

CHAPTER 346

ESTRAYS AND ANIMALS AT LARGE OR DOING DAMAGE

346.01 WHO MAY TAKE UP.

HISTORY. 1863 c. 13 s. 1; G.S. 1866 c. 19 s. 1; 1874 c. 54 s. 1; G.S. 1878 c. 19 s. 1; G.S. 1894 s. 2080; R.L. 1905 s. 2769; G.S. 1913 s. 6035; G.S. 1923 s. 7267; M.S. 1927 s. 7267.

It is incumbent upon a party claiming title to an animal under a poundmaster's sale to show that it was liable to be impounded and that the proceedings are authorized by law, in order to divest the owner's title. *Johnston v Kirchoff*, 31 M 451, 18 NW 315.

346.02 FINDER TO GIVE NOTICE; PENALTY.

HISTORY. 1863 c. 13 ss. 2, 3; G.S. 1866 c. 19 ss. 2, 3; 1874 c. 54 ss. 2, 3; G.S. 1878 c. 19 ss. 2, 3; G.S. 1894 ss. 2081, 2082; R.L. 1905 s. 2770; G.S. 1913 s. 6036; G.S. 1923 s. 7268; M.S. 1927 s. 7268.

346.03 APPRAISEMENT.

HISTORY. 1863 c. 13 s. 4; G.S. 1866 c. 19 s. 4; 1874 c. 54 s. 4; G.S. 1878 c. 19 s. 4; G.S. 1894 s. 2083; R.L. 1905 s. 2771; G.S. 1913 s. 6037; G.S. 1923 s. 7269; M.S. 1927 s. 7269.

346.04 CHARGES FOR KEEPING.

HISTORY. 1863 c. 13 ss. 6, 7; 1865 c. 49 s. 1; G.S. 1866 c. 19 ss. 5, 6; 1874 c. 54 ss. 5, 6; G.S. 1878 c. 19 ss. 5, 6; G.S. 1894 ss. 2084, 2085; R.L. 1905 s. 2772; G.S. 1913 s. 6038; G.S. 1923 s. 7270; M.S. 1927 s. 7270.

346.05 SALE OF ESTRAY.

HISTORY. 1865 c. 49 s. 2; G.S. 1866 c. 19 s. 7; 1874 c. 54 s. 7; G.S. 1878 c. 19 s. 7; G.S. 1894 s. 2086; R.L. 1905 s. 2773; G.S. 1913 s. 6039; G.S. 1923 s. 7271; M.S. 1927 s. 7271.

346.06 MONEY, HOW DISPOSED OF.

HISTORY. 1863 c. 13 s. 9; G.S. 1866 c. 19 s. 8; 1874 c. 54 s. 8; G.S. 1878 c. 19 s. 8; G.S. 1894 s. 2087; R.L. 1905 s. 2774; G.S. 1913 s. 6040; G.S. 1923 s. 7272; M.S. 1927 s. 7272.

346.07 REMOVAL OF ESTRAY; NEGLECT TO GIVE NOTICE.

HISTORY. 1863 c. 13 ss. 9, 10; G.S. 1866 c. 19 ss. 9, 10; 1874 c. 54 ss. 9, 10; G.S. 1878 c. 19 ss. 9, 10; G.S. 1894 ss. 2088, 2089; R.L. 1905 s. 2775; G.S. 1913 s. 6041; G.S. 1923 s. 7273; M.S. 1927 s. 7273.

346.08 DISTRAINT OF ANIMALS DOING DAMAGE.

HISTORY. 1865 c. 50 s. 1; G.S. 1866 c. 19 s. 29; 1874 c. 53 s. 1; G.S. 1878 c. 19 s. 28; 1885 cc. 106, 120; G.S. 1894 s. 2113; R.L. 1905 s. 2776; G.S. 1913 s. 6042; G.S. 1923 s. 7274; M.S. 1927 s. 7274.

In the absence of action by the town, the common-law rule whereby every man is bound to keep his cattle on his land is in force. Where plaintiff allowed his

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cow to run at large and she strayed on railroad track, she was there by the owner's fault. *Locke v St. P. & P. Ry. Co.* 15 M 350 (283).

The damages to which a land owner is entitled in proceedings where animals are taken up as estrays, are limited to such damages as were committed by the animals at the time of and immediately preceding the trespass for which they were distrained. *Fleetham v Therres*, 92 M 500, 100 NW 377.

At the time the cows in question were distrained by plaintiff, defendant tendered an ample sum to cover damages, which sum the plaintiff refused to accept and retained the cows in his possession for two days. The retention was wrongful and plaintiff was under legal duty not only to assume responsible care of the cows, but to dispose of and account for milk received while in his possession. *Fleetham v Therres*, 92 M 500, 100 NW 377.

During a period of drouth the state emergency relief administration received from the federal government certain purchased and branded distrained cattle. These were contracted out to individuals to be cared for. Where such cattle do damage the cattle may not be held in an attempt to force collection of damage, such cattle belonging to the state. OAG Sept. 28, 1934 (400a).

