

James C. Child
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
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SCHOOL LANDS.

An Act to punish trespassers on school lands in Minnesota Territory.

✓ [Passed March 6, 1852.] C. 33

Trespassers, punishment of.

(1.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* That any person who shall willfully cut any standing or other timber, on any lands set apart as school lands, for the use either of common schools or the university of Minnesota, not having acquired a title to such lands, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the county jail for a period of not less than three days, nor more than six months, or shall forfeit and pay a fine of not less than twenty-five nor more than five hundred dollars; one half of said fine to go to the party complainant, and the other half to the common school fund; and in case of the neglect or refusal of the person so convicted, to pay the fine above specified, he shall be, in addition to the imprisonment above imposed, confined in the county jail or territorial prison, one day for every dollar thereof, until said fine shall be discharged.

Committal of offender.

(2.) SEC. II. In all cases of conviction under this act, if there be no jail within the county where the offense was committed, (or to which it may be attached for judicial purposes,) it shall be competent for the court before which such conviction was had, to commit the offender to the nearest jail in any other county; and it is hereby made the duty of the keeper of such jail, to receive the prisoner so committed, and in all respects to proceed with him as if he had been committed by the proper authorities of

the county in which such jail is situated: *provided*, that the county in which the offense was committed shall pay the cost of his confinement.

(3.) SEC. III. [*As amended by laws of 1854, page 44.*] It shall be the duty of all sheriffs, justices of the peace, constables and school trustees, to use all necessary means to obtain information of trespassers on any school lands, and to give such information to the county commissioners, who shall cause proceedings to be had as hereinbefore provided, by directing the district attorney to commence proceedings against said trespassers; and the several boards of county commissioners are hereby required to collect from said trespassers the full value of any timber which any trespasser has or may cut on the school lands, by suit or otherwise, and all moneys so collected shall belong to the school districts of the county where said timber may be cut. Any board of county commissioners, who shall neglect or refuse to perform the duties required in this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, pay a fine to the county for the use of schools, of not less than one hundred dollars nor over five hundred dollars.

Duties of sheriffs, justices, &c., to protect school lands.

(4.) SEC. IV. The several district courts and justices of the peace shall have concurrent jurisdiction in all cases arising under this act.

Jurisdiction of offender.

(5.) SEC. V. This act shall take effect from and after its passage.

Act to take effect, when.

An Act to prevent trespass on School, University, Swamp and Internal Improvement Lands.

[*Passed March 20, 1858.*] c. 17

(6.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That it is hereby made the duty of the county commissioners, and sheriffs in their respective counties, and of justices of the peace, and constables in their respective precincts, in the name of the state of Minnesota, to prosecute upon view or information, all persons who shall, after the passage of this act, commit any trespass on lands granted to this state by any act or resolution of congress, for the use or support of schools or universities, or for internal improvements.

Prosecutions for trespass.

(7.) SEC. II. If any person shall, under pretense of any lease or otherwise, cut, fell, box, bore, destroy, or carry away any tree or sapling, standing or growing, or any fallen or dead timber upon any lands within this state; reserved, appropriated or intended by any act or resolution of congress, either for the use and support of schools, or for the use and support of any university or college, or for any public buildings, or for internal improvements, or shall cut and carry away any grass or hay, such person shall for each and every such trespass, forfeit and pay the sum of fifty dollars: *provided always*, that nothing in this act shall be so construed as to prevent any actual settler from the enjoyment of his or her improvements.

Cutting timber.

Cutting hay.

Penalty.

(8.) SEC. III. The penalties provided in the above preceding sections shall, and may be recovered with all costs of suit under this act, in any action of debt, in the name of the state of Minnesota, before any justice of the peace, when the amount does not exceed one hundred dollars' damages, and the costs, taxed as hereinafter provided in this act.

Recovery of penalty.

(9.) SEC. IV. If any county or precinct officer, or any township officer, either in the civil or school towns or townships hereafter created, shall fail to prosecute for ten days after notice in writing given to them, with the names of witnesses, sufficient to prove a trespass, [he] shall forfeit and pay the sum of twenty-five dollars to the county school fund of each county in which a trespass was committed, to be recovered by action of debt before

Failure to prosecute; penalty, how recovered.

any justice of the peace; it shall be lawful for any person to enter complaints for any breach of this act.

Limit of time of commencing suit.

(10.) SEC. V. All suits under this act shall be brought within one year after the cause of action occurred, and not after.

Jurisdiction of justices of the peace.

(11.) SEC. VI. That justices of the peace shall have jurisdiction in all cases arising under the provisions of this act, in any sum not exceeding one hundred dollars' damages, and costs of suit.

Suits to be prosecuted in county where offense is committed.

