

Free Range and Fencing

On February 14, 1884, the United States Senate directed the Secretary of the Interior to report to the Senate any information on file in the Department of the Interior relative to unauthorized fencing of the public lands of the United States. The following report from the Commissioner of the General Land Office, Department of the Interior, was submitted to the Senate on March 14, 1884.

To Hon. H. M. Teller,
Secretary of the Interior.
Sir:

I have the honor to acknowledge the receipt . . . of the resolution of the Senate, dated February 14, 1884, directing you to report to the Senate any information now on file in this Department relative to unauthorized fencing of the public lands of the United States.

In reply I transmit copies of the principal reports and correspondence of this office which convey such information upon the subject as is at present in my possession.

The correspondence is of a voluntary character, and consists only of such letters as individuals have seen proper to address to this Department. The limited number of special agents, and their employment in other fields of duty, have enabled investigations to be made only in a few instances, but, so far as made, the investigations have fully confirmed the statements previously presented, the facts having generally been found in excess of the representations.

The information serves to show the general fact of the existence, upon a large scale, and to an unknown extent, of unauthorized fencing of public lands; the manner in which it is done, and the purpose and effect of the inclosures. The reports of special agents also show that fraudulent entries of public land within the inclosures are extensively made by the procurement and in the interest of stockmen, largely for the purpose of controlling the sources of water supply. . . .

[The specific states involved were Kansas, Nebraska, Dakota, Idaho, Wyoming, Nevada, California, Montana, Utah, New Mexico, and Colorado.]

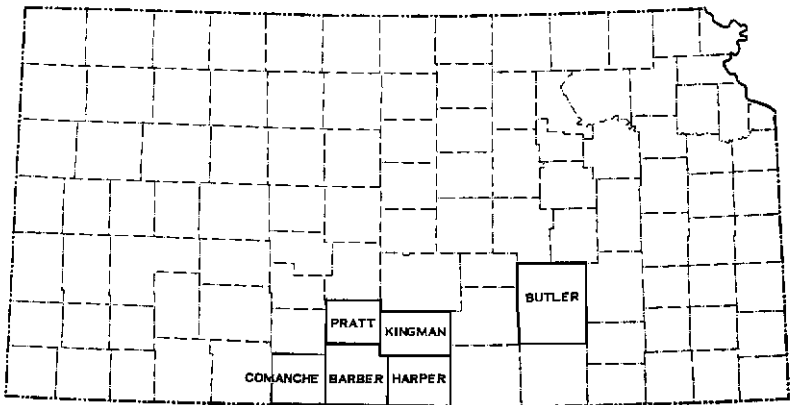
In Kansas, entire counties are reported as fenced. In Wyoming one hundred and twenty-five large cattle companies are reported having fencing on the public lands. . . . Several companies and persons in Montana and elsewhere are mentioned as having inclosures with no data.

A large number of cases in the several States and Territories west of the 100th meridian are reported where the inclosures range from 1,000 acres to 25,000 acres and upwards.

The cases mentioned in the reports and correspondence herewith submitted are to be regarded merely as indicative of the situation. I am satisfied from the information received that the practice of illegally inclosing the public lands is extensive throughout the grazing regions, and that many millions of acres are thus inclosed and are now being so inclosed to the exclusion of the stock of all others than the fence owners, and to the prevention of settlements and the obstruction of public travel and intercourse.

Very respectfully,
L. HARRISON
Acting Commissioner.

Out of nearly eighty letters and petitions submitted by the Department of the Interior to the Senate, fifteen were from Kansans. To show the extent and seriousness of this unauthorized fencing in Kansas, the letters are reprinted below.



