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Matthew Menarchek

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The Open Range in Madison County, Alabama

By Matthew Menarchek

The open range, upon which livestock grazed and roamed the public domain, constituted a major portion of the antebellum South's economy. As southerners moved westward, they found plentiful and undeveloped land through which an open range system could thrive.¹ Western settlers from Georgia and the Carolinas first moved into the Mississippi Territory, of which Madison County became a part. Thus, it developed as one of the first frontier counties of the old Southwest. From its beginning, county residents relied on an open range system for sustenance and the basis for economic development. Despite the county's growth in plantation owners and Huntsville's urbanization in subsequent decades, herding and grazing remained an important part of the economy. Those who owned and looked after grazing livestock, the herdsman, left little evidence of their existence. Yet, court records, newspaper land advertisements, and United States Census records provide evidence of the role herdsman and the open range played. Madison County, from its beginning until the Civil War years, maintained an open range system that provided an occupation, a source of food, and a source of wealth for its inhabitants.

At first Madison existed as a county within the Mississippi Territory, and from this early time the territory protected the open range through legislation. The Mississippi Territory in 1807 required that land owners build fences "five feet high, well staked and ridged, or sufficiently locked, and so close that the beasts breaking into the same could not creep through . . ." if they wished to protect their land and crops from wandering livestock. If an animal broke through a lawful fence, the livestock owner became liable for damages. However, if

¹ Frank Lawrence Owsley's *Plain Folk of the Old South* (Baton Rouge: Louisiana State University Press, 1949), and Grady McWhiney's *Cracker Culture: Celtic Ways of the Old South* (Tuscaloosa: University of Alabama Press, 1988), provide excellent descriptions of southern open range herding and how this system shaped the antebellum South in general.

lands had no fences, were not built to legal specifications, or had fallen into extreme disrepair, then land owners had no legal recourse for damages incurred by an animal to his land.²

The record of several Madison County court cases involve disputes over livestock and affirm the county's reliance on open range herding. These court records about livestock owners reflect the legal principle of *animus revertendi*, translated "the intention to return," which became part of the English common law. Under *animus revertendi*, an owner of livestock may brand his herd, let the herd freely roam the public domain, and still retain ownership. The act of branding served as proof that the owner intended the animal to return for the owner's personal use. Others could not legally take branded livestock, even if the livestock had wandered from the direct control of their owner. These laws emerged to accommodate open range practices that existed in England since medieval times and which then came to the American South through Celtic immigrants. The court cases mention branding, pointing to use of the practice in Madison County.³

² John G. Aikin, comp., *Digest of the Laws of the State of Alabama: Containing all the Statutes of a Public and General Nature, in Force at the Close of the Session of the General Assembly, in January, 1833* (Philadelphia: Alexander Towar, 1833), 193-194; J. Crawford King, "The Closing of the Southern Range: An Exploratory Study," *The Journal of Southern History* 48, no.1 (1982): 53-54.

³ John H. Ingham, *The Law of Animals: A Treatise on Property in Animals Wild and Domestic and the Rights and Responsibilities Arising Therefrom* (Philadelphia: T and J. W. Johnson and Company, 1900), 5-7; Grady McWhiney and Forrest McDonald, "Celtic Origins of Southern Herding Practices," *The Journal of Southern History* 51, no. 2 (1985): 166-170.

JSTOR, www.jstor.org.



One Madison County case in 1814, *The [Mississippi] Territory vs. William Campbell*, involved “a certain Brown steer four years old branded on the left horn with a small ‘S’, the property of Stephen Jones.” Jones alleged Campbell “did . . . feloniously steal, take and drive away” the cow valued at fifteen dollars. The court record described both men as “yeoman.” Jones and Campbell likely grew some crops, but they relied on their livestock for economic independence. Fifteen dollars represented a sizable investment, especially for a small farmer such as Jones. Furthermore, the court found Campbell not guilty, a decision that occurs almost without exception in cases such as this one. This suggests the difficulty plaintiffs encountered in actually proving another had stolen one of his herd in an open range system. Even if branded, free roaming animals caused reasonable doubt that the defendant intentionally stole another’s livestock.⁴

In 1815 *The [Mississippi] Territory vs. Thomas George* claimed that George stole a “red heifer marked with a crop in the

⁴ K. Loughton, comp., *Mississippi Territory Minute Book Superior Court of Law and Equity Madison County M. T. 1811-1819* (State Department of Archives and History: Montgomery, Alabama), 74.

left [ear] and a split in the same ear.” The court again protected the ownership rights of the accuser, Michael Strasen, acknowledging his claim to the branded animal. The county estimated the value of the cow at five dollars, not an enormous sum but still representing an important investment for a yeoman farmer such as Strasen. Furthermore, this indicates how Madison residents measured wealth. Livestock, not crops, determined wealth during Madison’s early development. The court eventually cleared George of wrongdoing.⁵

Numerous other cases in the years leading up to Alabama’s statehood involved hogs. The recurrence of these types of cases reveals the prevalence of livestock in the lives of Madison County’s earliest residents. These cases almost always record the value of the hog or the cow, usually determined at five or six dollars. The open range constituted Madison’s most significant economic development during its early days and provided the basis for the county’s agriculture.⁶

Alabama became a state in 1819 and quickly passed its own laws to affirm and build upon Mississippi Territory statutes concerning the open range. Madison County operated under these laws until the Civil War. In 1820 the state legislature passed a law that required land owners to report all strays taken on their lands to the county court, with the finders taking note of the animals’ marks, brands, stature, color, and age. The law further provided that “if any person shall take up or use a stray of whatever description, contrary to the meaning of this act, such person shall . . . forfeit and pay one hundred dollars,” a significant sum for that time. The state forbade finders to sell or trade any strays within twelve months of discovery. During this period, the original owner could reclaim his livestock through certificates and brands. In addition to these restrictions, strays could not be taken up under any circumstances between the months of April and November, when herders fattened their livestock during the spring and summer months to drive them to

⁵ *Ibid.*, 124.