346.09 NOTICE TO OWNER; APPRAISERS; APPOINTMENT.

HISTORY. 1865 c. 50 ss. 1, 3; G.S. 1866 c. 19 ss. 29, 31; G.S. 1878 c. 19 ss. 28, 30; 1879 c. 12 s. 1; G.S. 1894 ss. 2113, 2115; R.L. 1905 s. 2777; G.S. 1913 s. 6043; G.S. 1923 s. 7275; M.S. 1927 s. 7275.

The notice required by this section in proceedings to distrain animals doing damage is written notice and is jurisdictional; and such notice is not waived by a general statement of the owner of the animals "to have the damage appraised and he would pay for them." *Pruka v Maroushek*, 182 M 421, 234 NW 641.

346.10 APPRAISEMENT; PROCEDURE.

HISTORY. 1865 c. 50 ss. 3, 4; G.S. 1866 c. 19 ss. 31, 32; G.S. 1878 c. 19 ss. 30, 31; 1879 c. 12 s. 1; G.S. 1894 ss. 2115, 2116; R.L. 1905 s. 2778; G.S. 1913 s. 6044; G.S. 1923 s. 7276; M.S. 1927 s. 7276.

346.11 TENDER BY OWNER; EFFECT.

HISTORY. 1865 c. 50 s. 4; G.S. 1866 c. 19 s. 31; G.S. 1878 c. 19 s. 30; 1879 c. 12 s. 1; G.S. 1894 s. 2115; R.L. 1905 s. 2779; G.S. 1913 s. 6045; G.S. 1923 s. 7277; M.S. 1927 s. 7277.

346.12 IMPOUNDMENTS.

HISTORY. 1865 c. 50 s. 5; G.S. 1866 c. 19 s. 33; G.S. 1878 c. 19 s. 32; 1885 c. 120 s. 2; G.S. 1894 s. 2117; R.L. 1905 s. 2780; G.S. 1913 s. 6046; G.S. 1923 s. 7278; M.S. 1927 s. 7278.

346.13 POUNDMASTER; CUSTODY; SALE; TIME; NOTICE.

HISTORY. 1865 c. 50 s. 6; G.S. 1866 c. 19 s. 34; G.S. 1878 c. 19 s. 33; G.S. 1894 s. 2118; R.L. 1905 s. 2781; G.S. 1913 s. 6047; G.S. 1923 s. 7279; M.S. 1927 s. 7279.

346.14 SALE OF ANIMAL NOT IMPOUNDED.

HISTORY. 1865 c. 50 s. 7; G.S. 1866 c. 19 s. 35; G.S. 1878 c. 19 s. 34; G.S. 1894 s. 2119; R.L. 1905 s. 2782; G.S. 1913 s. 6048; G.S. 1923 s. 7280; M.S. 1927 s. 7280.

346.15 REDEMPTION.

HISTORY. 1865 c. 50 s. 7; G.S. 1866 c. 19 s. 35; G.S. 1878 c. 19 s. 34; G.S. 1894 s. 2119; R.L. 1905 s. 2783; G.S. 1913 s. 6049; G.S. 1923 s. 7281; M.S. 1927 s. 7281.

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346.16 RUNNING AT LARGE; DEFINED; PROHIBITED; TREBLE DAMAGES.

HISTORY. 1913 c. 459 ss. 1, 2, 3; G.S. 1913 ss. 6063 to 6065; G.S. 1923 ss. 7295 to 7297; M.S. 1927 ss. 7295 to 7297.

Where defendant, ignoring Section 346.16, castrated plaintiff's bulls which had broken into his pasture, the evidence of malicious injury to plaintiff's property justified a verdict for \$500.00 which included treble damages. *Mitzel v Zachman*, 219 M 253, 16 NW(2d) 473.

346.17 PROCEEDS OF SALE.

HISTORY. 1865 c. 50 ss. 8, 9; G.S. 1866 c. 19 ss. 36, 37; G.S. 1878 c. 19 ss. 35, 36; G.S. 1894 ss. 2120, 2121; R.L. 1905 s. 2784; G.S. 1913 s. 6050; G.S. 1923 s. 7282; M.S. 1927 s. 7282.

346.18 TAKING DISTRAINED BEASTS A MISDEMEANOR.

HISTORY. 1865 c. 50 s. 11; G.S. 1866 c. 19 s. 39; G.S. 1878 c. 19 s. 38; G.S. 1894 s. 2123; R.L. 1905 s. 2785; G.S. 1913 s. 6051; G.S. 1923 s. 7283; M.S. 1927 s. 7283.

346.19 CERTAIN MALE ANIMALS OR BREACHY CATTLE.

HISTORY. 1873 c. 20 ss. 1 to 6; G.S. 1878 c. 19 ss. 39 to 44; G.S. 1894 ss. 2124 to 2129; R.L. 1905 ss. 2793 to 2796; G.S. 1913 ss. 6059 to 6062; G.S. 1923 ss. 7291 to 7294; M.S. 1927 ss. 7291 to 7294.