

LOST GOODS AND ESTRAYS.

CHAPTER 12.

AN ACT CONCERNING LOST GOODS AND ESTRAYS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

No person shall
take up estrays,
except. *Provided*

Section 1. No person shall take up an estray animal except in the county wherein he or she resides, and is a householder, or holds a claim under the pre-emption or homestead laws, nor unless the same be found in the vicinity of his or her claim or place of residence; *Provided*, That this shall not be so construed as to prevent taking up of any estray found in the uninhabited parts of this Territory, and at a distance of ten miles from any habitation.

During what
months. Unless

Sec. 2. No person shall take up any estray animal mentioned in the next section in any county except during the months of October, November, December, January, February and March, unless the same is found trespassing upon the claim, or within the inclosure, of the person taking up the same.

Shall give notice
—when—how.
Marks and
brands not
effaced

Sec. 3. Every person who shall take up any estray horse, mare, colt, mule, ass or any head of neat cattle, sheep, hog, or goat, shall within fifteen days thereafter give notice of the finding and taking up of such animal, by posting a written advertisement thereof, with a description of such estray, and the marks and brands thereon, in three public places in the county wherein he resides, or by publishing such advertisement three times in a weekly newspaper, if there is a newspaper published in the county in which the estray is taken up, and if the same be not called for or claimed by any person within twenty-two days after the posting of such notice, or within three weeks after the first insertion of such notice in a newspaper, the person taking up such estray animal shall go before some justice

of the peace of the county wherein he resides, and make oath that such animal was found estray by him, and the place where the same was found; that the marks and brands thereon have not been effaced or altered by him since the taking up, and that he hath duly advertised the same as required by law; every such affidavit shall be made and subscribed in the docket of such justice, and shall be sufficient proof of the advertisement of such estray as herein required.

Sec. 4. Such justice of the peace shall thereupon issue his warrant to three disinterested householders of the county, unless their attendance may be otherwise had, commanding them to attend at such place as may be therein mentioned, to appraise such estray; the appraisers so appointed, or any two of them shall thereupon proceed to appraise such estray, and upon the completion of such appraisement shall attend before the justice and report their appraisement; and the justice shall thereupon enter such appraisement upon his docket in the form of an affidavit or certificate of the appraisers, setting forth a description of the estray appraised, the marks and brands thereon, the name and place of residence of the person taking the same up, and that the appraised value of such estray is a fair and true valuation thereof; and such affidavit shall thereupon be subscribed by the appraisers, and sworn to before such justice.

Justice to issue warrant. To whom. Proceedings of appraisers shall report

Sec. 5. Upon the completion of such appraisement as aforesaid, the justice of the peace before whom the appraisement is had shall forthwith post in three of the most public places in his county, or publish three times in a newspaper if there is a newspaper published in the county; a notice of the taking up of such estray, with a description thereof and of the marks and brands thereon, and the name and place of residence of the person taking up the same.

Upon completion of such appraisement justice to post notices.

Sec. 6. Such justice shall also transmit a copy of such affidavit or certificate of the appraisers certified by him to be a true copy from his docket to the register of deeds of his county within ten days after the completion of such appraisement.

Justice to transmit copy of affidavit. To whom. When

Sec. 7. Every register of deeds upon receiving any such certified copy of such appraisement shall forthwith cause the same to be recorded in a book to be kept in his office, to be entitled the "Estray Register."

Recorded in Estray register

When two or more animals are taken up at the same time

Sec. 8. If two or more animals are taken up at the same time by the same person, both and all thereof shall be numbered in the same advertisement and appraisement, and the same fees are allowed as for the advertisement or appraisement of one estray.

When person shall appear and make claim to estray. Duty of person taking up same. Assessment final

Sec. 9. Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray shall go before the justice of the peace before whom such appraisement was had, or some other justice of the peace of the county, and such claimant shall make affidavit in writing subscribed by him setting forth his name and place of residence and that he is the owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant upon payment of all fees advanced by him in accordance with this chapter, and his reasonable charges for keeping and caring for such estray. If the parties can not agree as to the amount of such charges, the same shall be assessed by such justice of the peace and such assessment shall be final. Every affidavit required by this section shall be made and recorded upon and within the docket of such justice of the peace.

If estray be not claimed within one year, does not exceed fifty dollars

Sec. 10. If any such estray be not claimed and taken away within one year after the appraisement thereof as hereinbefore provided, and if the person taking up such estray shall have caused the same to be advertised and appraised as provided by sections three, four and five, and shall not in other respects have violated the provisions of this chapter, and if the appraised value of such estray does not exceed fifty dollars, the property therein shall immediately vest in the persons taking the same up.

Exceeds fifty dollars

Sec. 11. If the appraised value of any estray exceeds fifty dollars, and the same is not called for within one year after the appraisement thereof the person taking up such estray shall notify some justice of the peace of the county, and such justice shall appoint a day and place for the sale thereof and cause notices of such sale to be posted in three public places in the county at least twenty-two days before such day so appointed, or shall cause such notice of such sale to be published three times in a weekly newspaper, if there is one published in the

county, and on the appointed day the person taking up such estray shall have the same present at the place fixed by the justice, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray and caring for and keeping the same to be fixed by such justice and the fees advanced for the appraisement and advertisement of such estray as herein provided, and after deducting the fees allowed such justice for such sale and the advertisement thereof, the residue of the proceeds of such sale shall be paid to [the] county treasurer who shall receipt to the justice therefor.