(12.) SEC. VII. All suits under this act shall be commenced before a justice of the peace in the county in which the trespass is alleged to have been committed.

(13.) SEC. VIII. (a) All complaints shall be under oath and filed with the justice in the following form as near as may be, to wit:

State of Minnesota, }
county. }

Complaint, form of.

states under oath, that a trespass has been committed on or about the day of , A. D. 18 , (here describe by the proper numbers, the lot of land on which the trespass was committed,) in the county of and state aforesaid, one did (here describe what was done that constitutes the trespass under this act,) and alleging one act, shall give the right to prove all or any trespass under act, upon any lands referred to in section two, of "An act to prevent trespass on school, university, or internal improvement lands," approved , A. D. 18 , and that the deponent verily believes is guilty of the same, contrary to the form of the statute in such [case] provided, , complainant, sworn to and subscribed before me, this day of , 18 . J. P.

(14.) SEC. IX. Upon the filing of any such complaint before any justice of the peace of the proper county, together with the names of plaintiff's witnesses, it shall be his duty to issue a warrant in the following form as near as may be:

State of Minnesota, }
county. }

The state of Minnesota to any constable [of said county] greeting:

Warrant, form of.

You are hereby commanded to take the body of , if to be found in your county, and forthwith bring him before me at my office, then and there to answer the state of Minnesota in an action of debt, under section two of "An act to prevent trespass on school, university, and internal improvement lands," approved , A. D. 18 . J. P.

Service of warrant.

(15.) SEC. X. If no constable is present, the justice can and is hereby authorized to deputize a special constable to serve, in that case only, by endorsing such appointment on the back of the warrant under his hand.

Manner of service.

(16.) SEC. XI. Upon the return of such warrant, it shall be the duty of the constable serving the same, to endorse thereon the date and manner of the service, with his fees, as hereafter specified.

Change of venue on oath of defendant.

(17.) SEC. XII. Previous to the commencement of any trial before a justice of the peace, the defendant may make oath, that it is the belief of such deponent that he can not have an impartial trial before such justice: whereupon it shall be the duty of the justice immediately to transmit a

(a) The explanatory parts are so carelessly intermingled with the text of the form given in this section, that it is thought proper to append one in the shape in which it was evidently intended to appear:
State of Minnesota, }
county. }

states under oath, that a trespass has been and was committed on or about the day of , A. D. 18 , on the [here describe by the proper numbers the lot of land on which the trespass was committed,] in the county of and state aforesaid, that then and there one did [here describe what was done that constitutes the trespass under this act, and alleging one act shall give the right to prove all or any trespass upon any lands referred to in section two of this act,] and that this deponent verily believes is guilty of the same, contrary to the form of the statute in such case provided. [Complainant's signature.]

Sworn to and subscribed before me, this day of , 18 . J. P.

copy of his docket, together with all papers and documents belonging to the suit, to the nearest justice of the peace of his county, who shall proceed as if the said suit had been originally instituted before him. And it shall be the duty of all jurors, witnesses and parties, to go forthwith before such justice to whom the papers are sent. Duty of jurors, witnesses, &c.

(18.) SEC. XIII. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be his duty to issue a subpoena in the following form, as near as the case will admit, to wit:

State of Minnesota, }
county. }

The state of Minnesota, to : You are hereby commanded Subpoena.
to appear before me, at , on the day of , A. D. 18 , at
o'clock, then and there to testify to the truth in a matter in suit,
wherein the state of Minnesota is plaintiff, and is defendant, and
this you are not to omit under the penalty of the law.

Given under my hand and seal this day of A. D. 18 .
J. P.

(19.) SEC. XIV. Which subpoena may be served by a constable, or any other person, by reading the same to the witness, but no mileage shall be paid except to the constable. Service thereof.

(20.) SEC. XV. When a warrant shall be executed, by bringing the defendant before a justice, it shall be his duty to issue his writ, directed to any constable, commanding him to summon six jurors, who are legal voters, any two of whom defendant may object to without cause, whereupon the justice shall order the constable to summon two others from the by-standers, or others, and if defendant object, and show cause, the justice may, in his discretion, strike from the list, and add thereto until six good and lawful jurors shall appear on the list, who shall be sworn to try the cause according to evidence. Summoning jurors.
Challenge.
Additional jurors.

(21.) SEC. XVI. The justice shall not cause a jury to be summoned unless the defendant shall demand a jury. No jury unless demanded by defendant.

(22.) SEC. XVII. In all cases when a jury is demanded, the party demanding shall advance the fees, the justice shall issue his venire as follows, to wit:

State of Minnesota, }
county. }

State of Minnesota, to any constable in said county, greeting:

You are hereby commanded to summon six good and lawful men of your county, legal voters, and who are not of kin to nor prejudicial against , defendant, to appear before the subscriber, a justice of the peace, at his dwelling house, (or office, as the case may be,) in said county, on the day of , A. D. 18 , at o'clock, to make a jury for the trial of an action of debt.

