

THE  
STATUTES AT LARGE  
OF THE  
STATE OF MINNESOTA

COMPRISING  
THE GENERAL STATUTES OF 1866  
*As amended by subsequent Legislation to the close of the Session of 1873*  
TOGETHER WITH  
*ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873*

WITH REFERENCES TO  
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER  
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED  
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,  
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE  
CONSTITUTION OF THE STATE OF MINNESOTA

*VOL. I.*

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CHICAGO  
CALLAGHAN AND COMPANY

1873

## CHAPTER XXVII.

### OF ESTRAYS, UNCLAIMED PROPERTY, AND BEASTS DOING DAMAGE.

(This Chapter is Chapter XIX. of the Statutes of 1866.)

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## TITLE I.\*

### OF ESTRAYS.

**SECTION 1 (AS AMENDED BY ACT OF MARCH 6, 1871).** *Person taking up estray to give notice to town clerk.*—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 forty-eight hours thereafter, cause to be filed in the office of the town clerk of the town in which such estray shall be taken up or found a written notice 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.

S. L. 1871, 97.

\* Finder of estray has lien on same for his charges, 3 Wis. 399.

SEC. 2 (REPEALED BY ACT OF MARCH 6, 1871).

S. L. 1871, 97.

SEC. 3. *Clerk to record notice—fees.*—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.

SEC. 4. *Fence viewers to be notified to appraise value of estray.*—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, 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. *Fees for keeping estray.*—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.

SEC. 6 (AS AMENDED BY ACT OF MARCH 7, 1867). *Clerk to send certified copy of notice to register—fees.*—When the value of such estray exceeds 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 such 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 one dollar and 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 published in some weekly paper printed and published in said county, also record the same in a book kept for that purpose, to be designated "estrays book," and put on file in his office. When the value of such estrays exceeds the sum of twenty-five dollars, the taker up shall, within ten days thereafter, advertise the same in the "Saint Paul Weekly Press" (or should the Press be discontinued, he shall advertise in any weekly paper published at the capital in the English language, and having general circulation throughout the state) one week, giving full description of said estray, its kind, age, color, sex, marks, natural and artificial, as near as may be, together with his own name and place of residence. For the expense of such advertisement he shall be paid by the owners of said estray, if claimed according to the provisions of this act, of which this is an amendment; or if not so claimed, he may retain the amount thus paid for advertising out of any moneys arising from the sale of such estray, according to the provisions of the act aforesaid.

SUB-DIV. 2 (SEC. 2, *ib.*) *Duty of register of deeds.*—The register of deeds of each county of this state is hereby required to subscribe for one copy of the paper referred to in section one of this amendment, and place the same on file in the office of said register of deeds, subject to the inspection of the public at any time

during office hours ; and the amount of the subscription price of said paper shall be allowed and paid out of the treasury of the county.

S. L. 1867, 66.

SEC. 7. *Estray may be sold, when.*—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.

SEC. 8. *Expense of keeping estray, how fixed.*—Whenever notice of sale is given, the taker up, if he has complied with all the provisions of this title (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.

SEC. 9. *Fees of fence viewers.*—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.

SEC. 10. *Money received for estray, how disposed of.*—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 title (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.

SEC. 11. *To be paid to county treasurer, if owner does not appear.*—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.

SEC. 12 (AS AMENDED BY ACT OF MARCH 3, 1869). *Treasurer to dispose of money, how.*—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 county in which the estray was kept.

S. L. 1869, 50.

SEC. 13. *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 title (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.

SEC. 14. *Penalty for failure to comply with provisions of this title (chapter).*—Any person taking or detaining any estray, who fails or neglects to comply with the provisions of this title (chapter), shall be subject to a fine of not less than ten nor 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.

### OF UNCLAIMED PROPERTY.

SEC. 15. *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.

SEC. 16. *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.

SEC. 17. *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 title (chapter).

SEC. 18. *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.

SEC. 19. *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 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. *Justice to take 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.

SEC. 21. *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 sales under executions from justices' courts.

SEC. 22. *To make return.*—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.

SEC. 23. *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 rateable 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.

SEC. 24. *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.

SEC. 25. *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.

SEC. 26. *If not claimed by owner, to go 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.

SEC. 27. *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 title (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.

SEC. 28. *Fees of justice and constable.*—The fees allowed to any justice of the peace under the provisions of this title (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.

SEC. 29 (1 OF ACT OF MARCH 6, 1871). *Disposition of unclaimed goods by railroad company.*—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.

S. L. 1871, 60.

SEC. 30 (2). *Disposal of proceeds arising from such 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.

S. L. 1871, 60.

SEC. 31 (3). The provision 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.

S. L. 1871, 60.

### TITLE III.

#### OF DISTRAINING BEASTS DOING DAMAGE.

SEC. 32 (29, AS AMENDED BY ACT OF MARCH 5, 1870). *Beasts may be distrained, when—legal fence defined.*—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 damage. 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 whence the damages are done, to be paid in the first instance by the distrainer, distance traveled and time spent to be certified to on oath, and made a part of the returns of said appraisers. 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 be proven that the said lands were protected on the side where the breach or entry was made by a lawful fence; every three-rail fence, four 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 title 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.

S. L. 1870, 95. *Locke v. St P. & P. R. R.*, 15 Minn. 550. *Vide* 23 Wis. 460.

SEC. 33 (30). *Distress, when 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.

SEC. 34 (31). *Duty of appraisers.*—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. 35 (32). *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.

SEC. 36 (33). *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, 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. 37 (34). *Duty of pound master.*—The pound master 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 pound master, 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. 38 (35). *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.*—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.

SEC. 39 (36). *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.

SEC. 40 (37). *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.

SEC. 41 (38). *Liable to action, when.*—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.

SEC. 42 (39). *Taking away beasts distrained, penalty.*—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.

## TITLE IV.

### OF ANIMALS RUNNING AT LARGE.

(This Title is the Act of March 8, 1873. S. L. 1873, 138.)

SEC. 43 (1). *Fine, for owner allowing certain animals to run at large.*—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 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.

SEC. 44 (2). *Chairman of supervisors must notify owner, and begin suit.*—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 inclose 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' titles or interest therein.

SEC. 45 (3). *He must also cause such animals still left at large to be castrated.*—If the owner or owners of any such stallion, bull, boar, or ram, shall, after receiving the notice specified in section forty-four (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.

SEC. 46 (4). *If he cannot find owner, how to proceed.*—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.

SEC. 47 (5). *Owner can have 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.

SEC. 48 (6). *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 title (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.

Section 7 of said act repeals all prior inconsistent acts. *Vide also S. L. 1866, 75.*