaid: provided, that if property so received and transported be perishable, or liable to speedy decay, the same, when necessary to avoid loss, may be sold by the company at any time, without notice, and at private sale.

(1871, c. 23, § 1; G. S. 1878, c. 19, § 25.)

§ 2105. Disposal of proceeds of sale.

The proceeds of all sales made under the authority of this act, or so much thereof as may be necessary, shall be applied to the payment of all the reasonable charges of the company thereon, including the expenses of the sale; and the surplus, if any, shall be held and retained by the company subject to the order of the owner of the property sold, and payable to him on demand and reasonable proof of such ownership.

(1871, c. 23, § 2; G. S. 1878, c. 19, § 26.)

§ 2106. Act made retrospective.

The provisions of this act shall extend as well to property heretofore received and transported by any railroad company in this state, as to property that may hereafter be so received and transported.

(1871, c. 23, § 3; G. S. 1878, c. 19, § 27.)

§ 2107. Unclaimed baggage, etc.—Delivery to warehouseman.

When any personal baggage shall have remained, for a period of thirty days, in the possession of any carrier of passengers, at any station of such carrier in this state, to which it may have been carried in performance of the contract of such carrier relative thereto, or when any freight or merchandise shall have remained, for a period of sixty days, after notice given by mail to the consignee thereof, in the possession of any common carrier, at any office or station of such carrier within this state, to which such freight or merchandise may have been consigned, then and in that case such carrier, upon payment of its just charges for the transportation and storage of the same, may deliver such baggage, freight, or merchandise to any warehouseman or storage company doing business in this state.

(1885, c. 202, § 1; G. S. 1878, v. 2, c. 19, § 27a.)

¹An act to provide for the storage and disposal of unclaimed baggage, freight, and merchandise. Approved March 10, 1885.

MINNESOTA STATUTES 1894

Tit. 2]

UNCLAIMED PROPERTY.

§§ 2108-2112.

§ 2108. Storage—Lien.

Any warehouseman or storage company receiving any property, as provided in section one of this act, shall provide suitable storage for the same; and such warehouseman or storage company shall have a lien upon such property for all charges paid to the carrier from which the same was received, and for all reasonable charges for handling, storage, insurance, and other expenses necessarily incurred in safely keeping the same, with legal interest on all thereof.

(1885, c. 202, § 2; G. S. 1878, v. 2, c. 19, § 27b.)

§ 2109. Sale—Notice.

If the owner of such property, or his agent, does not appear and duly claim the same within twelve months of its receipt from the carrier, such warehouseman or storage company may proceed to sell the same, at public auction, to the highest bidder. A notice specifying the time and place of such sale shall be published at least once in each week for three successive weeks prior to such sale, in a newspaper printed and published at the capital of the state, and also in a newspaper printed and published in the county where such sale is to take place, if there be such a newspaper, and also by mailing a copy thereof to the owner, if his address be known, and by posting a copy of the same in three public places in the town, city, or village where the property is to be sold.

(1885, c. 202, § 3; G. S. 1878, v. 2, c. 19, § 27c.)

§ 2110. Sale—Proceeds.

The proceeds of all sales made under the authority of this act, or so much thereof as may be necessary, shall be applied to the payments of all reasonable charges of such warehouseman or storage company, and the expenses of such sale; and the surplus, if any, shall be immediately paid over to the treasurer of the county in which the property was sold, accompanied by a statement as provided in section nineteen of chapter nineteen of General Statutes of one thousand eight hundred and seventy-eight, which statement shall be filed and surplus disposed of in all respects as provided in sections twenty, twenty-one, and twenty-two of said chapter nineteen.

(1885, c. 202, § 4; G. S. 1878, v. 2, c. 19, § 27d.)

§ 2111. Warehouseman—Bond.

Before any warehouseman or storage company shall be entitled to the benefit of the provisions of this act, such warehouseman or storage company shall execute a bond to the state of Minnesota, with at least two sureties, to be approved by the governor of the state, in the sum of ten thousand dollars, conditioned for the faithful performance of all duties enjoined upon such warehouseman or storage company under the provisions of this act, which bond shall be for the use of any party interested, and shall be deposited in the office of the secretary of state.

(1885, c. 202, § 5; G. S. 1878, v. 2, c. 19, § 27e.)

§ 2112. Act retrospective.

The provisions of this act shall apply to all property now held by any carrier in this state, or which has been heretofore delivered to any warehouseman or storage company in accordance with the provisions of this act, as fully as though this act had been in force at the time of the receipt of such property by such carrier, warehouseman, or storage company.

(1885, c. 202, § 6; G. S. 1878, v. 2, c. 19, § 27f.)

