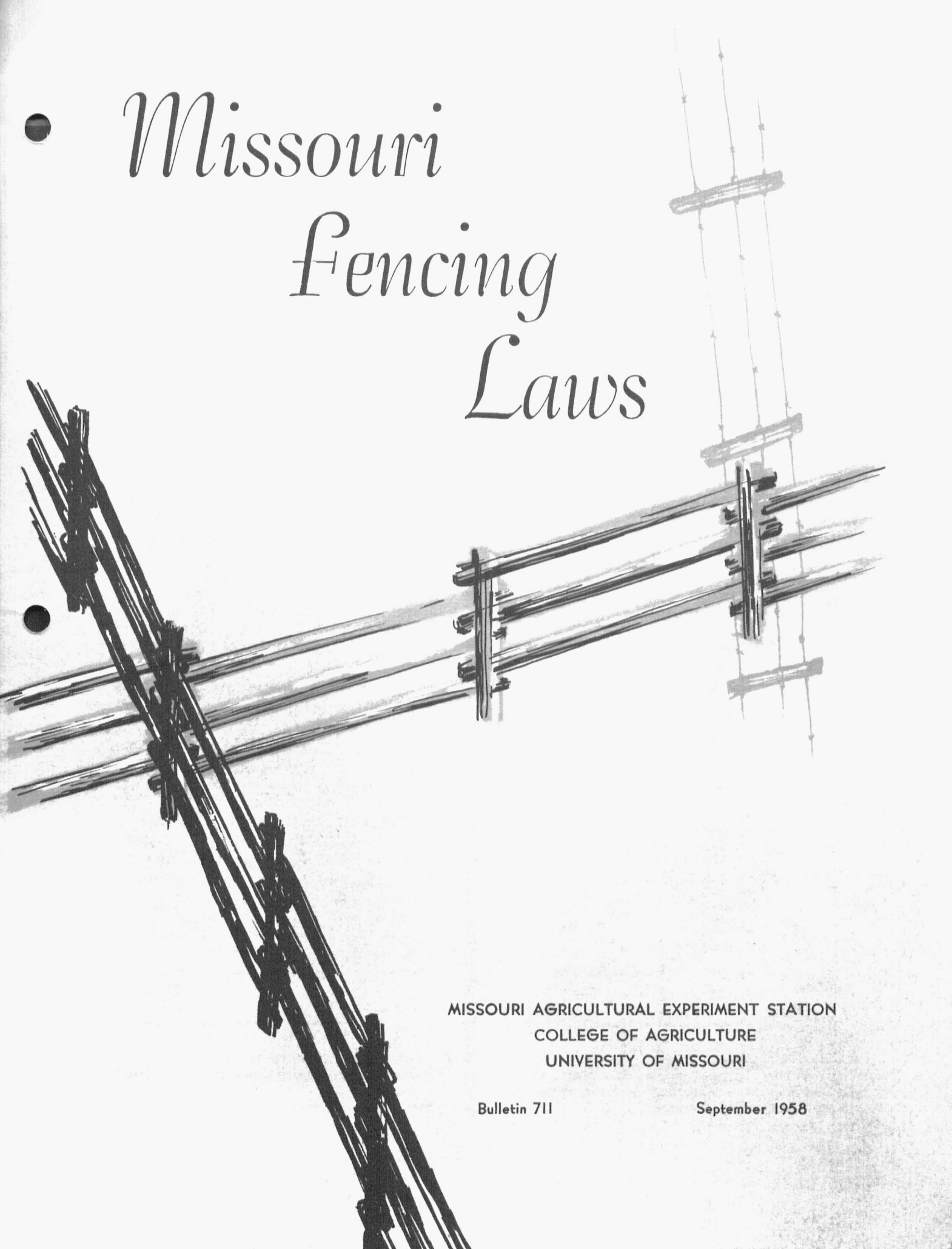


Missouri Fencing Laws



MISSOURI AGRICULTURAL EXPERIMENT STATION
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Legal Responsibility for Fences in Missouri

Fences are used for two major purposes: (1) to mark boundaries between properties and (2) to control livestock. Both purposes help to establish and maintain harmonious relationships between people, but the second is especially important to Missouri farmers.

In the 1948-57 ten-year period, receipts from livestock averaged \$745,553,000 a year. This amount was 71.6 percent of the cash income from sale of farm products. Similar relationships between crops and livestock income are expected to prevail in the future. A body of law to set up rules for the control of animals that produce this income and to fix responsibility where control is incomplete is essential to stability in the livestock industry.