Dated this day of , A. D. 18 .

J. P.

(23.) SEC. XVIII. After the jury shall have been impaneled and sworn as aforesaid, and the parties are ready for trial, the justice shall proceed to examine all the testimony and arguments of counsel against, as well as for the defendant, and after hearing the same, the jury shall retire to consider of their verdict in charge of a constable, who shall, as soon as they agree, return them into court, and it shall be the duty of the justice to receive their verdict. Hearing.
Making up verdict.

(24.) SEC. XIX. The verdict of the jury shall state guilty or not guilty, and if guilty, particularly the extent of the same, and what acts of defendant are proved to be a trespass under section two of this act. Form of verdict.

(25.) SEC. XX. And the justice shall receive and record the verdict Record thereof.

of the jury in his docket, and enter a judgment according to the finding thereof, under the provisions of this act.

No jury, the justice to hear and decide.

(26.) SEC. XXI. In all cases where the defendant shall dispense with a jury, it shall be the duty of the justice, after the parties are ready for trial, to proceed to hear all the proof and allegations of the parties, together with all the arguments against and for the defendant, and to assess the damages, and to render a judgment in dollars and cents, according to the evidence under this act, and record the same in his docket book.

Execution; when returnable.

(27.) SEC. XXII. Upon the rendition of judgment as aforesaid against the defendant, the justice shall issue an execution forthwith, directed to any constable of the county, and made returnable within thirty days from its date.

Levy; if no personal property defendant to be committed to jail.

(28.) SEC. XXIII. Such execution shall be levied on personal property, but if no personal property be found, then in that case the constable shall take the body of the defendant and convey him to the common jail of the county, there to remain until the execution shall be paid and satisfied: *provided*, that defendant shall be allowed two dollars for [every] twenty-four hours until such debt and all costs shall be paid at that rate, which shall fully discharge defendant from all liability for debt and costs, and in case of such discharge therefrom by the jailor, it shall be the duty of the county commissioner's court to pay all costs in such case to the justices, constables and witness out of any moneys in the county treasury not otherwise appropriated, as they may by law be entitled to.

Provision for release; costs to be paid by counties.

(29.) SEC. 24. The execution shall be in the following form as near as may be, to wit:

Execution; form of.

State of Minnesota, }
 } ss.
 } county.

The state of Minnesota, to any constable of said county, greeting.

You are hereby commanded that of the goods and chattels of _____, in your county, you make the sum of _____ debt, and costs, which the state of Minnesota lately recovered before me in a certain plea, against the said _____, and hereof make a return to me within thirty days from this date, and if no goods or chattels can be found, or not sufficient to satisfy this execution, you are further commanded to take the body of the said _____, if he can be found within the state of Minnesota, and convey him to the common jail of the said county, there to remain until this execution shall [be] satisfied and paid.

Given under my hand this _____ day of _____, A. D. 18 _____
J. P.

Appeals.

(30.) SEC. XXV. Appeals from judgments of justices of the peace to the district court, shall be granted in all cases, except on judgments confessed: *provided*, the complainant on the part of the state, or the defendant shall in all cases give notice of their intention to take such appeal, at the time of the rendition of such judgment, and within ten days thereafter enter into bonds, in accordance with the statute in such case made and provided.

Constable's duty on receiving execution.

(31.) SEC. XXVI. It shall be the duty of any constable into whose hands any execution shall come, forthwith to proceed to levy the same, indorsing on the back of the execution the date of such levy, and making an exact inventory of the property on which the same shall have been levied; and shall appoint a day and hour for the sale of such property, giving ten days' previous notice of the place and hour between the hours of nine o'clock A. M., and four o'clock P. M., by advertisement in writing, to be posted up in at least three of the most public places in the neighborhood, and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to satisfy the

execution, to the highest bidder for cash, and make return according to law.

(32.) SEC. XXVII. The constable shall pay over the debt to the county treasurer, and take duplicate receipts therefor, and file one with the auditor of the county funds, and the other return with the execution to the justice who issued it, with all costs, and the justice upon the receipt of such fees, shall, when called upon, pay the same to the person entitled thereto. Constable's duty on satisfaction of execution!

(33.) SEC. XXVIII. Justices shall have discretion to hold defendant in custody a reasonable length of time to procure witnesses, not to exceed three days. But no continuance can be granted unless a recognizance is entered into with good security. Procurement of witnesses.

