

No. III.

CATTLE IMPOUNDING
AMENDMENT.

An Act to repeal an Act of the Governor and Council of New South Wales intituled “*An Act to authorize the erection of Pounds and for regulating the impounding of Cattle*” and to make further and other provisions in lieu thereof. [12th July, 1833.]

Preamble.

WHEREAS a certain Act of the Governor and Council of New South Wales was passed in the ninth year of the reign of His late Majesty King George the Fourth intituled “*An Act to authorize the erection of Pounds and for regulating the impounding of Cattle*” and it is expedient to repeal the same and to make further and other provision for the erection of pounds for regulating the impounding of cattle and preventing the vexatious impounding thereof Be it therefore enacted by His Excellency the Governor of New South Wales with

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with the advice of the Legislative Council thereof That from and after the first day of September one thousand eight hundred and thirty-three the said recited Act (except in so far as any other Act matter or thing is thereby repealed and except as to any Act matter or thing already done or commenced to be done under and by virtue of the same) shall be and the same is hereby repealed and that from and after the said first day of September this present Act shall commence and take effect.

Repealing former Act.

Exceptions.

2. And be it further enacted That it shall and may be lawful for the Justices assembled at any Court of Petty Sessions to be holden in and for any district within the said Colony or the major part of them to appoint one or more convenient place or places adjoining to some public highway whereof one shall if it be practicable be at or near to the place at which such Petty Sessions are respectively holden for establishing erecting and maintaining a public pound or pounds for the said district and also a fit and proper person to be the keeper of any such pound being able to write a plain and legible hand and not being a paid constable and it shall and may be lawful for the said Justices or the greater part of them from time to time for the greater convenience of resort thereto by the inhabitants of the said district or place upon notice of their intention being inserted in the *Government Gazette* at least one month previous by order under their hands to cause any such pound to be removed to and erected in any other place and also from time to time to displace and remove the keeper of any such pound from his said office upon a reasonable cause appearing to them and in such case and also upon the death or resignation of any poundkeeper to appoint another fit and proper person to the said office in the place of the one so removed or dying or having resigned.

Pounds and pound-keepers to be appointed and removed by Justices in Petty Sessions.

3. And be it further enacted That a notification of the appointment or removal of any public pound or poundkeeper as the case may be shall be inserted in the *Government Gazette* by order of the Justices as aforesaid and signed by the Clerk of the Petty Sessions for the district in which such pound shall be situate or poundkeeper appointed and such notification shall be deemed and taken in all Courts of Law in this Colony and for all intents and purposes to be evidence that such pound or poundkeeper hath been legally appointed or removed as in the said notification is mentioned.

Notification in *Government Gazette* to be *prima facie* evidence of appointment or removal of a pound or poundkeeper.

4. And be it further enacted That it shall be lawful for the Governor of the Colony to advance and issue if required any sum not exceeding ten pounds for the erection of one such pound in every district in which Petty Sessions shall be holden as aforesaid and every pound erected as aforesaid whether at the public expense or otherwise shall be kept in good repair by the keeper thereof at his proper cost and charge and shall be delivered up by such keeper upon the determination of his office by removal or otherwise in the like order as the same may have been received by him to such person as shall be appointed by such Justices in such behalf and every pound erected as aforesaid shall be properly fenced and enclosed and adapted as far as may be for keeping cattle infected with any contagious disease separate and apart from those in health and if any poundkeeper shall not keep up and maintain the said enclosures in proper repair or shall knowingly keep or permit to be kept any cattle infected with any contagious disease in the same enclosure with cattle not so infected or shall not keep the said pound clean and in good order and the cattle which from time to time shall be impounded therein supplied with a sufficiency of wholesome food and water every such poundkeeper shall upon conviction of any such neglect forfeit and pay a sum not exceeding five pounds nor less than one pound.

Governor may advance £10 for erection of a pound in each district.

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Justices to frame a table of fees and estimate rates of ordinary damage subject to allowance &c. of the Governor.

5. And be it further enacted That it shall and may be lawful for the Justices or the major part of them as aforesaid to specify all such reasonable fees as shall be taken and charged by any poundkeeper for any matter or thing required to be done by him under and by virtue of this Act and not herein specially provided for and also from time to time as the same may become necessary to appoint affix and vary the price which it shall be lawful for the keeper of every such pound as aforesaid to charge and receive for the sustenance of the cattle of whatever description which shall be committed to any such pound and also to estimate and assess reasonable rates as and for the general or ordinary damages which shall and may be demanded and recovered in a summary way by the owner of any lands without proof of special damage for the trespass of any cattle thereon which rates shall be proportioned according to the respective descriptions and value of the crops growing upon the lands trespassed upon and also to the respective descriptions and nature of the cattle trespassing and to frame a table of such fees price or rates as near as may be according to the form in the Schedule A hereunto annexed such fees price and rates being nevertheless subject to the alteration allowance or disallowance of the Governor for the time-being and the same after having been so altered or allowed and such alteration or allowance notified in the *Government Gazette* shall and may be lawfully taken and charged demanded and recovered respectively as aforesaid.