To the Commissioner of Public Lands,
Department of the Interior, Washington, D.C. :
Your petitioners, the undersigned residents of Kingman
County, Kansas, in the Wichita land district, respectfully repre-

sent to your honor that large tracts of land belonging to the United States Government, lying in the south and southwestern part of said county, are being fenced with posts and wire fences by syndicates and individuals engaged in the stock business for the purposes of pastures, thereby preventing the said public lands from being settled upon and pre-empted by actual settlers under the provisions of the pre-emption law, and obstructing public thoroughfares and roads, to the detriment of the public generally, and of the people of said county and of individuals desiring to avail themselves of the benefit of the pre-emption laws. [Signed by thirty-six farmers, merchants, and craftsmen.]

Cleveland, Kingman County, Kansas

April 18, 1883.

Dear Sir: You will observe this petition simply sets forth facts and makes no requests or suggestions. The drawer understands from your action that it is only necessary for you to know of the existence of these frauds. The sentiment here expressed would be heartily indorsed by nearly every citizen in our county. Only two I approached failed to sign, and they gave as a reason that it would probably injure their sales (they are merchants).

If you desire a fuller expression of the people of this county, I will gladly furnish it.

I am, sir, very respectfully,

M. ALBRIGHT.

To the Secretary of the Interior,

Washington, D.C.:

We the undersigned would respectfully represent that certain parties in Pratt and Barber Counties, in the State of Kansas, have fenced in large tracts of the public domain in Pratt County, Kansas. That said fence in many instances runs so near the lands owned or occupied by actual settlers, that it interferes with said settlement to such an extent that in the opinion of your petitioners it will seriously interfere with the further settlement of the public domain in the immediate vicinity of such fences. And your petitioners would further state that the county is now so poorly settled that the present settlements are unable to enjoy church and school privileges, and unless the county settles, which your petitioners claim would soon be the case were the public domain left free and open for settlement, your petitioners would be compelled to abandon their homes or raise their families without the cheering influences of the church and school. Your petitioners would therefore ask that such steps may be taken as in your wisdom may seem best to abate the evils and

restore the public domain to the use designed—actual settlement. For which your petitioners will ever pray. [Signed by seven settlers, and notarized.]

Cleveland, Kansas,
January 6, 1883.

To Hon. N. C. McFarland,
Commissioner General Land Office.

Sir: . . . Men with large herds and with extended means are fencing in large tracts of Government land, thereby excluding and preventing the settlers with small herds or with only a few milk cows from having the benefit of the public domain to graze them upon.

All Government land (the public domain) is as much one man's as another's, and I don't think it is right for one man because he has more money than another to be allowed to have the exclusive use of said lands because of being able to fence the same. This fencing of the Government land is getting to be, and soon will be, a great grievance to the poor settler. And now I ask you cannot it be stopped?

. . . Myself and four sons have settled in this county on a little spring branch 4 miles north of the Chicaskia River. But very little of the land down the spring branch between here and the river bottom is worth anything for cultivation, it being rough and too sandy. We have pioneered to a considerable extent, and suffered a great many privations from settling in a new country poor, but with a wish to gradually work ourselves into a stock of cattle, of which we have a few, and our only grazing ground is down said spring branch, between us and the river, all Government land, but which is likely to be taken from us by a company fencing the whole thing, which we don't like, you may bet.

If you consider the subject worthy of your attention and can do anything in the premises, please do, and oblige myself and many others.

Yours truly,
JOHN WILLITS & SONS,
Kingman County, Kansas.

Harper, Harper County, Kansas.

To N. C. McFarland.

Dear Uncle: Having seen some of your communications in the papers, I have concluded to write you some facts in reference to the pre-emption law, land monopolies, and cattle kings of the

country. In the first place, I find it a very difficult matter for actual settlers to get their claims proved up without going to unnecessary expenses on account of the cattle men, who use every means in their power to deter and prevent the country from being settled. I saw a man setting fence-posts yesterday in the southwest corner of Harper County for a man by the name of Hale. I inquired of him how much they intended to fence. He informed me that they only intended fencing four sections at present. The fact is, he hires men to work for him and prove up for him by putting up a 10 by 12 shanty and never living in it. They break from 1 to 3 acres on each quarter-section. Is this filling the intent of the law?