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TITLE 3.

DISTRAINING BEASTS DOING DAMAGE.

§ 2113. Distress—Appraisers—Fees.

The owner or occupant of lands may distrain all beasts doing damage upon his lands, 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 Saturday or Sunday, in which case, before the Tuesday morning thereafter, he shall apply to the nearest justice of the peace in the county, who shall appoint three disinterested inhabitants of such town to appraise the damages. Such appraisers shall receive as compensation for their services one dollar per day for every day actually consumed in making the appraisal, and six cents per mile as mileage in going to and returning from the place where the damages are done, to be paid in the first instance by the distrainer, distance traveled and time spent to be certified to and made a part of the returns of said appraisers.

(G. S. 1866, c. 19, § 29, as amended 1874, c. 53, § 1; G. S. 1878, c. 19, § 28; 1885, c. 120; Id. c. 106.)

Laws 1885, c. 106, (approved March 9, 1885,) amends the section "so as to read" as above; apparently superseding § 1 of c. 120, (approved February 10, 1885,) which amends "by inserting after the word 'town' in the seventh line of said section the words 'or of any near justice of the peace in any adjoining town or city within the same county.'"

See *Locke v. First Div. St. Paul, etc., R. Co.*, 15 Minn. 350, 353, (Gil. 283, 292.)

§ 2114. Distress, when to be made.

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.

(G. S. 1866, c. 19, § 30; G. S. 1878, c. 19, § 29.)

§ 2115. Power and duty of appraisers—Tender.

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: *provided*, the owner of such animals, or his agent, at any time before proceedings have been commenced to appraise such damages under the provisions of this act, or before suit in any court shall have been commenced to recover said damages from such owner or agent, may tender the amount of such damage to the person aggrieved by any depredation, of such amounts as said owner may think has been suffered thereby; and if said tender is accepted, no other damages can be recovered in any manner; and if said tender is not accepted, and other proceedings are had under the provisions of this act, or otherwise, and the person aggrieved by such depredations fails to substantiate or recover any greater sum as damages than such amount tendered by the said owner, no costs shall be collected or taxed against such owner, and said owner's costs and disbursements shall be paid by said complaining party, to be taxed against him as in like actions and proceedings.

(G. S. 1866, c. 19, § 31; G. S. 1878, c. 19, § 30; as amended 1879, c. 12, § 1.)

§ 2116. To certify damage and fees.

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.

(G. S. 1866, c. 19, § 32; G. S. 1878, c. 19, § 31.)

Tit. 3] DISTRAINING BEASTS DOING DAMAGE. §§ 2117-2120

§ 2117. Beasts distrained may be impounded until fees are paid.

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, or in the nearest pound in any adjoining town or city within the same county, 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.

(G. S. 1866, c. 19, § 33; G. S. 1878, c. 19, § 32; as amended 1885, c. 120, § 2.)

§ 2118. Duty of poundmaster—Sale.

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.

(G. S. 1866, c. 19, § 34; G. S. 1878, c. 19, § 33.)

See *Johnston v. Kirchoff*, 31 Minn. 451, 453, 18 N. W. Rep. 315.

§ 2119. Sale in towns having no pound—Redemption—Notice to owner.

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.

(G. S. 1866, c. 19, § 35; G. S. 1878, c. 19, § 34.)

§ 2120. Fees of distrainer and others.

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.

(G. S. 1866, c. 19, § 36; G. S. 1878, c. 19, § 35.)

§ 2121. Owner to receive surplus.

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.

(G. S. 1866, c. 19, § 37; G. S. 1878, c. 19, § 36.)

§ 2122. Owner of beasts liable to action, when—Vote of towns.

