

No. V.

An Act for preventing the extension of the infectious Disease commonly called the Scab in Sheep or Lambs in the Colony of New South Wales. [31st August, 1832.]

SCAB IN SHEEP.

WHEREAS a certain infectious disease commonly called the Scab Preamble. has for some time been prevalent amongst sheep and lambs in New South Wales to the great injury of divers individuals and of the interests of the Colony generally and it is expedient to prevent as much as possible the further communication and extension of the said disease Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That if any person shall after the first day of May next turn out keep If any person shall turn out upon any depasture

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land unless belonging to or rented by him or drive upon any road any sheep infected with scab he shall forfeit not more than ten pounds on conviction before one or more Justices for each sheep so turned out or driven.

Penalty if the person offending be a convict.

Proviso not to prevent such sheep from being driven on any public road during the month of February in every year.

Whenever sheep infected with scab shall be kept upon any land crossed by a public way notice of such infection to be affixed at each end of such way.

Penalty.

depasture drive or conduct or permit or suffer to be turned out kept depastured driven or conducted any sheep or lambs infected with the said disease upon any land whatsoever being within the boundaries of the Colony prescribed for location to settlers and not being the property of such person or rented by him or if any person shall drive or conduct or permit or suffer to be driven or conducted any sheep or lambs so infected as aforesaid upon any public road or way used as a public way for driving sheep from one part of the Colony to another and not crossing or passing through land owned or rented by such person every such person shall upon the complaint upon oath of any proprietor or overseer in charge of any sheep and upon conviction before one or more Justice or Justices of the Peace for the said Colony be liable to the following penalties that is to say if such person so offending shall be free then and in every such case he or she shall be liable to forfeit and pay for every such offence a penalty or sum not exceeding ten pounds nor less than twenty shillings together with all reasonable costs and charges to be ascertained by the Justice or Justices before whom the conviction shall take place or if such person so offending shall be a convict under sentence then and in every such case such convict shall if a male be liable to be worked in irons on the roads for any time not exceeding six months or if a female to be confined in the penitentiary class of the factory or other place duly appointed for the custody of female offenders for any time not exceeding six months or to be kept in solitary confinement on bread and water for any time not exceeding one month unless it shall appear and be proved to the satisfaction of such Justice or Justices that such infected sheep or lambs were turned out kept depastured driven or conducted contrary to the provisions of this Act or Ordinance by such convict by the order or direction of his or her master mistress or overseer in which case such master mistress or overseer shall be held exclusively liable for such offence and to the penalties hereinbefore provided for the same Provided always that no offender shall be liable to incur any penalty for any such offence within the period of one calendar month from and after any preceding conviction and provided also that nothing in this Act or Ordinance contained shall prevent any person from driving or conducting or permitting or suffering to be driven or conducted any sheep or lambs so infected as aforesaid upon any public road or way used as a public way for the driving of sheep from one part of the Colony to another during the month of February in each and every year.

2. And be it further enacted That whenever any sheep or lambs infected with the said disease called the scab shall be turned out kept or depastured upon any land whatsoever within the limits aforesaid which may be intersected or crossed by any public road or way used as a public way for driving sheep from one part of the said Colony to another it shall be the duty of the proprietor or person in charge of such sheep or lambs or of his or her overseer or manager to cause public notice to be given of such infection by affixing the same in writing in distinct legible characters at some conspicuous place at each end of such public road or way that is to say one such notice shall be affixed at the end of such road or way where it enters such land and the other at the end where the said road leaves such land and every such notice shall by such proprietor or person in charge or his or her overseer or manager be renewed and replaced as often as occasion shall require and shall be there continued so long as any sheep or lambs so infected as aforesaid shall be kept or depastured upon such land And if any proprietor or person in charge of such infected sheep or lambs or his or her overseer or manager shall wilfully

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wilfully omit or neglect to cause such public notice to be given according to the form and manner hereby provided and directed or shall omit or neglect to renew and continue the same in such and the like manner and so long as any such sheep or lambs shall remain infected according to the true intent and meaning of this Act or Ordinance every such person so offending shall be liable for every such omission or neglect upon complaint made upon oath by any other proprietor or overseer in charge of any sheep and upon conviction before any one or more Justice or Justices of the Peace to pay a penalty or sum of ten pounds.

3. And be it further enacted That if any person shall wilfully set at large and abandon any sheep or lamb infected with the said disease called the scab to the danger of infecting other sheep with such disease every person so offending shall be liable upon complaint made upon oath by any proprietor or overseer in charge of any sheep and upon conviction before any one or more Justice or Justices of the Peace to forfeit and pay a penalty or sum of twenty pounds.