I am credibly informed that there are men living along the southern line of our State owning from 5,000 to 10,000 cattle that never have paid one cent of taxes to the State, neither have they paid to the Indian agents.

In the name of God, I ask, is this a republican form of government, when the poor man, with barely enough to keep soul and body together and pay for his 160 acres of land, must pay the taxes of the country and the cattle kiugs go free? If so, I was a big fool to spend three years of my life to defend such a country. . . .

With great respect, your nephew,
J. McFARLAND.

Leon, Butler County, Kansas,
May 1, 1883.

To The Secretary of the Interior.

Sir: My object in writing to you is in regard to the Government land. During the last year there has been hundreds of acres in this part of this county put under wire fence that has never been lived on a week; there are men who have entered 160 that will hire young men to enter a quarter section, paying \$25 for the trouble and furnishing money for filing and pre-emption, then claiming to buy out the young man.

The most of these men who are getting these lands into pasture are stockmen, who work on borrowed capital, so eventually all these lands will pass into speculators' hands, when, if such could be prevented, Butler County would in a few years be one of the greatest farming counties of the State. There is a great deal of fraud used to obtain this land. As I am a farmer I feel deeply interested in the farming interests of this county, and hope you will not throw this aside until you read it carefully. It would be of great advantage to the farmers out here in the West

if the Government officers would investigate this matter, and take an action to prevent these lands from being taken only by actual settlers for homes.

Respectfully,
J. M. HAMPTON.

Farnsworth, Kansas,
November 16, 1883.

To Hon. Henry M. Teller,
Secretary of the Interior.

Sir: Will you inform me in what way to proceed to prevent a cattle monopoly from fencing the public lands for ranges, as I am located near and inside of fence where the Smoky Hill Cattle Pool are fencing some twenty townships of land, which shuts out trade from my place and also throws thousands of cattle upon my homestead; will close all roads, two of these being United States mail routes, by gates. As there are at present but few settlers owning homesteads or pre-emptions inside of their inclosure, and none of the members of said pool are actual settlers, I trust they will not be permitted to fence the country up.

Please answer and ohlige,
Your obedient servant,

P. W. HEY.

Farnsworth, Kans.,
November 26, 1883.

To Hon. Henry M. Teller.

Sir: Inclosed I send you clipping from the Western Central Kansas Cow-Boy, written by W.A.S. (which is William A. Sternberg), superintendent of the Rochester Cattle Company, of Rochester, N.Y. He is also one of the board of directors of the Smoky Hill Cattle Pool, a dangerous monopoly. The same pool I asked your advice how to proceed against, to prevent them from fencing me in their pastures a few days ago. If you will spend time to read the same, you cannot fail to see the false position he puts this country in in regard to crop raising, especially gardening. I can send you the affidavit of a farmer who raised the past summer 780 cabbage upon two rods of ground. Of course this was irrigated with the same water they (the cattle monopoly) expect by fencing to prevent any settlers from occupying. Your honor, I was told but yesterday by a prominent member of said pool that if I did not like their fencing me in I could move outside, for sooner or later I would be compelled to, and if the arguments in said article was carried out I certainly

should have to leave my home, which I trust a Government as republican as ours will never in the least allow. Trusting your honor will do me the favor to read the article inclosed, I am, sir,

Your obedient servant,

PETER W. HEY.

Ashdon, Kingman County, Kansas,
January 16, 1883.

To Hon. N. C. McFarland,

Commissioner General Land Office.

Dear Sir: I see by the newspapers that you are making an effort to prevent or suppress the frands upon the public lands in this county. I wish to call your attention to a class of men who are preventing actual settlers from occupying the public lands and making homes for themselves and families. The men I refer to are stock owners from the older counties, who drive their stock to this county in the spring to graze, and bring a number of young men with them as herders, who will each take a claim, and file on it, and when men who would take the land and comply with the requirements of the law find the land thus occupied, for fear of having to contest their claim, refuse to take the land.