Missouri has such a body of law, but frequent inquiries about what constitutes a legal fence and the responsibilities of owners for damages when animals stray from the home farm lead to the conclusion that the statutes are not understood by a great many farm people.

The basic doctrine of the fence laws of Missouri is that owners of animals need not keep them within fences. However, the people of an area can require that livestock be restrained. Thus, in some parts of the state, free range is the custom; in others animals must be kept within fences. This fact often leads to confusion. The material in a part of the bulletin deals with these conflicting concepts. Other sections outline the responsibilities of property owners for division fences, and for damages caused by stray animals.

Not all of the questions that arise concerning fences nor those growing out of damages caused by stray animals are answered. However, the material that is presented will answer many of them, and the legal information presented will help people to prevent situations from arising that often lead to bitter controversy between neighbors.

This bulletin is a report on Department of Agricultural Economics Research Project 44. "Land Use."

Missouri Fencing Laws

Because of the diversity of agriculture in Missouri, laws regarding fences and restraint of livestock are largely matters of local county policy. This publication deals with basic policies and statutes. Neither the policies nor the laws are uniform throughout the state. Any combination may be in force in a particular county. However, some provisions apply in all sections. This fact will be indicated when the provision is analyzed.

Unless otherwise indicated, reference to "animals" or "livestock" will mean cattle, swine, horses, asses, sheep, and goats. Special mention of dogs will be made at one point. Nothing in this publication pertains specifically to barnyard fowl, yet the courts of Missouri have generally applied the same law as in the case of the animals specifically set out above.

I. BASIC DOCTRINE OF MISSOURI LAW OF FENCES

(The Enclosure Act)

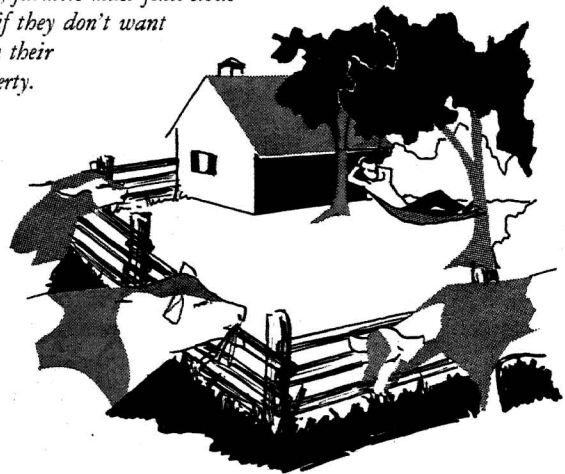
Missouri, contrary to states east of the Mississippi River, but in accord with the Great Plains and Western states, takes the basic view that owners of animals need not fence them in; instead the landowner must fence them out if he does not want them on his land. This "free range" law came from the Laws of the Louisiana Territory as adopted in 1808. Under that act, which is almost identical to our present Enclosure Act,¹ all fields are required to be enclosed with a fence of certain specifications. If a field or farm is enclosed with a lawful fence as provided by this chapter, the owner of animals which break through it and enter the field will be liable for their trespass. If the landowner does not have a lawful fence as provided in the statute, he cannot recover damages for other people's livestock running upon his land.

Courts that have considered the question of whether a particular fence has satisfied the statute have placed emphasis on substantial compliance

rather than conformity with a given list of specifications.

When animals do break through a lawful fence, the injured landowner can hold the owner liable only for his *true damages*.

In counties where the "free range" still is in effect, farmers must fence stock out if they don't want it on their property.



¹Missouri Revised Statutes, 1949, Section 272.010.

II. MODIFICATION OF THE BASIC DOCTRINE

(Optional Stock or Restraint Act)

It is easy to understand, in view of the types of agriculture carried on in some parts of Missouri, that a law which requires a landowner to fence roving animals off his land would not be in complete favor. To alleviate this obvious dissatisfaction, the Missouri legislature of 1883 passed a law which left it optional with the people of a particular county or township whether they wanted to restrain livestock from running at large or any one particular type of animal from running at large.²