Poundkeeper to be bound in recognizance &c.

6. And be it further enacted That every poundkeeper appointed under the provisions of this Act shall become bound by recognizance himself in the sum of twenty pounds and one or more surety or sureties to be approved by the said Justices or the major part of them in the further sum of twenty pounds in the form and with the conditions contained in the Schedule hereunto annexed marked C (which recognizance the Clerk of the Court of Petty Sessions is hereby authorized and empowered to take and for the taking whereof a fee of two shillings and sixpence shall be chargeable by him and no more) conditioned for the faithful performance of his duty as poundkeeper and of every act matter and thing by him required to be done and performed by virtue and according to the provisions of this Act and in case of the default of the said poundkeeper in any of the premises the said recognizance shall be forfeited and may be forthwith put in suit for the recovery of any penalties incurred and for the benefit of any party or parties aggrieved by such default as the case may be.

Party aggrieved may impound on his own premises cattle trespassing.

7. And be it further enacted That it shall and may be lawful for any person or the agent overseer or bailiff of any person upon whose land any cattle the owner whereof shall be known to him may be found trespassing to impound and detain the same in any convenient place upon his own lands if he shall think fit to do so Provided that he shall within twenty-four hours of such last mentioned impounding give or cause to be given to the owner of the said cattle the like notice as is hereinafter required to be given to the keeper of any public pound by any person sending cattle thereto and provided that he shall feed and maintain the said cattle whilst so impounded and shall not keep them so impounded longer than three whole days of twenty-four hours each but shall at the expiration of the said time if not sooner released upon payment of his lawful charges thereon drive or cause the same to be driven to the nearest public pound and lodged therein in manner hereinafter mentioned Provided also that any person impounding cattle on his own land as aforesaid or his agent or overseer shall not be entitled to demand or receive any compensation for damage done by the said cattle save and except for such damage as was done before their first mentioned impounding and shall not be entitled to demand or receive any fee or charge for the said impounding

His duty and lawful charges thereon.

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impounding except such as shall be by law chargeable by the keeper of the nearest public pound for feeding and maintaining.

8. And be it further enacted That it shall and may be lawful for any person or the agent overseer or bailiff of any person upon whose land any cattle shall be trespassing to drive and lodge or cause the same to be driven and lodged in the public pound nearest to the said land and the person impounding any such cattle shall specify to the keeper of the said pound the number and kinds of the cattle impounded and the name of the owner if he be known or supposed owner or that he is wholly unknown the place where the said cattle were trespassing and the amount of damages claimed for the trespass and if any owner or occupier of land or his agent or overseer shall impound any cattle in any pound or place not authorized by this Act or in any manner contrary to the directions and provisions thereof every person so offending shall upon conviction forfeit and pay a fine not exceeding ten pounds and not less than five pounds for every such offence.

Mode of impounding cattle trespassing and duty of the person sending them to the pound.

Penalty for impounding cattle contrary to this Act in unauthorized places.

9. And be it further enacted That the keeper of every public pound shall have and preserve at or near to the said pound a copy of this Act and also a pound-book ruled and divided into columns as near as may be in the form in the Schedule B hereunto annexed and he shall enter into the said pound-book in a legible hand-writing the particulars of all cattle lodged in the said pound specifying the day and hour as near as may be when and the cause for which the same were respectively impounded and by whom they were sent the time and mode of giving notice of the said impounding as by this Act required and also when and in what manner the same were released and by whose order and to whom delivered the particulars of all sales and of the proceeds thereof and by whose order the same were made and the said entries shall be made at the time the said acts were respectively done or as soon after as possible but not after any dispute concerning such entry shall have arisen and a copy of this Act and of the said pound-book shall at all reasonable times be produced by the said poundkeeper to and be open for the inspection of any person desiring to see the same upon payment to the said poundkeeper of the sum of sixpence for every such inspection and the said poundkeeper shall grant extracts (signed by himself) from the said pound-book upon payment of one shilling for every such extract not exceeding one hundred words and for every subsequent number of words not exceeding one hundred sixpence And the said poundkeeper shall file and preserve for not less than twelve calendar months all orders made by Justices concerning any cattle impounded and if any poundkeeper shall neglect or refuse to produce a copy of this Act or the said pound-book for the inspection of any person desiring to see the same upon his lawful fee for the same being first paid or offered to be paid or shall neglect to make any lawful entry therein he shall forfeit and pay for every such default a sum not exceeding twenty shillings and if any poundkeeper shall wilfully delay making any entry or shall knowingly make any false entry in the said pound-book or shall wrongfully erase or destroy any entry previously made therein he shall forfeit and pay for every such offence a sum of ten pounds.

