

and damage, approved March 10, 1892, and to repeal sections 6 to 14, inclusive, of said act." There is nothing in the text of the last named act which states that it is intended to supersede the sections of the act of 1892 which it repeals, but it is here assumed that such was the intention of the Legislature. It is too bad that this matter has been left open to doubt, as a judicial decision will be required to settle it. The NEWS called attention to the commission soon after the bill was introduced, but no heed was paid to the suggestion, and a serious ambiguity is the result.

The first five sections of the act of 1892, are, for the purposes of this compilation, assumed to be still in force, and it is further assumed that the act of 1894, which was approved March 8th, and the title of which is quoted above, was intended to take the place of the last nine sections of the act of 1892.

It will be noticed that some of the sections after section 5 have double numbers, but that this double numbering is not continued throughout. It was probably the intention that the section numbered "Section 1.—Sec. 6" was to take the place of section 6 of the act of 1892, as it is the first section of the act of 1894, and so on; but why the double numbering was not continued the present writer is not able to state, unless the failure to do so was an oversight on the part of the author of the latter bill, or of the engrossing clerk. It is also here assumed that all laws upon this subject, enacted prior to 1892, have been repealed. A short bill was passed at the session of 1894, substituting for the word "premises," in section 5 of the act of 1892, the words "improved real property;" and section 13 of the act of 1894 alters the wording of section 3 of the act of 1892, which changes are here made.

With this explanation the compilation is submitted. Faults have been taken to make it correct and reliable, because of the large number of people in the Territory who are interested in it.

FIRST FIVE SECTIONS OF THE ACT OF 1892.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:

SECTION 1. That any precinct of said Territory may at any general or special election, called for that purpose by the county court thereof, by a vote of a majority of all the taxpayers of said precinct, declare in favor of fencing their farms and allowing their animals to run at large; and in such cases the provisions of this act authorizing the detention and sale of animals for damage shall be inoperative.

Sec. 2. It shall be the duty of the county court of each county, at its June session in the year 1892, or as soon thereafter as may be practicable, to declare what shall constitute a lawful fence for that county and the fence viewers of said county shall be governed thereby.

Sec. 3. [As amended by section 13 of the act of 1894]. All horses, mules and neat cattle, found running at large, on which there is no brand, except calves and cows running at large on the premises of any person not the owner, are hereby declared to be estrays.

Sec. 4. It is hereby made the duty of

the constable of any precinct in any county in this Territory to take up any estrays in said precinct, and, after advertising them by posting notices in three of the most public places in said precinct (giving a general description thereof) for ten days, shall sell the same at public auction, to the highest bidder for cash; and after deducting costs and expenses of keeping and sale, shall deposit the balance of the proceeds of the sale with the justice of the peace in and for said precinct, to be by him disposed of as in the case of balance of sale of animals for damages as hereinafter provided. *Provided*, That the constable shall have the power to sell estrays at "general roundups" or drives, and shall advertise his intention to do so for a period of fourteen days previous thereto, in some paper having a general circulation in such county, and he shall receive as compensation fifteen per cent of the proceeds of such sales.

Sec. 5. If any neat cattle, horses, mules, asses, sheep, goats or hogs shall trespass or do damage upon the improved real property of any person, except in cases where said places are not enclosed by a lawful fence in counties where a fence is required by law, the party aggrieved may recover damages by an action at law against the owner of the trespassing animals, and no animals trespassing shall be exempt from execution. *Provided*, The fees in such cases shall be but one half the fees in civil cases.

THE WHOLE OF THE ACT OF 1894.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:

SECTION 1.—Sec. 6. The owner or occupant of any improved real property may distrain all animals doing damage on such property and keep them in some secure place and properly care for the same, for twenty-four hours after the doing of such damage. He shall cause said damage to be appraised within twenty-four hours after the same shall have been done, by some disinterested voter of the precinct, who shall certify to the same in writing, and which certificate of appraisement may be substantially in the following form to wit:

TERRITORY OF UTAH,
County of _____ } ss.
Precinct, _____

This certifies that, at the request of _____, I have this day appraised certain damage upon (here describe premises upon which damage is done) to (here describe nature of damage) alleged to have been done by (here describe the animal alleged to have done the damage) owned by (here give the name of the owner of the animals if known, and if unknown state the fact) on the (here give date of the doing of the damage) and after viewing the premises and making due examination and inquiry, I appraise the same at the sum of \$ _____, and that my fees for making this appraisement are \$ _____, number of miles traveled _____, number of hours employed in making this appraisement _____.

Dated at _____, this _____ day of _____ 18—,

Appraiser.

The appraisers shall deliver said certificate of appraisement to the person damaged, who shall also sign the same,

and shall use due diligence to find the owner of said animals, and for this purpose shall examine the Territorial brand sheets, in the possession of the constable, and if the owner of said animals is known, and a resident of the precinct, the person damaged shall, within twenty-four hours after the distraining of said animals, deliver to the owner thereof a copy of the certificate of appraisement of damage. If the owner is known but is not a resident of the precinct where said damage is done, the persons distraining said animals shall, within twenty-four hours after said damage shall have been done, deposit in the postoffice, postage prepaid and registered, a letter containing a copy of said certificate of appraisement, addressed to the owner of said animals, at his known place of residence.

Sec. 2.—Sec. 7. If at the expiration of twenty-four hours after the distraining of the animals mentioned in the preceding section, the owner thereof cannot be found, or if found shall neglect or refuse to pay the damages and costs thereon, the party distraining the same shall forthwith deliver said animals with a copy of the certificate of appraisement, to the constable of the precinct wherein said damage is alleged to have been done, and also deliver to the justice of the peace of said precinct the certificate of appraisement.

Sec. 3.—Sec. 8. Upon receipt by the justice of the peace, of the certificate of appraisement, he shall immediately file the same in his office, and make the proper and necessary entries in his docket as in other civil cases, and the said certificate of appraisement shall constitute the complaint in said case, and the person distraining said animals shall be designated as the plaintiff in all subsequent proceedings in said case, and the owner of said animals or if the owner be unknown, then the unknown owner of the animals, briefly describing them, shall be designated as the defendant, and the justice shall immediately issue a summons, addressed to the defendant, requiring him to appear before said justice at his office, and to answer to said complaint, within five days after the service upon him of said summons, if served upon him within the precinct for which the justice is acting, and if served out of such precinct, then within said five days from the date of its service, with one day additional for every twenty-five miles or fractional part thereof of the distance that the defendant may reside from the office of the justice, by the nearest traveled route, and to which summons shall be annexed as a part thereof a certified copy of the certificate of appraisement in said case, and in other respects said summons shall be the same in form as other summonses in justices' courts in civil actions, and shall deliver said summons to the constable of the precinct for service, and said justice shall hear, try and determine said case in the same manner as other civil cases are tried and determined in justices' courts, and shall, in all other respects, proceed as in other civil cases.

Sec. 4.—Sec. 9. The constable shall receive, hold and properly care for, all animals committed to his custody under the provisions of this act, pending the determination of the case, and