

REVISED STATUTES OF 1846

CHAPTER 125

Chapter 125. Of distraining and replevying beasts.

Of Distraining Beasts.

433.101 Beasts distrained; impounding.

Sec. 1. When any beasts are taken up and distrained by any person, for going at large, contrary to law, or contrary to any by-law of a township, they shall be forthwith impounded in the township pound, and the keeper of such pound shall furnish them with suitable food and water, so long as they are detained in his custody.

History: R.S. 1846, Ch. 125;—CL 1857, 5046;—CL 1871, 6767;—How. 8355;—CL 1897, 10688;—CL 1915, 14779;—CL 1929, 9061;—CL 1948, 433.101.

433.102 Fees; distraining and impounding.

Sec. 2. The person so taking up and distraining the same, shall be entitled to 50 cents per head for all horses, mules, asses and neat cattle, and 10 cents per head for all sheep, goats and swine, so distrained by him; and the pound keeper shall be entitled to 4 cents per head for all the said animals so impounded.

History: R.S. 1846, Ch. 125;—CL 1857, 5047;—CL 1871, 6768;—How. 8356;—CL 1897, 10689;—CL 1915, 14780;—CL 1929, 9062;—CL 1948, 433.102.

433.103 Fees; payment prerequisite to delivery of beast.

Sec. 3. The pound keeper shall not deliver to the owner any beasts so impounded, until such owner shall pay him his fees and the expense of keeping such beasts, and also the fees due the person distraining said beasts, which last mentioned fees he shall pay to such person.

History: R.S. 1846, Ch. 125;—CL 1857, 5048;—CL 1871, 6769;—How. 8357;—CL 1897, 10690;—CL 1915, 14781;—CL 1929, 9063;—CL 1948, 433.103.

433.104 Recovery for damages caused by beasts.

Sec. 4. When any person is injured in his land, by sheep, swine, horses, asses, mules, goats or neat cattle, he may recover his damages in an action of trespass, or trespass on the case, against the owner of the beasts, or against the person having the care and control of such beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom in consequence of the neglect of the person who has suffered the damage, to maintain his part of the division fences, the owner or person having the control of the beasts shall not be liable for such damage.

History: R.S. 1846, Ch. 125;—CL 1857, 5049;—CL 1871, 6770;—How. 8358;—CL 1897, 10691;—CL 1915, 14782;—CL 1929, 9064;—CL 1948, 433.104.

433.105 Impounding beasts doing damage.

Sec. 5. The beasts so distrained for doing damage, shall be impounded in the township pound, if there be one, and the distrainer shall leave with the pound keeper a memorandum in writing, signed by him, stating the cause of distraining, and the sum that he demands from the owner, for the damages done by the beasts.

History: R.S. 1846, Ch. 125;—CL 1857, 5050;—CL 1871, 6771;—How. 8359;—CL 1897, 10692;—CL 1915, 14783;—CL 1929, 9065;—CL 1948, 433.105.

433.106 Delivery of beasts by poundmaster.

Sec. 6. The pound keeper shall not deliver the beasts to the owner, until such owner shall pay him his fees, and the expense of keeping such beasts, together with the sum so demanded by the distrainer, and the expense of advertising such beasts, if they shall have been advertised, and all other legal costs and expenses.

History: R.S. 1846, Ch. 125;—CL 1857, 5051;—CL 1871, 6772;—How. 8360;—CL 1897, 10693;—CL 1915, 14784;—CL 1929, 9066;—CL 1948, 433.106.

433.107 Care of beasts by person distraining.

Sec. 7. If there shall be no public pound within the township, the beasts shall be impounded in some suitable place under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water so long as they remain impounded.

History: R.S. 1846, Ch. 125;—CL 1857, 5052;—CL 1871, 6773;—How. 8361;—CL 1897, 10694;—CL 1915, 14785;—CL 1929, 9067;—CL 1948, 433.107.

433.108 Notice of beasts distrained; delivery to owner.

Sec. 8. When beasts are impounded for either of the causes aforesaid, the person impounding them shall, within 24 hours thereafter, give notice thereof to the owner or person having the care or control of them, if known, and living within 6 miles from the place of impounding, which notice shall be delivered to the party, or left at his place of abode, and shall contain a description of the beasts, and a statement of the time, place and cause of impounding.