4. And be it further enacted That if any proprietor or person having the charge and management of any sheep or lambs infected with the said disease called the scab shall knowingly and wilfully turn out keep depasture drive or conduct or permit or suffer to be turned out kept depastured driven or conducted any such sheep or lambs contrary to the provisions of this Act or Ordinance or shall knowingly and wilfully fail and neglect to give or cause to be given notice of such infection in such case and in such form and manner as hereinbefore is directed and required and if such infected sheep or lambs shall while so kept depastured driven or conducted intermix with the sheep or lambs of any other person or persons and thereby communicate the said disease to any such sheep or lambs of such other person or persons then and in every such case such proprietor or person having the charge and management of sheep or lambs so infected as aforesaid shall be subject and liable over and above any other penalty imposed by this Act or Ordinance to forfeit and pay to the person or persons to whose sheep or lambs such disease shall be so communicated such sum of money as in the judgment and discretion of the Justices before whom complaint shall be made as hereinafter mentioned shall be sufficient to reimburse such person or persons for the losses and expenses which he she or they shall have incurred and been put to thereby so as that such sum shall not in any one case exceed the sum of fifty pounds and such sum shall be recovered upon complaint brought by or on behalf of the injured person or persons and duly proved before any two or more Justices of the Peace in like manner as any fine or penalty imposed by this Act or Ordinance Provided always however that every such complaint as last aforesaid shall be brought within three calendar months next after the cause of such complaint shall have arisen and provided also that no action or suit at law shall be brought in any Court in the said Colony for or in respect of any loss expense or damage which shall or may be incurred as aforesaid after the cause shall have been heard and determined in a summary way as hereby provided and if any such action or suit shall be brought for such cause it shall be lawful for the defendant or defendants to apply to the Court wherein such action or suit shall be brought to stay proceedings and such Court is hereby required to stay such proceedings accordingly and to award such reasonable costs as shall be thereby incurred by such defendant or defendants.

5. And be it further enacted That if any licensed butcher or other person shall have in his possession for the purpose of slaughtering for sale or shall slaughter or cause to be slaughtered for sale any sheep having infected sheep or lambs in their possession for the

Proviso limitation of time of bringing such complaint and amount of forfeiture.

or

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purpose of slaug-
tering or exposing
the carcase for sale.

Proviso for destroy-
ing meat the produce
of infected sheep.

Mode of compelling
the appearance of
persons punishable
under this Ordinance.

Recovery of
penalties.

Form of conviction.

Appeal to the
Quarter Sessions.

or lamb so infected as aforesaid or shall expose the carcase or any part thereof for sale in any public shop stall market or other place every such person shall be liable upon conviction thereof before any one or more Justice or Justices of the Peace to a penalty of not less than five nor more than twenty shillings for every such infected sheep or lamb so in his possession or slaughtered or of which the carcase or any part thereof shall be exposed for sale one moiety of which penalty when recovered shall go and be paid to the informer and the other moiety thereof shall be to the use of His Majesty His Heirs and Successors to be applied to the purposes hereinafter mentioned Provided always that the flesh of all such infected sheep or lambs so slaughtered as aforesaid shall be seized condemned and destroyed in such manner as such Justice or Justices may direct.

6. And for the more effectual prosecution of all offences punishable by summary conviction under this Act or Ordinance be it further enacted That where any person shall be charged on oath before any Justice or Justices of the Peace with any such offence the Justice or Justices may summon the person charged to appear at a time and place to be named in such summons and if he shall not appear accordingly then (upon proof of the due service of the summons upon such person by delivering the same to him personally or by leaving the same at his usual place of abode) the Justice or Justices may either proceed to hear and determine the case *ex parte* or issue his or their warrant for apprehending such person and bringing him before such Justice or Justices of the Peace or the Justice or Justices before whom the charge shall be made may (if the person charged be a prisoner of the Crown) without any previous summons issue such warrant and when the person charged shall appear proceed to hear and determine the case.

7. And be it further enacted That upon any person being convicted before any Justice or Justices as aforesaid in any penalty for any offence committed against the provisions of this Act or Ordinance and the said penalty not being forthwith paid it shall and may be lawful for the Justice or Justices to issue his or their warrant to distrain upon the offender's goods and chattels and the Constable or other person by whom the distress shall be levied shall within five days from the making such distress sell or cause to be sold the said goods and chattels or so much as shall be necessary to satisfy the said warrant and after satisfaction of the same and payment of all costs and charges for the levying keeping and selling such distress shall render the overplus of the proceeds of such sale (if any) to the offender as aforesaid Provided always that in case no sufficient distress can be found the person or persons so convicted as aforesaid shall be liable to be imprisoned for any period not exceeding six nor less than three months unless the whole of such penalties forfeitures and costs be sooner satisfied.