Poundkeeper to have a copy of the Act and also to have a pound-book-form and requisites of the latter.

10. And be it further enacted That the keeper of every public pound shall erect and maintain in some conspicuous part of the said pound a board having painted thereon in legible white characters on a black ground a table of all such lawful fees and charges as he is by this Act authorized to demand have and receive together with all rates of ordinary damages as estimated assessed and allowed under and by virtue of the same and if he shall fail to erect the said board or to keep and maintain the same in proper repair

Poundkeepers to keep a board of fees and charges and rates of ordinary damages.

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repair after it has been erected or to make any lawful alteration therein which may afterwards become necessary within a reasonable time after the said alteration ought to be made or shall knowingly paint or cause to be painted any false statement thereon he shall forfeit and pay for every day that such board shall not be erected except during such reasonable time as the same shall be taken down for alteration or repair and for every day that such board shall not be maintained in proper repair or lawful alteration be not made after a reasonable time for making the same respectively shall have elapsed as aforesaid the sum of two shillings and sixpence and for every day that he shall knowingly suffer any false statement to remain on the said board the sum of five shillings.

Duty and responsibility of pound-keeper.

11. And be it further enacted That the keeper of every such public pound shall receive and detain in his custody any cattle lodged in such pound and shall be responsible to the owner thereof for every loss or damage sustained by the wilful act or the neglect of such poundkeeper or his servants but not otherwise and the said poundkeeper shall and may detain all cattle so impounded until the same shall be replevied in due course of law or until the sum for which the same were impounded together with his lawful fees and charges shall be paid or tendered or secured to be paid in the manner hereinafter provided or until he shall receive the written order of the person impounding such cattle to deliver the same together with his lawful fees and charges and upon such payment as aforesaid being tendered or paid or secured as hereinafter provided or such order being received from the person impounding together with his fees and charges as aforesaid the said poundkeeper shall immediately deliver such cattle to the owner thereof or his agent or overseer or other person duly authorized by such owner to receive the same and if such poundkeeper shall fail to deliver such cattle as hereinbefore required and directed he shall forfeit and pay for every such offence a fine of not less than forty shillings nor more than five pounds.

Form of security.

12. And be it further enacted That the security hereinbefore mentioned shall be an undertaking in writing and shall be in the form and to the effect mentioned in the Schedule hereunto annexed marked with the letter D and shall be signed by the owner of such impounded cattle or his agent or overseer and every agent or overseer who shall sign such note whereby such cattle shall be released from pound shall be deemed to be the authorized agent of his employer without any further proof being required thereof and every such security or undertaking shall be paid at all events at the time and place therein mentioned without any further notice or demand for such purpose and upon failure of such payment the amount or sum secured by such undertaking shall and may be recovered by summary process of distress and sale to be issued by any Justice of the Peace (which such Justice is hereby authorized and required to issue) upon the production of such undertaking or security before such Justice and the oath of the poundkeeper that the same is still due and unsatisfied against the goods and effects of the owner of the cattle so impounded.

Poundkeeper to post notice at the pound of all cattle under his charge.

13. And be it further enacted That the keeper of every public pound whenever and as often as any cattle shall be impounded therein for trespass shall post a written notice on the gate or on some other conspicuous part of the said pound setting forth a description of the cattle so impounded or in his possession and such notice shall remain so posted until such cattle shall have been claimed or otherwise disposed of by due course of law and every poundkeeper who shall neglect to post such notice as aforesaid shall for every such neglect forfeit and pay a fine of forty shillings.

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14. And be it further enacted That when any impounded cattle shall not be followed to the said pound or claimed by the owner thereof or by some one on his behalf within twenty-four hours after the same shall have been impounded the keeper of the said pound shall as soon as possible after the expiration of the said twenty-four hours send notice in writing to the said owner if he be known to him and shall reside within ten miles of the said pound or to his agent or overseer if the said owner shall reside at a greater distance and have a known agent or overseer residing within ten miles which notice shall contain the same particulars as are required to be given to the poundkeeper by the person impounding the same And also shall contain notice of the time and place where the said cattle will be sold if not sooner released from the said pound by the owner or some one on his behalf and also the sum of money for which the same were impounded and the said notice shall within the distance aforesaid be delivered personally to the said owner agent or overseer or left for him at his usual place of abode and if the said owner agent or overseer be known and shall reside at a greater distance than ten miles from the said pound then the said poundkeeper shall send the like notice addressed to the owner agent or overseer by the General Post as soon as possible after the expiration of twenty-four hours from the time of impounding and if neither owner nor agent nor overseer be known to the said poundkeeper then he shall cause the like notice to be posted at the nearest Court-house and a notice in the form in the Schedule marked E hereunto annexed to be inserted in the next *Government Gazette* which shall be published after the expiration of the said twenty-four hours and in which it shall be possible to cause the same to be inserted Provided always that when the cattle impounded under the provisions of this Act shall consist of sheep goats swine or calves and be not more than two in number it shall not be necessary to give any other notice of such impounding than by affixing notice thereof on the pound in the manner hereinbefore directed.

