

MASON'S MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE
STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
CITER-DIGEST COMPANY

WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

Citer-Digest Company
St. Paul
1927

7264. Neglect to perform duty—Penalty—Any fence viewer who shall unreasonably neglect to perform any duty required by this chapter shall forfeit five dollars to the town, and shall also be liable to the party injured for all damages consequent upon such neglect. (2766) [6032]

7265. Compensation of viewers—Each fence viewer shall be paid for his services by the person employing him at the rate of one dollar for each day's employ-

ment. If such compensation be not paid within thirty days after the service is performed, he may recover double the amount thereof in a civil action. (2767) [6033]

7266. Viewers in counties not divided—In counties not divided into towns, the county commissioners shall be fence viewers, and shall be governed by the provisions of this chapter. (2768) [6034]

CHAPTER 53

ESTRAYS AND BEASTS DOING DAMAGE

Estrays, §§ 7267-7273.

Who may take up	7267
Finder to give notice—Penalty	7268
Appraisalment	7269
Charges for keeping	7270
Sale	7271
Money, how disposed of	7272
Removal of estray—Neglect to give notice	7273

Beasts Doing Damage, §§ 7274-7283.

Who may distrain	7274
Notice to owner	7275
Appraisalment	7276
Tender and effect	7277
Beasts impounded, etc.	7278
Sale—Time and notice	7279
Sale if not impounded	7280
Redemption	7281
Proceeds of sale	7282
Taking distrained beasts a misdemeanor	7283

Mischievous Dogs, §§ 7284-7290.

Owners or keepers of dogs liable for damage done	7284
Keeping after notice	7285
Worrying sheep	7286
Nuisance, when—Procedure	7287
Owner not known	7288
Hearing—Judgment	7289
Costs	7290

Running at Large of certain animals, §§ 7291-7297.

Penalty	7291
Owner notified—Proceedings	7292
Proceedings when owner not found	7293
Castration of animals	7294
Permitting to run at large unlawful	7295
Treble damages	7296
What deemed running at large	7297

ESTRAYS

7267. Who may take up—No person shall take up any estray, except horses or mules, unless such estray shall be found on lands owned or occupied by him in the town wherein he resides. (2769) [6035]
31-451, 18+315.

7268. Finder to give notice—Penalty—Every finder of an estray, within seven days thereafter, shall notify the owner thereof, if to him known, and request him to pay all reasonable charges and take such estray away; but, if such owner be to him unknown, he shall within ten days file a notice with the town clerk. Such clerk shall transmit a copy thereof to the register of deeds, who shall record the same in a book designated "Estray Book." If the estray is of less value than five dollars, such finder shall give posted notice thereof in said town, but, if the value exceeds five dollars, he shall give four weeks' published notice thereof. Such notice shall briefly describe the estray, giving its marks, natural and artificial, as near as practicable, naming the residence of the finder, and specifying the town,

section, and time when taken up. For failure to give such notice, the finder shall be liable to the owner of such estray in double the amount of damages sustained by him thereby. (2770) [6036]

7269. Appraisalment—Every finder of an estray of the value of ten dollars or more at the time of taking up shall also within one month thereafter cause the same to be appraised by a justice of the peace of such town, and the certificate of such appraisalment shall be filed with the town clerk. The finder shall pay the justice fifty cents for such certificate, and six cents per mile for each mile necessarily traveled to make the same. (2771) [6037]

7270. Charges for keeping—The person entitled to the possession of any such estray at any time within one year after such notice is filed with the town clerk may have the same restored to him upon proving his right thereto, and paying all lawful charges that occur in relation to the same. If such person and the finder cannot agree as to the amount of such charges, or upon what should be allowed for the use of such estray, either party, on notice to the other, may apply to a justice of the peace of such town to settle the same, who for that purpose may examine witnesses on oath. If any amount shall be found due to the finder, over the value of the use of such estray, the same, with costs, shall be a lien upon such estray, and the costs of such adjudication shall abide the decision of the justice. (2772) [6038]

7271. Sale—If no claimant for such estray shall cause its return to him as before provided, and if such estray shall not have been appraised at more than ten dollars, the finder shall thereupon become the owner thereof; but, if such appraised value exceeds ten dollars, the estray shall be sold at public auction by any constable of the county on the request of the finder. Notice thereof shall be given and the sale conducted and the same fees allowed as in case of sales upon justice's execution. The finder may bid at such sale, and at the time thereof shall deliver to such officer a statement in writing of his charges. After deducting such charges, if reasonable, and the costs of sale, the officer shall deposit the remainder of the money, together with said written statement, and a statement of the costs of sale, with the county treasurer, taking his receipt therefor. If the finder of any such estray shall fail to cause such sale to be made, he shall pay to the town the value of such estray, to be recovered in an action by the town. (2773) [6039]

7272. Money, how disposed of—If the money so deposited be not claimed by the former owner of the estray within one year after such sale, the same shall

be paid by the county treasurer into the public school fund. (2774) [6040]

7273. Removal of estray—Neglect to give notice—If any person, without the consent of the finder, shall take away any estray taken up pursuant to this chapter, without first paying all lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such estray; and, if any person taking up the estray shall neglect to comply with the provisions of this chapter, he shall be precluded from acquiring any right of property in such estray, and from receiving any charges or compensation in relation thereto. (2775) [6041]

BEASTS DOING DAMAGE

7274. Who may distrain—The owner or occupant of lands may distrain any beast doing damage thereon, either while upon the premises, or upon immediate pursuit of such beast escaping therefrom, and before returning to the inclosure or immediate care of the owner or keeper, and keep such beast upon his premises or in some public ground in his town until his damages shall be appraised, as hereinafter provided. (2776) [6042]

92-500, 100+377. See 15-350, 283.