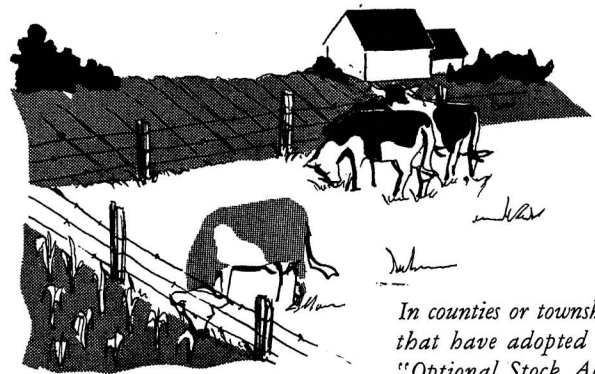
This statute which is substantially unchanged today, provides (if adopted) that it shall be unlawful for the owner of sheep, cattle, horses, asses, swine or goats to allow the same to run at large outside their enclosure and that the owner shall be liable for all damage they cause while unrestrained. The statute also provides for the sheriff to restrain livestock running at large and the owner will be charged with the sheriff's costs.

In counties and townships which have adopted this act (Optional Stock Restraint Act), the Enclosure Act is completely superseded and there is no duty to fence roving livestock off the land. *Instead the owner of livestock must fence them in or be strictly held liable for all damages done while the animals are at large.* It is no defense that the person damaged had poor fence or no fence at all. At this point it might be well to note that there may be some difference in this strict liability, if the livestock go onto an *adjoining* neighbor's land and there is a division fence involved. This will be discussed later in connection with division fences.

III. DIVISION FENCES

(Missouri Revised Statutes, 1949, Chapter 272.)

The law concerning division fences is separate and distinct from the problem of whether livestock must be fenced in or out. This law applies whether



In counties or townships that have adopted the "Optional Stock Act," farmers are required to fence their own animals in.

There is one qualification to the strict liability for damages in counties which have adopted this act and that is, where livestock is being driven along a public road. If the drover is using reasonable care, the owner of the livestock will not be liable to landowners whose property *adjoins* the road. This is in contrast to the situation where the animals go onto a landowner's property whose farm does not adjoin the road, since the qualification applies only to land adjoining the road.

The Optional Stock Restraint Act applies only if a majority of the legal voters in a county or township have voted to accept it. Otherwise, the Enclosure Act stays in effect and landowners must fence livestock out (free range). The election to adopt this act can be called by filing a petition with the county clerk signed by 100 householders (landowners or renters) of the township or county. Upon filing, an election will be ordered to determine whether the free range law shall continue to apply or whether the owners of the livestock must fence them in.

a county has a free range law or the restraint act. Thus, all that has previously been said is modified or altered to fit what is said here where the problem is between adjoining landowners.

²Missouri Revised Statutes, 1949, Section 270.010.

A. Building Division Fences

In the usual case, division fences are built by agreement or contract between the adjoining owners. In case it is impossible to get a fence built this way, it is provided by statute³ that, if one landowner builds a fence which wholly or partially encloses the land of an adjoining landowner, the builder, if the fence is on the boundary line, can force the adjoining owner to pay for an undivided one-half of the fence that serves to enclose the adjoining landowner.

In case the value of the undivided one-half cannot be peaceably ascertained, it is possible to have three disinterested householders appointed by the judge of magistrate court to appraise the value to be charged to each landowner. If the builder cannot collect from the adjoining owner, his ascertained share, this may be reduced to judgement by court action.

B. Portion of Division Fence Each Landowner Is to Keep in Repair

This again will normally be easily agreed upon by the adjoining landowners. However, if that is not the case, it is provided by statute that either party may ask the magistrate judge of the county to appoint three disinterested householders to view the fence and designate which part each landowner should maintain. The fee for the viewers is \$1 per day—this cost to be borne equally by the adjoining landowners.

