

Opinion No. 14-1300

August 17, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Jose A. Ribera, Cochiti, New Mexico.

PUEBLO INDIANS.

Action of superintendent of Pueblo Indians in taking up horses and cattle found on Indian land and holding them subject to the payment of \$ 1.00 per head, without authority of law.

OPINION

{*157} Your letter of the 15th inst. was received yesterday afternoon (Sunday) when I was unable to make answer and I take the first opportunity I have had to write you.

You say that "Mr. Coggeshall, Superintendent for the Pueblo Indians, is at Santo Domingo and is taking up horses and cattle found on Indian land, subject to the payment of \$ 1.00 per head, by virtue of the provisions of Section 2117 of the revised statutes of the United States."

This action of Mr. Coggeshall is absolutely without any authority of law, even though it should be conceded, which is doubtful to say the least, that the statute referred to covers the case of land belonging to Pueblo Indians. The section reads as follows:

"Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of \$ 1.00 for each animal of such stock."

This section, if it is applicable, merely gives a right of action against the person who drives animals to range and feed on land belonging to Indians, but it gives no right whatever to the Indians or to their superintendent, or any other government officer, to take up and confine the animals unless the dollar for each head is paid. Mr. Coggeshall's action, in effect, makes him a court to adjudicate the penalty and an officer to collect it. The remedy of the owners of the animals so taken up, would be by an action of replevin to which Mr. Coggeshall cannot possibly make any defense.

You will notice also, that the statute imposes a penalty only for driving stock "to range and feed" on the Indian land, while you say in your letter that the cattle and horses belonging to the Sile people merely pass over the Indian land to get to watering places in the Rio Grande. If this is correctly stated, the owners would not be liable, even if suit were properly brought against them, under the statute of the United States.

It is my personal opinion that the statute of the United States has no application whatever to the lands of the Pueblo Indians, but even if it does, as already stated, the course pursued by Mr. Coggeshall is without any authority of law and might subject him to indictment and prosecution under Section 79 of the Compiled Laws of { *158 } 1897, which makes it a felony for any person to drive away, or in any manner, deprive the owner of the immediate possession of any cattle or horses.