7275. Notice to owner—The person distraining shall give notice to the owner of such beast, if known to him, within twenty-four hours if he resides in the same town, and within forty-eight hours if he resides in another town in the same county, Sundays excepted; specifying in such notice the time when and place where distrained, the number of beasts, and the place of their detention, and that at a time and place stated therein, which shall not be less than twelve hours after the service of such notice, nor more than three days after such distress, he will apply to a designated justice of the peace of the county for the appointment of appraisers to appraise the damages; but if the owner be unknown, or does not reside in the county, he shall apply for the appointment of such appraisers within twenty-four hours after such distress without notice. Upon such application the justice shall appoint, in writing, three disinterested freeholders of such town to appraise the damages, for which he shall receive a fee of fifty cents. (2777) [6043]

7276. Appraisalment—The appraisers, immediately after their appointment, shall be sworn, and view the damage done. They may take the evidence of any witnesses of the facts and circumstances necessary to enable them to ascertain the extent of such damage, and the insufficiency of any line fence on the premises where the damage was done, if any dispute shall arise touching the same, and may administer oaths to such witnesses. They shall certify under their hands the amount of such damages, and the costs of keeping such beasts to that time, with their fees, not exceeding one dollar per day each; and their determination as to such damages, and the sufficiency of such fence, if in dispute, shall be conclusive. (2778) [6044]

7277. Tender and effect—At any time before proceedings are begun for such appraisalment, or before action is brought for the recovery of damages, the owner or his agent may tender, to the person aggrieved by the depredation of such animal, the amount of damages which such owner may believe has been sustained. If such tender be accepted, no further damages shall be recovered in any way; if refused, and the person aggrieved fails to substantiate or recover as damages a sum greater than that tendered, no costs, disbursements or expenses shall be collected or

recovered in his favor, but he shall pay the costs and disbursements of such owner. (2779) [6045]

92-500, 100+377.

7278. Beasts impounded, etc.—Unless the damages so ascertained, together with the fees of the appraisers and justice, shall be paid within twenty-four hours after appraisal, the person distraining shall cause the beasts to be put into the nearest pound of the same town, if there be one, and, if not, then in some secure inclosure therein, where the same shall remain until sold as hereinafter directed, or until such damages, fees, and the costs of keeping such beasts after appraisal shall be paid, or until otherwise seized or discharged according to law. From the time of seizure until discharged or sold, such beasts shall be furnished with suitable food, the expense of which, after the appraisal, shall be added thereto as additional costs; and, if such beasts be put in a pound, the certificate of appraisal shall be delivered to the keeper thereof. (2780) [6046]

31-451, 18+315.

7279. Sale—Time and notice—The poundmaster shall receive and keep in the public pound any beasts so delivered to him, and, unless seized or discharged according to law within six days, shall sell the same or as many as shall be necessary to pay such damages, fees, and costs, at public auction, giving three days' posted notice thereof, and posting one such notice on the pound. (2781) [6047]

7280. Sale if not impounded—If, by reason of there being no pound within such town, such beasts shall be kept within some other inclosure, and shall not be discharged therefrom in the manner hereinbefore provided within six days after being placed therein, the sheriff or any constable of the county shall sell such beasts, or so many as may be necessary to pay such damages, fees, and costs of keeping, upon the same notice as is required in sales of personal property on execution. (2782) [6048]

7281. Redemption—The purchaser of any animal sold under §§ 7279, 7280, shall keep the same at least two months, during which time the owner may redeem such animal by paying all costs and charges of keeping, and the amount paid therefor at the sale, with interest thereon at twelve per cent. per annum. (2783) [6049]

7282. Proceeds of sale—From the proceeds of such sale the person making it shall retain his fees therefor, which shall be the same as are allowed constables on execution sales, and the costs of keeping such beasts, and he shall pay to the distrainer the damages so certified, with fees of the appraisers and justice; and the surplus, if any, shall be paid to the owner of the beasts, if known. If no one appears at the time of such sale, or within one week thereafter, who claims such surplus, the same shall be paid to the treasurer of the town, to be paid to the owner of the beasts, if claimed within one year after the distress. If not applied for within one year, the money shall be applied to the use of the town. (2784) [6050]

7283. Taking distrained beasts a misdemeanor—If any person, without authority of law, and without first paying the damages and costs, takes any distrained beast out of the possession of the person making the distress, or that of the sheriff, constable, or poundmaster, as the case may be, without his consent, he shall be guilty of a misdemeanor, and shall also be liable to the person injured in double the amount of the damage done by such beasts. (2785) [6051]

MISCHIEVOUS DOGS

7284. Owners or keepers of dogs liable for damage done—All owners or keepers of any dog or dogs, that kill, wound, or worry any domestic animal or animals, shall be jointly and severally liable to the owner of such animal or animals for all damages done by such dog or dogs, without proving notice to or knowledge, by any such owner or keeper of such dog or dogs, that any or either of them was mischievous or disposed to kill or worry any domestic animal. (R. L. '05 § 2786; G. S. '13 § 6052, amended '15 c. 344 § 1)

98-477, 108+865.