Poundkeeper to give notice to owners of cattle impounded.

Proviso.

15. And be it further enacted That from and after the commencement of this Act it shall and may be lawful for the keeper of every pound in this Colony legally constituted by virtue of this Act to demand and receive as pound fees for the cattle of the several descriptions which shall be impounded therein the several and respective sums following that is to say for the first or only horse mule or ass and for the first or only horned beast goat or swine the sum of six-pence and for every additional beast not exceeding the number of ten the sum of three-pence each and the further sum of one penny for each and every additional beast of the kind impounded at the same time and upon the same account and for any one or more not exceeding four in number of sheep or lambs which shall be so impounded the sum of two-pence and the further sum of one halfpenny each for every additional animal of the like kind beyond four impounded at the same time and upon the same account.

Pound fees to be taken for the first three days.

16. And be it further enacted That the several sums so by this Act authorized to be demanded and taken by any such poundkeeper as pound fees shall be taken and deemed to be in full satisfaction as pound fees to such poundkeeper for three days consisting of seventy-two hours next after the time when such cattle shall be so impounded whether such cattle shall remain impounded during the whole or during a part only of seventy-two hours and that after such three days it shall be lawful for any poundkeeper to demand and take one-half of the like sum at the rate hereinbefore mentioned for every additional seventy-two hours during the whole or any part of which any cattle of the description hereinbefore mentioned shall remain in the custody of such poundkeeper in such pound.

Pound fees to be taken after the first three days.

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Poundkeeper's charges for giving notice of cattle impounded.

17. And be it further enacted That the keeper of any public pound shall and may lawfully demand and receive from every owner of such cattle for every notice of cattle impounded as aforesaid posted on the gate or other conspicuous part of the said pound as by this Act required for writing and posting the same the sum of six-pence for every notice in writing sent to the owner of any cattle impounded or his agent or overseer as by this Act required where the said owner agent or overseer shall reside within ten miles of the said pound for writing and sending the same the sum of two shillings and six-pence for every such notice sent by the General Post where the same is by this Act required so to be sent and the nearest Post-office or usual place for despatching letters by the said post shall be within ten miles of the said pound for writing and sending the same the sum of two shillings and six-pence and where the said Post-office or place is beyond ten miles but not exceeding fifteen miles the sum of five shillings and exceeding that distance the sum of seven shillings and six-pence and for inserting any notice in the *Government Gazette* where the same is by this Act required to be done the actual cost of such insertion over and above the charge for writing and sending the same as hereinbefore mentioned.

What fees pound-keeper may take.

18. And be it further enacted That it shall and may be lawful for the keeper of any public pound to demand have and receive to his own use for the impounding of any cattle and for feeding and maintaining the same whilst impounded and for giving notice thereof to the owner and for all other matters and things which are by this Act required to be done by him all such fees and charges as are specified in this Act and all such other fees and charges as shall at any time be authorized to be taken and charged as in this Act is mentioned and if any poundkeeper shall demand or take any greater sum for the impounding of any cattle or doing any act matter or thing than such poundkeeper is so authorized to demand and take every such poundkeeper shall forfeit and pay for every such offence a sum not exceeding five pounds nor less than one pound.

Penalty for taking unlawful fees.

As to release of cattle impounded on payment of the sum of money or amount of damages claimed.

19. And be it further enacted That if the owner of any cattle impounded shall release the same upon payment to the keeper of the said pound of the sum of money for which the said cattle were impounded the said poundkeeper shall pay the same to the party who impounded the said cattle upon his demand thereof and if he shall fail so to do he shall forfeit and pay for his default the sum of five pounds.

Proceedings of the poundkeeper respecting unclaimed cattle prior to sale.

