

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

IN FORCE

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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the provisions of this act shall not apply to nor be in force in the towns of McPherson and Medo, in the county of Blue Earth: *provided*, that the provisions of said act shall apply to the respective occupants of lands inclosed with fences for the purpose of pasturage or grazing. (*As amended 1879, c. 37, March 10th, adding the provisos; and see, as to said towns, 1879, c. 36, approved March 7th.*)

***§ 24. Exemption of Goodhue and McLeod counties.**

The provisions of this chapter shall not apply to any part of the counties of Goodhue and McLeod, but said counties shall be and hereby are excepted from the operations and effect thereof: *provided*, that the provisions of this chapter shall apply to the respective occupants of lands in said counties inclosed with fences for the purpose of pasturing. (1878, c. 34, § 1, *as amended 1883, c. 97, § 1.*)

CHAPTER 19.

ESTRAYS, UNCLAIMED PROPERTY, AND BEASTS DOING DAMAGE.

TITLE 1.

ESTRAYS.

***§ 1. Who may take up estrays.**

This and the remaining sections of this title are not inconsistent with c. 10, § 87, in relation to fees and duties of pound-masters, nor with §§ 23, 32, 33, *infra*. Johnston v. Kirchoff, 31 Minn. 451, 18 N. W. Rep. 315.

TITLE 2.

UNCLAIMED PROPERTY.

***§ 27a. 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.*)

***§ 27b. 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

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

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. (*Id.* § 2.)

***§ 27c. 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. (*Id.* § 3.)

***§ 27d. 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. (*Id.* § 4.)

***§ 27e. 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. (*Id.* § 5.)

***§ 27f. 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. (*Id.* § 6.)

TITLE 3.

DISTRAINING BEASTS DOING DAMAGE.

§ 28. (Sec. 29.) 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.* (*As amended* 1874, c. 53, § 1; 1885, c. 120, and c. 106.)

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

§ 30. (Sec. 31.) Appraisal—Tender—Effect.

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. (*As amended* 1879, c. 12, § 1.)

§ 32. (Sec. 33.) Impounding beasts distrained.

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. (*As amended* 1885, c. 120, § 2.)

§ 33. (Sec. 34.) Duty of pound-master—Sale.

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

§ 37. (Sec. 38.) Owner of beasts—Liability—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, how-*

* Gen. 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.'"

ever, 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 six, 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 day-time, 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, 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 Cocato and Stockholm in Wright county, and the town of Chanhasson in the county of Carver, and the townships in ranges twenty-two and twenty-three in Freeborn county: *provided*, that the townships of Marshan, Ravenna, and Hastings, in the county of Dakota, shall not be affected by this act: *provided*, that the provisions of this act shall not apply to the thirtieth, thirty-first, thirty-second, thirty-fifth, thirty-ninth, except Stevens county, forty-first, except Otter Tail county, Wilkin county, and Polk county, twenty-eighth, twenty-ninth, thirty-sixth, and twenty-seventh senatorial districts; *and provided, further*, that nothing contained in this act shall apply to the townships of Deerfield, Medford, and Aurora, in the county of Steele; *and provided, further*, that in the county of Kandiyohi a majority of the voters of said county may determine, by ballot, at the next annual town meeting after the passage of this act, whether horses, mules, asses, cattle, and swine shall be permitted to run at large or not in said county; and for the purpose of determining such question, those in favor of permitting the same to run at large in said 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, asses, and swine," and those against the running at large of such beasts 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, asses, and swine." Such votes shall be canvassed and returns thereof made in the same manner that votes for county officers are canvassed and returned; and if, upon a canvass of said votes by the board of county canvassers, it shall be ascertained that a majority of the voters of said county voting upon said question at said election shall have voted for the running at large of said beasts in said county, then, and in that case, the provisions of chapter fifty-three of the General Laws of eighteen hundred and seventy-four, and more particularly the first proviso of section two of said act, shall be applicable to the different towns in said county of Kandiyohi, without regard to the provisions of section one of this act. But if a majority of the voters of said county voting on said question at such election vote against the running at large of horses, cattle, mules, asses, and swine, then, and in that case, the provisions of section one of this act shall be and remain in full force and effect in said county from and after the first day of May, A. D. eighteen hundred and eighty-one. It shall be the duty of the county auditor of said county of Kandiyohi to cause

a statement of the vote on such question to be published in the official paper of said county for three weeks, as soon as practicable after the same is ascertained: *provided, only*, that this act shall not apply or be in force in the towns of Burbank, Colfax, Lake Lillian, Norway Lake, or Roseville, and that none of said last-mentioned towns shall be allowed to vote on such question at said election. (*As amended* 1874, c. 53, § 2; 1875, c. 122, § 1; 1876, c. 84, § 1; c. 85, § 1; 1877, c. 64, § 1; 1878, c. 16, § 1; 1881, c. 24, § 1, c. 81, § 1; 1881, *Ex. Sess.* c. 38; 1887, c. 76.)

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

Blue Earth.....	1881, c. 185	McLeod.....	1879, c. 268; 1881, cc. 194, 308, 310, 316; 1883, c. 279; 1885, c. 297
Carver.....	1881, c. 182	Meeker.....	1881, c. 181; 1883, c. 277; 1885, c. 283; 1887, c. 308
Cass.....	1887, c. 310	Mower.....	1879, cc. 267, 272
Clay.....	1881, c. 817; 1883, c. 272; 1885, c. 88	Nicollet.....	1879, c. 266
Crow Wing.....	1887, c. 311	Olmsted.....	1879, c. 265
Dakota.....	1879, c. 264	Polk.....	" c. 346
Douglas.....	1881, c. 180	Pope.....	1881, c. 180; 1883, c. 275
Fillmore.....	1879, c. 269; 1881, c. 186	Rice.....	1879, cc. 260, 261; 1881, c. 105
Grant.....	1881, c. 315	Swift.....	1879, c. 270; 1881, c. 312, 313; 1883, c. 280; 1887, c. 309
Hennepin.....	1881, c. 314; 1883, c. 274	Traverse.....	1881, c. 306
Houston.....	1881, c. 311	Washington.....	1881, cc. 183, 307; 1883, c. 276; 1885, c. 282
Jackson.....	1879, c. 271	Wilkin.....	1879, cc. 259, 262; 1881, c. 132
Kittson.....	1879, c. 263	Winona.....	1881, c. 309
Le Sueur.....	1883, c. 273		
Marshall.....	1879, c. 263		
Martin.....	1883, c. 278		

***§ 39. Suffering certain animals to run at large—Penalty.**

This section is independent of section 40, 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.

CHAPTER 20.

PRESERVATION OF GAME.*

***§ 1. Season for killing game birds.**

[Repealed 1887, c. 142, § 7. See *§ 21a, *post*.]

***§ 2. Season for killing deer.**

[Repealed 1887, c. 142, § 7. See *§ 21b, *post*.]

***§ 4. Sale, possession, etc., of game out of season.**

No person shall sell or expose for sale, or have in his possession or custody or under his control, with intent to sell or dispose of, any woodcock, save only during the month of July, after the third day thereof, and during the months of August, September, and October; or any white-breasted or sharp-tailed grouse, or prairie chicken, save only during the month of August, after the fourteenth day thereof, and during the months of September and October; nor any quail or partridge, save only during the months of September, October, and November; nor any ruffed grouse or pheasant, save only during the months of September, October, and November succeeding; nor any aquatic fowl, save only between the first day of September and the fifteenth day of May succeeding; nor any elk, deer, buck, doe, or fawn, or piece of green skin,

*See list of special laws at end of chapter.