The stock is driven out of the county in the fall, and in the following spring is driven in again, and the same mode pursued as in the year previous. This has been done for two or three years.

Then there are another class of stockmen who drive their stock and bring their herders, who will take claims and perhaps do a small amount of plowing, and dig a hole in the ground and cover it with a few boards and call it a house; and under the present law allowing a claimant to make final proof in six months, they will prove up and transfer the land to the owner of the stock, who will secure a loan upon the land as security and pay the interest for a few years to have a range for their stock, and when they need the range no longer they stop paying the interest, and the mortgage is foreclosed and the land becomes the property of the mortgagee; consequently remains unsettled and held by speculators to the detriment of the actual settlers. There are several sections of land in this vicinity that were used the past summer as a range that will undoubtedly be proved up in the manner just mentioned from present indications, unless a change in the law should prevent it. I would suggest that the law be amended making eighteen months' or two years' residence upon the land necessary to secure it, or at least one-third or one-half to be put under cultivation and other improvements to a sufficient amount, so that the claimant would not be likely

to abandon his land after making final proof. I would suggest that it be made a trespass for stockmen to use the public lands as ranges for their stock.

Please give this matter your attention, and call the attention of our member of Congress to the matter also.

Very respectfully, yours,

PETER WILLHOUR.

Topeka, Kans.,

January 9, 1883.

To Hon. N. C. McFarland,

Commissioner of the General Land Office.

My Dear Judge: Information has from time to time reached me from the Wichita and Lamed land districts regarding entry of large tracts by parties claiming the right of pre-emption or entry under the various acts providing for the sale of Osage trust and diminished reserve lands, but who, in reality, are not actual settlers upon the lands.

There is a class of cases that it seems it is utterly impossible for the local land-officers to detect, whether there is fraud in or not, unless they should be personally acquainted with the land sought to be entered, in which event they could, of course, suspend the entry.

These frauds have been carried to such an extent that I am satisfied in my own mind that large tracts of land in Kingman, Harper, Barbour, and Comanche Counties have been inclosed and fenced by parties for stock ranches, the real parties in interest securing the entry by individuals of single quarter sections adjoining each other, and the entries being made under fictitious names.

And in Harper County a large number of fraudulent entries have been made in a manner similar to the Sumner County frauds, which you are aware of and the prosecution of which are now pending.

As before stated, the local land-officers are powerless to arrest and check this thing, and, as it seems to assume growing proportions, I would suggest as a probably effective method that the Department send some shrewd, skillful detective to report to the officer or to the local land-offices (probably it would be better to report to the local officers), whose duty it shall be to investigate the whole matter, collect the evidence in shape, and report to this office, so that I can institute prosecution against the offenders so soon as they are detected.

I shall be obliged if you will give the matter your prompt attention.

J. R. HALLOWELL,
United States Attorney.

Sun City, Barbour County, Kansas
September 1, 1882.

To Hon. C. A. Morris,
Register, &c.

Sir: I would like to know if there is any way of preventing the monopoly of United States public lands by private individuals.

Parties near me are fencing large tracts, to which they have no title and upon which they have made no "settlement" legally. This prevents its settlement by parties who would buy it of the Government and injures those who have purchased homes.

If you can tell me how to proceed, I will take steps to have the matter decided.

M. H. CLEMENTS.

Medicine Lodge, Kansas.,
September 6, 1882.

. . . Parties in Comanche County, Kansas, have inclosed the entire county with a fence, and but very little of the land has been entered. A person traveling through the country must either go a great ways around, or tear down the fences, and thereby perhaps cause litigation and trouble.

It deters settlement from entering within the inclosures. It is not only in Comanche County, but there are large inclosures in this (Barbour) county within which is Government land . . .

H. PARDEE.

Anthony, Kans.,
December 24, 1882.

