

## LINCOLN COUNTY—ANIMALS.

## CHAPTER 40.

AN ACT TO PROHIBIT CERTAIN ANIMALS FROM RUNNING AT LARGE IN CERTAIN SEASONS OF THE YEAR, IN LINCOLN COUNTY, DAKOTA TERRITORY.

*Be it enacted by the Legislature of the Territory of Dakota :*

Section 1. That any person or persons owning or having in his, her, or their charge or possession, any horses, mules, cattle, sheep, or swine, or any of such animals which shall trespass upon any cultivated field belonging to any person or persons other than the owners of such animal or animals, within the county of Lincoln, between the first day of May, and the first day of November each year, such person or persons owning or having in charge or possession such trespassing animal or animals, shall be liable to the party or parties sustaining such injury, for all damages he, she, or they may have sustained by reason of such trespassing aforesaid, to be recovered in a civil action before any court having jurisdiction thereof, in the county where such damage may have occurred, and the proceedings shall be the same in all respects as in other civil actions; *Provided*, That no exemption laws shall apply to executions issued on judgments obtained under the provisions of this act.

Persons owning.  
Liable to injured  
party, when  
Provided

Sec. 2. Any person occupying or cultivating lands shall be considered the owner thereof, in any action under the provisions of the last section.

Who considered  
owner

Parties sustain-  
ing damage.  
Provided

Sec. 3. The parties sustaining damage done by animals as mentioned in section one, before commencing an action thereon, shall notify the owner or person having in charge such offending animal or animals, of such damage, the probable amount thereof; *Provided*, He knows to whom such animal or animals belong; and that such owner or keeper resides and is then within the county where such damage was committed.

May restrain  
and keep in  
custody

Sec. 4. The person suffering damage done by animals as mentioned in section number one, may restrain and keep in custody such offending animals until the finding of the court be ascertained, unless before such suits, the amount of his claims and expense of keeping such animals, be tendered to him.

Shall prove  
amount of  
damage

Sec. 5. Upon trial of an action under the provisions of section one, the plaintiff shall prove the amount of damage sustained and (if he has retained in custody the animals committing such damage) the amount of expense incurred for keeping the offending animals, and any judgment rendered for damages, costs and expense against the defendant shall be a lien upon the animals committing the damage, but if it shall appear upon the trial that no damage was sustained, judgment shall be rendered against the plaintiff for cost of suit.

When defendant  
is not the owner.  
Proceedings

Sec. 6. If upon the trial it appears that the defendant is not the owner or the person in charge of such offending animals he shall be discharged and the action and the suit may proceed as against a defendant whose name is unknown, and if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals he may bring suit against a defendant unknown in which case service shall be made by posting copies of the summons in three of the most public places within the county not less than ten days previous to the day of trial which posting may be done by the proper officer or any voter of the county.

Shall govern  
what actions

Sec. 7. This act shall govern in all actions and proceedings instituted and transacted under the provisions thereof, any law to the reverse notwithstanding.

To take effect  
—when

Sec. 8. This act shall take effect and be in force from and after its passage and approval.

Approved, Jan. 12, 1869.