20. And be it further enacted That where any impounded cattle shall not be released from the said pound by the owner thereof or by some one on his behalf within seven days after notice has been given to the said owner agent or his overseer by delivering the same to him personally or by leaving the same at his usual place of abode or within twenty-one days after notice shall have been despatched through the General Post or inserted in the *Government Gazette* as the case may require which periods of seven days and twenty-one days respectively shall be reckoned exclusive of the day upon which the said notice shall have been delivered or despatched or inserted it shall and may be lawful for the said poundkeeper to apply to the next Justice of the Peace not being a party interested in the said matter for an order for the sale of the said cattle and the poundkeeper shall at the time of the said application produce and shew to the said Justice the pound-book kept by him as by this Act directed or an extract of so much thereof as may apply to the case and also such other proof by the oath of the said poundkeeper or others as the said Justice may require that he has complied with the terms and provisions of this Act and thereupon the said Justice shall and may if he

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he be satisfied that the said terms and provisions have been complied with make an order under his hand authorizing the sale of the said cattle or otherwise shall first direct such acts to be done as shall have been omitted and in the meantime shall suspend the order for the said sale until a future day to be appointed anew by him and until the said terms and provisions shall have been complied with notice of which suspension and future time of sale shall be given by the said poundkeeper to the owner his agent or overseer personally or at his usual place of abode or through the General Post or by insertion in the *Government Gazette* as the case may require and in the same manner respectively as by this Act is provided for giving the original notice of impounding. Provided however that where any such delay and suspension of sale shall be made necessary in consequence of the neglect of the said poundkeeper the costs of all further proceedings and notices as well as of the future feeding and maintaining of the said cattle shall be borne by the said poundkeeper.

Proviso—if suspension of sale be caused by neglect of poundkeeper.

21. And be it further enacted That all sales of impounded cattle under and by virtue of this Act shall take place on the tenth day after the same shall have been impounded in all cases where notice of impounding shall have been given to the owner or his agent or overseer by delivering the same to him personally or by leaving the same at his usual place of abode and in all other cases on the twenty-fourth day after such notice shall have been despatched through the General Post or inserted in the *Government Gazette* unless the said tenth day or twenty-fourth day as the case may be shall happen to be Sunday or Christmas Day or Good Friday and then on the following day and unless the sale be suspended by order of the competent Justice as hereinbefore mentioned in which case the sale shall take place upon the day appointed anew by the said Justice and all such sales shall take place at the public pound where the said cattle shall have been impounded and shall commence at the hour of noon and not more than ten head of sheep or goats or five pigs shall be put up in any one lot and not more than one horse or one head of any other cattle and neither the person who impounded the said cattle nor the keeper of the said pound nor his surety nor the Justice who made the order for the sale shall either personally or by any other purchase the said cattle or any part thereof upon pain that every person offending therein shall forfeit and pay for every such purchase contrary to the true intent and meaning hereof the sum of five pounds.

Time and mode of sale of impounded cattle and who may not purchase.

22. And be it further enacted That all impounded cattle directed to be sold under the provisions of this Act shall and may be sold by the poundkeeper by public auction to the highest bidder notwithstanding that he shall not have taken out a license as an auctioneer and all such sales shall be free of auction duty anything contained in a certain Act of the Governor and Council passed in the ninth year of the reign of His said late Majesty intituled “*An Act to regulate the licensing of Auctioneers and the collection of Duties on property sold by auction*” to the contrary notwithstanding.

Poundkeepers to act as auctioneers.

23. And be it further enacted That it shall and may be lawful for every poundkeeper appointed under this Act to receive the price of any impounded cattle which shall be sold under and by virtue thereof and to apply the same first in the payment of all lawful fees and charges due to himself secondly in payment of the sum due to the party at whose instance the same were impounded and the residue he shall pay over to the owner of the cattle sold where he is known or to his known agent or overseer upon the same being demanded and if the owner of the cattle sold be unknown and have no known agent or overseer the said poundkeeper shall within one month after the sale pay the amount into the hands of the Colonial Treasurer in trust for the

As to the application of money arising from sale of cattle impounded.

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the party entitled thereto and the receipt of the said Treasurer for the same shall be the legal acquittance and discharge of the said poundkeeper for the amount specified therein and in case no claim to the same shall be duly made within two years next after the said money shall have been so paid into the hands of the Colonial Treasurer it shall and may be lawful for the Governor by warrant under his hand to direct the same to be paid to the Treasurer for the time-being of the Benevolent Asylum to be by him applied in furtherance of the objects of that institution and the said money shall thereupon be paid over and applied accordingly.

Proceeds of cattle impounded for private trespass proving insufficient to defray the expenses the residue to be paid by party impounding.

24. And be it further enacted That if the proceeds of any cattle impounded by any person or his overseer for trespassing and doing damage upon the lands of such person and sold under and by virtue of this Act shall be insufficient to satisfy the lawful fees and charges of the poundkeeper respecting the same the residue of such fees and charges shall be paid to the said poundkeeper by the party who impounded the said cattle.

Remedy of party aggrieved by trespass of cattle without impounding them.