. . . The Commissioner's letter to Lockwood in regard to the proving-up of claims fraudulently has got up quite a furor among a few of the real-estate men here, who were getting rich off their ill-gotten gains. If something is not done in regard to this business the cattle men will own all the south part of Harper County and have it wired in. Treadwell has 3,000 acres fenced north of this place, and several other large tracts are now fenced in. The late letter has called a halt in this direction for a while, but if some action is not taken they will go ahead as before. . . .

J. P. HORTON.

Sun City, Kans.,

September 16, 1882.

. . . This part of the country is fast being fenced up by cattle men to the injury of the settlement. There are men who manage to get a few hundred acres of deeded land where water is running and then fence in their deeded land together with large quantities of Government land, using the whole for stock ranges, and if outside parties do not keep their stock from off the fenced land it is put out. There are hundreds of acres of Government land fenced in Barbour County, and many more being fenced fast. . . .

J. N. BIBB.

Sun City, Kans.,

October 30, 1883.

To Commissioner General Land Office.

Sir: Parties are still fencing the public domain in large quantities for their exclusive benefit and to keep settlers from taking it. Many passing through looking for locations are frightened out and pass on.

They claim to have bought up the Secretary of the Interior, Hon. Henry M. Teller, and defy anybody to interfere with them.

Let us know if any action is to be taken, and that, too, soon.

Yours, respectfully,

M. H. CLEMENTS.

Medicine Lodge, Kans.,

July 6, 1883.

To Hon. H. M. Teller,

Secretary of the Interior.

Sir: Some parties have fenced in section 16, township 32, range 10, in this county, and forbid settlers from going in and living upon and cultivating the land on that section.

Is this a violation of the laws of the United States? If so, what is the remedy?

Yours, respectfully,

J. W. M. NEAL.

Well, the remedy ultimately was the decision of the federal land commissioners in 1885 that all wire and posts had to be removed from Government land. Eventually this came about, slowly in some areas, more quickly in others. All during his term in office (1901-1909), Teddy Roosevelt was fighting illegal fencing by "cattle kings" in Nebraska, the

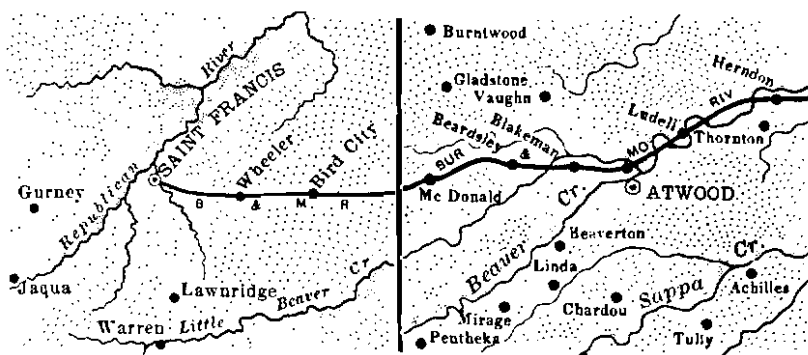
Dakotas, Wyoming, Texas, New Mexico. At last, however, in 1910, the Government had won its long battle against illegal enclosures.

Items from The Annals of Kansas, 1886-1925 indicate what was occurring in this state during the first decade of the twentieth century:

April 11, 1901—The Federal Land Department ordered all fences on government land in western Kansas removed. A special agent for the Santa Fe said 64,480 acres of public land had been fenced in Finney county, 57,160 in Kearny county and 9,196 in Seward county in violation of the fencing act of February 25, 1885. It was objected that enforcement would “injure cattlemen.” Ope, on the Cimarron river, had fenced a pasture 75 miles long and 20 miles wide. The government had refused to lease the land.

May 13, 1901—Cattlemen were evading the order to remove fences by having cowboys file on the land. One attorney declared: “The southwest Kansas counties are one big cattle ranch, and no government order will ever make them anything else.” Wallace county cattlemen were ignoring the order. “More fencing was going on than ever before.”