'15 c. 344 § 2, repeals all inconsistent acts.

In order to make one who harbors a dog liable in damages to one who is bitten by it, the evidence must show that the dog is vicious, and that such person has knowledge thereof. 165-156, 205+894.

7285. Keeping after notice—Every person who shall keep or harbor a dog which has bitten any domestic animal, after having notice of such fact, shall pay a fine of five dollars for every day he keeps, harbors, or permits such dog to remain on his premises thereafter. (2787) [6053]

7286. Dogs worrying sheep, livestock or poultry—Killing—Any owner or caretaker may kill any dog found chasing, injuring or worrying his sheep or other livestock or poultry owner by or in care of such owner or caretaker, on lands or premises owned or controlled by him, and any owner or caretaker of sheep may kill any dog found on his premises where sheep are kept, not under the restraint or control of his owner or other person. (2789) [6054] (Amended '27, c. 217, § 1)

Explanatory note—Section 2 of Laws 1927, c. 217 repeals all inconsistent acts.

7287. Nuisance, when—Procedure—Any dog that habitually worries, chases, or molests teams or persons traveling peaceably on the public road, is a public nuisance. Upon complaint in writing made to a justice of the peace, containing a description of such dog, and giving his name and that of his owner, if known, and, if not, so stating, and that such dog is a public nuisance, the justice shall issue a summons, if such owner is known, commending him to appear before said justice at his office at a time therein stated, not less than six nor more than ten days from the date thereof, to answer such complaint. Such summons shall be served not less than six days before the day of hearing thereon, in the same manner as other justice court summonses. (2789) [6055]

7288. Owner not known—If it appears from the complaint that such owner is not known, ten days' posted notice, containing a description of such dog as given in the complaint, and stating that such complaint has been made, and the time and place of hearing thereon, shall be given in the town where such justice resides. (2790) [6056]

7289. Hearing—Judgment—On the day of hearing the justice shall hear the evidence in the case, and, if he shall find therefrom that such dog is a public nuisance, he shall enter judgment accordingly, and thereupon shall order the constable to kill and bury such dog, which order such constable shall forthwith execute. (2791) [6057]

7290. Costs—Costs in the first instance shall be paid by the complainant, but if the dog is adjudged a nuisance, and the owner is known, judgment shall be entered against him therefor. (2792) [6058]

RUNNING AT LARGE OF CERTAIN ANIMALS

7291. Penalty—The owner of any stallion over the age of one year, bull over the age of nine months,

boar or ram over the age of three months, or of any breachy cattle, who shall suffer the same to run at large in any town, shall forfeit to such town five dollars for each day any such animal shall be so at large. (2793) [6059]

26-154, 2+163.

7292. Owner notified—Proceedings—Upon notice that any such animal is running at large, the chairman of the town board shall forthwith notify its owner, and, if he does not immediately confine such animal, such chairman shall cause suit to be brought against him, in the name of the town, to recover the forfeiture, and such animal may be sold under execution in said action to pay the forfeiture and costs. After deducting the costs and expenses of suit, all such forfeitures collected shall be paid into the town treasury for the use of the road and bridge fund. (2794) [6060]

7293. Proceedings when owner not found—If unable to find the owner of any such animal, the chairman shall cause it to be confined in the public pound, if there be one, and, if not, in some other inclosure, for three days; and, if not then claimed, he shall cause it to be sold at public auction upon five days' posted notice. From the proceeds of such sale he shall deduct the amount of the forfeiture and expenses, and deposit the balance with the town treasurer, which shall be paid to the owner of such animal if applied for within one year. If not so applied for, the same shall be paid into the town treasury for the use of the town. (2795) [6061]

7294. Castration of animals—If, after being notified as in this subdivision provided, the owner of any such stallion, bull, boar, or ram shall permit the same to continue or again to run at large, such chairman shall forthwith cause the same to be taken up and castrated in the usual manner, and shall have a lien on such animals for the expenses of so doing, and may also recover the amount of such expenses from the owner of such animal in a civil action brought in the name of the town: Provided, that any such ram running at large may be castrated without liability for damages by any person among whose sheep he shall be found. Any chairman who shall refuse or neglect to perform any of the duties required by this subdivision shall be guilty of a misdemeanor. (2796) [6062]

7295. Permitting to run at large unlawful—It shall be unlawful for any owner or any person having the control of any animal of the species of cattle, horse, ass, mule, sheep, swine or goat to permit the same to run at large in the state of Minnesota. ('13 c. 459 § 1) [6063]

While crossing a public highway traversing a farm, horses, going from an inclosure on one side of the road to the barnyard on the other side are not "running at large," though no one is in charge of them while upon the road. 161-315, 201+428.

