

Livestock Running at Large—Incorporated Cities or Towns—Prosecution of Owners of Livestock for Permitting Same to Run at Large.

Chap. 65 of the Laws of the Fifteenth Legislative Assembly applies to range stock as well as live stock kept in a herd or in a pasture.

March 4th, 1918.

Mr. Josph C. Tope,
Attorney at Law,
Terry, Montana.

Dear Sir:

I am in receipt of your letter of recent date asking for a construction of Chapter 65, Laws of the Fifteen Legislative Assembly.

The facts as they appear from your letter are as follows:

"Some of the horses of one Robert Martin of this town wandered within the corporate limits of the town of Terry from the public range. The city authorities desire Mr. Martin prosecuted under said Chapter 65.

You express the opinion that said chapter "relates to live stock either kept in herd or live stock which is kept within the town limits of an incorporated town, and I do not think that said chapter applies to range stock which might wander into the corporate limits of a city or town from the public range."

I cannot agree with the conclusions reached by you. Sections 1 and 2 of said act provides:

"Section 1. It is hereby provided that livestock, consisting of horses, cattle, mules, sheep, goats and swine or any such animals shall not be allowed to run at large in any incorporated city, or in any incorporated town."

"Section 2. Any person owning livestock or having in charge any horses, mules, cattle, sheep, goats or swine or any such animals who willfully and unlawfully permit any such livestock to trespass, in violation of any of the provisions of this Act, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be punished as such as provided by law."

I do not believe that said act should be restricted to the extent expressed in your opinion, but on the contrary, that the same should have a liberal construction in order that the objects intended by the legislature may be accomplished.

It is a general rule of the common law that the owner of stock is bound, at his peril, to keep them off the land of other persons, and he cannot justify or excuse such an entry by showing that the land was unfenced. The common law rule has been repudiated in Montana as well as in many of the newer states. In these jurisdictions it is generally held that the owner incurs no liability by permitting his stock to range at will on uninclosed lands where there is no express statute prohibiting it.

Since the earlier decision repudiating the common law rule, there has occurred, with the rapid development of the states by increased population and extension of agriculture, such a marked change in the conditions that the reason for the rejection of the common law rule have disappeared and instead a necessity for its adoption has clearly arisen. Chapter 65 is a re-enactment of the common law rule as to incorporated cities or towns.

Such is the condition that exists in Montana and the legislature intended to protect incorporated cities and towns against *all* stock running at large.

Respectfully,

S. C. FORD,

Attorney General.