

## Opinion No. 14-1181

April 2, 1914

**BY:** IRA L. GRIMSHAW, Assistant Attorney General

**TO:** Honorable Antonio Lucero, Secretary of State, Santa Fe, New Mexico.

### **CATTLE.**

When a cattle brand used in Colorado can be used in this state.

### **OPINION**

{\*38} We have your oral request for an opinion concerning the questions contained in the communication of Miss Rebecca Shaw addressed to you.

The first question is whether or not the husband can sell and convey ranch property without the wife's consent.

The latest exposition of law on this question is contained within Chap. 37 of the laws of 1907. Sec. 16, of that chapter, empowers the husband with the management and control of the community property, with absolute power of disposition other than testamentary, in the same manner as he has of his separate estate. The effect of this section is that the husband may sell and convey the community property, but cannot make a gift of it, nor convey it without a valuable consideration, unless the wife, in writing, consents thereto. The communication of Miss Shaw does not state whether the ranch property was acquired by either the husband or wife, or jointly before the passage of the laws of 1907. Without going into the case of Reade vs. De Lea, decided by our Territorial Supreme Court in 1908, and a decision of the Supreme Court of the United States in the case of Arnett vs. Reade, decided in 1910, it is sufficient to state that the laws of New Mexico permit a husband to sell and convey community property acquired subsequent to the passage of the laws of 1907; that the husband cannot convey without a valuable consideration the community property acquired subsequent to the laws of 1907; nor can he make a gift of such property without the consent of the wife; that the husband cannot sell or convey the homestead which is occupied and used as a home by the husband and wife, or which has been declared to be a homestead by a written instrument signed and acknowledged by the husband and wife and recorded in the office of the county clerk, without the written consent of the wife; that the husband cannot sell and convey, without the consent of the wife, community property acquired prior to 1907.

The second question is whether or not a brand used in Colorado can be used in this state.

Our laws provide that a brand is recognized as evidence of ownership. A person desiring to adopt a brand for the purpose of branding animals in this state must forward to the secretary of the Cattle Sanitary Board a fac simile of such brand, together with a fee of fifty cents to pay for its recordation. A certified copy of the brand is then sent to the applicant by the Cattle Sanitary Board upon the payment of fifty cents additional. A brand used in Colorado may be used in {\*39} this state when the provisions of the laws of New Mexico have been complied with, provided, however, that the brand is not the same as that of any other brand recorded in behalf of any other person in New Mexico, or of such a character as to conflict with any prior recorded brand.