

Opinion No. 250.

**Livestock Commission—Sale of
Branded Livestock—Proof of Owner-
ship Required—Character
of Proof.**

HELD: Where a shipper sells livestock bearing the brand recorded in the name of another person the livestock commission is justified in holding up the proceeds of sale until the shipper produces either a bill of sale from the owner of the recorded brand or such other satisfactory proof as the circumstances warrant.

An unsworn statement by a person who sold a branded animal to the shipper that he purchased the animal from the owner of the recorded brand is not satisfactory proof.

The fresh brand of the shipper on the animal bearing the recorded brand of another is not sufficient proof of the

ownership of the shipper, the recorded brand being unvented.

August 9, 1940.

Mr. Paul Raftery
Secretary, Livestock Commission
The Capitol

Dear Mr. Raftery:

You have submitted the following:

On July 24, 1940, W. O. Bohart sold a cow bearing Bohart's fresh brand and also the unvented brand of Gordon Deams. He submitted to your inspector a bill of sale from Frank McKenzy. On the bill of sale was a statement to the effect that he (McKenzy) had purchased the cow from Gordon Deams on a certain date. Bohart told the inspector that he could get a bill of sale from Deams but that he would not do it and that he would make the Livestock Commission pay for the cow without a bill of sale. He threatened suit unless the proceeds of sale are paid over to him by the Livestock Commission.

You ask my advice as to what action the department should take.

Except for the fresh brand of Bohart's the facts are exactly like those in the case of Bohart v. Songer et al., recently decided by our Supreme Court, 110 Mont. This case was decided against Mr. Bohart, in favor of the Livestock Commission. Among other things, the Supreme Court held that proof of ownership should be submitted to the Livestock Commission by a shipper before he had a right to the proceeds or to sue the Livestock Commission. In that case Bohart did not submit a bill of sale from the owner of the recorded brand or any other satisfactory proof to the Livestock Commission before he commenced action. We do not think that Bohart's fresh brand adds to the proof. It is merely a self-serving declaration. It is no more than a statement from Bohart that it is his cow.

We think that the Livestock Commission is legally entitled to (a) either a bill of sale from Deams or (b) other satisfactory proof aside from the self-serving statements of Bohart himself and McKenzy. Bohart might feel that he can take a chance on branding and selling the animal on such proof but

he should not ask that the Livestock Commission, which was established to protect livestock men, to establish a policy by acting on such so-called proof. We are unable to advise you that the state should act on proof of this character. It is not proof that would be accepted as sufficient in court. If Mr. Bohart has or can get a bill of sale from the owner of the recorded brand, we see no reason why he should not present it or present such other satisfactory proof as the circumstances warrant.