25. And in order to avoid in as far as may be the impounding of cattle be it enacted That where any cattle shall be found trespassing or doing damage and the rate of damage for the said trespass shall have been estimated and assessed by the Justices as aforesaid and allowed by the Governor as in this Act is mentioned it shall and may be lawful for the person entitled to such rate of damage to take drive or send such cattle to their owner or his known agent or overseer and to demand payment of the amount of damage according to such rate and thereupon it shall and may be lawful for such owner or his agent or overseer and he is hereby required to pay the same as and for a satisfaction of the said trespass and if the owner of any such cattle or some person in his behalf shall not pay the amount of such fixed rate of damage upon the same being demanded it shall and may be lawful for the party aggrieved by such trespass instead of impounding the cattle to make his complaint to the Justices of the Peace assembled and sitting in Petty Sessions at or nearest to the place where the said trespass was committed and such Justices shall summon before them the owner of any cattle so having trespassed or if he be absent his known agent or overseer and it shall be lawful for such Justices (at the time appointed by such summons for the appearance of the party complained against whether he appear or not) upon proof of the service of such summons summarily to enquire and examine into and hear and determine upon the matter of such complaint and upon satisfactory proof of such trespass and of the neglect or refusal of the party complained against to pay the fixed rate of damage to issue their warrant to levy the same together with such costs as to the said Justices shall appear just and reasonable.

Pound rescues or breaches.

26. And be it further enacted That if any person at any time after the passing of this Act shall rescue any cattle which shall have been lawfully seized for the purpose of being impounded or shall break down injure or destroy any pound legally constituted whether any cattle shall be impounded therein or not or shall commit any pound breach or rescue whereby any cattle of any description shall escape or be enlarged from any such pound every such person shall be deemed guilty of a misdemeanor and upon conviction of such offence before any competent Court shall be liable to suffer fine and imprisonment at the discretion of such Court before whom such offender shall be tried and convicted.

Penalty.

Cattle not to be driven from the land or herd of any person without notice.

27. And whereas serious inconvenience and loss have been occasioned by reason of persons whose cattle have strayed upon the land and into the herds of others driving off the cattle of other persons together with their own for remedy whereof Be it further enacted

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That it shall not be lawful for any person to drive any cattle from the land and out of the herds of any other person without first giving notice to such last mentioned person his overseer or bailiff of the time he intends to drive away such cattle and any person who shall drive away any cattle other than his own or his master's or employer's from the land and out of the herds of any other person or who shall fail to give such notice as hereby required being free shall on conviction of every such offence forfeit and pay the sum of five pounds or being a convict shall be deemed to be guilty of disorderly conduct and punished accordingly.

28. And whereas great injury has arisen to the breed of horses and horned cattle by reason of entire horses and bulls of inferior kinds being allowed to stray and run at large Be it therefore enacted That the owner of any entire horse or bull above the age of one year which may be impounded or detained under the provisions of this Act shall upon the complaint of the owner or occupier of the land trespassed upon or of his agent or overseer and on proof before any two or more Justices of the Peace that such entire horse or bull has been wilfully or negligently suffered to stray and run at large forfeit and pay the sum of five pounds over and above any other penalty or charge to which he may be liable under this Act.

Additional penalty on entire horses and bulls impounded.

29. And be it further enacted That it shall not be lawful for any person whomsoever to suffer any cattle belonging to him or under his charge to stray or go about or to be tethered or depastured in any street or public place within the limits or reputed limits of the towns of Parramatta Windsor Richmond Liverpool Campbell-town Newcastle or Maitland and any person who shall so offend shall on conviction forfeit and pay for every such offence a sum not exceeding forty shillings nor less than five shillings to be recovered in a summary way before any Justice of the Peace by distress and sale of the offender's goods and it shall and may be lawful for any constable or other person to seize and impound in the nearest pound any such cattle as aforesaid there to be detained until released upon payment of the poundkeeper's lawful fees and charges or otherwise disposed of according to the provisions of this Act Provided always that if any dispute shall arise as to the limits of any of the towns aforesaid the same shall be determined by the Justice before whom the case shall be brought.

Cattle not to be allowed to stray in the streets of towns.

Proviso.

30. Provided always and be it further enacted That nothing herein contained shall extend or be construed to prevent the owner of any lands trespassed upon from waiving the ordinary damages estimated assessed and allowed in manner required by this Act and claiming in any competent Court full satisfaction for any special damage sustained by him in consequence of any trespass And provided also that if the plaintiff in any suit or action for such special damages shall not after waiving the ordinary damages recover more than the amount of such ordinary damages then he shall not be entitled to or recover the costs of the said suit or action from the defendant in the same but the said defendant shall be entitled to and recover from the plaintiff the costs incurred by the said defendant and if the plaintiff in any suit or action for such special damage shall after waiving the ordinary damage become nonsuit or discontinue his said suit or action or a judgment be given against him therein the defendant in the said suit or action shall be entitled to and recover double costs from the said plaintiff.

Persons impounding cattle may waive the ordinary damages and bring an action for full satisfaction.

