

No. 300

**EVIDENCE—SIMILAR ACTS—RELEVANCY—CATTLE
INSPECTION—INSPECTION OF CATTLE**

Held: Collateral facts may be examined into for the purpose of establishing guilty intent, design, purpose or knowledge.

November 21, 1941.

Mr. Paul Raftery, Secretary
Montana State Livestock Commission
Helena, Montana

Dear Mr. Raftery:

You have submitted the following:

A certain shipment of cattle was made subject to brand inspection at destination, as provided by Section 3321, Revised Codes of Montana, 1935, as amended by Section 1, Chapter 136, Laws of 1937. After the shipment was loaded at X, it was diverted while en route to Y, and did not reach Z (the place of original destination). Due to the fact that the shipment was originally billed subject to inspection at destination, there was no inspection made at the time of loading, and no inspection made at destination.

Will you kindly give me your opinion as to whether or not the shipper in this case can be prosecuted?

Section 3321, Revised Codes of Montana, 1935, as amended by Section 1, Chapter 136, Laws of 1937, provides:

"Inspection of Cattle to be Removed from State. It shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, calf, horse or mule, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the state as hereinafter provided; provided, however, that whenever any of the class of stock aforementioned shall be loaded for shipment with any

railroad company and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipment so consigned, need not be inspected in this state before shipment."

Section 3323, Revised Codes of Montana, 1935, as amended by Section 4, Chapter 136, Laws of 1937, provides:

"Penalty for Violation of Act. Any person removing or attempting to remove any livestock of the kind named in Section 3321 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad, other carrier or person accepting for shipment any such livestock, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, and any person who shall load any of such stock for shipping and consign same to any point where the livestock commission maintains a stock inspector, and who shall then reconsign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act, fifty (50%) per cent thereof shall be turned into the state treasurer, and placed to the credit of the livestock commission fund and fifty (50%) per cent to the credit of the county in which the livestock shipment originated or from which the livestock were taken, except that all fines collected where arrest is made by highway patrolmen, or upon information furnished by highway patrolmen, in which event fifty (50%) per cent of such fines be deposited to the credit of the general fund of the county from which the livestock shipment originated or from which the livestock were taken, and the other fifty (50%) per cent be paid into the state treasury to be placed to the credit of the highway patrol revolving fund."

Thus it can be seen any person who shall load any such stock for shipping and consign same to any point where the livestock commission maintains a stock inspector, and who shall then reconsign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be guilty of a misdemeanor.

However, the question of a prosecution on the facts presented here is very much dependent upon the proof to be adduced at trial. Collateral facts may be examined into for the purpose of establishing guilty intent, design, purpose or knowledge. In short, where the intent of guilty knowledge is a material ingredient in the issue of a case, these collateral facts, tending to establish such intent or knowledge, are proper evidence. (2 Wigmore on Evidence (3d) 191; see also Jones (3d) 141, 142, 145.)

Although the rule is stringent, in criminal cases the conduct of the prisoner on other occasions is sometimes relevant, where such conduct has no other connection with the charge under inquiry than that it tends to throw light on what were his motives and intentions in doing the act complained of. The intention with which a particular act is done often constitutes the burden of the inquiry, and to prove the intent it becomes necessary, in many instances, to extend the examination beyond the particular transaction concerning which the accused is upon trial. For the purposes, therefore, of proving intent, not of proving the act itself, it is often permissible to show other criminal transactions of the same springing from like mental condition. (Vol. 2, Jones (2nd) 1160, 1161, 1162.)

Bishop in his work on criminal procedure (Vol. 2), after giving various illustrations as to the proper application of this rule in criminal practice, sums up his conclusion in the following words:

“It is, that though the prisoner is not to be prejudiced in the eyes of the jury by the needless admission of testimony tending to prove another crime, yet whenever the evidence which tends to prove the other crime tends to prove this one, not merely by showing the prisoner to be a bad man, but by showing the particular bad intent to have existed in his mind at the time when he did the act complained of, it is admissible; and it is also admissible, if it really tends thus, as in the facts of most cases it does not, to prove the act itself.”

Therefore, if you are able to supplement the facts set out in your query with evidence showing the commission of similar violations by the same party, under the same or similar circumstances, not too remote in time, such evidence would in all probabilities be sufficient to warrant the inference against the shipper as to his intent to avoid inspection, all of which, of course, would be a matter of fact. At any rate, it is my opinion such evidence would warrant a prosecution.

Sincerely yours,

JOHN W. BONNER
Attorney General