

Fish and Game—Right to Fish Within Enclosures of Other Persons.

A fisherman going upon privately owned land for the purpose of fishing is as much a trespasser as if he went upon the land for any other purpose, and may be held responsible for the damage actually committed.

C. A. Jakways, Esq.,
State Game Warden,
Helena, Montana.

My dear Mr. Jakways:

You have requested a statement of the law as to the rights of persons holding Montana fishing licenses to go upon the property of others, and to fish within their enclosures.

The law has been long established that, in the case of non-navigable streams, the right to fish is an incident of the ownership of the land, and while the public have a general ownership in animals wild by nature, including fish, and all members of the public have equal rights to pursue and take the same, the right to fish is separate from the right to go upon or use the property upon which the stream is situated, and does not excuse the trespass committed by one going upon private property without permission or authority to do so. Consequently the going upon privately owned land for the purpose of fishing is as much a trespass as going upon the same for any other purpose.

There is, however, no statute of Montana making it a criminal offense to go upon the property of another for the purpose of fishing, although Chapter 36 of the Laws of 1915 makes it a misdemeanor

for one to hunt upon private property having posted thereon notices forbidding hunting or trespassing. The liability, therefore, of one going upon the lands of another for the purpose of fishing is a purely civil one, and such person can only be held for the damage actually committed. Chapter 36, *supra*, also makes it a misdemeanor to tear down or injure any fence or enclosure for the purpose of entering the land or premises of another, or to build a fire within the enclosure of another.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.