

Opinion No. 12-914

June 28, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. E. Wooten, House, N. M.

CATTLE.

Unlawful to turn animals loose where they will go upon cultivated land.

OPINION

{*51} Your letter of the 24th instant was duly received. It does not appear to me because the people of your precinct have abrogated the operation of the herd law that the owners of stock have a right to turn their animals loose where they will go upon cultivated land. Section 98 of the Compiled Laws of 1897, which does not appear ever to have been repealed, prohibits the owners of stock from allowing the same to run at large from March to October, both inclusive, and they must have them under custody during that time. This is made a misdemeanor punishable by fine and costs, as provided in Section 1055 of the same laws. It being unlawful to permit stock to run at large, it is doubtful to say the least, whether the owner of stock could recover for animals which might eat poison put out for the killing of rabbits in cultivated ground. If it could be shown that {*52} the poison was put out with the intention of killing trespassing stock, a different case would be presented, and probably he would be liable. The Supreme Court of the United States has said that notwithstanding the existence of a fence law, if the owner of animals turns them loose where they are reasonably certain to trespass upon the lands of others, the owners of such land can recover damages.