April 12, 1904—C. P. Dewey and Chauncey Dewey were fined \$150 and a day in jail in the U.S. District Court at Topeka when they pleaded guilty to fencing government land in Rawlins and adjacent counties.



Research by Alfaretta Courtright of Rawlins County reveals that the Dewey holdings were of “stupendous dimensions” in 1903. The Dewey “West End” holdings alone included considerable land along the Beaver in Rawlins County, and in Cheyenne County, all the land south of the Burlington Railroad and as far west as Bird City. Building materials and three carloads of wire were reported to have been freighted from the Burlington to the Dewey headquarters at Pentheka. “Hemmed in and fenced

out here and there" was a quarter of land. The fences were drift fences with free range (alleged) between. The Grace Post Office in Cheyenne County and two Rawlins County Post Offices, Pentheka and Beaverton, were taken in. At that time, there were 6000 head of cattle, 150 fine Hereford bulls, 2000 head of Hereford cows, 2000 western cows, and the balance calves. There were 100 employees, many of them the tenderfoot variety, but some real gun-totin' cowboys.

On April 26, 1906, according to the Annals, the U.S. District Attorney announced that cases against Kansas ranchers charged with maintaining fences around government land would be dismissed if the fences were removed within sixty days.

With the fencing of the West, despite the many troubles that accompanied it, there eventually came a newer, more stable way of life. The great open ranges gave way to legally enclosed farms and ranches. The grangers took over and began to cultivate the soil and irrigate and improve their farming techniques. The cattlemen began to develop smaller ranches, better feed, better techniques, better breeds of cattle.—And the barbed wire fence had played its part in bringing about these changes.

Sometimes people accepted the changes in stride, with understanding and sympathy both for the old ways and for the new ways. A good example of this kind of acceptance is Carrie Omeara's account of life in Harper County in the late 1800's. This native Kansan has no regrets for the past nor of the future:

My father was one of the first three men in northwest Harper County to stake a claim in the beautiful bunch grass country. His claim was bordered on the west by the Barber County line, and on the north by the Kingman County line.

The first fences dating back to the early '70's were very few and far between as the first homesteaders settled in the western half of Kansas, then a splendid wilderness. The first fences were of course sod—or at least as I myself saw in my early life on my father's homestead. I remember there were sod fences in nearby Barber County and over into Kingman and Pratt counties. All this area was a vast free cattle range.

The very first wire to be obtained there was soaked in a black tar and had a few very sharp barbs now and then. The early settlers in this area took the wire and stretched it around the enclosures twice, leaving a space of about three feet unprotected. They filled this space with silage—anything they could obtain such as hay packed firmly or fodder from the sod corn. Then they had oftentimes a wall of sod on the outside, which made a fine windbreak and a safe protection from the terrible blizzards that swept the prairies. These fences were also a protection against varmints—grey wolves—the worst hazard that Kansas ever had. The wolves were so de-

structive to cattle raising, and to the poor pioneers trying desperately to live by raising pigs, chickens, and young calves.

Gradually great Western Kansas became the area of several immense cattle ranches. These were usually owned by some very rich eastern corporations or millionaire industrialists. The ranches were run by reliable managers or overseers. As many as twenty to a hundred good riders, or cowboys, were hired to ride the range to give an account of every animal.

