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1877

An act to provide for the branding, herding and care of stock, and to repeal certain acts in relation thereto.

Colorado General Assembly

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Recommended Citation

Colorado General Assembly, "An act to provide for the branding, herding and care of stock, and to repeal certain acts in relation thereto." (1877). *Session Laws 1861-1900*. 1304.

<https://scholar.law.colorado.edu/session-laws-1861-1900/1304>

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panies, approved February 9, 1872, be and the same are hereby repealed.

Approved, March 17, 1877.

AN ACT TO PROVIDE FOR THE BRANDING, HERDING AND CARE OF STOCK, AND TO REPEAL CERTAIN ACTS IN RELATION THERETO.

Be it enacted by the General Assembly of the State of Colorado:

Punishment for driving animals from usual range; what proof requisite.

2577. SECTION 1. Any person or persons not being the owner or owners, or having the right of possession of any animal or animals, who shall be found driving or leading any such animal or animals from its or their usual range, such person or persons may be arrested by any constable, officer, or other person, specially deputed for such purpose, by a judge or justice of the peace, and such person or persons may be taken before any court of competent jurisdiction for examination and trial, and if found guilty, shall be punished as for larceny. In prosecutions for a violation of the provisions of this section, it shall not be necessary, in order to warrant a conviction, for the people to prove that the offense was committed knowingly, or wilfully, or to show an intent, purpose or motive on the part of the accused; but if it shall be shown that the accused had in his possession, or under his control or supervision, any animal so being wrongfully lead or driven from its usual range, as aforesaid, or that the accused assisted in so leading or driving away any such animal without having the right of possession thereof, as aforesaid, such showing shall be sufficient to warrant a conviction, unless the accused shall by testimony in his behalf explain the case made against him in such manner as to show good faith and an innocent purpose on his part.

Liability for damages done by dog.

2578. SEC. 2. Any dog found running, worrying or injuring sheep or cattle, may be killed, and the owner or harbinger of such dog, shall be liable for all damages done by it.

2579. SEC. 3. Any person or persons owning or keeping any flock or herd of sheep, any portion of which flock

or herd may be diseased with the scab or any other contagious disease to which sheep are subject, shall be liable in the full amount of damage that may be incurred by other sheep owner or holder by reason of such diseased flock or herd of sheep being moved while in such diseased condition.

2580. SEC. 4. Animals such as are usually branded may be branded on either side with the owner's brand. All brands shall be recorded in the county where the owners reside. No evidence of ownership by brands shall be permitted in any court in this state unless the brands shall have been recorded as provided in this act. Each drove of cattle or sheep which may be driven into or through any county of this state, shall be plainly branded or marked with one uniform brand or mark. The cattle shall be so branded with the distinguishing ranche or road brand of the owner as to show distinctly in such place or places as the owner may adopt. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily, should they become intermixed with other flocks of sheep owned in the state; any such owner or owners, or person in charge of such drove, which may be driven into or through the state, who shall fail to comply with the provisions of this act, shall be fined not less than fifty (50) nor more than three hundred (300) dollars, at the discretion of the court.

2581. SEC. 5. Any person desiring to use any brand, shall make and sign a certificate setting forth a *fac simile*, and description of the brand which he desires to use, and shall file the same for record in the office of the county clerk of the county wherein he resides, which clerk shall record the same in a book kept by him for that purpose, and from and after the filing of such certificate, the person filing the same shall have the exclusive right to use such brand within such county for the purpose aforesaid. And any person or persons so desiring may, in the manner and with like effect, as herein provided, record his brand or mark in any county in this state into which his stock are liable to stray. *Provided*, that such mark or brand has not been heretofore recorded in such county by some other person, and if the

Liability for damages caused by moving flock or herd of diseased sheep

Marks and brands not evidence unless recorded; manner of marking or branding droves of cattle or sheep driven into or through any county of this state; penalty for failure to comply with provisions of this act.

Making and recording of certificate of brand.

Record of similar marks or brands; penalty for.

clerk and recorder of any county shall for any persons record any mark or brand, there being at the time of such recording a similar living mark or brand upon the records of his county, such clerk and recorder shall be liable to pay a fine of not less than twenty (20) nor more than one hundred (100) dollars; *and, provided, further*, when two or more similar marks or brands have been heretofore recorded in any county, the oldest record shall entitle the owner to the exclusive use thereof in such county.

Punishment for marking or branding or defacing or obliterating, etc., mark or brand of animal the property of another.

