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Agricultural Journal.

The following Extracts are taken from "The Cultivator," an Agricultural Paper published monthly at Albany. We recommend an attentive perusal of them to the Farmers of this Province, and think that if we had Laws similar to those referred to in these extracts, they would be of infinite advantage to us.

CULTIVATION WITHOUT FENCES.

The attention of persons not acquainted with the customs of Massachusetts, is attracted by the large amount of land in some neighbourhoods, lying as "commons," or unfenced. Along the Connecticut between the intervals or "meadows" and the hills on each side of the river, there are tracts varying from two to six to eight miles in width, called *plains*. A large portion of this land is unenclosed yet there are thousands of acres under cultivation, and some of it produces fair crops of rye, indian corn, buckwheat, and potatoes. A Law of the State prohibits live-stock of all kinds from running at large; and so strictly is the law observed, that not an animal is seen in the highways unless under the care of a keeper; and crops grown on the commons are considered equally as safe as though they were surrounded by the best fences. We passed many pieces of corn and other crops, which had received no injury, and it was evident that none was feared.

In the December number of the Cultivator, you alluded to the fact that along the valley of the Connecticut, in Massachusetts "there are large portions of territory unenclosed, yet there are thousands of acres under cultivation, &c."

Now we are proud to have such a paragraph as the one above cited, and those that follow it, written of Massachusetts; for it is to the honour of any State to have such things said of them, and most certainly very much to the comfort of the population to have them exist; for within the last week an intelligent man has remarked that it was "worth ten dollars a year to any farmer to have the streets kept clear of animals." Another who has been proprietor of a small farm since 1842, says that this public guardianship has been worth more than \$100 to him in the six intervening seasons.

But let us look at the contrast which a few years have effected in this matter in our ancient, and in something we hope wise, Commonwealth. Previous to the revision of the Statutes of 1836, by the law it was left discretionary with towns to say at their annual meeting, whether "swine and neat cattle should be permitted to run at large under certain restrictions." Very naturally every town adopted the course which their supposed interest and inclination prompted. In many places, especially in the western part of the State, the usual course was to let them ramble at discretion.

The consequences were, that our street were so commonly ploughed by the long nosed swine of those days, once at least in a season, where large crops of various unsightly weeds sprung up along the wayside to illustrate the beauty of the thorns and thistles overgrowing the vineyard of the man void of understanding. Large herds of cattle were seen rambling in every direction. These, one might suppose from their general movements, were acting in the capacity of fence viewers, for unless barriers were erected between the highway and the adjoining crops, almost high enough for the walls of a fortified city, they were sure to find the discrepancy, which they took for an invitation to "walk in," and partake in such quantities as their voracious appetites demand, of the good man's labour. Oh! what vexation arose when these pilferers, licensed by owners who had forgotten the law of love for their neighbours, and the law of right in their dealings with their fellow men, had broken into the meadows, and where perhaps ampling down the corn-field whose luxuriant growth had promised a bountiful harvest, or, perhaps, wading through wheat ready for the sickle, and which, but for the lowering skies, might then have been in the reaper's hands, instead of being garnered into the capacious stomachs of the wandering, starved, sacri-

ligious herd of trespassers, sent out to the daily task of highway robbery. Then, what care was necessary, that every gate and bar should be kept shut, for as sure as they were left for a moment unsecured, a host of quadruped Philistines were ready to enter in and spoil the land. It was not strange in such a state of things, with every temptation before them, that could be offered to educate them in wrong, driven by starving necessity one day and invited by sumptuous prospects another, that cattle became unruly in their propensities and ungoverned in their habits or that they were induced to wander off, frequently to the annoyance of their owners, and sometimes as it to give a lesson of instruction, a total loss to them. But there are further evils, which are not wholly unimportant, attending this less and illiberal state of things. I fancy one was so unfortunate as to have a watering place by the way side near his residence he was sure to receive a double portion of the visits of the congregated groups of thirsty animals on a warm summer's day; and then woe to his crops however lofty the barriers that separated them from the "long pasture," herded by a whole community. Perhaps a shade tree threw its spreading arms from his premises (it may be from his doorway, and round his front gate) over the highway. Under a cluster of such trees we found they were sure to make their nooning, and the appearance of the soft swarp, and the effluvia round about, we leave others to imagine rather than describe.