7296. Treble damages—Any person who shall knowingly permit the running at large of any such domestic animal shall be liable to the person aggrieved for treble damages sustained by him to be recovered in a civil action brought for that purpose. ('13 c. 459 § 2) [6064]

161-315, 201+428, note under § 7295.

7297. What deemed running at large—The herding of any such animal upon any land over the protest and against the will of the owner, shall be deemed a running at large. ('13 c. 459 § 3) [6065]

161-315, 201+428, note under 7295.

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

7239. Application of act.

Negotiable Instrument Act did not repeal §7247 relating to obtaining signature by deceit, trick or artifice. *Wismo Co. v. M.*, 186M593, 244NW76.
 If facts making a defense under §7247 are established a purchaser of note in due course is not protected. *M & M Securities Co. v. D.*, 190M57, 250NW801. See Dun. Dig. 1019.

MISCELLANEOUS PROVISIONS

7242. Contracts due on holidays, etc.

Public business transacted on a legal holiday is legal in case of necessity, existence of which will be presumed in absence of a showing to contrary. *Ingelson v. O.*, 199M422, 272NW270. See Dun. Dig. 3433, 3436, 9064.

7243. Following day deemed holiday, when.

Where memorial day falls on Sunday, custom of observing following day as memorial day does not warrant treasurer in accepting payment of first half of taxes without penalty on June 1st. *Op. Atty. Gen. (276f)*, May 26, 1937.

7247. Instrument obtained by fraud.

Evidence sustained verdict against maker and guarantor as against claim of fraud. 171M216, 213NW902.
 "Trick or artifice" must deceive, and defense was without merit where there was affirmance by signer after knowledge of the precise character of the instrument. 172M126, 214NW924.

Evidence held to show that misrepresentations were made by payee in note. 174M115, 218NW464.

Finding that there was no fraud or misrepresentation by cashier of bank in transaction in which note was given held sustained by evidence. 174M261, 219NW93.

Evidence held sufficient to establish defense under this section, which creates a new defense that is not lost by the mere fact that the payee or holder of the note

becomes insolvent and goes into the hands of a receiver after its execution. *Simerman v. H.*, 178M31, 225NW913.

This section was not repealed by Negotiable Instrument Act. *Wismo Co. v. M.*, 186M593, 244NW76. See Dun. Dig. 1019.

Evidence held to sustain finding that signature to note was obtained by deceit and artifice without negligence on part of maker. *Wismo Co. v. M.*, 186M593, 244NW76. See Dun. Dig. 1019.

In action on notes, fraud held for jury. *Wiebke v. E.*, 189M102, 248NW702. See Dun. Dig. 1019.

Burden is upon maker of showing that his signature was obtained by fraud as to nature and terms of contract; that he did not believe instrument to be a promissory note; and that he was not negligent in signing without knowledge. *M & M Securities Co. v. D.*, 190M57, 250NW801. See Dun. Dig. 1019.

If facts making a defense under §7247 are established, a purchaser of note in due course is not protected. *Id.*

Prejudicial error was not committed in permitting defendant to introduce testimony of fraud sufficient as a defense at common law without first producing affirmative proof that plaintiff was not a holder in due course and so making an issue for jury upon evidence tendered by plaintiff. *Id.* See Dun. Dig. 424.

Where defense to note is based on actual or common-law fraud merely consisting of misrepresentations as to merchandise sold, proof of absence of negligence is not essential as in case of note obtained by fraudulent trick or artifice. *Id.* See Dun. Dig. 1018.

Note given for corporate stock, held not obtained by fraud or misrepresentation. *Edson v. O.*, 190M444, 252NW217. See Dun. Dig. 2041b.

Evidence sustains finding that there was no fraud in obtaining signature of defendant to vote. *Erickson v. H.*, 191M177, 253NW361. See Dun. Dig. 1019.

A synthesis of the law of misrepresentation. 22Minn LawRev939.

CHAPTER 52

Partition Fences

7248. Fence viewers.

Establishment of center of section of land. 172M388, 215NW426.

County board may compel construction of party line fences in territory where townships have been dissolved. *Op. Atty. Gen. (434a-4)*, Sept. 24, 1936.

Provisions relating to partition fences do not apply to land forfeited to state for taxes. *Op. Atty. Gen. (631h)*, May 23, 1938.

7249. One barbed wire permitted with woven wire as a legal fence.

Where owner of land fences parts of three sides, adjoining owner on fourth side is required to erect and maintain a similar fence of like character and quality for distance of one-half of fourth side. *Op. Atty. Gen. (631f)*, June 27, 1938.

7250. Occupants to maintain.

Land in part woodland, meadow and slough, adjoining other lands not under plow, held not "improved" so

as to impose obligation to build joint line fence. *Op. Atty. Gen.*, Apr. 28, 1932.

A village must maintain its share of partition fence as to land outside village limits used in connection with water system of village operating in both a proprietary capacity and governmental capacity. *Op. Atty. Gen.*, Mar. 24, 1934.

