

Penalty for refusing to obey order of court.

SEC. 4. If said guardian shall neglect to obey such order within the time specified, the court may issue a warrant directed to any sheriff, or constable in the Territory, requiring him to apprehend and imprison such guardian, in some common jail in the Territory, until he shall perform such order, or be delivered in due course of law.

To take effect, when.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

HERD LAW.

CHAPTER XXIII.

AN ACT TO PROTECT CULTIVATED LANDS AND YOUNG TIMBER FROM TRESPASSING ANIMALS IN THE TERRITORY OF DAKOTA.

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

Animals restrained from running at large.

SECTION 1. That any person owning, or having in his or their charge, or possession, any horses, mules, cattle, goats, sheep or swine, or any such animals which shall trespass upon any cultivated land, or young timber, either fenced in or not fenced, belonging to any person, or persons, other than

the owners of such animals, within the Territory of Dakota, such person or persons owning or having in charge or possession such trespassing animal or animals, shall be liable to any 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, or by virtue of the provisions of this act.

Animals restrained from running at large.

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 is owner of trespassing animals.

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.

Notice to be give to owner of animals of damage done.

SEC. 4. The person suffering damage done by animals as mentioned in section one, may retain and keep in custody such offending animals until the damage and costs are paid or until good and sufficient security be given for the same; and whenever any animal or animals are restrained under this act, the person restraining the same shall forthwith notify the owner or person in whose custody the same was at the time the trespass was committed, of the seizure of said animals, providing the owner or person who had the same in charge is known to the person making said seizure.

Animals doing damage may be kept in custody until damage is paid.

SEC. 5. Upon trial of an action under the provisions of section one of this act, the plaintiff shall prove the amount of damage sustained, and if he has restrained and kept 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 expenses 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, and damage sustained by defendant.

Upon trial plaintiff shall prove amount of damage.

In certain cases suit may be conducted against unknown defendant.

SEC. 6. If upon the trial it appears that the defendant is not the owner or 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 such case service shall be made by publishing a copy of the notice, in a weekly newspaper, if there is one published in the county, and if not by posting copies of the notice in three of the most public places within the county, in either case not less than ten days previous to the day of trial.

How notice to defendant shall begin.

When judgment is rendered against unknown defendant, animals shall be sold.

SEC. 7. And after judgment shall have been rendered against the defendant (unknown as aforesaid) the offending animals shall be sold, as in other civil actions, and after the said judgment and costs have been satisfied if there is a surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same, within six months from the day of sale, it shall be placed in the school fund for the use of the public schools of said county.

This act shall govern in all actions instituted thereunder.

SEC. 8. This act shall govern in all actions and proceedings instituted and prosecuted under the provisions thereof.

Repeal.

SEC. 9. All acts and parts of acts in conflict with this act are hereby repealed.

When to take effect.

SEC. 10. This act shall take effect and be in force from and after the first day of April, A. D. 1871.

Approved, January 9th, 1871.

CHAPTER XXIV.

AN ACT TO PREVENT CERTAIN ANIMALS FROM RUNNING AT
LARGE.

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

SECTION 1. That no bull or stallion over the age of one year, shall be allowed to run at large; and such animals found running at large, the owner thereof shall be liable to a fine of five dollars for the first offense, and ten dollars for any subsequent offense, to be recovered by an action of debt before any justice of the peace in the county. Such fine or fines when collected by any justice of the peace, shall be paid into the county treasury of the county where the same shall have been collected, and the same shall be appropriated for the benefit of common schools.

Bulls and stallions forbidden to run at large.

Penalty.

SEC. 2. Any person finding such animals running at large may take up and secure the same, and shall give public notice of such taking up, and if the animal so taken up be not claimed within fifteen days, and the fines and costs of taking up and keeping paid, may castrate the same: *Provided*, The usual precaution be used, that the life of the animal be not endangered thereby more than is usual, and shall be entitled to recover from the owner of any such animal for castrating the same, the sum of five dollars in addition to a reasonable compensation for taking up and keeping, and shall have a lien upon said animal for the payment of the same.

Such animals found running at large may be taken up and castrated.

SEC. 3. The owner or owners of any such bull or stallion, who shall suffer or permit the same to run at large, contrary to the provisions of this act, shall be further liable for, and pay all damages which any person may sustain in consequence of such animals running at large.

Owner of animal liable for damages.

SEC. 4. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 12th, 1871.