

Chapter 604

Brands and Marks

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CASE CITATIONS: *Swift & Co. v. Peterson*, (1951) 192 Or 97, 233 P2d 216.

ATTY. GEN. OPINIONS: Personal liability of brand inspector, 1950-52, p 191; brand inspection of meat food animals, 1956-58, p 48; constitutionality of proposed brand inspection bill, (1969) Vol 34, p 547.

604.110

NOTES OF DECISIONS

This section, it seems, contemplates that the certificate of a brand as filed shall be recorded in full, and the entry in some book of a memorandum of its contents is not a compliance with the statute. *Brown v. Moss*, (1909) 53 Or 518, 101 P 207, 18 Ann Cas 541.

The intent of 1915 c. 33 was to provide for the recording of brands, to create an exclusive ownership of and a vested right in a particular brand after it had been recorded, and to prevent any other person from claiming or asserting any right to such recorded brand, to establish prima facie ownership and right of possession of the owner of such a brand in or to any animal marked with such brand, and to declare incompetent any parol evidence of the ownership of a recorded brand. *State v. Warner*, (1919) 91 Or 11, 178 P 221.

FURTHER CITATIONS: *Swift & Co. v. Peterson*, (1951) 192 Or 97, 233 P2d 216.

604.130

NOTES OF DECISIONS

The state can regulate the use of brands by providing that one brand can be used by only one stock owner. *State v. Randolph*, (1917) 85 Or 172, 166 P 555.

604.140

CASE CITATIONS: *Miller v. Lillard*, (1961) 228 Or 202, 364 P2d 766.

604.150

CASE CITATIONS: *Miller v. Lillard*, (1961) 228 Or 202, 364 P2d 766.

604.160

NOTES OF DECISIONS

In a prosecution for larceny of a steer, evidence of the assignment of a brand several months after the date of the larceny was inadmissible, although harmless. *State v. Garrett*, (1914) 71 Or 298, 141 P 1123.

In a prosecution for the unauthorized taking of an unbranded calf alleged to belong to a named owner it was not error to receive in evidence the copy of a brand recorded and owned by the alleged owner and his brother, and to

permit oral evidence which, besides identifying the brothers, showed that the brand was used only upon the cattle of the brother named as owner of the calf, including a cow which bore the brand and was the mother of the calf. *State v. Opie*, (1946) 179 Or 187, 170 P2d 736.

604.180

NOTES OF DECISIONS

See also cases under ORS 604.190.

1. In general

A recorded brand is not constructive notice of ownership but merely furnishes evidence thereof. *Stewart v. Hunter*, (1888) 16 Or 62, 16 P 876, 8 Am St Rep 267.

A brand is not proof of absolute ownership of the branded animal but is only prima facie evidence of title. *Jewell v. Harper*, (1955) 205 Or 1, 285 P2d 133.

A certificate of brand registration was admissible in evidence, even though merely a photocopy, where it was the original certificate issued to the owner by the state. *Miller v. Lillard*, (1961) 228 Or 202, 364 P2d 766.

2. Constitutionality

Since this section does not make the presence of a recorded brand on an animal conclusive evidence of ownership it does not violate the constitution. *State v. Randolph*, (1971) 85 Or 172, 166 P 555.

3. Recorded brand as exclusive evidence

An instruction in a prosecution for larceny of animals that ownership of the property may be shown by proof other than by a recorded brand was proper. *State v. Henderson*, (1914) 72 Or 201, 143 P 627.

4. Record as prima facie evidence

The prima facie case as to title made by the copy of a record may be overcome by competent proof, the effect of the recorded brand as evidence being for the jury. *Brown v. Moss*, (1909) 53 Or 518, 101 P 207, 18 Ann Cas 541.

Proof that cattle were branded with complainants' brand is prima facie evidence of ownership but whether it is sufficient to satisfy the jury beyond a reasonable doubt is for the jury to decide. *State v. Moss*, (1920) 95 Or 616, 182 P 149, 188 P 702.

A properly recorded brand and earmark was prima facie evidence of ownership of the animal on which found. *State v. Brinkley*, (1909) 55 Or 134, 104 P 893, 105 P 708.

Where complainant had his brand recorded under the 1915 Act, the defendant in a prosecution for larceny of a steer could not introduce evidence of another's unrecorded similar brand to disprove complainant's ownership. *State v. Randolph*, (1917) 85 Or 172, 166 P 555.

A certified copy of the brand of the prosecuting witness recorded after the date of the larceny but prior to the trial was admissible to prove ownership in the prosecuting witness. *State v. Morris*, (1918) 90 Or 60, 175 P 668.