C. Duty to Keep Division Fence in Repair

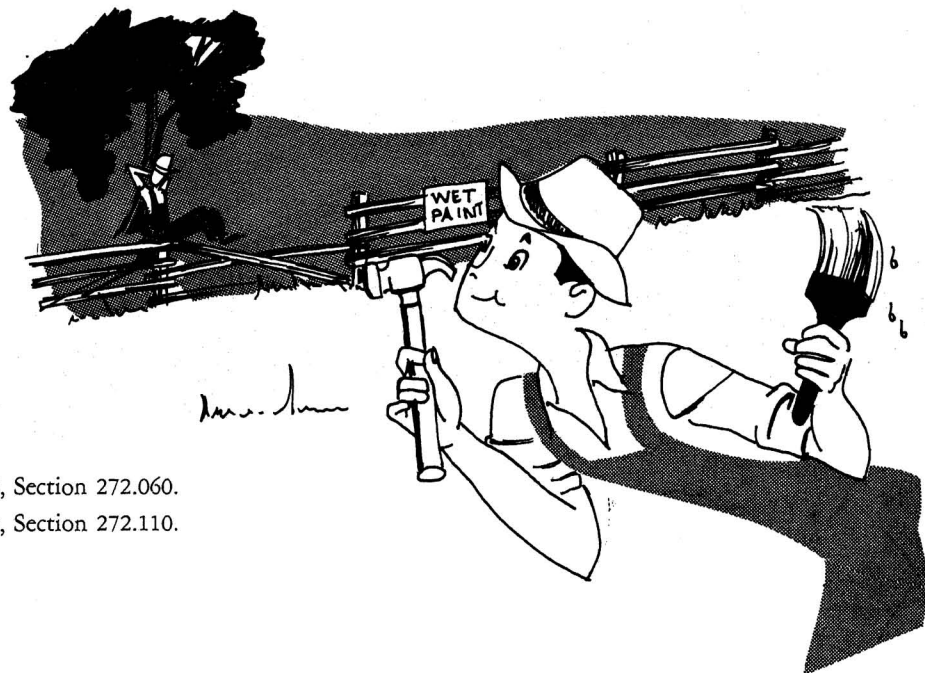
Here again the normal situation will not call for the application of legal rules; however, in case

one landowner refuses to maintain his part of a division fence, his adjoining landowner has the benefit of a statute⁴ which provides: "Every person who owns part of a division fence *must* keep the same in good repair." To facilitate this command, in the case of the reluctant fence mender, it is further provided that either party owning land adjoining a division fence may, upon the failure of the other party to keep his part in repair, have all that part owned by the other party repaired at that party's expense. Further, if the party who fails to keep his part in repair causes the other damage, the injured owner can recover twice the value of his damages. The collection of these damages can be enforced by restraining any livestock that come onto the injured party's land through the other owner's portion of the fence.

D. How Division Fences Affect the Trespassing Animal Problem

If animals come onto the property of an adjoining owner through a division fence, regardless of whether the county has the free range Enclosure Act or the Optional Restraint Act, liability for damages will depend on whose end of the fence the livestock went through. If, however, the livestock go onto an adjoining owner other than through the division fence—for example, if they (the animals) go out into a road and then in through an outside fence—the situation is the same as if the parties were nonadjoining owners and liability will depend on whether the county has a free range or restraint law.

Each landowner is responsible for the upkeep of a specific half of a division fence.



³Missouri Revised Statutes, 1949, Section 272.060.

⁴Missouri Revised Statutes, 1949, Section 272.110.

IV. WHAT IS A LAWFUL FENCE IN MISSOURI?

The structure of a lawful fence is provided by statute⁵ as summarized below. It is important to note that substantial compliance is all that is required, and not the strict detailed specifications as would seem to be indicated from the statute.

1. All hedges shall be 4 feet high.
2. Fences consisting of posts and/or rails, palings, barbed wire, palisades, shall be 4½ feet high, with posts set firmly in the ground, not more than 8 feet apart.
3. Fences composed of woven wire, wire net-

ting or wire mesh shall be 4½ feet high with posts not more than 16 feet apart.

4. All fences should be constructed to resist horses, cattle, swine and like stock, excepting in counties where swine are restrained from running at large. In these counties, all fences built of posts set firmly in the ground, not more than 16 feet apart with three barbed wires tensely stretched, with top wire at least 4 feet from ground shall be deemed to be a good and lawful fence.

V. STRAYS

(*Missouri Revised Statutes, 1949, Chapter 271.*)

A. Householders

Any householder of a county that finds an animal on a farm or plantation, which animal is unknown to him, may take up the same and if no one claims it within one year, he can acquire title to the same if he has complied with the following procedure:

1. Notified County Clerk within 15 days;
2. Posted 3 handbills in public places in the township for 30 days, giving the description of the animal;
3. If no one has claimed the animal within 30 days and the animal is worth more than \$15, filed an affidavit with magistrate judge;
4. Then run an ad in the county newspaper for two weeks.