There can be no partition fence between land separated by a cartway established either under the statute or by dedication as a public road, but if third person using the way has merely a license, there may be a partition fence. *Op. Atty. Gen. (377b-10(e)) (631h)*, July 5, 1934.

Right to fence on a section line depends upon whether or not a roadway legally exists. *Op. Atty. Gen. (631h)*, July 18, 1939.

7266. Viewers in counties not divided.

County board may compel construction of party line fences in territory where townships have been dissolved. *Op. Atty. Gen. (434a-4)*, Sept. 24, 1936.

CHAPTER 53

Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

7274. Who may distrain.

Where federal government purchased and branded distressed cattle in drouth areas and turned them over to state emergency relief administration for grazing and they were contracted out to individuals under an agreement that they be grazed and cared for, owner of property damaged by such animals may not hold them in attempt to force collection of damages; such cattle belonging to the state. *Op. Atty. Gen. (400a)*, Sept. 28, 1934.

7275. Notice to owner.

Notice is not waived by a general statement of the owner of the animals to one taking them up, "to have the damages appraised and he would pay for them." *Fruka v. M.*, 182M421, 234NW641. See Dun. Dig. 277, 10134.

The notice required in proceedings to distrain animals doing damage is a written notice and is jurisdictional. *Fruka v. M.*, 182M421, 234NW641. See Dun. Dig. 277.

MISCHIEVOUS DOGS

7284. Owners or keepers of dogs liable for damage done.

Liability of owners or keepers of animals. 22MinnLaw Rev1042.

7285. Keeping after notice.

Owner of dog becomes liable on receiving notice by seeing the forbidden act or by information from any other person, oral or written. *Op. Atty. Gen.*, Oct. 30, 1929.

Section is a criminal statute and may be enforced in justice court. *Op. Atty. Gen. (146f)*, Dec. 9, 1936.

7286. Dogs worrying livestock or poultry.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

7287. Nuisance, when—Procedure.

174M457, 219NW770.
Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.
Common-law rule is not abrogated by this section. 175M368, 221NW430.

RUNNING AT LARGE OF CERTAIN ANIMALS**7295. Permitting to run at large unlawful.**

Where plaintiff was injured at night by driving his automobile against carcass of a horse which had just been killed in a collision with a truck, jury might find that negligent permitting of horse at large was a proximate cause of injury to plaintiff. *Wedel v. J.*, 196M170, 264NW689. See *Dun. Dig.* 277.

In action for injuries received by automobile driver colliding with carcass of horse in the nighttime, truck driver who ran into and killed horse and left it on the highway held confronted with an emergency and was not negligent as a matter of law in attempting to swerve around horse instead of applying his brakes, and he was not negligent in failing to arrange for removal of the horse or placing a warning of its presence where he was very badly injured and required prompt medical attention to save his life. *Id.*

Whether horses running at large on highway at night, and not blinding lights of other cars, caused accident, held for jury. *Serr v. B.*, 202M165, 278NW355. See *Dun. Dig.* 276.

Court's instructions, relative to defendant's liability for failure to keep a borrowed horse off a much-used highway at night held proper. *Id.*

7297-1 to 7297-37. [Repealed Apr. 22, 1939, c. 410, §15, post §7297-55.]

Act of Apr. 21, 1931, c. 295; Ex. Sess., Jan. 24, 1936, c. 69.

ANNOTATIONS UNDER REPEALED SECTIONS**7297-1. County board to license dogs.**

Claim for damages may not be allowed after abandonment of licensing system. *Op. Atty. Gen.* (146d-2), Aug. 12, 1938.

7297-22. Auditor to include license fee in tax.

Eight per cent penalty to be charged on dog license tax and penalty not paid prior to March 1 following the date when tax becomes due. *Op. Atty. Gen.* (146d-2), May 22, 1936.

County auditor may keep separate books for dog license tax, and tax may be certified separately to county treasurer, and collection of such taxes should begin on first Monday in January after such certification. *Op. Atty. Gen.* (146d-2), Sept. 29, 1937.

7297-29. Owner to be liable.

Board cannot make statute retroactive so as to authorize payment for damage or injury to livestock occurring prior to adoption of appropriate resolution. *Op. Atty. Gen.*, May 15, 1931.

7297-30. Claims for damages may be filed.

Where county board adopted act on November 13, 1934, claims arising between January 1, 1935, and July 15, 1935, were eligible to participate in indemnity funds, though owners of dogs did not have to procure licenses until July 15, 1935. *Op. Atty. Gen.* (146d-2), July 24, 1935.

Claim for damages may not be allowed after abandonment of licensing system. *Op. Atty. Gen.* (146d-2), Aug. 12, 1938.

7297-32. Claims to be presented to county board.

Claims may not be accepted and paid out of fund after board has abandoned provisions of act. *Op. Atty. Gen.*, Mar. 15, 1933.

7297-35. County board to transfer excess to revenue fund.

Upon abandonment of act by board fund may be transferred to general revenue fund. *Op. Atty. Gen.*, Mar. 15, 1933.