2582. SEC. 6. If any person shall brand or mark, or cause to be branded or marked, with his, her or their brand, or any other not the recorded brand of the owner, any animal being the property of another, or shall efface, deface or obliterate any brand or mark upon any animal, any such person so offending shall be deemed guilty of larceny, and on conviction thereof, shall be confined in the penitentiary not less than one year, nor more than five, as the court may direct, and shall also be liable to the owner thereof for three times the value of the animal so branded or marked, or upon which the brand or mark shall have been so effaced, defaced or obliterated, and in no case shall the payment of the forfeiture herein mentioned, entitle the person so branding, effacing, defacing or obliterating a brand to the property in the animal so branded or upon which the brand was effaced, defaced or obliterated, but such animal shall be surrendered to the proper owner.

What stock deemed mavoricks; round up and sale; disposition of proceeds of sale; how rightful owner may recover market value.

2583. SEC. 7. All neat stock over the age of one year found running at large in this state without a mother, and upon which there is neither ear mark nor brand, shall be deemed a "mavorick," and may be taken in charge by the captain or foreman of a legal round-up and sold at such times and places and in such manner as shall be determined by the board of commissioners of the county in which they were taken up. The proceeds arising from such sales shall be paid into the county treasury of such county, and if any stock so sold shall within the period of twelve months immediately following such sale, be claimed, identified and proven by the rightful owner, to the satisfaction of the board of county commissioners, it shall be their duty to issue a warrant against such fund in his favor for the market

value of such stock. At the expiration of such twelve months, the balance remaining of such fund shall be for the use and benefit of the cattle growers' association of the county in which such stock was found, if such an association exists in such county; if not, it shall go into the general county fund for the benefit of the county. The captain or foreman of a legal round-up, who shall sell any stock under the provisions of this section, shall within thirty days after such sale pay all the proceeds of the sale into the county treasury, and he shall, as soon as convenient after coming into possession of said "mavoricks," brand them with a brand adopted by the county commissioners for such "mavoricks." Any person purchasing a "mavorick" as aforesaid, shall receive from the captain or foreman of such legal round-up selling the same, a bill of sale signed by him as captain of such round-up, giving a description of the brand aforesaid and price paid. And such bill of sale shall entitle the purchaser to the legal ownership of such stock.

Branding of mavoricks; bills of sale from captain of round up.

2584. SEC. 8. Any captain or foreman of round-up who shall refuse or neglect to deliver to the county treasury all moneys received from the sale of "mavoricks" or unbranded stock sold by him, or who shall give a false or incorrect bill of sale of any stock sold, or shall refuse to give a bill of sale of any stock sold by him, shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.

Penalty for violations of foregoing section by captain of round up.

2585. SEC. 9. Any person who shall mark or brand, or cause to be marked or branded, or in any way convert to his or her use, or allow the same to be done by his employé or agent in his behalf any animal known as a "mavorick," or any other animal not lawfully in possession of such person, except as otherwise provided in this act, shall be deemed guilty of larceny, and on conviction thereof shall be imprisoned not less than one month or more than one year, as the court may determine.

Unlawful branding of mavorick deemed larceny; how punished

2586. SEC. 10. Any stock grower of this state may adopt and use an ear mark, and such ear mark shall be taken in evidence in connection with the owner's recorded brand, in all suits at law or in equity in which the title to

Ear marks; effect of in evidence; same mark not to be recorded to more than one person.

stock is involved. Such ear mark shall be made by cutting and shaping the ear or ears of the animal so marked, but in no case shall the person so marking an animal cut off more than one-half of the ear so marked; neither shall any one mark by cutting an ear on both sides to a point. No county clerk or recorder shall record the same ear mark to more than one person.

Recorded brand evidence of ownership in all suits; how proof to be made.

2587. SEC. 11. In all suits at law or in equity, or in any criminal proceedings, when the title to any stock is involved, the brand on an animal shall be *prima facie* evidence of the ownership of the person whose brand it may be; *provided*, that such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand, shall be made by a copy of the record of the same, certified to by the county clerk of that county or any county in which the same is recorded under the hand and seal of office of such clerk.

Duties of drovers in case stock of residents intermix with their herds or droves; penalty for failure or neglect.

2588. SEC. 12. When the stock of any resident shall intermix with any drove of animals, it shall be the duty of any drovers or persons in charge to cut out and separate such stock from said drove immediately, except in case of sheep and horses, when they shall be driven to the nearest suitable corral to be separated. Any person, either owner or drover, or otherwise connected with the management of such drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding five hundred (500) dollars for every offense, and shall be liable to indictment for larceny.

Driving of stock off from range deemed larceny; how punished.

2589. SEC. 13. When the stock of any person in Colorado shall be driven off its range without the owner's consent, by the drover of any herd or drove, every person engaged as drover of such stock, or otherwise engaged in the care and management thereof, shall be liable to indictment and punishment as for larceny, and shall be liable for damages to the amount of two hundred (200) dollars for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock or a sufficient number to cover all damages and costs, shall be held liable for the same.