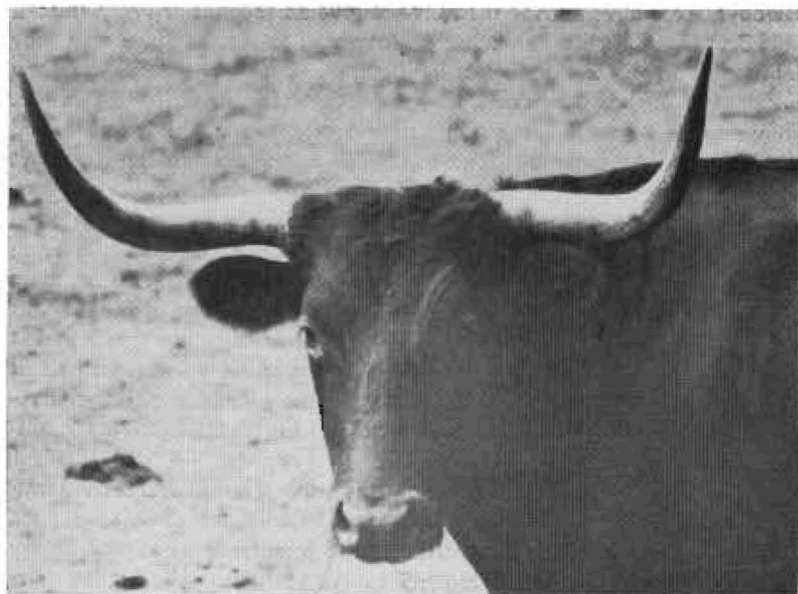
Great credit is due to the humble cowboys of bygone days, for they helped in the very upbuilding of the prosperity and the culture we now enjoy. Most of the poor cowboys were from honest Christian families. They were trying to make their honest living to support themselves and often to help their pioneer parents to hold down their claims. The cowboys were usually young single men that could face the privations, the dangers, and the hardships of the free range cattle country. They often carried a brace of six-shooters and belt—a necessity in those days as protection from Indians, and worse yet, the gangs of cattle thieves which infested the open free range. The cowboy's bed was often the bare ground. His food was wild game, mostly rabbits. The life of the typical old-time cowboy was hard, but he never forsook his duty. He helped build the western part of the state into the prosperous stock raising country it became. I myself remember seeing the old-time cowboys and the big ranches in my childhood.

The first type of free range cattle was the longhorn, which had migrated from Texas over the cattle trails across the Panhandle of the once "no man's land" of Oklahoma Territory. The longhorns were the sturdy pioneers that roamed the western free range. They were the predecessors to the better class of beef cattle which stockmen began to raise, and which eventually crowded the longhorns out. A word of praise, however, should be said for the old reliable breed of longhorns. Their horns were sometimes five or six feet across, and they certainly knew how to use them to their own advantage.

In the first herd of cattle that my father purchased, there was one especially wise old longhorn cow. She was from Texas on the Rio Grande. She had a powerful tan body, long legs, and swift small eyes. She was hostile—contrary to the belief that the longhorn cattle were never savage except when they were attacked by wolves.

Old Texas, as she was called, was the boss, and also the heroine, of the whole herd. Her leadership and aggressiveness was especially valuable when she foresaw danger and gave the alarm one moonlit evening in the autumn of 1884. My father heard a great commotion. The cattle were bellowing and stampeding in a ravine nearby. Calling his dogs, he took an old muzzle-loading shotgun, a relic of Civil War times, and followed the noise. What did he see? Old Texas was standing amid a circle of some twelve grey wolves. As they closed in around her, she fought desperately.

She was almost exhausted, but she managed to run her long horns through the body of a wolf and carried him triumphantly on her horns for a little distance. With the timely help of my father, she saved the herd, including many young calves.



The hides of the longhorns were much valued for durable home-made boots and coats, and they were even sometimes used as coverings for the dugouts so common on the prairies in those days. For every good quality, however, the longhorns had disadvantageous qualities, so they were gradually replaced by shorthorn breeds. The shorthorns were a good dairy cattle in addition to being easily fattened for beef, and they were more suited to domestication because they were a more gentle breed.

Yes, the days of the cowboys, the open ranges, the longhorns passed, but they made a great contribution to our state.

Truly those days have passed, never to return. But the heritage of the vast ranges and the small homesteads, of the powerful cattlemen and the pioneer settlers, of the rugged longhorns and the domesticated shorthorns, of the fences, both illegal and lawful—all this is our heritage, the heritage of Kansas.

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