

No. 187

LIVESTOCK CROSSING HIGHWAY—HIGHWAYS, Crossing of by Livestock—STOCK CROSSING HIGHWAY—SIGNS, Stock Crossing—MOTOR VEHICLES—MOTORISTS—AUTOMOBILE

Held: The rights of livestock owners are paramount to those of the motorists when the livestock owners are driving their livestock across the highway between stock crossing signs and it is the duty of the motorist at all times to recognize this right of the livestock owner. Therefore, the motorist must drive his car in a careful and prudent manner when he sees such stock crossing signs, so as not to cause injury to the livestock which are crossing or might cross the highway between the said stock crossing signs.

July 28, 1941.

Colonel Charles L. Sheridan
Supervisor
Montana Highway Patrol
Helena, Montana

Dear Colonel Sheridan:

You have presented the following query:

"I have had several inquiries relative to the rights of stock owners and automobile drivers as to their rights and the law involved with regards to the road and right-of-way between signs placed on the highway right-of-way on which have been inscribed the words 'Stock Crossing (blank) feet.'

"Will you, therefore, kindly advise me what rights the stock owner has in crossing the road with livestock between two such signs, and also what rights the motorist has therein? Also kindly advise as to the motorist's degree of care and duty to the public while traveling through such areas."

In answering your inquiry, it should be observed the State Highway Commission procures right-of-way either by purchase or condemnation (Section 1797, Revised Codes of Montana, 1935). In condemnation proceedings, the commissioners appointed by the Court to award compensation to the land owner not only take into consideration the value of the land actually taken, but also take into consideration, among other things, damage to the remaining portion of the land not taken—which in substance means the land owner is entitled to damages for segregation. (Section 9944, Revised Codes of Montana, 1935.)

State et al v. Bradshaw Land & Livestock Company, 99 Mont. 95, 43 Pac. (2nd) 674.

State v. Hoblitt et al., 87 Mont. 403, 288 Pac. 181.

It is common knowledge, when lands are purchased without condemnation by the Highway Commission, damages for segregation are taken into consideration by the parties. It is also common knowledge that, in these negotiations, as well as in condemnation proceedings, where stock passes or stock crossings are allowed, damages for segregation are diminished; and, of course, in my opinion, the land owner has the right to expect the State will keep faith with him by maintaining stock passes and stock crossings. In other words, the land owner has a legal right to have the stock passes and stock crossings maintained so that he may use the same.

It is, of course, recognized Montana is one of the leading agricultural and livestock states in the Union and it is to the benefit of the State to see to it that those industries are not impaired. Motorists traveling in

this state certainly are charged with the knowledge of the industries in this state as heretofore outlined.

Section 1793, Revised Codes of Montana, 1935, gives the Highway Commission the right to erect warning signs on or along state highways; and, hence, it would appear the State Highway Commission is absolutely within its rights in placing warning signs containing the words "Stock Crossing (blank) Feet."

It should be observed persons driving or leading animals upon a highway must take reasonable precaution to prevent their carrying injuries to others.

Smith v. French, 83 Me. 108, 21 Atl. 739, 23 Am. St. Rep. 761;

Kwiechen v. Holmes and Hallowell Company, 106 Minn. 148, 118 N. W. 668; 19 L. R. A. (N. S.) 255.

It would appear, where the owner of the livestock uses the stock crossing as it was intended to be used, he has the legal right to use that crossing—and the motorist is charged with the duty of recognizing the owner's right to have the livestock cross between the stock crossing signs.

Section 1742, Revised Codes of Montana, 1935, provides as follows:

"Every person operating or driving a vehicle of any character on a public highway of this state shall drive the same in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and so as not to unduly or unreasonably endanger the life, limb, property, or other rights of any person entitled to the use of the street or highway; provided, however, that cities and towns may, by ordinance, regulate speed and traffic upon the streets within the incorporated limits."

It is my opinion the rights of livestock owners are paramount to those of the motorist when the livestock owners are driving their livestock across the highway between stock crossing signs. It is the duty of the motorist at all times to recognize this right of the livestock owner. Therefore, the motorist must drive his car in a careful and prudent manner when he sees such stock crossing signs, so as not to cause injury to the livestock which are crossing or might cross the highway between the said stock crossing signs.

Sincerely yours,

JOHN W. BONNER
Attorney General