

# GENERAL STATUTES

33

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 1.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOT  
REMEDIAL, THE LATTER BEING IN VOL. 2.

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BY

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CHAPTER 19.

ESTRAYS, UNCLAIMED PROPERTY, AND BEASTS DOING DAMAGE.

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TITLE 1.

ESTRAYS.

SEC. 1938. **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, ch. 54, § 1: "An act relating to estrays." Approved March 9, 1874. Repealed title 1, ch. 19, G. S., and all amendments thereto. G. S. ch. 19, title 1, § 1, limited estrays to horse, mule, ass, neat cattle, hog, sheep or goat, and provided that any person who "takes up" such estray animal shall, within five days, post up a written notice in three most public places, giving description of estray and his own name and residence. The amendment of 1871, ch. 44, required the notice to be made within forty-eight hours and filed with town clerk. 31 M. 453.

SEC. 1939. **Same — Comply with law.**— 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, ch. 54, § 10. Same as § 14, ch. 19, G. S.

SEC. 1940. **Notice 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, ch. 54, § 2. Not in G. S.

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SECS. 1941-1944.]

ESTRAYS.

SEC. 1941. **Same — When owner 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 [neat] cattle; and five cents each for all hogs, sheep and goats described in said notice.

1874, ch. 54, § 3. G. S. ch. 19, §§ 1, 2, provided that if the owner did not appear and pay charges and damages within ten days after posting the notices, the finder should notify the town clerk who recorded the notice. This requirement was repealed by acts 1871, ch. 44.

SEC. 1942. **Appraisement.**— 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 travelled 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 "estrays 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, ch. 54, § 4. Below \* is § 6, ch. 19 of G. S., as amended 1867, ch. 37. G. S. ch. 19, §§ 4, 5, provided for appraisement by town fence viewers of all estrays "and also all damages" sustained, and payment of the fees and expenses, and in § 6 for the recording of the appraisement as above.

SEC. 1943. **Restoration to owner.**— 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, ch. 54, § 5. Not in G. S.

SEC. 1944. **Same — Adjustment of charges.**— 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, ch. 54, § 6. Not in G. S.

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UNCLAIMED PROPERTY.

[SECS. 1945-1949.]

**SEC. 1945. Taking estray without paying charges.**—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, damages and costs, and imprisoned in the county jail not less than ten nor more than thirty days.

1874, ch. 54, § 9. Same as § 13, ch. 19, G. S.

**SEC. 1946. Estray to be sold, when.**—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, ch. 54, § 7. G. S. ch. 19, §§ 7, 8, 9, 10, 11, provided that if owner did not redeem estray within three and four months the same to be sold at public auction, after twenty days' notice, the fence viewers to fix the expense of keeping, and fees for appraisal, the residue, after paying all charges, to be paid to owner if he appears; if not, to the county treasurer.

**SEC. 1947. Proceeds — Disposition 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, ch. 54, § 8. Substantially § 12, ch. 19, G. S. as amended 1869, ch. 38.

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## TITLE 2.

### UNCLAIMED PROPERTY.

**SEC. 1948. Record of.**—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. ch. 19, § 15 (11).

**SEC. 1949. To notify owner.**—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

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SECS. 1950-1956.]

## UNCLAIMED PROPERTY.

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. ch. 19, § 16 (12).

**SEC. 1950. Held for one year, then sold.**—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. ch. 19, § 17 (13).

**SEC. 1951. Notice of sale.**—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. ch. 19, § 18 (14).

**SEC. 1952. Affidavit.**—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.

G. S. ch. 19, § 19 (15).

**SEC. 1953. 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. ch. 19, § 20 (16).

**SEC. 1954. 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. ch. 19, § 21 (17).

**SEC. 1955. Same — Perishable property.**—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.

G. S. ch. 19, § 27 (23).

**SEC. 1956. Same — 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.

G. S. ch. 19, § 22 (18).

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## UNCLAIMED PROPERTY.

[SECS. 1957-1963.]

**SEC. 1957. Proceeds of sale.**— 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. ch. 19, § 23 (19).

**SEC. 1958. Same — Duty of 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. ch. 19, § 24 (20).

**SEC. 1959. Same — Pay to owner, when.**— 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. ch. 19, § 25 (21).

**SEC. 1960. Same — When unclaimed.**— 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. ch. 19, § 26 (22).

**SEC. 1961. Fees.**— 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. ch. 19, § 28 (24).

## SALE OF UNCLAIMED PERSONAL PROPERTY BY RAILROADS.

**SEC. 1962. Notice and sale.**— 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, ch. 23, § 1: "An act to provide for the disposal of unclaimed goods by railroad companies in this state." Approved March 6, 1871. The operation of this act is superseded by acts 1885, ch. 202, providing for delivery of such goods to warehouse or storage companies, and sold. *Post*, §§ 1965-1970.