Proviso as to costs in case of failure in such action.

31. And be it further enacted That all damages not exceeding five pounds to which any poundkeeper shall and may be subject by reason or on account of the neglect or default of such poundkeeper either in enlarging any cattle distrained or impounded or in permitting any such cattle to be enlarged without sufficient authority for so

Justices at Petty Sessions to have cognizance as to damages claimed against any poundkeeper not exceeding £5 and also of all

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offences against this
Act and time and
mode of proceeding.

doing or by any neglect in his driving feeding or keeping any such cattle or by any other neglect or default whatsoever of such pound-keeper and all fines and penalties whatsoever incurred under this Act by any person who shall be guilty of any offence against the same shall and may be recoverable and recovered on complaint before two or more Justices assembled in Petty Sessions at or nearest to the place where the said pound shall be situate and it shall be lawful for such Justices and they are hereby authorized empowered and required to hear and determine such complaint provided such complaint shall be made to them within one calendar month next after the cause of complaint shall have occurred or the offence shall have been committed and for that pupose it shall and may be lawful for the said Justices to summon before them on a day to be appointed by them in that behalf the person complained against or charged with any such neglect or offence together with the witnesses concerning the same and thereupon whether the said party having been duly summoned shall appear or not unless some reasonable excuse for his default to be allowed by the said Justices shall be made for his non-appearance the said Justices are hereby authorized forthwith to proceed to enquire touching the matters complained of and shall hear and examine the allegations proofs and witnesses concerning the same and shall give judgment thereon and also for the payment of the costs of the said proceedings according to law and if any penalty or sum of money forfeited or directed or adjudged to be paid upon any conviction or complaint under the provisions of this Act shall not be paid by the party convicted or adjudged to pay the same within the space of three days after such conviction or adjudication the said Justices or any one of them shall thereupon issue a warrant under his or their hand or hands directed to any peace officer within his jurisdiction requiring the said officer to seize and distrain sufficient goods and chattels of the person convicted or adjudged to pay the same together with the reasonable costs of the said distress and if within five days from the taking of the said distress the penalty or sum of money forfeited or adjudged to be paid together with the said costs shall not be paid the goods seized shall be sold and the surplus (if any) after deducting the sum to be levied and costs shall be rendered to the party entitled thereto Provided that if upon the return of the officer charged with the execution of the said distress it shall appear that no sufficient distress shall be found or the party adjudged to pay any money shall at the time of the said adjudication or conviction declare that he has no goods or chattels on which the said distress can be levied then the Justices shall by warrant under their hands commit every such person to the common gaol of the district or place where he shall be found there to remain for any time not exceeding fourteen days from the time of such commitment where the whole sum to be levied and remaining unpaid together with the costs shall not exceed ten shillings one calendar month where the said sum and costs shall not exceed one pound two calendar months where the said sum and costs shall not exceed five pounds and three calendar months where the said sum and costs shall be of any greater amount unless the said sum to be levied together with the costs shall be sooner paid.

Proviso.

Appeal to Quarter
Sessions if sum be
above five pounds.

32. Provided always and be it enacted That in all cases where the sum to be paid on any summary conviction by Justices at Petty Sessions under this Act shall exceed five pounds any person who shall think himself aggrieved by such conviction may appeal to the next Court of General Quarter Sessions to be holden in and for the district within which the same shall have taken place upon giving immediate notice to the Justices at Petty Sessions of his intention so to appeal and

Cattle Impounding Amendment.

and finding sufficient security to their satisfaction in double the amount of the said penalty for duly prosecuting such appeal at the said next Court of General Quarter Sessions and for abiding the determination of the said last mentioned Court thereon and the said Justices shall return to the said Court of Quarter Sessions the said conviction under their hands and thereupon the Justices in such General Quarter Sessions assembled or the greater part of them are hereby authorized and required to hear and determine the matters of such appeal and either to confirm or set aside the said conviction and to award such costs to either party as to them or the greater part of them shall seem reasonable and the said last mentioned decision shall be final and conclusive as to the matters thereof and if upon the hearing of any such appeal the judgment of the Justices at Petty Sessions shall be confirmed such appellant shall forthwith pay the penalty and costs adjudged to be paid by him or else in default thereof shall be forthwith committed by the said Court of Quarter Sessions to the common gaol of the district there to remain for such time as is hereinbefore mentioned as the proportionate imprisonment to be suffered for and in respect of any such unsatisfied conviction.

33. And be it further enacted That a judgment or conviction duly made under this Act shall and may be pleaded in bar of any suit action or information which shall be commenced instituted or prosecuted for such and the same cause or offence in any other Court whatsoever.

Effect of judgment or conviction under this Act.

34. And be it further enacted That all fines which shall be levied or paid under this Act shall go and be paid one-half thereof to the informer and the other half to His Majesty His Heirs and Successors for the public uses of this Colony and the support of the Government thereof.

