

effect and be in force, from and after its publication in the Iowa Star and Des Moines Republic.

Approved, January 24, 1853.

I certify that the foregoing act was published in the Des Moines Republic Feb. 3, and Iowa Star Feb. 10, 1853.

GEO. W. McCLEARY,
Secretary of State.

[165] CHAPTER 104.

WATER CRAFTS, ETC.

AN ACT to provide for the taking up of water crafts found adrift, lost goods and estray animals.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. ~~Take up—value—affidavit—justice of the peace to issue warrant—appraisers—appraisement—report—estrays book—copy—record.~~ That if any person or persons shall hereafter stop, or take up, any keel or flat boat, ferry boat, batteau, pirogue, canoe, or other vessel, or water craft found adrift on any water course within the limits, or upon the boundaries of this state, and the same shall be of the value of five dollars, or upwards, including her cargo, tackle, rigging, and other appendages, it shall be the duty of such person or persons within five days thereafter, provided the same shall not have been previously proven and restored to the owner, to go before some justice of the peace of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or water craft, where and when the same was found; whether any, and if so, what cargo, tackle, rigging or other appendages were found on board or attached thereto; and that the same has not been altered or defaced, either in the whole or in part, since the taking up, either by him, her, or them, or by any other person, to his, her or their knowledge; and the said justice shall thereupon issue his warrant, directed to some constable of his township or district, commanding him forthwith to summon three respectable householders of their neighborhood, if they cannot otherwise be had, whose duty it shall be to proceed, without delay, to examine and appraise such boat or vessel, her cargo, or tackle, rigging, and all other appendages as aforesaid, and to make report thereof, under their hands and seals, to the justice issuing such warrant as aforesaid, who shall enter the same, together with the affidavit of the taker up at large, in his estray book; and it shall be the further duty of such justice, within ten days after the said proceedings shall have been entered on his estray book aforesaid, to transmit a certified [166] copy thereof to the clerk of the county judge of the proper county, to be by him recorded in his estray book and file the same in his office.

SEC. 2. ~~Less than \$20—advertise—vest—exceed \$20—notice—newspapers—sell—county treasury.~~ In all cases where the appraisement of any such boat or vessel, including her cargo, tackle, rigging, or other appendages, as aforesaid, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court house, and in three other of the most public places in the county, within five days after the justice's said certificate shall have been entered on the records of the county judge, and if no person shall appear to claim and prove such boat

or vessel within six months from the time of taking up as aforesaid, the property in the same shall vest in the taker up; but if the value thereof shall exceed the sum of twenty dollars, it shall be the duty of the clerk of the county judge, within ten days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the door of the court house, and at three other of the most public places of the county; and also, a notice thereof to be published for three weeks successively in some public newspapers printed in this state, and if the said boat or vessel be not claimed or proven within ninety days after the advertisement of the same as aforesaid, it shall be the duty of the taker up to deliver the same to the sheriff of the county wherein such boat or vessel may have been so taken up, who shall thereupon proceed to sell the same at public auction to the highest bidder, for ready money having first given ten days' notice of the time and place of sale; and the proceeds of all such sales, after deducting the cost, and other necessary expenses, shall be paid into the county treasury.

SEC. 3. Money—description—return. If any person shall hereafter find any lost goods, money, bank notes, or other choses in action, of any description whatsoever, of the value of five dollars, and upwards, it shall be the duty of the person or persons to inform the owner thereof, if known, and to make restitution of the same, without any compensation whatever, except the same be voluntarily given, on the part of the owner; but if the owner be unknown, such person or persons shall, within five days after such finding as aforesaid, take such goods, money, bank notes, or [167] other choses in action, before some justice of the peace of the proper county, and make affidavit of the description thereof, the time and place when and where the same was found; that no alteration had been made in the appearance thereof since the finding of the same; whereupon the justice shall enter a description of the property thus found, and the value thereof, as near as he can ascertain, in his estray book, together with the affidavit of the finder, to be taken as aforesaid; and shall also, within ten days after said proceedings shall have been entered on his estray book as aforesaid, transmit to the clerk of the county judge a certified copy thereof, to be by him recorded in his estray book, and file the same in his office.