**SEC. 1963. Same — Proceeds of.**— 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, ch. 23, § 2.

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SECS. 1964-1969.]

UNCLAIMED PROPERTY.

**SEC. 1964. 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, ch. 23, § 3.

## SALE BY WAREHOUSE OR STORAGE COMPANY.

**SEC. 1965. Receive goods from carriers.**— When any personal baggage shall have remained, for a period of thirty (30) 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 (60) 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, ch. 202, § 1: "An act to provide for the storage and disposal of unclaimed baggage, freight and merchandise." Approved March 10, 1885.

**SEC. 1966. Lien for storage.**— Any warehouseman or storage company receiving any property as provided in section one (1) 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, ch. 202, § 2.

**SEC. 1967. Notice and sale.**— If the owner of such property, or his agent, does not appear and duly claim the same within twelve (12) 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 (3) 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 (3) public places in the town, city, or village where the property is to be sold.

1885, ch. 202, § 3.

**SEC. 1968. 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 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 (19) of chapter nineteen (19) of general statutes of one thousand eight hundred and seventy-eight (1878), which statement shall be filed and surplus disposed of in all respects as provided in sections twenty (20), twenty-one (21) and twenty-two (22) of said chapter nineteen (19).

1885, ch. 202, § 4.

**SEC. 1969. 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 (2) sureties, to be approved by the governor of the state, in the sum of

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DISTRAINING BEASTS DOING DAMAGE, ETC. [SECS. 1970-1973.]

ten thousand (10,000) 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, ch. 202, § 5.

**SEC. 1970. Application of this act.**—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, ch. 202, § 6.

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## TITLE 3.

### DISTRAINING BEASTS DOING DAMAGE, ETC.

Special laws for certain counties. Acts 1875, ch. 124; 1875, ch. 123; 1881, Spl. Laws, ch. —.

**SEC. 1971. Who may distrain — Appraisers.**—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.

**Appraisers.**—And within twenty-four (24) 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

**Compensation.**—Such appraisers shall receive as compensation for their services one dollar (\$1) per day for every day actually consumed in making the appraisal, and six (6) 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. ch. 19, § 29 (28), as amended 1870, ch. 34; 1874, ch. 53; 1885, ch. 120; 1885, ch. 106. This section in G. S. limited the damages to night-time unless land inclosed with fence. Acts 1870, ch. 34, eliminated this. Acts 1874, ch. 53, enacted as above, except that application be made to justice of the town. Acts 1885, ch. 120 (which was approved before ch. 106), empowered the "justice of adjoining town or city in same county;" and ch. 106 to the nearest justice in the county. 31 M. 453.

**SEC. 1972. When.**—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. ch. 19, § 30 (29).

**SEC. 1973. Taking distrained beasts.**—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. ch. 19, § 39 (38). 26 M. 155.



# MINNESOTA STATUTES 1891

SECS. 1974-1978.] DISTRAINING BEASTS DOING DAMAGE, ETC.

**SEC. 1974. Appraisers' duties.**—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.\*

**Tender.**—*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. ch. 19, § 31 (30), as amended 1879, ch. 12. Amendment below.\*

**SEC. 1975. Same.**—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. ch. 19, § 32 (31).

**SEC. 1976. To be placed in pound.**—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 cost 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. ch. 19, § 33 (32), as amended 1885, ch. 120. Amendment inserted "or in the nearest pound in any adjoining town or city within the same county." 31 M. 453.

**SEC. 1977. Sale by poundmaster — Notice of.**—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.

**Food.**—*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. ch. 19, § 34 (33).

**SEC. 1978. Sale where no public pound — Notice.**—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.

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DISTRAINING BEASTS DOING DAMAGE, ETC. [SECS. 1979-1981.]