2590. SEC. 14. Any person owning or having charge of any drove of cattle, horses or sheep, who shall drive the same into or through any county of Colorado, of which the owner is not a resident or land owner, and where the land in such county is occupied and improved by settlers and ranchers, it shall be the duty of such owner or person in charge of such cattle, horses or sheep, to prevent the same from mixing with the cattle, horses or sheep, belonging to the actual settlers, and also to prevent said drove of cattle, horses or sheep, from trespassing on such land as may be the property or be in the possession of the actual settler and used by him for the grazing of animals or the growing of hay or other crops, or from doing injury to ditches. If any owner or person in charge of any said drove of stock shall wilfully injure any resident of the state, by driving such drove of stock from the public highway, and herding the same on lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor, and shall be punished by a fine of not less than twenty-five or more than one hundred dollars, at the discretion of the court, and render the owner or person in charge of the drove so trespassing liable for the damages done to such settler.

Duties of owner or person having charge of drove passing through settled counties in preventing the same from mixing with cattle, horses or sheep, or trespassing on lands of settlers; penalty.

2591. SEC. 15. No hog or swine shall be permitted to run at large, and the owner of any hog or swine trespassing on the property of any person shall be liable in treble the damages occasioned by such trespass, and a fine of not less than five nor more than ten (10) dollars for each offense.

Penalty for trespass of hogs or swine running at large.

2592. SEC. 16. The county commissioners of the several counties in this state shall have power or [on] request or ample notice given, to order that cattle be gathered together or rounded up at such time and places as shall be convenient and desirable to stock owners, in their respective counties, under such rules and regulations as the said county commissioners shall provide, and under their care and supervision; *provided*, that such round-up shall not occur oftener than once in each year; *and, provided*, that no round-up shall be held within four miles of the line of any county in which no round-up is authorized by the county commissioners.

Round ups; how ordered and regulated.

Skinning of carcass of sheep or cattle without consent of owner deemed and punished as larceny.

2593. SEC. 17. Any person or persons who may skin or remove from the carcass any part of the skin, hide or pelt of any neat cattle or sheep found dead, without permission from the owner, shall be deemed guilty of larceny, and on conviction thereof shall be punished in the manner provided by law for the punishment of larceny; *provided*, nothing herein shall be deemed to prevent the skinning of animals killed by railroad companies by the employes of any railroad company by which such stock may have been killed.

Cases in which bills of sale shall be given and received for stock sold or otherwise disposed of.

2594. SEC. 18. No person or persons, whether as principal or agent, shall hereafter sell or otherwise dispose of any neat stock, nor shall any person, whether as principal or agent, buy, purchase or otherwise receive any such stock, unless the person or persons so selling or disposing of any such stock shall give, and the person or persons buying, purchasing or otherwise receiving any such stock shall take a bill of sale in writing, of the stock so sold, or disposed of, or so bought, purchased or otherwise received, as the case may be, in any of the following cases, viz:

First—When such stock or any part thereof, is to be shipped from the state, or slaughtered by the purchaser, or when the said stock or any part thereof is to be, by any such purchaser, sold to any other person or persons for shipment or slaughtering, or is to be by any such other person or persons offered for sale for shipment or slaughtering.

Second—When any such stock is to be driven, led, taken or shipped to any market, range or other place more than ten miles distant from the place of delivery thereof, upon any such sale or purchase, or when any such stock is to be led, driven, taken or shipped to any market, range or other place more than ten miles distant from the place where such stock may be herded, or kept, or permitted to range at the time of the sale or purchase thereof, or to any market, range or other place more than ten miles distant from the place where such stock may have been herded, kept, or permitted to range, for any portion of the three months next preceding such sale or purchase.

Third—When any such stock so sold or purchased, is at

the time of such sale or purchase, or for any part of the sixty days next prior thereto, has been running at large upon an unenclosed range; but this provision shall not apply to sales of stock when the persons who sell are selling stock of which they have had actual and personal control and supervision, daily, for the said period of sixty days next prior to the sale thereof, and are rightfully entitled either as principal or agent to sell and dispose of the same.

2595. SEC. 19. Any person who shall violate or fail to comply with any of the provisions of the last foregoing section, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than twenty-five dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days, nor exceeding six months, or may be punished by both fine and imprisonment, in the discretion of the court.

Penalty for violation of preceding section.

2596. SEC. 20. It shall be the duty of any person who may have purchased or received, or have in his possession any such stock, either for himself or for another, to exhibit on reasonable request to any person inquiring therefor, the bill of sale of such stock, if in his power do to so, and if not in his power so to do, to state and give the reason therefor, and any person violating or failing to comply with the provisions of this section, shall be deemed guilty and liable to punishment as provided in the next preceding section.