Sec. 12. All moneys so deposited with the county treasurer shall by him be retained in the treasury for six months thereafter, separate and apart from all other moneys; and if the owner of any such estray so sold as aforesaid shall within such period appear before the board of county commissioners and establish his title to such estray, such board of commissioners shall order the amount so paid into the treasury to be refunded to such owner; if no such owner appear within six months after the deposit of any such sum of money as herein provided, the same shall be passed to the school fund of the county, and shall be accounted for and expended as other school moneys are.

Moneys so deposited with the county treasurer retained by him how long

Sec. 13. Whenever any sum of money is paid into the county treasury by virtue of the eleventh section, the justice paying the same shall deliver to the treasurer a certificate setting forth a description of the estray from the sale of which the same was obtained and the marks and brands on such estray, and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall by the treasurer be filed and preserved in his office to the end that the right of the owner of such estray to receive such sum of money may be readily established.

Justice to deliver to treasurer certificate setting forth what

Sec. 14. The following fees shall be allowed for services performed under this chapter;

Fees allowed for services performed, certain fees a law

To justices of the peace for issuing any warrant of appraisement, fifty cents;

Entering the affidavit of appraisement and receiving their oaths thereto, fifty cents;

Taking and entering the affidavit of the taking up of any estray, fifty cents ;

For posting advertisements as required by the provisions of this act, and certifying a copy of the affidavits of the appraisers to the register of deeds, fifty cents ;

Posting notices and selling such estray, two dollars ;

Advertising such estray if published in a newspaper, three dollars ;

To each appraiser, twenty-five cents ;

To register of deeds for each inspection of the estray register to be kept in his office, ten cents, which shall be in full of all fees for services required to be performed by them under this act ;

The fees of justices of the peace, advertising and appraisers shall be paid by the person taking up the estray, but the same shall constitute a first lien upon the estray and shall be paid by the owner before he shall be entitled to take away such estray.

Manner of
taking up
appraising &c.

Sec. 15. The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highway, or in any other place, shall be the same as herein provided.

Persons not
authorized so
to do, willfully
neglecting to
advertise &c,
Provided.

Sec. 16. If any person not authorized so to do shall take up any estray or lost goods, or if any person taking up any such estray or any lost goods shall willfully neglect to cause the same to be advertised and appraised as herein provided or shall work or use any such estray beast, except in a prudent manner, and so as not to injure the same, or shall when working such beast fail to sufficiently feed and properly care for the same, every such person so offending shall forfeit twenty-five dollars to the owner of such estray, to be recovered by action of debt before any justice of the peace ; *Provided, however,* That such action shall not be a bar to an action commenced by the owner of such estray against the person taking up the same, if such animal should receive a permanent injury or be rendered useless because of ill treatment inflicted, or neglect received from the person taking up such estray.

Attempt to
conceal estray
or goods found
effacing brand or
marks, such per-
son shall forfeit

Sec. 17. If any person shall attempt to conceal any estray or any lost goods found and taken up by him, or shall efface any brand or marks thereon, or carry the same beyond the lim-

its of this Territory, or knowingly permit the same to be done, or shall willfully fail to cause the same to be sold as required by this act; every such person so offending shall forfeit a sum not less than ten dollars nor more than one hundred dollars, to be recovered by information commenced by the district attorney before any justice of the peace of the county, one-half to be paid to the informer and the other half into the county treasury for the benefit of the school fund of such county. Every person convicted under the provisions of this section shall be imprisoned in jail until such fine is paid.

Sec. 18. Any justice of the peace who shall fail to pay over to the county treasurer any moneys arising from the sale of any estray or lost goods under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than twenty dollars nor more than one hundred dollars for each estray for the benefit of the common school fund of the county.

Justice of peace
failing to pay
over moneys
arising from sale

Sec. 19. Any person taking up any estray beast may work and use the same in a prudent manner and so as not to injure the same, but during the time of working and using such estray shall not be allowed to receive or charge any compensation for the keeping thereof.

May work and
use in a prudent
manner

Sec. 20. If any estray after being duly advertised and appraised as provided in the third section of this act shall, without the fault of the person taking up the same, die or be stolen or escape and wander away, the person taking the same up shall not be chargeable therefor.

If estray die, or
be stolen, person
taking up same
not chargeable
—when

Sec. 21. The place of sale of estrays and lost goods under the provisions of this act shall be at the county seat of the county in which the estray or lost goods is appraised.

Place of sale

Sec. 22. Chapter thirty-five of the session laws of 1862 is hereby repealed.

Chapter 35 laws
1862 repealed

Sec. 23. This act shall be in force and take effect from and after its passage and approval.

Act in force and
effect when

Approved, January 8, 1869.