**Redeem.**— *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.

**Notice to owner.**— *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. ch. 19, § 35 (34).

**SEC. 1979. Proceeds of sale.**— 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. ch. 19, § 36 (35).

**SEC. 1980. 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. ch. 19, § 37 (36).

**SEC. 1981. Action for damages — Restrictions.**— 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, chapter ten, 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 be proved that said lands were inclosed 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 Fassum; 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; nor Brown, or Dakota counties, and the north half of the town of Pilot Mound, Fillmore county, and towns of Cokato and Stockholm in Wright county, and the townships in ranges twenty-

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two and twenty-three in Freeborn county; and the town of Chanhasson in the county of Carver; provided that the townships of Marshan, Ravenna, and Hastings in the county of Dakota 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: *provided*, that the provisions of this act shall not apply to the thirtieth (30th), thirty-first (31st), thirty-second (32nd), thirty-fifth (35th), thirty-ninth (39th), except Stevens county, forty-first (41st), twenty-eighth (28th), twenty-ninth (29th), thirty-sixth (36th), and twenty-seventh (27th) senatorial districts: *provided*, that the county of Sherburne shall not be affected by this act.

G. S. ch. 19, § 38 (37), as amended 1874, ch. 53; 1875, ch. 119; 1875, ch. 120; 1875, ch. 122; 1876, ch. 84; 1876, ch. 85; 1876, ch. 119; 1877, ch. 64; 1878, ch. 16; 1881, ch. 24; 1881, ch. 81; 1881, Ex. S. ch. 33; 1837, ch. 76; 1839, ch. 81; 1839, ch. 94; 1839, ch. 126. Above\* is § 38, ch. 19, G. S. The provision that no damages in day-time unless inclosure fenced is second paragraph of § 29, ch. 19, G. S. Acts 1874, ch. 53, added the provisos, but excepted therefrom Wabasha, Dodge, Steele, Lac qui Parle, Martin, Yellow Medicine, Lyon, Winona and Goodhue counties; and thirtieth, thirty-first, thirty-second, thirty-fifth, thirty-ninth, except Stevens county, fortieth, forty-first, twenty-eighth, twenty-ninth, thirty-sixth and twenty-seventh senatorial districts. Acts 1875, ch. 119, excepted Swift and Chippewa counties from fortieth district. Acts 1875, ch. 120, excepted "second commissioner district of Clay county" from forty-first district. Acts 1875, ch. 122, excepted "townships of Deerfield, Medford, and Aurora, in Steele county." Acts 1876, ch. 84, excepted "Brown and Dakota counties and north half of town of Pilot Mound, Fillmore county, and townships in ranges 22 and 23, in Freeborn county, but not townships of Marshan, Ravenna and Hastings, in Dakota county. Acts 1876, ch. 85, struck out the amendment of 1875, ch. 119. Acts 1876, ch. 119, excepted thirty-fifth district. Acts 1877, ch. 64, excepted Otter Tail county from forty-first district. Acts 1878, ch. 16, excepted Polk county. Acts 1881, ch. 24, excepted Kandiyohi county except towns of Norway Lake, Colfax, Burbank, Roseville and Lake Lillian. Acts 1881, ch. 81, excepted "towns of Cokato and Stockholm, in Wright county." Acts 1881, Ex. S. ch. 38, excepted Chanhasson, Carver county. 1887, ch. 76, excepted Wilkin county from forty-first district, and enacted that it was "the intention of this act that the general provisions of title 3 of said chapter apply in all respects to Wilkin county." Acts 1889, ch. 81, struck out provision that thirty-second district be excepted, and enacted that it was the "intention of this act that the general provisions of title 3 of said chapter apply in all respects to county of Wright except to the towns of Cokato and Stockholm in said county." Acts 1889, ch. 94, excepted McLeod county. Acts 1889, ch. 126, amended the last proviso as amended 1874, ch. 53, § 2, and 1875, ch. 119, § 1, by making it read as above and as the act of 1875, ch. 119, reads. Acts 1889, ch. 126, does not mention any of the amendments between 1875, ch. 119, and 1889, ch. 94. Special Laws 1881 make this section applicable to town of Kerkhaven, in Swift county.

SEC. 1982. **When law not to apply.**— *And provided further*, that in the said counties of Swift and Chippewa, Lincoln, Meeker, Otter Tail, Watonwan, Kandiyohi (except towns of Burbank, Colfax, Lake Lillian, Norway Lake or Roseville), a majority of [the] voters in said counties respectively may determine by ballot at the next annual town meeting after the passage of this act, whether horses, cattle, mules and asses shall be permitted to run at large or not, in their county, and for the purpose of determining such question, those in favor of permitting horses, cattle, mules and asses to run at large in their county shall have written or printed, or partly written and partly printed, on their ballots the words, "In favor of the running at large of horses, cattle, mules and asses;" and those against the running at large of such horses, cattle, mules and asses, shall have written or printed, or partly written and partly printed, on their ballots the words, "Against the running at large of horses, cattle, mules and asses." Such vote shall be canvassed, and returns thereof made, in the same manner that votes for county officers in such county are canvassed and returned; and if upon a canvass of said votes by the board of county canvassers, if it shall be ascertained that a majority of the voters of either of said counties have voted for the running at large of horses, cattle, mules and asses in their county, then the provisions of said chapter fifty-three, of the general laws of the year A. D. one thousand eight hundred and seventy-four, as the same existed prior to the passage of this act, shall be and remain in full force and effect as to the county voting. But if a majority of the voters in either of said counties vote against the running at large of horses, cattle, mules and asses, then and in that case the provisions of section one of this act, shall be and remain in full force as to the county or counties so voting. The

