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Judge Carpenter Decides for Battling Homesteader

Decision Sweepingly Puts Seal of Disapproval upon Wilful Trespass with Stock upon Lands of Another.

Judge C. C. Carpenter has just handed down his decision in the case of John H. Lux, Plaintiff vs. Robert M. Kennedy, upon plaintiff's demurrer, which case hinges upon the herd law. Originating in the taking up of two horses by the defendant, because the animals were devastating his growing crop, the case was brought step by step, the last action being a demurrer interposed by the plaintiff, as follows:

1. That the Court has no jurisdiction of the plaintiff under the provisions of sections 10, 11 and 12 of Chapter 244, Laws of 1907.
2. That said facts alleged, do not constitute a cause of action against the plaintiff under the provisions of sections 10, 11 and 12 Chapter 244, Laws of 1907, it appearing upon the face of said counterclaim that said trespass and damage was committed in South Dakota and in territory lying West of the Missouri river.

The Court in his decision has this to say:

Counsel have submitted briefs upon the constitutionality of sections 10, 11 and 12 of Chapter 244, Laws of 1907. It is unnecessary, however, to consider the constitutional question, as the case may be decided without reference thereto.

The contention of plaintiff is that notwithstanding the trespass and damage, defendant cannot recover because of the provisions of section 10, 11 and 12, Chapter 244, Laws of 1907, known as the "herd law."

Statutes providing that damage done by animals cannot be recovered unless the land has been inclosed with a fence of the size and material required by statute, do not give permission to the owner of stock to use his neighbor's land as pasture. They are intended to condone trespasses of straying live stock; they have no application to cases where they are driven upon unfenced land in order that they may feed there. Lazarus vs. Phelps, 152 U. S. 81. Monroe vs. Cannon, 24 Mont. 324. St. Louis Cattle Co. vs. Vaught, 1 Tex. Civ. App. 388. Union P. R. Co. vs. Rollins, 5 Kan. 176.

Fence laws do not authorize wanton and wilful trespass, nor do they afford immunity to those who in disregard of property rights, turn loose their stock under circumstances showing that they were intended to graze upon the lands of another.

The character of the trespass is a question of fact to be ascertained.

It is ordered, that the demurrer be and the same hereby is overruled. By the Court
Clay Carpenter, Judge.

The effect of this decision is that once for all the homesteader may consider himself secure against the herds that are still allowed to roam the open at random. The "legal" fence will still be required to secure damages in cases where an animal running away, against the owner's reasonable precautions, and commits damages. But under this decision it will henceforth be a risky thing for any owner of stock to wilfully turn his animals loose, that they may damage the fields and property of others--

Seed Speltz at Green's.

Geo. W. Egan Will Visit Lemmon Sunday

The Noted South Dakotan, Orator, and Leading Candidate for the Senator's Chair, will deliver a Lecture Sunday Evening

The frequent query: "Is Egan coming to Lemmon?" or "When will Egan Come?" is set at rest. Mr. Egan's advices to his many friends are to the effect that he will be at Lemmon Sunday, to deliver one of his noted lectures, "The Trial and Crucifixion of Jesus of Nazareth," at the Armory, Sunday evening.

Mr. Egan's lecture had at first been announced for Sunday afternoon, but as many intend to go to Reeder in the afternoon to hear the oratorio "The Messiah," arrangements were made to have the lecture delivered in the evening, thus giving all an opportunity to hear and meet him.

Mr. Egan will speak at Bison and other inland points Sunday, the Bison speech being scheduled at 2:00 p. m. The western Dakotas are full of friends for the man who single handed and alone is waging the finest political battle now before the people of the state, and it goes without saying that he will have the largest audience Lemmon has yet given any man with a mission.

Handel's Great Oratorio "The Messiah" at Reeder

Quite a delegation of Lemmonites, lovers of good music, will take No. 17 westbound on Sunday afternoon at 1:00 o'clock, to hear Handel's great oratorio "The Messiah" sung by the Reeder Choral Society under direction of J. L. Hjort, and assisted by a capable artists from outside.

To undertake a work as ambitious as "The Messiah" might be deemed almost madness in any small community, such as western Dakotas call their own--were it not for the fact that Reeder rejoices in having as one of its foremost citizens none other than Mr. Jacob L. Hjort, who formerly devoted his entire time to vocal culture, and solo singing as a professional high in rank. Reasons of health demanded his removal to the west, but, to be sure, his enthusiasm and devotion for what is best in music, he brought with him. And hence the Reeder Choral Society, and the magnificent results of its efforts in good music.

And that the concert Sunday afternoon will be a high success, is safe to predict, because the same work was rendered in January, the same artists assisting.

Mme Theoline Leo-Skaug, now of Ipswich, but formerly of Minneapolis, where she held high rank among concert singers, will render the soprano solos. Her interpretation of that noted song, "I know that my Redeemer Liveth," alone will bring its full reward to those who attend. She possesses a rich clear soprano of splendid range equal to the most exacting demands of oratorio music.

Miss Edith Bergh, of Hettinger, will sing the contralto solos. She has a sweet voice, and made good at the January rendition--which means much, when it is remembered that Handel wrote music that sets a high demand on the singer's executive and interpretative capacity.

Mr. Hjort will himself sing the

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tenor solos. He and his art are too well known to demand further eulogy in these columns.

Mr. J. P. Gross, of Lemmon, will again sing the bass number, rendering all four of the famous solos in that part.

The chorus has again gone over the entire large work, and it will be rendered practically complete--a rare achievement by any concert, as the Messiah is quite generally cut more or less.

The railroad company will stop No. 18, so that Lemmon people will be enabled to return the same evening.