SEC. 4. Finder or taker up—vest in finder—exceed \$10—advertise—newspaper—county treasury—clerk—sheriff—sell—notice—county treasury. In all cases where such lost goods, money, bank notes, or other choses in action, shall not exceed the sum of ten dollars in value, it shall be the duty of the finder to advertise the same on the door of the court house, and three other of the most public places in the county; and if no person shall appear to claim and prove such money, goods, bank notes, or other choses in action, within twelve months from the time of such advertisement, the right to such property, when the same shall consist in goods, money, or bank notes, shall be vested in the finder; but if the value thereof shall exceed the sum of ten dollars, it shall be the duty of the clerk of the county judge, within ten days from the time of the justice's said certificate, at his office, to cause an advertisement to be set up on the court house door, or three of the most public places in the county; and also a notice thereof to be published for three weeks successively in some public newspaper printed in this state; and if said goods, money, bank notes, or other choses in action, be not reclaimed within six months after the advertisement as aforesaid, it shall be the duty of the finder of the property, if the same shall consist in money or bank notes, to deliver the same to the county treasury after deducting the necessary expenses hereinafter provided for; if in bank bills, notes of hand, patents, deeds of conveyance, articles of apprenticeship, mortgages, or other instru-

ments of value, the same shall be delivered to the clerk of the county judge, to be preserved in his office, for the benefit of the owner, whenever legal application shall be made there [168] for; if in goods, wares, or merchandize, the same shall be delivered to the sheriff of the county, who shall thereupon proceed to sell the same at public auction to the highest bidder, for ready money, having first given ten days' notice of the time and place of such sale; and the proceeds of all such sales, after deducting the cost and other expenses, shall be paid into the county treasury.

SEC. 5. Duty of when less than \$5. In all cases where any vessel or water craft shall be taken up, or any goods, money, or bank notes shall be found as aforesaid, which shall be of a value less than five dollars, it shall be his duty to advertise the same by setting up three advertisements in the most public places in the neighborhood; but in such cases, the taker up or finder shall be required to keep and preserve the same, in his or her possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily, whenever legal application shall be made for the same, provided it shall be done within three months from the time of such taking up or finding; but if no owner shall appear to claim such property within the time aforesaid, the exclusive right to the same shall be vested in the finder or taker up.

SEC. 6. Householder's duty in taking up horses, etc.—oath—warrant—appraisal—marks—return—advertise—proviso. Every person being a householder, who shall take up any estray horse, gelding, mare colt, mule, or ass, shall, within five days thereafter, take the same before some justice of the peace of the county wherein such estray shall have been taken up; provided the same shall not have been previously proven by the proper owner or owners, and a tender of the compensation herein provided for, and make oath before such justice, that the same was taken up at his or her plantation, or place of residence, in said county, or otherwise, as the case may be, and that the mark or brands have not been altered by him or her, or any other person, to his or her knowledge, either before or after the same was taken up; the justice shall then issue warrant, directed to a constable of his township, commanding him to summon three disinterested householders of the neighborhood, unless they can otherwise be had, to appraise such estray; and after they, or any two of them, have been sworn, to appraise such estray, without partiality, favor or affection, they shall forthwith proceed to ap- [169] praise the same, and shall immediately make report thereof in writing under their hands and seals to the said justice, in which they shall be required to set forth a description of the marks, natural and accidental, brands, color and age of such horse, gelding, mare, colt, mule or ass; and the said justice shall thereupon enter the same in his estray book, and transmit a certified copy thereof, under his hand and seal together with the original return of the appraisers, to the county judge of said county within ten days thereafter, who shall enter the same in his estray book, and file the aforesaid transcript and report of the appraisers in his office; and the said judge shall, within twenty days from the time of the reception of the justice's said transcript, cause an advertisement thereof to be set up on the door of the court house, and at three other of the most public places in the county; and also, a notice to be published for three months successively in some public newspaper, printed in this state; provided, the newspaper publication may be dispensed with in all cases, where the value of such estray shall not exceed the sum of fifteen dollars.

