

Fruit, Shipment of Before Inspection. Horticulture, Inspection of Fruit Before Shipment. Transportation Company, May Refuse Shipment of Fruit Until Inspected.

Under Sections 1829 and 1936 a transportation company or common carrier may lawfully refuse to receive shipments of fruit or nursery stock from points in Montana until the same has been first inspected and a certificate issued.

Helena, Montana, January 31, 1910.

Mr. M. L. Dean,
Inspector at Large,
Missoula, Montana.

Dear Sir:—

Since giving you our opinion of January 14, 1910, regarding the inspection of fruit, and the point at which such inspection should be made, another question has arisen, and that is as to whether a common carrier or transportation company is justified under the law in refusing to accept a shipment of trees, vines, etc., or of fruit, which has not been first inspected and an inspector's certificate attached thereto.

This question was not presented, or covered, in the opinion heretofore given you, as the question there considered was the right of the transportation company to refuse to deliver a consignment of fruit to the consignee where the same had not been inspected.

Section 1929 reads as follows:

"Every person who for himself or as agent for any other person or persons, corporation or corporations, transportation company or common carrier, shall deliver or turn over to any other person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions, grafts, without first having attached the inspector's certificate, as provided in section 1926 (10) of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than \$25.00 nor more than \$300.00.

Section 1936 reads as follows:

"Every person who for himself, or as agent for any other person or persons, transportation company or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any fruits without first having attached the inspector's certificate shall be deemed guilty of a misdemeanor."

The first section is intended to cover nursery stock of all kinds, while the latter section deals with fruit only. But by these two sections the

law expressly declares that it is unlawful for any person to deliver or turn over to another person or persons, corporation or corporations, any nursery stock or fruit without first having the inspector's certificate attached thereto. This law applies as well to a person delivering nursery stock or fruit to a transportation company as it does to a transportation company which delivers it to a consignee.

Therefore, in our opinion, a transportation company, or common carrier, if it so desires, can lawfully decline to accept any nursery stock or fruit from any point in this state where the same has not first been inspected and an inspector's certificate attached thereto.

Yours very truly,

ALBERT J. GALEN.

Attorney General.