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, without regard to the sufficiency of the fences on the lands on which damage is done: provided, however, that in all cases arising under the provisions of this act, or the statutes to which this act is amendatory, in towns where a majority of the voters at any town or special town meeting called for the purpose shall determine, by by-law of such town, that horses, cattle, mules, and asses shall be permitted to run at large, in accordance with subdivision sixth, section fifteen, General Statutes of eighteen hundred and sixty-six, no damage shall be recovered by the owner of any lands for damage committed thereon by any such beasts during the daytime, until it shall first be proved that said lands were enclosed by a lawful fence; and every three-rail fence, four feet high, constructed of such materials, and in such manner as to constitute a good and sufficient fence as against cattle, horses, asses, and mules, one or more years old, that are not breachy, or any fence equal thereto in sufficiency, shall, for the purpose of this act, be deemed a lawful fence; but the word "cattle," as used in the act, shall not be so construed as to include either sheep or swine, or any other domestic animal not exceeding the size of sheep or swine: provided, further, that the foregoing proviso shall not apply to or be in force in the counties of Wabasha, Dodge, McLeod, Steele, Lac qui Parle, Martin, Yellow Medicine, Lyon, Polk county, except that portion of territory organized as the town of Fossum, the Seventh Senatorial District, (Winona county,) and Goodhue county; nor in the county of Kandiyohi, save and except in the towns of Norway Lake, Colfax, Burbank, Roseville, and Lake Lillian in said county, Brown, Dakota, and the north half of the town of Pilot Mound, Fillmore county, towns of Cokato and Stockholm in Wright county, and the town of Chanhassan in the county of Carver, and the townships in ranges 22 and 23, in Freeborn county: provided, that the townships of Marshan, Ravenna, and Hastings, in the county of Dakota, shall not be affected by this act: Proviso, That nothing in this act, or the act to which it is amendatory, shall be construed to prevent the citizens of Inver Grove, Mendota, Egan, Burnsville, Lebanon, Rosemound, and sections one, two, eleven, twelve, thirteen, fourteen and north half of sections twenty-three and twenty-four, range twenty-one, and sections six, seven, eighteen, and north half of section nineteen, in range twenty, in Lakeville township, in said Dakota county, and to include the township of West St. Paul, from permitting the cattle in their respective townships running at large, whenever so ordered by the vote of a majority of the legal voters of said townships, at the annual town meeting, after ten days' notice of said intended vote has been given, by posting notices thereof in three of the most public places in said township. Provided, that the owners of such cattle so running at large shall be liable in an action at law for all damages committed by them while running at large: provided, that the provisions of this act shall not apply to the thirtieth, thirty-first, thirty-fifth, thirty-ninth, except Stevens county, forty-first, twenty-eighth, twenty-ninth senatorial districts: provided, that the county of Sherburne shall not be affected by this act: and provided further, that nothing contained in this act shall apply to the townships of Deerfield, Medford and Aurora, in the county of Steele.

(G. S. 1866, c. 19, § 38, as amended 1874, c. 53, § 2; 1875, c. 120, § 1; Id. c. 122, § 1; 1876, c. 84, § 1; Id. c. 85, § 1; 1877, c. 64, § 1; Sp. Laws 1877, c. 226, § 1; 1878, c. 16, § 1; G. S. 1878, c. 19, § 37; 1881, c. 24, § 1; Id. c. 81, § 1; Id. Ex. S. c. 38; 1887, c. 76; 1889, c. 81, § 1; Id. c. 94, § 1; Id. c. 126, § 1; 1893, c. 216, § 1.)

MINNESOTA STATUTES 1894

Tit. 3] DISTRAINING BEASTS DOING DAMAGE. §§ 2122-2124

A proviso for submission of question whether cattle should run at large to popular vote at next annual town meeting in the counties of Swift, Chippewa, and Watonwan added by Laws 1875, c. 119, § 2, as amended, and a similar proviso as to the county of Kandiyohi added by Laws 1881, c. 24, § 2, have been omitted as being obsolete.

See the following special laws relating to the running at large of cattle in certain counties, as follows:

Big Stone, 1891, c. 341.
Blue Earth, 1881, Ex. S. c. 185; 1889, c. 481.
Carver, 1881, Ex. S. c. 182.
Cass, 1887, c. 310.
Chisago, 1891, c. 351.
Clay, 1881, c. 317; 1883, c. 272; 1885, c. 83.
Crow Wing, 1887, c. 311; 1889, cc. 482, 486.
Dakota, 1879, c. 264.
Douglas, 1881, Ex. S. c. 180.
Fillmore, 1879, c. 269; 1881, Ex. S. c. 186.
Grant, 1881, c. 315.
Hennepin, 1881, c. 314; 1883, c. 274.
Houston, 1881, c. 311; 1891, c. 391.
Jackson, 1879, c. 271.
Kandiyohi, 1889, c. 483.
Kittson, 1879, c. 263.
Le Sueur, 1883, c. 273.
McLeod, 1879, c. 268; 1881, cc. 308, 310, 316; Id. Ex. S. c. 184; 1883, c. 279; 1885, c. 279.
Marshall, 1879, c. 263.
Martin, 1883, c. 273.
Meeker, 1881, Ex. S. c. 181; 1883, c. 277; 1885, c. 283; 1887, c. 303.
Mower, 1879, cc. 267, 272, 335.
Nicollet, 1879, c. 266.
Norman, 1891, c. 410.
Olmsted, 1879, c. 265.
Otter Tail, 1889, c. 373.
Polk, 1879, c. 346.
Pope, 1881, Ex. S. c. 180; 1883, c. 275.
Rice, 1879, cc. 260, 261; 1881, c. 105.
Stevens, 1889, c. 296.
Swift, 1881, cc. 312, 313; 1883, c. 280; 1887, c. 309.
Traverse, 1881, c. 306.
Washington, 1881, c. 307; Id. Ex. S. c. 183; 1883, c. 276; 1885, c. 282; 1889, cc. 484, 485.
Wilkin, 1879, cc. 259, 262; 1881, c. 132.
Winona, 1881, c. 309.