SEC. 7. Cattle, etc.—similar to 6th section—fees—horses, etc. Any person being a householder, who shall take up any head of neat cattle, sheep, goat, or hog, shall, within five days thereafter, cause the same to be advertised in three of the most public places in the neighborhood or township, and shall also, within ten days thereafter, unless such stray or strays shall have been previously reclaimed by the owner, go before some justice of the peace of the proper county, and make oath as is required in the taking up of any estray horse, whereupon such justice shall take from such taker up, on oath, a particular description of the marks, brands, color, and age of such neat cattle, sheep, goat, or hog; and said justice shall also cause such estray or estrays last mentioned to be appraised in like manner as is required to be done in the case of an estray horse, after which the same entries and proceedings shall be made as is required in the sixth section, except that it shall not be necessary to make publication in a newspaper when the valuation of the property shall not exceed the sum of fifteen dollars: provided, that if two or more estrays of the same species [170] are taken up by the same person, at the same time, they shall, in all cases, be included in one entry and in one advertisement, and in such cases, the said justice, clerk, and appraisers shall receive no more for their services, than is allowed in cases where but one of the same is taken up; but in all cases where the value does not exceed the sum of five dollars, no further proceedings need be had than for the justice to enter the same in his estray book, for which the justice shall be entitled to a fee of twenty-five cents; and when so posted and entered, the right, after the expiration of six months, shall vest in the taker up; and if the appraisement of any estray or estrays shall exceed five dollars, and does not exceed ten dollars, the right therein shall be vested in the taker up, by his paying all charges which may have accrued in posting the same.

SEC. 8. Oath—proviso. Any person being a householder, finding any estray horse, gelding, mare, colt, mule or ass, running at large without any of the settlements in this state, may take up the same, and shall forthwith take such estray or estrays before the nearest justice of the peace, and make oath as directed in the sixth section of this act, after which it shall be lawful for such person to post such estray or estrays in manner and in form as in other cases: provided, that nothing in this act shall be so construed, as to authorize any person to take up or stop any estray animal between the first day of May and the first day of November, unless the same be a work beast, and manifestly straying away from the owner.

SEC. 9. Compensation—horse, mule, ass, \$2.00—cattle, 20 cents—sheep or hogs—goods or money—costs. As a reward for the taking up of all boats and other vessels, and of estrays, and for finding of lost goods, money, bank notes, and other choses in action, there shall be paid by the owner, to the taker up or finder, before restitution of the property; or proceeds thereof shall be made, for every horse, mare, colt, mule or ass, the sum of one dollar, except when the same may have been taken up out of the settlement, in which case the taker up shall be allowed the sum of two dollars, for each head of neat cattle; twenty cents, for every sheep, or hog, ten cents; and in all cases where goods, money, or bank notes, shall be found, the finder shall be entitled to ten per cent. upon the value thereof, in addition to which said allowance, the owner shall also be re-[171] quired to pay to the taker up, or finder, all such cost and charges as may have been paid by him, or her, for services to be rendered as aforesaid, including the cost of publication; together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the taker up, or finder, and the owner cannot agree, shall be assessed by two disinterested house-

holders of the neighborhood, to be appointed by some justice of the peace of the proper county, whose decision, when made, shall be binding and conclusive on all parties.

SEC. 10. No owner—within 1 year—vest—sheriff—sell—county treasury. In all cases where any stray animal shall be taken up as aforesaid, and no owner shall apply or prove his or her property, within one year after advertisement shall be made as aforesaid, and the valuation exceed the sum of ten dollars, and no owner appear within the time aforesaid, the property may be vested in the taker up, by his paying the appraised value into the county treasury, after deducting all necessary expenses as hereinafter provided; but if the taker up or finder shall fail to comply as aforesaid, it shall be his duty to deliver the same to the sheriff of the county, who shall thereupon proceed to sell such stray or strays at public auction to the highest bidder, for ready money, having first given ten days public notice of the time and place of sale, and the money arising from the sale thereof, after deducting the cost and charges paid by the taker up, and reasonable expenses for keeping the same, together with all other costs and charges which may be incident thereto, shall be paid into the county treasury: provided, that the taker up shall in all cases have the privilege, at the expiration of the year aforesaid, to pay into the county treasury the aforesaid value of such stray, after deducting the cost and charges aforesaid, and by so doing, shall acquire an absolute right to the property in such estrays; and provided, that if the taker up and treasurer cannot agree on the charges for keeping, it shall be assessed as aforesaid, by two disinterested householders, which decision shall be binding.

