

*Impounding.***No. XI.****IMPOUNDING.****An Act to authorize the erection of Pounds and for regulating the impounding of Cattle.**
[24th July, 1828.]**Preamble.**

So much of Act No. 20 dated 12th August 1824 as relates to impounding of cattle repealed.

Pounds how to be erected and upheld.**Damage when disputed to be assessed.****No extraordinary damage to be allowed for a trespass on cultivated land not inclosed.**

WHEREAS by an Act of the Governor and Council bearing date the first day of November one thousand eight hundred and twenty-five intituled "An Act to continue until further provision shall be made certain Duties Tolls Rates Fees and other Sums of Money imposed by the Governors of New South Wales and for other purposes" it is enacted That all tolls rates fares fees and other sums of money collected or become due under and by virtue of any proclamation or order of any Governor or person administering the Government of the Colony of New South Wales before the twelfth day of August one thousand eight hundred and twenty-four should be as valid and lawful as if the same had been imposed by the Legislature and that it should be lawful thereafter and until further provision shall be made to demand collect levy and receive such and the like tolls rates fares fees and other sums of money as aforesaid in the same manner as theretofore used And whereas such regulations are not adapted to the advanced state of property in this Colony Be it enacted by His Excellency the Governor of New South Wales by and with the advice of the Legislative Council That from and after the passing of this Act so much of the said recited Act of the Governor and Council as relates to the collecting and levying of any sum of money in respect of the detaining and impounding of cattle and other animals and so far as the said recited Act relates to the Colony of New South Wales and its Dependencies be and the same is hereby repealed.

2. And be it further enacted That it shall and may be lawful for the Governor for the time-being to erect and uphold and to authorize and empower any private person or persons to erect and uphold at convenient places a public Pound or public Pounds for the purpose of impounding and receiving any horses bulls cows oxen sheep goats pigs or other cattle trespassing upon any land whether the same be public or private property and for the detaining and keeping of the same until the original sum or amount of the damage for which such horses cattle or other quadrupeds as aforesaid shall have been impounded as well as all the charges allowed by this Act for keeping the same in pound and supporting the same while impounded shall have been paid and satisfied or the horses cattle or other quadrupeds as aforesaid so impounded shall have been replevied by due course of law.

3. And be it enacted That if the sum or amount which shall be claimed as the damage for which any horses cattle or other quadrupeds as aforesaid shall have been impounded be disputed by or on the part of the owner or owners of such horses cattle or other quadrupeds as aforesaid such damage shall be assessed by one or more Justice or Justices of the Peace who shall reside nearest to the spot wherein the trespass shall have been committed according to such evidence as shall be adduced by the party and the order of such Justice or Justices shall be a sufficient warrant to the Poundkeeper for demanding and receiving the sum of money which shall be specified in such order as the amount of the damage to be received under and by virtue of this Act Provided always that no claim for extraordinary damage shall be allowed for any trespass which shall be committed on any ground placed under artificial cultivation unless the same shall at the time of such trespass be inclosed by a wall fence or hedge equivalent at the least to a three-railed fence of the height of four feet.

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4. And be it further enacted That every Poundkeeper shall receive into his custody all such horses cattle or other quadrupeds as aforesaid as shall be delivered or sent to him to be impounded and such Poundkeeper shall be accountable to the person or persons who shall so deliver or send such horses cattle or other quadrupeds as aforesaid to be impounded for the amount claimed by him or them as damage or if such amount be disputed for the amount which shall be assessed for such damage by one or more Justice or Justices of the Peace as directed by this Act and such Poundkeeper shall pay over to the person or persons claiming the same the full amount of such damage or assessed damage without any deduction whatever immediately after he shall have released out of the Pound the horses cattle or other quadrupeds as aforesaid for which such claim for damage shall have been made or as soon thereafter as the same shall be demanded of him and if any Poundkeeper shall refuse to receive into his custody any such horses cattle or other quadrupeds as aforesaid as shall be delivered or sent to him to be impounded or shall refuse to pay over the full amount of the damage or assessed damage to the person or persons entitled thereto after such Poundkeeper shall have released out of the Pound such horses cattle or other quadrupeds as aforesaid he shall for every such offence upon being convicted thereof before one or more Justice or Justices of the Peace forfeit and pay a sum of no less than One Pound nor more than Five Pounds at the discretion of such Justice or Justices.

5. And be it further enacted by the authority aforesaid That upon complaint being made by any such Poundkeeper or other person of any poundbreach or rescue of any horses or cattle or other quadrupeds as aforesaid the same shall and may be enquired into and determined in a summary way by any such Justice or Justices of the Peace as aforesaid and upon the same being duly proved it shall be lawful for such Justice or Justices to award treble damages against the offender or offenders in any such poundbreach or rescue or against the owner or owners of the said horses cattle or other quadrupeds as aforesaid and the same to enforce by distress and sale of the offenders' or owners' goods or in case no distress be found the imprisonment of his or their person or persons respectively until such treble damages be paid.