7297-38. County board authorized to pay claims for death or injury to live stock in certain cases.—

The Board of County Commissioners of any county in this state, where said county adopted Laws 1931, Chapter 295, licensing dogs, and later discontinued the same and transferred the money in the livestock indemnity fund provided for in said chapter to the general revenue fund of such county, shall have the authority to pay any claims arising by reason of the death or injury of livestock during the time that such law was in force in said county, or thereafter, from the general revenue fund in the proportion authorized by Laws of 1931, Chapter 295, Section 32 [7297-32], provided that such claims are presented to said board by January 1, 1934. (Act Apr. 15, 1933, c. 265.)

7297-39. Claims for death or injury to livestock.

—The county board of county commissioners of any county in this state, where said county adopted Laws of 1931, Chapter 295 [§§7297-1 to 7297-38], licensing dogs, and later discontinued the same, and transferred the money from the livestock indemnity fund, provided for that purpose, to the general revenue fund of such county, shall have authority to pay any claims arising by reason of the death or injury of livestock during the time that such law was in force in said county, or thereafter, from the general revenue fund, in the proportion authorized by the Laws of 1931, Chapter 295, Section 32 [7297-32], provided that such claims are presented to said board prior to January 1st, 1936. (Act Apr. 24, 1935, c. 243, §1.)

7297-40. Limitation in amount of payments.—No claims shall be paid by said county board pursuant to this act which will exceed the total sum transferred from the livestock indemnity fund to the general revenue fund after deducting therefrom the amount of claims theretofore paid by such county under the provisions of this act or any heretofore existing law. (Act Apr. 24, 1935, c. 243, §2.)

7297-41. County Board to license dogs.—The board of county commissioners of any county is hereby authorized to establish a system of licensing and regulating the running at large of dogs, except in cities of the first class, and create a live stock indemnity fund to be handled and disbursed as hereinafter provided.

Before regulating and licensing, there must be filed with the county auditor a petition signed by at least 25 per cent of the persons actually engaged in raising live stock, including poultry, in the county as shown by the assessors' records, requesting the board to establish such system. When such petition has been filed, the board of county commissioners shall establish such system; or, the board of county commissioners may by a majority vote on their own motion and without petition, establish such system. The board of county commissioners shall exclude from the operation of this act burroughs, second, third and fourth class cities if such city has in operation a satisfactory law regulating dogs running at large. (Act Apr. 22, 1939, c. 410, §1.)

§1.

County board may not provide for licensing of dogs without establishing indemnity fund. *Op. Atty. Gen.* (146d-2), June 12, 1939.

Act provides two ways in which a system of licensing dogs may be established, by petition of 25 per cent of livestock and poultry raisers, in which action by board is mandatory, and on its own motion, in which case action is discretionary. *Id.*

7297-42. Dogs must have licenses.—(1) In every county in which this Act shall become operative every dog more than six months of age must have a license. The owner of any dog (the word "owner" when used in this act in relation to property in, or possession of, dogs shall include every person who owns, harbors or keeps a dog) shall, on or before February 1st in each year, obtain a license for his dog, and shall pay for such license the fee prescribed by the county commissioners which shall not be less than one dollar nor more than three dollars; such payments to be made to the town, village or city clerk or deputy. The application for such license shall be in such written form as prescribed by the county auditor, and shall state the name, sex, breed, age, color and marking of the dog for which the license is sought.

(2) The license year shall correspond to the calendar year. The current license year shall expire December 31, 1939. The sale or transfer of any licensed dog shall carry with it and transfer the license. (Act Apr. 22, 1939, c. 410, §2.)

7297-43. Assessor to list dogs—Kennels—Issuance of license.—(1) Every assessor shall annually ascertain by diligent inquiry the dogs owned, harbored or kept within his assessment district. Every person shall answer frankly and fully all questions which

shall be put to him by such assessor relative to the ownership or keeping of dogs within the assessor's district. The assessor shall prepare and file with the town or village clerk a list containing the names and addresses of all owners of dogs in his district, and the number and sex of dogs owned, harbored or kept. He shall make a list of the names of persons owning and operating kennels and the number of dogs kept in each. The term "kennel" shall mean any establishment where dogs are kept for the purpose of breeding, sale or sporting purposes. Any person who keeps or operates a kennel may in lieu of the license for each dog required by this act apply to the town, city or village treasurer for a kennel license for the keeping or operating of such kennel. For such a kennel license he shall pay a fee of ten dollars for the license year. With such kennel license the clerk shall issue a number of metal tags equal to the number of dogs kept in the kennel. Such tags shall be made in a form so that they may be readily distinguishable from the individual license tags for the same year. The licensee of a kennel shall at all times keep one of such tags attached to the collar of each dog over six months old kept by him under a kennel license. Such tags may be transferred from one dog to another within the kennel wherever any dog is removed from the kennel. Such list shall be filed with the town, village or city clerk at the time the assessor delivers to such clerk his assessment roll. The clerk may appoint a deputy or deputies to issue such licenses. The clerk shall receive ten cents for each license issued, to be paid by the town out of the revenue fund.