§ 2123. Penalty for taking away beasts distrained.

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 poundmaster, 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.

(G. S. 1866, c. 19, § 39; G. S. 1878, c. 19, § 33.)

§ 2124. Penalty for allowing certain animals to run at large.

That if the owner or owners of any stallion over the age of one year, or bull over the age of nine months, or boar over the age of three months, or ram over the age of three months, or any breachy cattle, shall suffer the same to run at large, he shall forfeit to the town in which the animal shall be so at large the sum of five dollars for each and every day such animal shall be so at large; and it shall be the duty of the chairman of the board of supervisors, and he is hereby authorized and required, to sue for and collect, in his name of office, such forfeitures in any court having jurisdiction of such action; and all moneys collected for such forfeiture, after deducting the expenses of such

MINNESOTA STATUTES 1894

§§ 2124-2129 ESTRAYS, UNCLAIMED PROPERTY, ETC.

[Ch. 19

suit, shall be paid into the town treasury, for the use of the road and bridge fund of said town where such animals are so found running at large.

(1873, c. 20, § 1; G. S. 1878, c. 19, § 39.)

This section is independent of § 2125, and an action may be maintained under its provisions without a compliance with the latter section. *Goener v. Woll*, 26 Minn. 154, 2 N. W. Rep. 163.

2125
97 - 47

§ 2125. **Notice to owner and suit by chairman of supervisors.**

And the chairman, when notified by any person that such stallions, bulls, boars, rams or breachy cattle are running at large, he shall, within twenty-four hours after such notice, give notice to the owner or owners of such stallion, bull, boar, ram or breachy cattle; and if the owner or owners of such stallion, bull, boar, ram or breachy cattle does not enclose the same, the chairman shall immediately cause a suit to be brought against such owner or owners; and any suit so commenced shall constitute and be a lien upon the animals therein described in favor of the plaintiff to the extent of the defendants' title or interest therein.

(1873, c. 20, § 2; G. S. 1878, c. 19, § 40.)

§ 2126. **Castration of animals at large after notice.**

That if the owner or owners of any such stallion, bull, boar or ram, shall, after receiving the notice specified in section two of this act, permit any such stallion, bull, boar or ram to continue or again run at large, it shall be the duty of such chairman, when again notified by any person that such stallion, bull, boar or ram is still or again running at large, to cause such animal to be taken up immediately, and castrated in the usual manner, and so as to endanger the life of such animal as little as possible, for which he shall recover the sum of three dollars from the owner by civil action before a justice of the peace, and he shall have a lien on such animal for said amount: provided, if any ram shall be found going at large, off the premises and out of the enclosure or control of its owner or keeper, at any time, he may be taken up by any person on whose premises or among whose sheep he may be found, and may be castrated by such person, who shall not thereby be liable for any damages.

(1873, c. 20, § 3; G. S. 1878, c. 19, § 41.)

§ 2127. **Proceedings where owner is not found—Sale.**

If the chairman of the board is unable to find the owner of such animals, he shall cause the same to be impounded for the term of three days; and if such animal is not claimed, he shall proceed to sell the same at public auction by first giving five days' notice, by posting up written notices in three of the most public places in said town, and after the sale deduct the forfeiture and expenses from the amount, and place the balance in the hands of the town treasurer.

(1873, c. 20, § 4; G. S. 1878, c. 19, § 42.)

§ 2128. **Owner may claim purchase money within one year.**

If the owner of such animal so sold shall prove to the chairman of the town board, within one year from the date of said sale, that it was his animal, the chairman shall give to such owner or owners an order on the treasurer for the amount of said money deposited by him.

(1873, c. 20, § 5; G. S. 1878, c. 19, § 43.)

§ 2129. **Penalty for chairman's neglect.**

If the chairman of said board of supervisors shall refuse or neglect to perform any of the duties required in this act, he shall be liable to a fine of twenty-five dollars for each and every refusal or neglect, and the person making the complaint may sue for the fine, in any court having jurisdiction, for his own benefit.

(1873, c. 20, § 6; G. S. 1878, c. 19, § 44.)