(34.) SEC. XXIX. When any juror or witness shall, after being duly served with process, fail or refuse to attend according to law, it shall be the duty of the justice to issue an attachment at the request of the party requiring the attendance of such witness or juror, before the first or second justice of the peace, as provided in this act, directed to any constable of said county, commanding him forthwith to bring before such justice the body of such juror or witness, to show cause why he should not be fined for such contempt, and on the appearance of such juror or witness, on such attachment, it shall be lawful for the justice of the peace to fine him in any sum not less than one dollar, nor more than ten dollars, or wholly discharge him if satisfactory excuse can be made. Failure of jurors or witnesses to appear. Attachment.

The following fees shall be allowed to the officers, jurors, and witnesses, under this act, to wit: Fees under this act.

Justices' Fees: For each complaint under oath, twenty-five cents; for warrant, twenty-five cents; for subpoena for one witness, fifteen cents; for each additional one, five cents; for each venire, twenty-five cents; for administering an oath, five cents; for docketing each suit, and filing all papers, fifty cents; for entering each verdict of a jury, twenty-five cents; for entering each judgment, twenty-five cents; for each continuance, ten cents; for recognizance, fifty cents; for order for appeal, twenty-five cents; for appeal bond, twenty-five cents; for each transcript certificate, with all papers sent to a justice or clerk, one dollar.

Constables' Fees: For serving each warrant, twenty-five cents; for serving subpoena on each witness, ten cents; for serving venire, fifty cents; for serving and returning execution, fifty cents; for each mile of necessary travel from justice's office to the residence of defendant or any witness, one way only, ten cents; for attending jury trial, fifty cents; for advertising property on sales, twenty-five cents; for selling property, ten per cent. on all sales of fifty dollars and under, and five per cent. on all sums above that amount; for taking defendant to jail, both going and coming from the justice's office to the prison or jail, ten cents per mile; for serving attachment on juror and witness, each, twenty-five cents.

Jurors' Fees: To each juror, per day, seventy-five cents.

Witnesses' Fees: For each witness, per day, seventy-five cents.

All the foregoing fees shall be taxed against the defendant, if found guilty.

(35.) SEC. XXX. This act shall take effect from and after its passage. Takes effect on passage.

An Act to authorize the sale of Grass upon School Lands.

[Passed June 23, 1858.] c 58

(36.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That the chairman of the board of supervisors of each town shall be au- Sale of grass upon school lands.

thorized to sell the grass growing upon any unsold school lands in this town, and shall pay the proceeds thereof into the county treasury, for the benefit of the school fund, and shall immediately report the amount so paid to the state treasurer.

(37.) SEC. II. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

(38.) SEC. III. This act shall take effect from and after its passage.

Conflicting acts repealed.

Takes effect on passage.

CHAPTER 25.

HEDGES, FENCES, FRUIT AND ORNAMENTAL TREES.

SECTION

1. The owner of land bordering on road may cultivate hedge or live fence, &c.
2. Penalty on person who shall injure hedge or fence, or let down bars.
3. Penalty for injuring fruit or ornamental trees, &c.

SECTION.

4. Name of one joint tenant sufficient to be stated in complaint.
5. When and before whom prosecutions under this chapter to be brought, and fines, when paid.

An Act for the protection of Hedges, Fences, Fruit and Ornamental Trees.

[Chapter 30, Revised Statutes.]

The owner of land bordering on road may cultivate hedge or live fence.

(1.) SEC. I. Whenever any owner, or owners, occupant, or occupants, of any land, or lands, bordering upon any public road, or highway, excepting a street, or alley, in a town or village through which any public road, or highway may pass, may wish to plant and cultivate any hedge or live fence, along the margin of his, her or their lands, it shall be lawful for any such person, or persons, to set or plant any such hedge, or live fence, precisely on the line of the road, or public highway, and also to place on the margin of such road, a protection fence, not to occupy more than six feet of the margin, or edge of such road; and such protection fence, when placed opposite any live fence or hedge actually set or planted, shall be permitted by the supervisor of roads, and all other persons, to remain for the term of seven years: *provided*, that the commissioners of any county may grant permission, in writing, to the owner, or owners of any hedge or live fence, to continue such protection fence any term of time they may deem necessary.

Penalty on person who shall injure hedge or fence, or let down bars.

(2.) SEC. II. If any person, or persons, shall wantonly or maliciously cut through, dig up or injure, any hedge or live fence, or throw, cut, or lay down, or prostrate any fence inclosing any orchard, pasture, meadow, garden, or other field or inclosure, in which any grain or other vegetables are cultivated, the property of, or lawfully occupied by any other person, or persons, or shall wantonly or maliciously open, let down, throw down, or prostrate, any gate or bars belonging to any such inclosure or field, and leave any such fence, bars or gate, down, prostrate, or open; every such persons, or persons shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.