

Livestock, Trespass Of. Trespass of Livestock.

Under Chapter CIII, Laws 1903, the owner or person driving livestock, held in herd, upon the lands of another is subject to fine for so doing.

Helena, Montana, May 28, 1908.

Hon. Roy E. Ayres,
County Attorney,
Lewistown, Montana.

Dear Sir:—

Your letter of the 25th inst. received, in which you request an opinion of this office upon the following question:

Is Chapter CIII, Laws 1903, relating to the trespass of stock held in herd, sufficiently definite in its terms to be enforced.

As stated in your letter, the technical and literal reading of Section 2 of said chapter would indicate that it was the live stock driven upon the property of the complainant that would be subject to the payment of the fine. However, it is clearly apparent from the context of the entire chapter that it was the intention of the legislature to provide punishment for the person or persons unlawfully driving or causing the live stock held in herd to be driven on or over the property described in the law. It is the general rule of construction that where the intention of the legislature is manifest from the reading of the entire section or chapter that the court, if possible, should give construction to vague and uncertain phrases that will carry out the manifest intention of the legislature.

Lewis' Sutherland Statutory Construction in Section 370 lays down the rule as follows:

"In the exposition of a statute the intention of the law-maker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion. If upon examination the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose. But to warrant the change of the sense, according to the natural reading, to accommodate it to the broader or narrower import of the act, the intention of the legislature must be clear and manifest."

In the recent case of Raymond vs. Blancgrass, 93 Pac. 648, our supreme court in construing Section 1232, Code Civil Procedure, held that the word "real" as used in said section should be construed as "personal" when such section was construed in conjunction with other sections of said chapter.

In the light of the above rules of construction we do not believe that officers whose duty it is to enforce the law should assume the responsibility of holding that said Chapter CIII, Laws 1903, is too vague and uncertain to be enforced, and that therefore, in the event of a complaint being made alleging the violation of this law, that same should be prosecuted and the sufficiency of the law tested in the courts.

Very truly yours,

ALBERT J. GALEN,
Attorney General.