(2) A license shall be issued by said clerk or his deputy upon application being made therefor and upon payments made as herein provided. Such license shall be in the form prescribed by the county auditor and shall be executed by the proper town, village or city clerk or his deputy. The license shall state the year for which it was issued, shall bear a serial number, the owner's name and address, and the name, sex, breed and color of the dog licensed. Whenever information is furnished that any dog on the assessor's list is dead the clerk shall so indicate on such list. (Act Apr. 22, 1939, c. 410, §3.)

7297-44. Clerk to issue metal tags—Distribution—Issuance—Duplicate—Accounting.—(1) The clerk or his deputy issuing a license shall at the same time deliver to the licensee a metal tag which shall bear the same serial number as the license. Said tag shall also bear the name of the county in which issued and the license year. The county auditor shall contract for and have prepared and furnished annually a sufficient number of such metal tags, and a sufficient supply of suitable blank licenses to be bound in books of proper size and perforated so that a duplicate of each license may be kept upon the stub thereof. The cost of making, printing, and furnishing said tags and blank license receipts shall be paid out of the dog license fund.

(2) The several county auditors shall distribute said tags and license blanks to the several town, village and city treasurers in proper amounts together with blank license receipts. The licensee shall securely attach the tag to a collar and this collar with the tag attached shall at all times be kept on the dog for which the license is issued. A new tag with a new number shall be furnished to the licensee by the town, village or city clerk or his deputy in place of the original tag upon presentation of the license and proof of the loss of the original tag. The town clerk or his deputy shall then indorse the new tag number on such license and shall enter it upon the register. The clerk shall receive for his services in issuing such new tag the sum of ten cents to be paid by the person obtaining the new tag.

(3) Every town, village or city clerk or his deputy shall at the time of issuing a license and before delivering the same make a complete duplicate thereof upon the stub portion of the license blank. Said

clerk shall annually during the month of January return to his county auditor all unused tags of the preceding year, together with license books therefor and all duplicate licenses of the preceding year and the said county auditor shall carefully check said returned tags, duplicate licenses, and license blanks to ascertain whether all tags and license blanks which were furnished by the county auditor have been accounted for, and to enable the county auditor to do that, he shall charge each town, village, or city clerk with all tags and blank licenses furnished or delivered to him and credit him with those returned. In case of discrepancy, the county auditor shall notify the county attorney who shall investigate and take steps to enforce the law. (Act Apr. 22, 1939, c. 410, §4.)

7297-45. To pay fees to County Treasurer—Report.—Every town, village or city clerk or his deputy shall at the end of each month pay all license fees received by him and his deputy and not before paid, to the county treasurer and shall at the same time report in writing to the county auditor the licenses issued during the month and for which the license fees so deposited with the county treasurer were paid. Such report shall be in the form prescribed and furnished by the several county auditors. (Act Apr. 22, 1939, c. 410, §5.)

7297-46. To be kept in dog license fund—Offenses.—(1) The license fees so paid to the county treasurer shall be kept in a separate account and shall be known as the "dog license fund" and shall be appropriated and disbursed for the purposes and in the manner herein set forth.

(2) Expenses necessarily incurred by the county in purchasing and providing books, forms and other supplies required in the administering of the dog license law shall be paid out of said dog license fund. The amount remaining thereafter in said fund shall be available for and may be used as necessary for paying claims allowed by the county to the owners of domestic animals on account of damages done by dogs during the license year for which the fees were paid. Any surplus in excess of \$1,000 which may remain from the license fees of any license year shall on March first of the succeeding year belong and be credited to and paid by the county treasurer to the towns, villages and cities of his county for their use in the proportion in which said towns, villages and cities shall have contributed and paid to the fund out of which said surplus arises. It shall be used as the governing body of the town, village or city shall determine. Whenever any county operating under the provisions of this Act shall discontinue their dog licenses and livestock indemnity fund, any money remaining shall be distributed among the various townships in proportion to license money paid in. (Act Apr. 22, 1939, c. 410, §6.)

86. If system is discontinued after it has been established, action must be by the same power which established it, by petition if established under petition, and by board if established by it on its own motion. Op. Atty. Gen., (146d-2), June 16, 1939.

7297-47. May seize dogs running at large.—(1) Any person may seize, impound or restrain any unlicensed dog which he may find running at large. The fact that a dog is without a license attached to a collar shall be presumptive evidence that the dog is unlicensed. The sheriff and his deputies, any marshal or constable or other police officer shall seize, impound or restrain any dog for which no license has been issued and for which one is required. Any officer who shall seize, restrain, impound or kill any dog found in any place without a license as required under sections two to 12, inclusive, upon delivery of such dog or carcass and the proper disposal of the carcass and after making a report to the village, town or city treasurer of the village, town or city in which the dog was seized or killed, showing that the dog did not have a license, shall receive therefor a payment of two dollars, the same to be made from any funds in

the village, town or city treasury not otherwise appropriated.

(2) It shall be unlawful for any person to harbor or permit to remain about his premises any dog for which no license exists and for which one is required. Any person who shall have seized or impounded a dog with or without license under section 7 shall deliver such dog to the humane officer of the village, town or city, if such officer exists; or if there be no such officer to the constable, village marshal, or the town, village or city police officer. The officer to whom the dog is delivered shall without delay notify the owner personally or through the United States mail, if such owner be known to the officer or can be ascertained with reasonable effort, but if such owner be unknown or cannot be ascertained, then the officer shall post written notice in three public places in his town, giving a description of the dog, stating where it is impounded and the conditions for its release. If after five days the owner does not claim such dog such officer shall dispose of the dog in a proper and humane manner.