Penalty for failure to exhibit bill of sale upon reasonable request.

2597. SEC. 21. The provisions of the last three sections shall be liberally construed in favor of the people, and, in order to convict of any offense made punishable in any of the said sections, it shall not be necessary for the prosecution to prove knowledge, intent, purpose or motive on the part of the accused, but such knowledge, intent, purpose and motive may be presumed when the wrongful act of the accused has been shown, and shall justify a conviction, unless the testimony in the case shall satisfactorily show the good faith and innocent purpose of the accused.

Liberal construction of three preceding sections; what proof necessary to conviction.

2598. SEC. 22. Any person who shall steal, embezzle or knowingly kill, sell, drive, lead or ride away, or in any manner deprive the owner of the immediate possession of any neat cattle, horse, mule, sheep, goat, swine or ass, or

Punishment for stealing, killing, driving or leading away stock of another, or of unknown owner, or purchasing from any one not having lawful right to dispose of such stock.

any person who shall steal, embezzle or knowingly kill, sell, drive, lead or ride away, or in any manner apply to his own use any neat cattle, horse, mule, goat, sheep, ass or swine, the owner of which is unknown, or any person who shall knowingly purchase from any one not having the lawful right to sell and dispose of the same, any neat cattle, horse, mule, sheep, swine or ass, shall be deemed guilty of a felony, and on conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment not exceeding six years, or by fine not exceeding five thousand (5,000) dollars, at the discretion of the court.

What violations of this act construed to be grand larceny.

2599. SEC. 23. All cases which are by this act declared to be larceny, and in all cases of felonious taking, stealing, riding, driving, leading and carrying away of any animal or animals herein referred to, the same shall be deemed, and taken to be, and the courts of this state shall construe the same to be grand larceny, subjecting the offender or offenders to be condemned to the penitentiary for a term of not less than one year nor more than ten years, except as otherwise provided for in this act, notwithstanding the value of such animal or animals may be less than twenty dollars.

Selling or trading unbranded stock having no bill of sale or power of attorney, deemed larceny, unless ownership or authority proved by defendant; proof of criminal intent not necessary to conviction.

2600. SEC. 24. Any person or persons who may sell or offer for sale or trade any neat stock upon which such persons have not their recorded mark or brand, or for which the person so offering has neither bill of sale nor power of attorney from the owner of such stock, authorizing such sale, every person so offering shall be deemed guilty of larceny, unless such person upon trial shall establish and prove that he was at the time the actual owner of the stock so sold or traded, or offered for sale or trade, or that he acted by the direction of one shown and proved to be the actual owner of such stock; and in prosecutions for a violation of this section it shall not be necessary, in order to warrant a conviction for the people, to prove motive, intent or purpose on the part of the accused, or that the accused knew that the stock sold or traded, or offered for sale or trade, was so sold, traded or offered in violation hereof, but the fact of such selling, trading or offering for sale or trade contrary to the provisions hereof, when proved, shall be sufficient to authorize a conviction, unless

the accused shall by testimony explain the case made by the people in a manner consistent with good faith and an innocent purpose.

2601. SEC. 25. Chapters fifty-eight and eighty of the revised statutes of Colorado territory, and sections 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 of an act approved February 9, 1872, regulating the branding, herding and care of stock, and all the acts of the year A. D. 1874 relating to stock, except section one of an act approved February 13, 1874, entitled "An act to amend an act entitled an act regulating the branding, herding and care of stock," approved February 9, 1872, are hereby repealed; and all the acts contained in the session laws of the eleventh session of the legislature of said territory, relative to stock, are hereby repealed, except an act approved January 28, 1876, entitled an act to amend sections one and two of an act entitled an act to amend division six, chapter twenty-two of the revised statutes of Colorado territory, entitled "Criminal Code," approved February 11, 1874.

Approved, March 22, 1877.

CHAPTER XCVII.

SUPREME COURT.

[Revised Statutes, Chapter LXXXI]

2602. SECTION 1. If there shall not be a quorum of the justices of the supreme court present on the first day of any term, the court shall be, and stand adjourned from day to day until a quorum shall attend; and said court may, there being a quorum present, adjourn to any day specified, as may be deemed advisable.

Adjournments
for want of quo-
rum; adjourn-
ments to speci-
fied day.

2603. SEC. 2. All process issued out of the supreme court shall bear test in the name of the chief justice, be signed by the clerk of the court, sealed with its seal, and made returnable according to law or the rules and orders of the court, and shall be executed by the officer to whom the same is directed.

Issue, execution
and return of
process.