5. Admissibility of certified copies

The record of a brand may be proved by a copy certified by the legal keeper even though the brand was not entitled to be recorded because it was similar to a previously recorded one. *Brown v. Moss*, (1909) 53 Or 518, 101 P 207, 18 Ann Cas 541.

A certificate of the adoption of a brand which sets out a facsimile of the brand was admissible in evidence though it contained no further description of the brand. *State v. Garrett*, (1914) 71 Or 298, 141 P 1123.

A certified copy of the record of a brand in the office of the county clerk was as competent as a like copy obtained direct from the department of agriculture. *State v. Pointer*, (1923) 106 Or 589, 213 P 621.

In a prosecution for larceny of livestock a certified copy of a recorded brand was admissible without preliminary proof that the alleged owner of the livestock was the same person who owned the recorded brand. *State v. Christy*, (1929) 131 Or 314, 282 P 105.

604.190

NOTES OF DECISIONS

See also cases under ORS 604.180.

While this statute prohibits the use of an unrecorded brand to prove ownership, such brand is admissible to identify an animal. *State v. Hanne*, (1899) 35 Or 195, 57 P 629; *State v. Morse*, (1899) 35 Or 462, 57 P 631; *State v. Henderson*, (1914) 72 Or 201, 143 P 627.

An unrecorded brand is admissible for identification purposes like any color or other physical feature of livestock. *State v. Christy*, (1929) 131 Or 314, 282 P 105; *State v. Garner*, (1940) 166 Or 1, 108 P2d 274; *State v. Opie*, (1946) 179 Or 187, 170 P2d 736.

This section does not prohibit testimony as to the ownership of an animal marked with an unrecorded brand but it does prohibit evidence of "ownership of stock by brands" unless the brand has been recorded. *State v. Warner*, (1919) 91 Or 11, 178 P 221.

In a trial for larceny of steers, identification of hides of steers by markings and other characteristics in addition to unrecorded brands to prove ownership, was sufficient to take the case to the jury. *State v. Garner*, (1940) 166 Or 1, 108 P2d 274.

In a prosecution for taking an unbranded calf without the consent of the owner, evidence that mother of calf was branded with complainant's recorded brand was admissible. *State v. Opie*, (1946) 179 Or 187, 170 P2d 736.

Oral evidence was admissible to show that a brand recorded in partnership name was used solely by one partner. *Id.*

ATTY. GEN. OPINIONS: Recording of brands by owners of sheep or goats, 1944-46, p 175.

604.230

NOTES OF DECISIONS

In a prosecution for larceny of a cow, where there was

evidence tending to show that the brand upon the cow in question had been freshly cut out, there was no error in admitting evidence of alteration of earmarks. *State v. Fitzgerald*, (1924) 111 Or 455, 227 P 306.

In prosecution for larceny of livestock the description of animals as established by evidence was an immaterial variance with the description in the indictment in view of this section, the instructions given, and testimony by practical livestock men that it was hard, if not impossible, to produce precise earmarks that the brander intended. *State v. Christy*, (1929) 131 Or 314, 282 P 105.

604.320

ATTY. GEN. OPINIONS: Liability of brand inspector for loss of proceeds realized from the sale of unclaimed livestock, 1950-52, p 191.

604.330

NOTES OF DECISIONS

This section applies only to livestock which are a part of shipments originating in this state. *Swift & Co. v. Peterson*, (1951) 192 Or 97, 233 P2d 216; *Peterson v. Valley Packing Co.*, (1954) 202 Or 489, 276 P2d 403.

604.410

NOTES OF DECISIONS

The provisions of this section do not place a burden upon interstate commerce. *Swift & Co. v. Peterson*, (1951) 192 Or 97, 233 P2d 216.

As used in this section the word "origin" or its derivatives relate to the point or place in this state where a shipment of livestock begins its movement and do not relate to the place of birth or origin of the livestock. *Id.*

This section applies only to livestock which are a part of shipments originating in this state. *Id.*

604.420

NOTES OF DECISIONS

As used in this section the word "origin" or its derivatives relate to the point or place in this state where a shipment of livestock begins its movement and do not relate to the place of birth or origin of the livestock. *Swift & Co. v. Peterson*, (1951) 192 Or 97, 233 P2d 216.

This section applies only to livestock which are a part of shipments originating in this state. *Id.*

604.540

ATTY. GEN. OPINIONS: Personal liability of brand inspector, 1950-52, p 191; authority of inspector to use siren or red light on his vehicle, 1966-68, p 65.