History: R.S. 1846, Ch. 125;—CL 1857, 5053;—CL 1871, 6774;—How. 8362;—CL 1897, 10695;—CL 1915, 14786;—CL 1929, 9068;—CL 1948, 433.108.

433.109 Notice of beasts distrained; posting in certain cases.

Sec. 9. If there shall be no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall, within 48 hours thereafter, cause to be posted up in 3 public places in the township, and in a public place in each of any 2 adjoining townships, if within 4 miles from the place where they were taken, a written notice, containing a description of the beasts, and a statement of the time, place and cause of impounding.

History: R.S. 1846, Ch. 125;—CL 1857, 5054;—CL 1871, 6775;—How. 8363;—CL 1897, 10696;—CL 1915, 14787;—CL 1929, 9069;—CL 1948, 433.109.

433.110 Notice of beasts distrained; publication in newspaper.

Sec. 10. In case notice shall be given by posting up the same, if no person shall appear to claim the beasts within 7 days after the day of impounding, a like notice shall be published for 3 successive weeks, in some public newspaper, if any shall be published within 20 miles of the place of impounding, the first publication to be within 15 days after the day of impounding.

History: R.S. 1846, Ch. 125;—CL 1857, 5055;—CL 1871, 6776;—How. 8364;—CL 1897, 10697;—CL 1915, 14788;—CL 1929, 9070;—CL 1948, 433.110.

433.111, 433.112 Repealed. 1991, Act 142, Imd. Eff. Nov. 25, 1991.

Compiler's note: The repealed sections pertained to animals running at large.

433.113 Sale of beasts; notice.

Sec. 13. If the sum so found to be due, shall not be forthwith paid, the person who impounded the beasts shall cause them to be sold by auction in the township where they are impounded, first advertising the sale by posting up a notice thereof in 3 public places in the same township, at least 5 days before such sale.

History: R.S. 1846, Ch. 125;—CL 1857, 5058;—CL 1871, 6779;—How. 8367;—CL 1897, 10700;—CL 1915, 14791;—CL 1929, 9073;—CL 1948, 433.113.

433.114 Sale of beasts; proceeds.

Sec. 14. The proceeds of the sale, after paying all the said damages, costs and expenses, with the charges for advertising and selling the beasts, shall be deposited in the treasury of the township, for the use of the owner of the beasts, in case he shall substantiate his claim thereto, within 2 years from the time of sale.

History: R.S. 1846, Ch. 125;—CL 1857, 5059;—CL 1871, 6780;—How. 8368;—CL 1897, 10701;—CL 1915, 14792;—CL 1929, 9074;—CL 1948, 433.114.

433.115 Beasts escaped or rescued; retaking.

Sec. 15. If any beasts that shall have been lawfully distrained or impounded, shall escape or be rescued, the pound keeper or person who distrained them, may, at any time within 7 days thereafter retake such beasts, and hold and dispose thereof, as if no such escape or rescue had taken place.

History: R.S. 1846, Ch. 125;—CL 1857, 5060;—CL 1871, 6781;—How. 8369;—CL 1897, 10702;—CL 1915, 14793;—CL 1929, 9075;—CL 1948, 433.115.

433.116 Rescuing beasts distrained; penalty.

Sec. 16. If any person shall rescue any beasts, distrained or impounded for any cause, he shall be liable in an action on the case, to be brought by any person injured, to pay all damages which such person shall have sustained thereby, and all the fees and charges which shall have been incurred before the rescue, and shall also forfeit a sum not less than 5, nor more than 20 dollars.

History: R.S. 1846, Ch. 125;—CL 1857, 5061;—CL 1871, 6782;—How. 8370;—CL 1897, 10703;—CL 1915, 14794;—CL 1929,

9076;—CL 1948, 433.116.

433.117 Legality of distress determined in replevin action.

Sec. 17. The defendant in any action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal; but if there is any ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin, to be brought as provided in the following sections.

History: R.S. 1846, Ch. 125;—CL 1857, 5062;—CL 1871, 6783;—How. 8371;—CL 1897, 10704;—CL 1915, 14795;—CL 1929, 9077;—CL 1948, 433.117.

Compiler's note: Former sections 18 to 22 of R.S. 1846, Ch. 125, pertaining to replevin of beasts distrained, were repealed by Act 267 of 1945.