Stallions, Penalty for Unlawfully Importing Into the State. Statute, Construction of Relating to Importing Stallions into the State.

Under the provisions of Sec. 16, Chap. 108, Session Laws of 1909, railway transportation companies and common carriers are prohibited from transporting into the state any stallion or jack unless accompanied by a state or federal veterinarian certificate. Violation of this section is punishable as provided in Sec. 12, of the act instead of Sec. 13 therein referred to. Where the language of the statute is ambiguous and its meaning can be ascertained by resorting to the history of its passage through the legislature, its history can be looked to to determine its meaning.

June 24, 1911.

Mr. Robert C. Strong,
Deputy County Attorney,
Billings, Montana.

Dear Sir:

I am in receipt of your letter June 19th, stating that your office has filed a complaint in the justice court of your county, charging the Burlington Railroad Company and F. B. Hunter, its agent, with unlawfully importing a stallion into this state contrary to thfe provisions of Section 16, Chap. 108, Session Laws of 1909, and requesting my opin-

ion as to the proper construction of section 16 of this act with reference to the penalty provided for by that section.

Section 16 provides that:

> "No railroad company, transportation company or common carrier shall transport into the state of Montana, any stallion or jack, unless accompanied by a state or federal veterinarian certificate as provided in Section 6 of this act. Violations of this provision shall be punishable as provided in Section 13 of this act."

Section 13 of the act provides how the funds accruing from fees, etc., collected under the act, are to be used, but does not mention or provide any penalty whatever. The only penalty provided in the act is to be found in Section 12, which is a general penalty covering the entire act.

I have carefully looked into the history of this act, and find that the bill as originally printed, contained another section 12, which section provided that every person complying with the provisions of the act, should have a lien upon the mare and off-spring of the services. When the bill reached the committee of the whole, it was amended by striking out said section 12, and by changing the numbering of section 13 to section 12, and renumbering each succeeding section in order thereafter. As so amended, it was referred to the engrossing committee and engrossed as amended. The legislature, however, omitted to change the figures 13 referred to in section 16 of the act as passed, to section 12, which is the new number of the section containing the penalty.

It is therefore apparent that the failure of the legislature to amend section 16 of the act with reference to the penalty therein provided for, to confirm to the new numbering of the sections, was purely an omission, and the intention of the legislature can be readily obtained from the history of the act as above outlined.

While it is true that courts must treat an enrolled bill properly authenticated, approved and deposited with the secretary of state, as conclusive of the regularity and validity of its passage, and that courts have no power to go behind it and look at the legislative journals or other records for the purpose of determining whether a constitutional requirement as to form and procedure, were observed (36 Cyc 971; State v. Long, 21 Mont. 34); yet, where the language of a statute is ambiguous, its meaning might frequently be ascertained by resort to the history of its passage through the legislature, and for the purpose of interpreting the legislative will, resort may be had to the history of the statute as found in the journals of the two legislative bodies, and also to the original bill with the amendments noted thereon. (36 Cyc, Page 1138 and cases cited. Edger v. Board of Com. 70 Ind. 331; State v. E. Rickson, 60 Md. 581; 113 N. W. 705, State ex rel Hay v. Hindson, 40 Mont. 353.)

This being the case it is quite apparent that the legislature intended by section 16 of the act, to refer to the penalty prescribed by section 12 instead of referring to section 13, which section provides no penalty whatever.

Mere verbal inaccuracies or clerical errors in statutes, in the use of words or names or in grammar, spelling or punctuation, will be corrected by the court whenever necessary to carry out the intention of the legislature as gathered from the entire act. (36 Cyc page 1137 and cases cited).

It is both a common law and statutory rule of construction of statutes, that the intention of the legislature must be discovered, and if possible pursued; the courts ascertain the intention of legislatures in enacting a statute by considering the object sought and effect of their interpretation, and are not restricted to the words which are used. (Power v. Commissioners, 7 Mont. 82, Perkins v. Guy, 2 Mont. 15.)

In the consideration of a statute, the intention of the legislature is to be pursued if possible (Sec. 7876, Revised Codes).

When this act is read in the light of its history, the intention of the legislature is quite apparent, and it is my opinion that the supreme court would construe section 16 with reference to the penalty as referring to section 12 in place of section 13.

I am further confirmed in this opinion by reason of the fact that if this interpretation was not followed, no effect whatever could be given to section 16, and under the provisions of Section 7875, Revised Codes, such a construction is, if possible, to be adopted as will give effect to all of the provisions of a statute.

You are therefore advised that it is my opinion that section 16 of this act should be so construed as to refer to the penalty provided in the act under section 12, in place of referring to section 13.

Yours very truly,

ALBERT J. GALEN,

Attorney General.