The convention that revised our statutes in 1836, saw these evils, and perfected a plan for their remedy; and we have no doubt that the benefit of the single enactment relative to prohibiting animals from running at large in the highway and on unenclosed lands, have already been sufficient to defray the expenses of their whole session, and yet the first fruits of their labour are hardly beginning to be enjoyed. They give us a statute expressly in this matter and which cannot be mistaken in its import. In its first application it runs thus:—"The field driver shall take up at any time, all sheep, hogs, horses, or neat cattle found going at large and without a Keeper, in the highway or on unimproved lands;" and the field driver is sworn like other officers to the faithful discharge of his duty. So it will be seen there is no ground to parley in the matter, no discretionary power. If a field driver does not construe the law in its plain and simple meaning, it implies at once that he is blinded by prejudice, or led astray by mistaken motives.

After the liberal construction and discretionary power given by the former law, it was in no way strange that one so stringent in its application as the present, should find opposition in every community. This was truly the case we believe, more or less, in every section of the Commonwealth. In some places severe threats were given, in case men did their duty, when they had solemnly sworn to do it. In some it may be summary acts were committed on the property of such individuals who dared to do as the law of the land said they must do or perjure themselves before high heaven, and become guilty and untrustworthy in the sight of their fellow men.

But the progress of the matter has been onward, and has you have lately had an opportunity to witness, its triumphs in some places have been complete. In others it is approaching that desirable position, and in all, even our most "secluded nooks and corners," it augurs well of its triumph.—"Public opinion," that tribunal which will scarcely allow an appeal from its decisions, is growing stronger and stronger in its approval of the letter of the law; and individual prejudice, which is so prone to take root in the unbroken ground of self interest, is yielding in its favor as a means of accomplishing its own ends. As you truly related, the state of things in our Commonwealth is essentially improved by the existence of this law. The farmer can now retire at night with the reflection that his crops are safe from highway depredators of all classes, except lawless bibes, which no fences can stop, and law seldom restrain. He can plant trees along the wayside, and sit quietly and comfortably under the shadows of them—if convenience require, he can

have half a dozen gates or bars open thro' the day, in the business of the farm, and no annoyance near—he can drive his own animals without inconvenience from those who have no driver—women and little children can walk the streets quietly and safely without danger from wild, disorderly animals—the waysides, unless used for ploughed crops, exhibit a gay, vernal appearance, and when newly mowed present a lovely sight. In fact countless benefits attend this improved state of things, and not a solitary wrong thing in the whole matter. Wise are the legislators who enact such good and wholesome laws for the preservation of our rights and safety. Public benefactors are the men who come boldly out and sustain them in their early adoption; and "happy are the people" who live under their salutary influence. May a similar condition to that which Massachusetts is now approaching, and which she is ultimately to attain through all her borders in these matters, be speedily realised all over the nation, and through the world.

In the May No. of the Cultivator, I noticed the remarks of your Correspondent with his very sensible request that the Legislature of Connecticut, at their next session would pass a law similar to the one in Massachusetts, for preventing animals from running at large in the highway. For his sake and for the comfort and convenience of all the good people of "the land of steady habits," we wish so too; and when we look at the fitness of the law, and its general influence on the well being of the farmer, we wish that it might be adopted by every state in the Union. Nor do we consider this wish vain, or one unlikely at some time to be realized.

The utility of such a law is unquestionable. It is the pledge of the public guarantee of individual rights in property, a portion of which is taken for public benefit. When a highway is laid out, the only claim which the public make upon the premises, is the right of travel and repair. The right of soil with the grass and trees growing upon it, remain vested in the owner of the premises when the land is taken. This point is settled by common law of ancient date. Thus it is said "Though every highway is said to be the King's, yet this must be understood so as that in every highway the King and his subjects may pass and repass at their pleasure."

But the freehold and all the profits of the trees, &c., belong to the lord of the soil, or the owner of the land on each side of the way." Also, "The Lord of the Soil shall have an action of trespass for digging the ground." See abridgment of Common law Vol. 3, page 694. "Land covered by a highway may be recovered by a writ of ejectment," where the public abuse their right. Lord Mansfield in delivering the opinion of the Court in a case of ejectment, says—"The King has nothing in highway, but a passage for himself and his people, but the freehold and all the profits belong to the owner of the soil; so do all the trees upon it and mines under it, which may be extremely valuable." Mr Justice Foster says—"The Owner of the Soil has all above and under the ground, except only a passage for the King and his people.—Thus far we quote the common law of England and opinions of her Courts.