8. And be it further enacted That in all cases where any conviction shall be had for any offence or offences committed against this Act or Ordinance the conviction shall be according to the form in the Schedule hereunto annexed.

9. And be it further enacted That if any person not being a transported felon or offender convicted of any offence or offences punishable by this Act or Ordinance before any one or more Justice or Justices of the Peace as aforesaid shall think himself or herself aggrieved by the judgment of such Justice or Justices such person shall have liberty to appeal from any such conviction to the next Court of Quarter Sessions of the Peace which shall be held nearest to the place where such offence shall have been committed and that the execution

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execution of every judgment so appealed from shall be suspended in case the person so convicted shall with two sufficient sureties immediately before such Justice or Justices enter into a bond or recognizance to His Majesty His Heirs and Successors in the penal sum of double the amount of the penalty so incurred or forfeited which bond or recognizance respectively such Justice or Justices is and are hereby authorized and required to take and such bond or recognizance shall be conditioned to prosecute such appeal with effect and to be forthcoming to abide the judgment and determination of the said Court of Quarter Sessions and to pay such costs as the said Court shall award on such occasion and the Justices at the said Court of Quarter Sessions are hereby authorized and required to hear and determine the matter of the said appeal and to award such costs as to them shall appear just and reasonable to be paid by either party and such decisions shall be final between the said parties to all intents and purposes.

10. And be it further enacted That no conviction shall be had under this Act or Ordinance on any case happening more than one month before the time of laying the complaint excepting in the case hereinbefore specially provided for. Limitation of convictions.

11. And be it further enacted That if any person shall be summoned as a witness to give evidence before any such Justice or Justices of the Peace or any Court of Quarter Sessions touching any of the matters aforesaid either on the part of the prosecution or of the person or persons accused and shall neglect or refuse to appear at the time and place to be for that purpose appointed without a reasonable excuse for such neglect or refusal to be allowed by such Justice or Justices of the Peace or Court respectively before whom such prosecution or appeal shall be depending or appearing shall refuse to be examined on oath or otherwise give evidence every such person so offending shall forfeit for every such offence the sum of five pounds to be levied by distress and sale of the offender's goods in manner hereinbefore directed. Penalty upon persons summoned as witnesses not appearing or refusing to give evidence.

12. And be it further enacted That no action at law shall lie against any Justice of the Peace or Constable for any matter or thing which may be done or commanded by them or any of them in pursuance of the provisions of this Act or Ordinance unless there be direct proof of corruption or malice and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen and if any Justice or Constable shall be sued for any matter or thing done in pursuance of this Act or Ordinance the defendant or defendants in any such action may plead the general issue and give this Act or Ordinance and the special matter in evidence. Limitation of actions.

13. And be it further enacted That no order or judgment or other proceedings made touching and concerning any of the matters aforesaid or touching and concerning the conviction of any offender or offenders against this Act or Ordinance shall be quashed or vacated for want of form only or be removed or removeable by *certiorari* or any other writ or process whatsoever into the Supreme Court. Proceedings not to be quashed for informality or removed by certiorari.

14. And be it further enacted That all fines and penalties which shall be levied under this Act or Ordinance and for the appropriation of which no special directions are given shall be appropriated to His Majesty His Heirs and Successors for the public uses of the said Colony and the support of the Government thereof. Appropriation of fines.

15. And be it further enacted That this Law or Ordinance shall commence and take effect from the first day of May one thousand eight hundred and thirty-three and shall be and continue in force for two years. Commencement of Ordinance.

Harbours.

SCHEDULE TO WHICH THIS ACT REFERS.

FORM OF CONVICTION.

New South Wales } Be it remembered that on this
 to wit. } day of in the
 year of the reign of A. B. is convicted before
 of His Majesty's Justices of the Peace for the Colony of New South Wales by virtue of an
 Act or Ordinance of the Governor and Council made in the third year of the reign of King
 William the Fourth intituled "*An Act for preventing the extension of the infectious Disease
 commonly called the Scab in Sheep or Lambs in the Colony of New South Wales*" (here
 specify the offence and the time and place when and where the same was committed and set
 forth the evidence as nearly as possible in the words used by the witness and if more than one
 witness be examined state the evidence given by each or if the defendant confess instead of
 stating the evidence say and the said
 acknowledged and
 voluntarily confessed the same to be true) and I (or we) the said
 do adjudge him (her or them) to forfeit and pay for the same the sum of

Given under my hand and seal (or our hands and seals) the day and year aforesaid.