When this procedure has been followed and no one has claimed the animal within one year, title vests in the taker, subject however, to the qualification that if the animal is worth more than \$12, the taker shall pay the county treasury one-half of the remainder after \$12 and all expenses are deducted.



B. Nonhouseholders

A person who does not have official residence in a county can take up a stray only if he posts a bond prior to impounding the animal.

C. Penalties

Anyone who takes up a stray animal without following the legal procedures outlined here will be subject to penal liability.

⁵Missouri Revised Statutes, 1949, Section 272.020.

VI. GENERAL CONSIDERATIONS

A. Agistment or Pasturing and Feeding for Hire

1. If A puts his livestock in B's hands to care for and feed, B is liable to A for all injuries the livestock receive due to B's carelessness in attending them.
2. If A puts his livestock in B's hands for B to care for and feed and the livestock break into C's field, A is not liable to C unless he was careless in selecting B and B was a known in-

competent. B would be liable to C if the restraint law was in effect, or in case of free range, he would be liable if C had a lawful fence which the stock broke through.

B. Running at Large or Free Range

When a livestock owner turns his animals out to run at large, he does so at his own peril and cannot hold liable a landowner who has an excavation which the animals fall into.

VII. PERSONAL INJURIES

A. Vicious Animals

The owner of a vicious animal is absolutely liable for any injury done by it to any person exercising ordinary care in a place where such person had a right to be. Thus, if a person is negligent around a known vicious animal or the person is in a place where he has no right to be, the injured person may not be able to hold the owner liable.

B. Highway Accidents

In order for a person to recover for injuries suffered as a result of a collision with an animal on a public highway, the injured person will have to show that the owner of the animal unlawfully per-



mitted it to run at large. If the owner of the animal can establish the fact that the animals were outside their enclosure through no fault or negligence of his, he (the owner) cannot be held liable for damages resulting from an accident involving the animal.⁶

VIII. INJURIES TO OTHER ANIMALS

In every case where a *dog* shall kill or maim sheep or any other domestic animals, the owner of the animals shall recover all damages caused and the owner of the dog is required to kill the dog, subject to penalty for failure to do so.⁷

Generally for recovery for injuries caused by animals (other than dogs) to other animals, the owner of the damaged livestock will have to show that the animals which caused his damages unlawfully trespassed upon his farm.

⁶Missouri Revised Statutes, 1949, Section 270.010.

⁷Missouri Revised Statutes, 1949, Section 273.020.

IX. SUMMARY WITH EXAMPLES OF APPLICATION OF THE LAW

Facts

A owns a mule, B is A's adjoining neighbor, C, whose farm does not adjoin A's, lives down the road one-fourth mile. All three (A, B and C) live in X County.

A. X County Has Not Passed the Optional Stock Restraint Statute.

A's mule gets into B's cornfield, then goes down the road to C's feed lot, causing substantial damage at both places.

1. If B has no lawful fence which was broken through by the mule, A will not have to pay for damage in B's cornfield. *Reason:* X County has not adopted the Optional Stock Restraint Statute, thus the free range enclosure act is automatically in effect and B must fence A's mule out of his cornfield.
2. If A and B have a division fence and the mule got through it, the liability will depend on whose end of the fence the mule got through as to whether A will have to pay for damage in B's cornfield. *Reason:* The division fence law applies even though X County has free range law. If the mule got into the cornfield through B's end of the fence, A will not have to pay for the damage.
3. A will not have to pay for the feed lot damage done on C's farm unless C had a lawful fence which the mule broke through. *Reason:*

X County has the free range law which requires landowners to fence out roving livestock.

B. X County Has Passed the Optional Stock Restraint Statute.

A's mule gets into B's cornfield, then goes to C's feed lot where three pigs are stepped on.

1. If there is no division fence between A and B, A will have to pay for damage in B's cornfield. *Reason:* Where the Optional Stock Restraint Act has been passed, owners of livestock must restrain them from running at large and there is no duty to build fences to keep roving animals out.
2. If there is a division fence between A and B, liability will depend on whose end of the fence the mule went through. *Reason:* The division fence law applies, regardless of whether the Stock Restraint Statute or the free range law is in effect.
3. As to C's pigs, A will be liable for damages, since X County has the Stock Restraint Statute. Under this statute, A, by not restraining his mule, has become liable for the true damages he did.

NOTE: Information as to whether a particular county has adopted the Optional Stock Restraint Act can be obtained at the office of the county clerk of that county.