Judge Putnam, in giving the opinion of the Court in the case of Stockpole & al. vs. Healy, (vide Mass Reports Vol. 16, p. 34f 35,) says—"I hold it to be clear that the public have no other right but that of passing and repassing; and that the title to the land, and all the profits to be derived from it, consistently with, and subject to the right of way, remain in the owners of the soil. The owner may maintain trespass for any injury to the soil, which is not incidental to the right of passage acquired by the people.

It is then given as the opinion of the Court that "it is not lawful, therefore, for the public to put the cattle on the highway to graze. For whenever one would justly taking the property of another in virtue of a license or a way, he must plead and prove that he used the way as a way, and not for any other purpose." Judge P. then quotes the opinion of the English Court as follows—"If one drive a herd of cattle along the highway, where trees or wheat or any other kind of corn is growing, if one of the

beasts take a parcel of the corn, if it be against the will of the driver he may well justify, for the law will intend that a man cannot govern them at all times as he he would; but if he permitted them, &c., then it is otherwise."

Such then is the English Common Law in the matter of highways, and such are the opinions of her Justices. Our statutes are in many instances very wisely based on those laws, and in accordance our learned Chief Justice Parker has given the opinion above cited. That such laws and such statutes are based on principles of strict justice to the public, who claim the right of way, and the individual through whose premises the way passes, cannot admit of a doubt. The public receive all they claim: all that can be of any service to them, in securing the right of travel and repair.—They do not ask, as a public body, the right of pasturage, or of ploughing and sowing or mowing. If they did it would operate as an unequal right, which a part might enjoy, while others would have no opportunity or disposition to avail themselves of it. On the contrary, it is for the public convenience and public interest to leave this right of soil and its productions in the hands of the original proprietor, and further by good laws to protect him in that right. Where would the comfort or the safety of the traveller be, if all sorts of animals were allowed to run, indiscriminately, in our highways? Here he might be exposed to the attack of a ferocious bull; there an unmanageable horse might blockade his path, and perhaps endanger his life. Many advocates of street pasture, would no doubt say, keep such animals out, but let others run. But no. If our highways are public pastures, they have as good a right there as the innocent lamb. If they are pastures for every kind of farm stock, this is fully incumbered by the practice of the advocates of street feeding.

Street feeding is an encroachment on individual rights to an amount more than equivalent to all the benefits that can result from it. Many farmers would never on any consideration permit their animals to run at large. They choose, like thrifty men, to keep them in their own enclosures, where they are safe from the exposures to which animals running at large are liable; and where they are always sure to find them when needed. (Such men are forever tormented by street cattle, which usually go in herds, and are forever picking quarrels with those in enclosures adjoining the highway—throwing down fences and teaching other cattle to do so, and fighting when the fences are down. Many a quiet and orderly Stock has been made unruly, and of course of depreciated value, by evil associations with animals running at large.)

But there are other wrongs to which individuals are subject, through this pernicious practice. Suppose for instance, (and it is a supposition which will hold good in a great majority of cases) that the farm of A. is situated so that a great proportion of his farm teaming is across the public way. In spring he wishes to haul his manure to fields opposite to his barn, one or two things must be done: the bars must be put up, or the gates opened and shut on each side of the way, every time he passes, or his fields must be trodden up by the herds of marauders, wandering about like the prince of darkness seeking whom they may devour.

In summer, the season of busy cares, when earth is pouring her treasures into the storehouse and granary, the same scene of opening and shutting must be gone through again, only twice at each gate for every load of hay or grain that is moved to the barn. Now, is not this a pretty item of labour in the hurry of haying and harvest?—And does the public for whose benefit the farmer's fields are cut in twain, demand it? No; they only ask "the right of travel and repair," all these ceremonies of labour and toil must be gone through with to gratify the lawless desire of a grasping individual. Let animals be expelled from the highway, and bars may be out and gates open for the prosecution of the business of the farm from morning till night, or from spring to autumn, with nothing to molest or make afraid for the safety to crops.

And now, brother farmers, we leave it for you to say whether such a state of things is