

**171.02 History:** R. S. 1849 c. 37 s. 11, 12; R. S. 1858 c. 44 s. 11, 12; Ann. Stats. 1889 s. 1645; Stats. 1898 s. 1645; 1923 c. 291 s. 3; Stats. 1923 s. 171.02.

**171.03 History:** R. S. 1849 c. 37 s. 14; R. S. 1858 c. 44 s. 14; R. S. 1878 s. 1646; Stats. 1898 s. 1646; 1923 c. 291 s. 3; Stats. 1923 s. 171.03; 1967 c. 276 s. 39; 1969 c. 87.

**171.04 History:** 1903 c. 391 s. 1; Supl. 1906 s. 1646—1; 1921 c. 356 s. 1; 1923 c. 291 s. 3; Stats. 1923 s. 171.04; 1967 c. 276 s. 39; 1969 c. 87.

A storage company engaged also in the draying business is not a common carrier as to the business of storing goods for hire and cannot enforce a lien for storage under ch. 391, Laws 1903. It must proceed under sec. 3347, Stats. 1911. *Schacht v. Oriental S. & T. Co.* 155 W 121, 143 NW 1058.

**171.05 History:** 1903 c. 391 s. 2; Supl. 1906 s. 1646—2; 1923 c. 291 s. 3; Stats. 1923 s. 171.05; 1965 c. 252; 1967 c. 276 s. 39; 1969 c. 87.

**171.06 History:** 1903 c. 391 s. 3; Supl. 1906 s. 1646—3; 1923 c. 291 s. 3; Stats. 1923 s. 171.06; 1965 c. 252; 1967 c. 276 s. 39; 1969 c. 87.

**171.07 History:** 1921 c. 356; Stats. 1921 s. 1646—5; 1923 c. 291 s. 3; Stats. 1923 s. 171.07; 1953 c. 457.

**171.08 History:** 1889 c. 359; Ann. Stats. 1889 s. 1729b to 1729h; Stats. 1898 s. 1747i; 1923 c. 291 s. 3; Stats. 1923 s. 171.08; 1965 c. 252.

## CHAPTER 172.

### Animals Distrained.

**172.01 History:** 1870 c. 93 s. 1, 2; R. S. 1878 s. 1482; Stats. 1898 s. 1482; 1903 c. 14 s. 1; Supl. 1906 s. 1482; 1923 c. 291 s. 3; Stats. 1923 s. 172.01.

Sec. 1482, Stats. 1898, as amended, imposes liability upon an owner who suffers his animals to run at large, even though the original escape is without fault. Diligence to prevent escape is not a defense but diligence to recapture the animal after its escape is discovered is a defense. *Hadtke v. Grzyll*, 130 W 275, 110 NW 225.

Sec. 1482, Stats. 1898, as amended, eliminates, as to the animals it mentions, the limitation imposed by 90.03 and 90.04, upon recovery for damage done by trespassing animals. But it does not apply to a person not in control of the animal, as where the animal is under the control of its owner's tenant who allows the animal to run at large. *Reuter v. Swarthout*, 182 W 453, 196 NW 847.

The clear inference of 172.01, Stats. 1923, is that in the absence of the statute it was not unlawful for the animals therein mentioned to run at large. *Fox v. Koehnig*, 190 W 528, 209 NW 708.

Because 172.01 imposes strict liability on owners of domestic animals therein described, the statute must be strictly construed, and absolute liability cannot be imposed unless the statutory requirement of a "bull over 6 months old" is established. Where a plaintiff has established that the defendant owned the bull,

allowed him to run at large, and that the bull escaped his enclosure and did damage to the property or person of another, a rebuttable presumption arises that the bull was 6 months old. *Fringer v. Venema*, 26 W (2d) 366, 132 NW (2d) 565, 133 NW (2d) 809.

172.01, Stats. 1923, does not prohibit an owner from allowing a bull over 6 months of age to remain in a fenced pasture. 13 Atty. Gen. 580.

**172.015 History:** 1969 c. 417; Stats. 1969 s. 172.015.

**172.02 History:** 1870 c. 93 s. 3; R. S. 1878 s. 1483; Stats. 1898 s. 1483; 1923 c. 291 s. 3; Stats. 1923 s. 172.02.

**172.03 History:** 1870 c. 93 s. 4; R. S. 1878 s. 1484; Stats. 1898 s. 1484; 1923 c. 291 s. 3; Stats. 1923 s. 172.03; 1965 c. 252.

**172.04 History:** 1870 c. 93 s. 5; R. S. 1878 s. 1485; Stats. 1898 s. 1485; 1923 c. 291 s. 3; Stats. 1923 s. 172.04; 1967 c. 276; 1969 c. 87.

**172.05 History:** 1870 c. 93 s. 6, 7; 1877 c. 91 s. 1; R. S. 1878 s. 1486; Stats. 1898 s. 1486; 1923 c. 291 s. 3; Stats. 1923 s. 172.05; 1967 c. 276; 1969 c. 87.

**172.06 History:** 1870 c. 93 s. 8; 1877 c. 91 s. 2; R. S. 1878 s. 1487; Stats. 1898 s. 1487; 1923 c. 291 s. 3; Stats. 1923 s. 172.06; 1969 c. 87.

**172.07 History:** 1870 c. 93 s. 9, 10; R. S. 1878 s. 1488; Stats. 1898 s. 1488; 1923 c. 291 s. 3; Stats. 1923 s. 172.07.

**172.08 History:** 1852 c. 387 s. 2; R. S. 1858 c. 52 s. 2; R. S. 1878 s. 1490; Stats. 1898 s. 1490; 1923 c. 291 s. 3; Stats. 1923 s. 172.08.

## CHAPTER 173.

### Animals Doing Damage.

**173.01 History:** 1852 c. 29 s. 1, 6; R. S. 1858 c. 51 s. 1, 6; 1861 c. 229 s. 2; 1864 c. 470 s. 1; 1877 c. 194; R. S. 1878 s. 1631; Stats. 1898 s. 1631; 1923 c. 291 s. 3; Stats. 1923 s. 173.01; 1967 c. 276; 1969 c. 87.

The destruction of a fence surrounding an inclosure by an animal in the street subjects the animal to distraint. The distrainer may retain custody for 24 hours on his own premises or in the public pound, and no action can be commenced to deprive him of it. *Pettit v. May*, 34 W 666.

A town by-law prohibiting cattle from running at large confers no right upon the owner in fee of the land included in a highway to distraint cattle grazing thereon. *Taylor v. Welbey*, 36 W 42.

Where a person fails to give the notice prescribed in sec. 1631, Stats. 1898, the detention of the animals becomes unlawful and no demand is necessary to enable the owner to maintain replevin. *Goodrich v. Crabtree*, 142 W 16, 124 NW 1023.

**173.02 History:** 1852 c. 29 s. 2 to 4; R. S. 1858 c. 51 s. 2, 3; R. S. 1878 s. 1632; Stats. 1898 s. 1632; 1923 c. 291 s. 3; Stats. 1923 s. 173.02.