6. And be it enacted That each Poundkeeper shall keep a book in which he shall enter the description of all horses cattle or other quadrupeds as aforesaid which shall be put into his Pound together with the date of the day on which and the name or names of the person or persons by whom they shall have been sent to Pound the amount of the damage claimed for them the name or names of the owner or owners or person or persons pretending to be such the day of release and the sum paid and if any Poundkeeper shall fail to enter all these particulars regularly on each day as they occur or shall make a false entry in such book he shall for every such offence upon being convicted thereof before one or more Justice or Justices of the Peace forfeit and pay the sum of One Pound.

7. And be it enacted That every Poundkeeper or other person authorized by this Act to impound any horses cattle or other quadrupeds as aforesaid shall be allowed the following sums that is to say for each and every horse mare gelding colt filly or foal the sum of one shilling for each and every bull ox cow steer heifer or calf the sum of sixpence for each and every sheep or lamb the sum of two-pence and for each and every goat kid boar sow or other pig the sum of one shilling by the day for every day or part of a day during which such horses cattle or other quadrupeds as aforesaid shall be so impounded Provided always that at each and every Pound a board having a scale of the penalties and forfeitures leviable under this Act

painted

Poundkeeper to be accountable for amount of damage claimed or assessed.

Amount of damage to be paid to the injured party.

Persons guilty of poundbreach or rescue to be liable to treble damages.

Poundkeeper to keep a book of entry.

To forfeit the sum of £1 in case of a false entry.

Rates of poundage fees.

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painted in legible characters shall be erected and maintained by the Poundkeeper upon pain of forfeiting the sum of One Pound.

Poundkeeper to apprise the owners of cattle that are impounded if within ten miles otherwise to give a full description of such cattle to the nearest Justice of the Peace.

8. And be it further enacted That in case the owner keeper or person in charge of any such horses cattle or other quadrupeds as aforesaid so impounded as aforesaid be known to such Poundkeeper and shall reside within the distance of not more than ten miles from such Poundkeeper then such Poundkeeper shall with due diligence give notice to such owner keeper or person in charge of the impounding of his or her horses cattle or other quadrupeds as aforesaid and in case such owner keeper or person in charge of any such horses cattle or other quadrupeds as aforesaid so impounded as aforesaid shall not be known or shall not reside within the distance aforesaid then such Poundkeeper shall forthwith deliver or cause to be delivered to the nearest resident Justice of the Peace a full and particular description of the nature colour brands and other distinguishing marks of all such horses cattle or other quadrupeds as aforesaid so impounded as aforesaid and such Justice of the Peace is hereby authorized if he shall deem expedient to cause notice of such impounding to be conveyed to the owner keeper or person in charge of such horses cattle or other quadrupeds as aforesaid so impounded and such Justice shall and is hereby required in all cases to transmit a full and particular description of such impounded horses cattle or other quadrupeds as aforesaid with as little delay as possible to the Printer of the *Sydney Gazette* or other paper used by Government for publishing its orders and such Printer is hereby directed and required to publish and advertise every such notice three several times in some conspicuous part of such Gazette or other paper used by Government as soon as may be after the receipt of the said notice and in all cases the expenses attending the giving and publishing of any such notice as aforesaid shall be a charge upon all such impounded horses cattle

Cattle impounded to be advertised in the *Sydney Gazette*.

Expenses to be paid by the owner of the cattle.

Cattle that are not claimed to be sold.

Proceeds of sale to be paid to the Colonial Treasurer in trust for the owners

or other quadrupeds as aforesaid and shall be paid by the owner keeper or person in charge thereof and in case impounded horses cattle or other quadrupeds as aforesaid shall not be claimed and redeemed within seven days after notice shall have been given to the owner keeper or person in charge thereof by such Poundkeeper as before directed or within twenty-one days after a notice shall have been published in the *Sydney Gazette* or other paper used by Government as aforesaid then and in every such case the said Poundkeeper shall under and subject to the orders and directions of such Justice of the Peace cause such horses cattle or other quadrupeds as aforesaid to be sold by public auction the day on which the sale of the said horses cattle or other quadrupeds as aforesaid is to take place having been and the same is hereby directed to be specified in the said notice or advertisement above directed to be made and after deducting the sum or sums claimed as damage for such trespass or trespasses together with the charges of food and detention or impounding and of advertising and selling such horses cattle or other quadrupeds as aforesaid in manner hereinbefore directed such Poundkeeper shall within ten days afterwards pay over to the owner or owners of such horses cattle or other quadrupeds as aforesaid if known or if unknown into the hands of any one or more of the Justices of the district where such Pound or Pounds shall be situated all the surplus monies arising from such sale or sales according to an account thereof which such Poundkeeper is hereby required to deliver to such owner or owners or to such Justice or Justices as the case may be and to the truth of which such Poundkeeper is to make oath if required and which oath every such Justice is hereby authorized empowered and required to administer and the sum or sums of money which shall be paid into the hands of the Justice or Justices as aforesaid shall by them within ten days be paid over

