

Estrays, Disposition Of. Stock Running at Large. How Dealt With. Maverick Cattle, Owner Of. Inspectors of Stock, Power Of. Stolen Cattle, Ownership Of. Stray Stock, How Disposed Of.

The only provision of law relative to the sale of stray horses or the manner of dealing with the same, are Sections 1817 et seq. and Section 1996 et seq., of the Revised Codes.

Where stock has been stolen the ownership is with the party from whom it was stolen and he alone has authority to dispose of it.

Helena, Mont., July 15, 1911.

Mr. D. W. Raymond, Sec'y,
Board of Stock Commissioners,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 13th inst., enclosing a communication received by you from George Twible, in which he states:

1. "That there was running on the range there a mare branded 'E L lsh' that has been there for eight or nine years, and that there is running with her a two year old and a yearling colt, both of which, are unbranded and he is desirous to know of you if he can sell the same as stock inspector.

He also states that:

2. There are certain cattle running on the range and which have been mavericked. These cattle were stolen from some one; that the party who stole them has left the country under bonds, leaving a bill of sale with his wife.

He desires to know what can be done with these cattle. With reference to the first question submitted, we have no law in this state defining "estrays;" the only act we had on that subject was Chap. 19, Laws of 1903, which the supreme court held to be unconstitutional and void in case of State vs. Cunningham, 35 Mont. 547.

Sec. 1820 et seq. Revised Codes, provide for the sale of certain strays when shipped out of the state, but these sections have reference only to cattle, and section 1996 et seq., Revised Codes, provide for the sale of domestic animals when the same are saved from drowning or starvation. The only other section we have on the subject is Sec. 1817, Revised Codes, which provides for the sale of domestic animals in certain cases where the same are held under quarantine.

Unless, therefore, this mare and these colts are held under provisions of Sec. 1817 et seq. or under the provisions of Sec. 1996 et seq., I know of no law that authorizes their sale.

With reference to the second question submitted, if these cattle were stolen as alleged in the letter, then the ownership is in the man from whom they were stolen and he alone has authority to dispose of them. If they were not stolen but were the property of the man who left the country then the title thereto vests in his wife if he gave her a legal bill of sale. The question of ownership seems to be wholly one of fact. If anyone other than the wife claims the property he is the one who should take possession of the stock and institute proceedings if necessary to determine the ownership.

Yours very truly,

ALBERT J. GALEN,
Attorney General.