(3) Any person who shall violate any of the provisions of this act shall be liable to a penalty of not less than five dollars nor more than \$50.00 for such violation. (Act Apr. 22, 1939, c. 410, §7.)

7297-48. Owners of domestic animals may file claim for damages.—(1) The owner of any domestic animals (including poultry, and game birds) attacked, chased, worried, injured or killed by a dog or dogs may within ten days after the owner shall have knowledge or notice thereof, file a written claim for damages with the clerk of the town, village or city in which the damage occurred. The form of such claim may be prescribed by the county auditors. Upon presentation of such claim the supervisors of the town, the board of trustees of the village, or the common council of the city, or a committee appointed for that purpose by the supervisors, the board of trustees or the common council shall promptly investigate said claim and may subpoena witnesses, administer oaths and take testimony relative thereto and shall within 30 days after the filing of said claim make, certify and return to the county auditor said claim, a report of the investigation, the testimony taken and the amount of damages, if any, suffered by the owner of said animals.

(2) The form of the report and certification shall be prescribed by the county auditor and shall be subscribed by the supervisors, board or committee making the same. The county auditor shall lay before the county board at its first meeting, following the receipt of any such claim, all claims so filed and reported and the same shall be acted upon and determined by the county board as other claims are determined and acted upon, and the county board shall equalize the values and claims between and within the various towns of the county. The amount of damages filed and reported to the county auditor shall be prima facie proof of the actual damages sustained, but evidence may be taken before the county board relative to the claims as in other cases and appeals from the action of the county board shall lie as in other cases. On appeal from the action of the county board, said trial shall be by the court without a jury.

(3) Such claims shall be solely against the dog license fund and shall create no other liability on the part of the county.

(4) The amount allowed by the county board upon any such claim shall in no case exceed \$100.00 for each horse, mule, or bovine; \$15.00 for each sheep or goat; \$30.00 for each swine; or three dollars for each fowl. Whenever the claimant shall furnish conclusive evidence as to the ownership of the dog or

dogs doing the damage the claimant shall be paid the full amount of the claim submitted.

(5) Distribution of dog license fund among claimants for loss of animals by dogs within license year shall be made at the close of license year. (Act Apr. 22, 1939, c. 410, §8.)

7297-49. May kill dogs in certain cases.—Any person may kill any dog, that he knows is affected with the disease known as hydrophobia, or that may suddenly attack him while he is peacefully walking or riding and while being out of the inclosure of its owner or keeper, and may kill any dog found killing, wounding or worrying any horses, cattle, sheep, lambs, or other domestic animals. (Act Apr. 22, 1939, c. 410, §9.)

7297-50. Allowance of claims.—No claim shall be allowed by the county board at less than the amount so certified and reported, unless the claimant shall first be notified that such action is contemplated and shall have been given a reasonable opportunity to be heard and to offer further evidence in support of his claim. (Act Apr. 22, 1939, c. 410, §10.)

7297-51. Removing of licenses.—No person except the owner or his authorized agent shall remove any license tag from a dog collar or remove any collar with a license attached thereto from any dog. No person shall keep or harbor a dog wearing a fictitious, altered or invalid license tag, or a license tag not issued in connection with the licensing or keeping of the dog wearing the same. No license or license tag issued for one dog shall be transferable to another dog. Every town, village or city clerk shall notify the county attorney of his county of every refusal or failure of an owner to obtain a license for keeping his dog and it shall be the duty of the county attorney to institute proceedings against such owner and against every owner within his county who has violated any of the provisions of this act. (Act Apr. 22, 1939, c. 410, §11.)

7297-52. Exemptions.—Dogs brought into this state temporarily for a period not to exceed 30 days shall be exempt from the provisions of this act. (Act Apr. 22, 1939, c. 410, §12.)

7297-53. Provisions severable.—The provisions of this act relating to the licensing of dogs and the provisions for the payment of claims out of the dog license fund for damages done by dogs are severable and the provisions relating to such payment of claims are not an inducement to the enactment of any other provisions of said act. (Act Apr. 22, 1939, c. 410, §13.)

7297-54. Same.—In the event that any section, provision or part of this act shall be declared unconstitutional it shall not in any way affect any other section, provision or part thereof. (Act Apr. 22, 1939, c. 410, §14.)

7297-55. Repeal.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 7297-1 to 7297-37 are hereby repealed. (Act Apr. 22, 1939, c. 410, §15.)

7297-56. Construction of act.—This act is supplemental to all other laws relating to dogs not expressly referred to herein, and to all laws relating to taxation of dogs as personal property, and shall not be construed as to modify, repeal or in any wise affect any part of [sic] provision of any such laws not expressly repealed herein or to prevent municipalities from prohibiting licensing or regulating the running at large of dogs within their respective limits by law or ordinance now or hereafter provided. (Act Apr. 22, 1939, c. 410, §16.)