Mode of distribution of fines &c.

35. And be it further enacted That in the construction of this Act the word cattle shall in all cases be deemed and taken to mean and to include horses mares geldings colts fillies asses mules bulls cows oxen heifers steers calves rams ewes sheep lambs goats and swine and shall be deemed and taken to mean include and apply to any one animal of the said several kinds and that whenever in this Act any word or words is or are used importing the singular number of the masculine gender only yet the same shall be understood to include and apply to several persons as well as to one person and to females as well as to males.

Construction of this Act.

36. And be it further enacted That if any poundkeeper shall make it appear to the satisfaction of the majority of the Justices assembled at the first Court of General Quarter Sessions to be held after the commencement of the year one thousand eight hundred and thirty-five and of each and every succeeding year nearest to the place where such pound may be situate that the fees and profits arising from his office as keeper of such pound have amounted to less than thirty pounds for the preceding year it shall be lawful for the Governor for the time-being if he shall so think fit upon a certificate of the fact by the Clerk of the Peace to cause the keeper of such pound to be remunerated out of the funds of the Colony provided that the sum so to be paid to him shall not amount with the fees and profits of his office to more than thirty pounds as aforesaid And provided further that no such allowance shall be made to more than one poundkeeper in any district in which Petty Sessions are holden as aforesaid.

Governor may remunerate pound-keeper under certain circumstances.

Proviso.

Cattle Impounding Amendment.

SCHEDULES REFERRED TO.

A.

TABLE of Rates to be charged for Trespass of Cattle and the sustenance thereof whilst impounded in the District of 4th Wm. IV. No. 3. under the provisions of the

Description of Cattle &c. trespassing.	In any Forest or open Pasture Land open Stubble After-grass or other unenclosed Land.	In any Paddock of Grass enclosed by a good and substantial fence.	In any Garden or unenclosed Meadow or growing Crop of any kind enclosed by a good and substantial fence.	Amount to be charged daily for Sustenance whilst impounded.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
For every horse mare gelding colt filly ass mule bull cow ox heifer steer calf.				
For every ram ewe sheep lamb or goat.				
For every pig.				

Fixed by the Justices in Petty Sessions assembled at

day of

183

on the

Allowed by His Excellency the Governor

By Order

Colonial Secretary

Clerk of the Petty Sessions.

B.

FORM OF POUNDKEEPER'S BOOK.

Date.	Time.	Particulars of Cattle impounded.	Brand Marks.	Owner.	By whom impounded.	For what cause impounded.	Time and mode of giving Notice to the Owner.	How disposed of.	Time when released or sold.	Particulars of release or sale.

C.

Form of Recognizance to be entered into by a Poundkeeper with one or more Sureties.

NEW SOUTH WALES } BE IT REMEMBERED That on the day of 183
TO WIT. } A. B. of C. D. of
and E. F. of came personally before me (G. H. Clerk of the Court of Petty Sessions for the District of) and severally acknowledged themselves to owe to our Sovereign Lord the King to wit the said A. B. the sum of twenty pounds and the said C. D. (or the said C. D. and E. F.) the sum of twenty pounds of lawful money of Great Britain to be levied of their respective goods and chattels lands and tenements to the use of our said Lord the King His Heirs and Successors in case default shall be made in the performance of any of the conditions hereunder written—Now therefore the condition of this Recognizance is whereas the said A. B. is authorized to keep and maintain a public Pound situated at or near to in the District of if the said A. B. shall well and faithfully perform his duty as such poundkeeper and every act matter and thing by him as such poundkeeper required and directed

Imperial Acts Adoption.

directed to be done and performed by virtue and according to the provisions of the Act of the Governor and Council in such case made and provided then this Recognizance to be void otherwise to remain in full force Taken and acknowledged the day and year first above-written (as by the said Act is authorized and directed) before me

G. H.

(L. S.)

D.*Form of Security or Undertaking.*

I A. B. (describing the residence of the owner of the cattle impounded) hereby promise to pay within thirty days from the date hereof to C. D. (the poundkeeper) at

(naming either the pound or place of residence of the poundkeeper as may be required) the sum of (specifying the full amount of poundage as well as the fees and charges thereon) without any deduction whatever and in default thereof I consent that the said sum together with the costs necessarily incurred by the said default shall be levied by distress and sale of my goods and effects wheresoever found.

Dated at this day of 183 .

(Signed) A. B.

or for A. B.

C. D.

Overseer of the said A. B.

E.*Form of Advertisement in the "Government Gazette."*

Impounded at (here state the place the number and kind of cattle and where and how branded.)

If not claimed to be sold on

A. B. Poundkeeper.

Where there is no brand the animals are to be shortly described by stating age colour and any particular mark.