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county auditor of the county or counties permitting horses, cattle, mules and asses to run at large as hereinbefore provided, shall cause a statement of the result of the vote upon such question to be published as soon as practicable after the same is ascertained, by posting or causing to be posted the same in two of the most public places in such election (district) in his county: *provided, however*, that this act shall not apply to or be in force in the townships of Lathrop and Granite Falls, in said Chippewa county.

1875, ch. 119, § 2: "An act to amend § 38, ch. 19, title 3, G. S., as amended 1874, ch. 53, § 2," approved March 9, 1875, as amended 1876, ch. 81: 1876, chs. 82 and 119; 1877, ch. 64; 1881, ch. 24. Acts 1876, ch. 81, added Lincoln county; 1876, ch. 82, left out Watonwan county; 1876, ch. 119, added Meeker county; 1877, ch. 64, added Otter Tail county; 1881, ch. 24, added Kandiyohi county, but by an additional proviso which is substantially as above. Acts 1874, ch. 53, amended §§ 29 and 38 of G. S. as amended 1870, ch. 34, and are §§ 1971, 1981, *ante*.

## STALLIONS, BULLS, BOARS, RAMS, BREACHY CATTLE.

SEC. 1983. **Must not 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 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, ch. 20, § 1: "An act to restrain the running at large of stallions, bulls, boars and breachy cattle." This section same as § 1, ch. 33, acts 1866, except that the forfeit was \$2 and when recovered to be applied to the use of common schools.

SEC. 1984. **Same—Notice to owner.**— 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, ch. 20, § 2. Supersedes and same as § 2, ch. 33, acts 1866.

SEC. 1985. **Same—Castration.**— 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, ch. 20, § 3.

SEC. 1986. **Same—Sale of.**— If the chairman of the board is unable to find the owner of such animals, he shall cause the same to be impounded for

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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, ch. 20, § 4. Supersedes and same as § 3, ch. 33, acts 1866.

SEC. 1987. **Same — Owner claim purchase money.**— 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, ch. 20, § 5. Supersedes and same as § 4, ch. 33, acts 1866.

SEC. 1988. **Same — Penalty for neglect of duty.**— 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, ch. 20, § 6. Supersedes and same as § 5, ch. 33, acts 1866.

## SHEEP, PROTECTION OF.

SEC. 1989. **Lawful to kill dogs, when.**— It shall be lawful for any person to kill or cause to be killed any dog which has been or shall be found injuring, fretting or killing any lambs or sheep within this state; and any sheep owner or person in his employ may kill or cause to be killed any dog found on his premises on which sheep are kept, not under the restraint or control of the owner or other person, without incurring penalty for such act.

1867, ch. 35: "An act to protect the sheep-growing interests of Minnesota," as amended 1885, ch. 126. Acts 1867, ch. 35, was § 81, ch. 95, G. S. 1878, and Penal Code, § 541, purports to repeal that chapter without reference to acts 1885, ch. 126.

SEC. 1990. **Liability.**— The owner or possessor of any dog that shall kill, wound or worry any sheep or lamb, or other domestic animal or animals, including poultry, shall be liable for the value of such sheep or lamb to the owner thereof, without proving notice to the owner or possessor of such dog, or knowledge by him, that his dog was mischievous or disposed to kill sheep.

Any person keeping or harboring a dog or dogs that has bitten or worried any sheep or lambs, or other domestic animal or animals, including poultry, and having been notified of such fact, shall be liable to pay a fine of five dollars per day for every day thereafter that he shall keep, harbor or permit such dog or dogs to remain in or about his premises. Such fine, when collected, shall be paid over to the county treasurer of the county, for the benefit of the common-school fund of the county.

1873, ch. 21: "An act for the protection of sheep," as amended 1874, ch. 51; 1885, ch. 126. This law was §§ 79, 80, ch. 95, G. S. 1878, which Penal Code, § 541, purports to repeal without reference to acts 1885.