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over to the Colonial Treasurer in trust for the owner or owners his and after twelve months to be applied to the use of the poor. her or their representatives and in case no such owner or owners or his her or their representatives shall within twelve months appear and duly claim such surplus money then the same shall be paid over to the Treasurer or Acting Treasurer of the Benevolent Society for the maintenance of the poor of the Colony and accounted for from time to time in such manner as the Governor for the time-being shall appoint and direct.

9. And be it further enacted That in case any such horses cattle or other quadrupeds as aforesaid shall trespass upon any lands being private property and there shall be no Pound as hereinbefore directed within ten miles of such lands it shall be lawful for the proprietor or person in charge of such lands to impound and detain all such horses cattle or other quadrupeds as aforesaid so trespassing upon such parts of such lands as such proprietor or person in charge thereof shall think fit and the said horses cattle or other quadrupeds as aforesaid so trespassing shall be liable to such and the same rates and damages and the said proprietor or person in charge of such lands so impounding the same shall perform and be subject to such and the like acts and obligations as to the giving notice of such impounding and the feeding and maintaining of such horses cattle or other quadrupeds as aforesaid and liable to such and the like fines and penalties in respect thereof as the keeper of any public Pound established in the manner directed by this Act.

10. And be it enacted That the provisions of this Act shall extend to all the lands of this Colony being within the limits which from time to time shall be prescribed by the Governor or Acting Governor for the location of settlers and others obtaining lands from the Crown whether the same shall be in the actual possession and use of the Crown or let or located to any private person or shall remain still unlocated and in a state of nature.

11. And whereas it is expedient that an end should be put to the practice of allowing horses cows oxen sheep goats pigs and other cattle to be at large in the public streets of the towns and villages in the said Colony to the public annoyance and to the personal danger inconvenience and injury of private individuals be it further enacted by the authority and with the advice aforesaid That if any person or persons shall after the passing of this Act turn out into the public streets of Sydney or of any other town or village in New South Wales any horses cows oxen sheep goats pigs or other cattle or in case any such horses oxen sheep goats pigs or other cattle shall be found at large in any such town or village without being under the immediate guidance protection and control of some one or more competent person or persons the same shall be liable to be seized and taken to the nearest public Pound by any person or persons whatsoever and the person or persons so seizing and impounding the same shall be entitled to demand and receive for every horse mare gelding colt foal filly bull ox cow heifer calf goat kid hog or pig so seized or impounded the sum of five shillings sterling and for every sheep or lamb so seized or impounded the sum of two shillings sterling and the keeper of every public Pound shall in addition to the sum or sums which he is authorized by this Act to claim as Poundkeeper demand from the owner or owners of such horses cattle or other quadrupeds as aforesaid such sum or sums of money as aforesaid and shall retain such horses cattle or other quadrupeds as aforesaid until the same shall have been paid and all Constables and other Peace Officers are hereby specially ordered and required to seize all horses cattle or other quadrupeds as aforesaid being so at large as aforesaid and in case the owner or owners of any such horses cattle or other quadrupeds as aforesaid so found at

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Persons rescuing or attempting to rescue such cattle to be fined 10s. or imprisoned for one month.

large or any other person or persons shall rescue or attempt to rescue from any Constable or Constables or other person or persons any such horses cattle or other quadrupeds as aforesaid which shall have been so seized or shall be in the act of driving to pound under the provisions of this Act such owner or owners or other person or persons shall for every horse or other quadruped as aforesaid so rescued or attempted to be rescued pay a fine of Ten Shillings Sterling which is to be imposed and levied in a summary manner by sale and distress by any one or more Justice or Justices or such owner or owners or other person or persons shall be liable at the discretion of the Justice or Justices before whom he she or they shall be convicted of such rescue or attempted rescue to be imprisoned in the house of correction for one calendar month.

Herds exceeding ten in number to be attended by a stock-man.

