

Estrays—Lien on Estrays—Right of Stock Inspector to Seize Estrays.

One in possession of an animal under Section 2091 of the Revised Codes, has right to retain possession thereof until any lien he may have against the animal for keeping and advertising the same has been paid.

February 12, 1917.

Mr. William E. Keeley,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

I have your letter of February 8th, submitting certain questions for the consideration of this office.

You state that "last October one Ed. Chapman, a rancher living near here, took up an estray, and thereafter advertised the animal himself to the effect that the owner could have the animal if he would come in and pay for the publication charge and the feed bill," that a stock inspector now demands possession of the animal under the provisions of Chapter 34 of the session laws of 1915.

Section 2091, of the Revised Codes, provides that if an animal breaks into an enclosure surrounded by a legal fence or is wrongfully upon the premises of another, that the owner of such premises may take possession of such animal and retain possession of the same until all damages, together with a reasonable charge for keeping and feeding, is paid.

Section 5805, Revised Codes, gives a person while lawfully in possession of an article of personal property, a special lien upon such property for any service to the owner thereof by labor for safe keeping of the same.

If therefore Chapman took possession of the animal under the provisions of Section 2091, he has a lawful right to retain possession of the same until the sum due is paid, and may enforce his lien as in the case of a pledge.

If, however, Chapman was not acting under Section 2091, but has without right taken up an estray he may be prosecuted under the provisions of Chapter 126 of the Session Laws of 1909, and the stock inspector is entitled to the possession of the animal under the provisions of Chapter 34 of the Session Laws of 1915, and is not required to pay for advertising charge or feed bill and an action may be brought to recover possession of the animal as an estray.

Respectfully,

S. C. FORD,

Attorney General.