SEC. 11. County treasury—owner apply—use of schools. The net proceeds of all such sales, as may at any time be made by sheriff in pursuance of this act, and all such money or bank notes, as may be paid over to the county treasurer, as directed in the tenth section of this act, shall remain in the hands of the county treasurer, in trust for the owner, if any such shall apply within one year from the time the same shall have been paid over; but if no owner shall appear within the time aforesaid, the said money shall be considered as forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the county treasury for the use of common schools in said county.

SEC. 12. Accidents—not accountable—notice. If the taker up of any stray animal, water craft or lost goods, bank notes, or other choses in action, shall be faithful in taking care of the same, and if any unavoidable accident shall happen thereto, without the fault or neglect of the finder or taker up, before the owner shall have an opportunity of reclaiming the same, such taker up or finder shall not be accountable therefor: provided, that in all cases of accident as aforesaid, it shall be the duty of the taker up or finder, within ten days thereafter, to certify the same under his hand and seal to the clerk of the county judge, who shall make an entry thereof in his stray book.

SEC. 13. Taker up disposing of property—forfeit. If any person shall trade, sell or loan, out of the limits of this state, any such property as may at any time be taken up or found as aforesaid, except such animals as are suitable for the harness or saddle, before he, she or they shall be vested with the right to the same, agreeably to the provisions of this act, he, she or they so offending shall forfeit and pay double the value thereof, to be recovered by any person who shall sue for the same, in any court, or before any justice of the peace having jurisdiction thereof, by action of debt, one-half thereof shall go to the person suing, and the other half to the county as aforesaid.

SEC. 14. Failure to comply—fine. If any person shall take up any boat or vessel, or any estray beast, or shall find any goods, money, bank notes or other choses in action, and shall fail to comply with the requisition of this act, every such person so offending shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace: who will sue for the same, the one-half whereof, shall be for the use of the person suing, and the other half to be deposited in the county treasury, for the use of common schools: provided, that nothing herein [173] contained shall prevent the owner from having and maintaining his action for the recovery of any damage he or she may sustain.

SEC. 15. Fees—justice of the peace—clerk—sheriff—constable—appraiser. In all cases where services shall be performed by any officer or other person under this act, the following fees or compensation shall be allowed, to wit: To the justice of the peace, for administering the oath to the taker-up or finder, making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county judge, fifty cents; to the clerk for taking proof of the ownership of the property, and granting certificate of the same, twenty-five cents; for registering each certificate transmitted to him by the justice as aforesaid, ten cents; for advertisements, including the newspaper publication, fifty cents; to the sheriff, on account of sales made by him in pursuance of this act, four per cent. on the amount; to the constable, for each warrant served on appraisers, twenty-five cents; to each appraiser, twenty-five cents; all which said costs and charges, with the exception of the justice for granting a certificate of ownership, and the sheriff's commission, shall be paid by the taker up to the person entitled thereto, whenever the service shall be performed; provided, that in all cases where it shall be necessary to make publication in a newspaper, the taker up or finder, as the case may be, shall be required to deposit with the clerk of the county judge a sum of money sufficient to pay for the same, previous to the publication thereof, all which costs and charges shall be reimbursed to the taker up or finder, in all cases where restitution of the property shall be made to the owner, or the same shall be delivered to the sheriff to be sold, or where money or bank notes shall be paid into the county treasury, in addition to the reward to which such person may be entitled, for such taking up or finding as aforesaid.

SEC. 16. Estray book. For the more speedy recovery of the estrays or other lost property, it shall be lawful at all times for any person interested, to search and examine the estray book of the clerk for any information, he or she may want in relation to any property which may at any time have strayed away or been lost by any such person as aforesaid, for which said clerk shall be entitled to no compensation.

[174] **SEC. 17. Take effect.** This act to take effect from and after the publication of the laws of this session.

Approved, January 24, 1853.

CHAPTER 105.

FENCES.

AN ACT concerning fences.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Fences—lawful. That any fence constructed of strong materials, put up in a good and substantial manner, with sufficiently small spaces between the materials composing said fence, and raised to the height of