12. And whereas it will tend in a great degree to prevent horses and cattle from trespassing if the same are placed under the charge of herdsmen who shall be responsible for any trespasses committed by such horses and cattle under their charge be it further enacted That every person who shall be possessed either as the proprietor or agent or attorney for the proprietor of any horses or cattle grazing or depasturing on lands uninclosed and exceeding the number of ten shall provide at least one herdsman or stockman for the safe keeping and attending of such horses or cattle and preventing the same from trespassing upon the lands of any other person or persons and every such proprietor agent or attorney as aforesaid who shall fail to provide such herdsman or stockman shall be considered as offending against this Act and shall be liable for every such offence to a fine of Five Shillings for each and every such horses or cattle which shall be found trespassing upon such lands and unprovided with a herdsman or stockman as hereby directed and in case any herdsman or stockman having charge of any horses or cattle shall wilfully or negligently suffer any such horses or cattle to commit any trespass upon the lands of any person or persons whether the same be inclosed or uninclosed shall if a free man incur and be liable to a fine not exceeding One Shilling per head for each and every such horses or cattle or if a convict prisoner to such moderate corporal punishment as any Justice of the Peace shall award and all such fines as last aforesaid shall be recovered in a summary manner before any Justice or Justices of the Peace within the district where such fines shall have been incurred and shall be paid over to the person or persons upon whose lands such trespass as last aforesaid shall be committed.

Penalties and forfeitures to be recovered in a summary way.

13. And for the better and more easy recovery of the several penalties forfeitures and sums of money directed to be paid under this Act and the powers herein contained be it further enacted That it shall be lawful for any one or more Justice or Justices of the Peace within their respective counties or districts to hear and determine in a summary way all offences committed against the true intent and meaning of this Act and for that purpose to summon before him or them within their respective jurisdictions any party or parties accused of being an offender or offenders against the true intent and meaning of this Act and in case the party accused shall not appear on such summons or offer some reasonable excuse for his default then and in every such case any such Justice or Justices is or are hereby authorized and required to proceed to make enquiry touching the matters complained of and to examine any witness who shall be offered on either side on oath and which oath every such Justice is hereby authorized empowered and required to administer and after hearing the parties who shall appear and the witnesses who shall be offered on either side such Justice or Justices shall convict or acquit the party or parties accused and if the penalty or money forfeited or directed to be paid in any

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any such conviction shall not be paid within the space of twenty-four hours after any such conviction every Justice shall thereupon issue a warrant under his hand and seal directed to any Peace Officer or Officers within their respective jurisdictions and thereby require him or them to make distress of the goods or chattels of the offender or offenders within such their respective jurisdictions to satisfy such penalty or money forfeited or directed to be paid and the costs of the prosecution and distress and if within five days from the distress being taken the penalty or money forfeited or required to be paid and costs shall not be paid the goods seized shall be appraised and sold rendering the overplus if any after deducting the penalty or sum of money required to be paid and the costs and charges of the prosecution distress and sale to the owner or owners thereof which charges shall be ascertained by the Justice or Justices before whom any such offender or offenders shall have been so convicted and for want of such distress then every such Justice within whose respective jurisdiction any such offender or offenders shall reside or be shall on the application of any prosecutor or prosecutors and proof on oath made of the conviction and non-payment of the penalty or sum of money directed to be paid and charges by warrant under his hand and seal commit every such offender or offenders to the common gaol or house of correction of the county town or place where such offender or offenders shall be found there to remain for any time not exceeding one calendar month from the time of such commitment unless after such commitment payment shall be made of the said penalty or sum of money and costs and charges before the expiration of such calendar month.

14. And be it enacted That in all cases where the sum adjudged Right of appeal. to be paid on any summary conviction under this Act shall exceed Five Pounds or the conviction shall have taken place before one Justice only any person who shall think himself aggrieved by such conviction may appeal to the next Court of General or Quarter Sessions to be holden for the district within which such conviction shall be made and the execution of such conviction shall in such case be suspended the person or persons so convicted giving immediate notice of such appeal and of the matters thereof and finding sufficient security to the satisfaction of the Justices in such General or Quarter Sessions assembled for prosecuting such appeal with effect and abiding the determination of the Court therein and such Justices in such General or Quarter Sessions are hereby authorized and required to hear and determine the matter of such appeal and may either confirm or quash the said conviction and award costs to either party as to them the said Justices shall seem just and reasonable such decision to be final and conclusive and if upon the hearing of any such appeal the judgment of the Justice or Justices before whom any appellant shall have been convicted shall be confirmed such appellant shall forthwith pay the penalty and costs awarded to be paid by such appellant or in default thereof shall be immediately committed by the said Court to the common gaol or house of correction there to remain for any time not exceeding six calendar months unless such penalty and costs shall be sooner paid.

15. And be it enacted That a conviction under this Act shall Conviction under this Act may be pleaded in bar of any action. and may be pleaded in bar of any action suit or information that shall be commenced instituted or prosecuted for such and the same offence in any Court whatsoever.

16. And be it further enacted That all fines which shall be levied under this Act and for the appropriation of which no special directions are hereinbefore contained shall be paid to the Treasurer of the Benevolent Society for the maintenance of the poor of the Colony and accounted for from time to time in such manner as the Governor for the time-being shall appoint and direct. Penalties to be applied for the maintenance of the poor.