⁶ *Ibid.*, 5-6, 7-8, 31, 36, 118, 126.
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Menarchek: The Open Range in Madison County, Alabama town markets from August through November.⁷

The open range remained a large part of Madison County's economy for the next three decades. Despite the county's and Huntsville's growth, open land and livestock existed in large amounts within the county. Numerous advertisements appear in *The Democrat* and *The Southern Advocate*, two Huntsville newspapers of the antebellum period, revealing the prevalence of open land in Madison. In 1837 Francis M. Phillips advertised his land for sale noting that 240 acres out of his 1,000 acres were in cultivation. In other words, 760 acres of Phillips' land remained unobstructed and undeveloped. Similarly, a farmer named Mason advertised that he had cleared 600 acres of his 1,000 acres. These advertisements indicate the general clearing pattern of local land owners. These farmers had improved about half of their land.⁸

Two advertisements deserve special attention because of their content and the time period in which they appeared. First, a Mr. Hewlett advertised a land sale in *The Southern Advocate* in 1857 that stated his land "can be divided to advantage to suit small planters and [live]stock raising" and that his land only had "100 or 300 acres in cultivation" out of a total of 960 acres. Hewlett specifically targeted livestock owners in his advertisement indicating that, even as Madison County experienced rapid development in the 1850s, hogs and cattle still constituted an important part of the economy.⁹

⁷ Aikin, *Digest*, 400-402; Forrest McDonald and Grady McWhiney, "The Antebellum Southern Herdsmen: A Reinterpretation," *The Journal of Southern History* 41, no. 2 (1975): 161-162. *JSTOR*, www.jstor.org.

⁸ *The Democrat* (Huntsville), 11 March 1837. Microfilm; *The Democrat* (Huntsville), 31 October 1837. Microfilm.

⁹ *The Southern Advocate* (Huntsville), 12 November 1857. Microfilm.



The second advertisement in 1858 tells of a deceased Elias Wellborn. He, by authority of his will, wished his land sold. Wellborn possessed 860 acres of land about half cleared. This indicates that Madison land owners, even if they possessed their land for a long period of time, might leave major portions of their land undeveloped. This contributed to the continuance of



the open range, even as large planters and small farmers moved into the county in the decades leading up to the Civil War.¹⁰

Census data from 1850 and 1860 confirm the impressions given by the newspapers regarding Madison County's society.

¹⁰ *The Southern Advocate* (Huntsville), 19 August 1858. Microfilm.

Menarchek: The Open Range in Madison County, Alabama

In 1850 farmland accounted for 64 percent of the county's land. Unimproved farmland, however, taken with the county's land not in farms constituted 68 percent of total land area. In essence, around 68 percent of Madison still remained open for roaming livestock. At this time, 8,572 cattle and 63,080 hogs lived in Madison, a major portion of county livestock valued at \$642,978. By 1860, numbers in most of these categories had declined. 58 percent of Madison's land remained free for the open range. 7,673 cattle and 49,723 hogs still lived in Madison, with total livestock valued at \$1,107,685.¹¹ Yet, despite a significant amount of industrial growth in Huntsville, the majority of Madison's land remained free. From its beginning, Madison's economy relied on livestock, and the immense amount of hogs by 1850 shows the growth of a livestock economy. This, coupled with laws supporting the open range in Alabama, gives a different perspective to Madison County's economic development.

Open farmland and large numbers of livestock also characterized Alabama and the antebellum South in general.¹² In 1850, 63 percent of Alabama's farmland remained open range, while all other southern states' farmland constituted between 50 and 75 percent of open range. 1,904,540 hogs resided in Alabama, while 20,115,088 hogs resided in the South. The latter number constituted 66 percent of the entire nation's hog population. By 1860, the openness of southern farmland and the prevalence of livestock remained essentially unchanged. Livestock also held a substantial amount of wealth. In 1850, livestock held \$225,977,972, and this amount had climbed to \$497,340,511 by 1860.¹³

Madison County possessed many facets of antebellum

¹¹ Bureau of the Census, *The Seventh Census of the United States: 1850* (Washington, D. C., 1853), 429-430; Bureau of the Census, *Agriculture of the United States in 1860 . . . Compiled from . . . the Eighth Census* (Washington, D.C., 1864), 2-3.

¹² The percentages in this paragraph are derived from the Census statistical data of those states which eventually joined the Confederacy, in addition to the states of Kentucky and Missouri.

¹³ Bureau, *The Seventh Census*, lxxxii; Bureau, *Agriculture . . . 1860*, cxxiii-cxxviii, 184.

southern society, including large and small planters, yeoman farmers, businessmen, and herdsman. In short, Madison presents the antebellum South in microcosm. The same open range system that existed in Alabama existed in most, if not all, southern states. Slavery certainly constituted a major portion of the antebellum South's economy, but the majority of southerners provided for themselves without slavery. Herding and grazing animals provided an occupation and a source of wealth for those of Madison County as well as many southerners in several states. The open range significantly affected the development of the antebellum South's economy. Madison County's development provides insights into the antebellum South's development outside of King Cotton's influence and the economic system it created.