

No. XII.

CATARRH IN SHEEP. An Act for preventing the extension of the Disease commonly called the Influenza or Catarrh in Sheep and Lambs in the Colony of New South Wales. [29th August, 1838.]

Preamble.

If any person shall turn out upon any land unless belonging to or rented by him or drive upon any road any sheep infected with Catarrh he shall forfeit not more than fifty pounds on conviction before two Justices.

WHEREAS a certain disease commonly called the Influenza or Catarrh 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 expiration of ten days from the passing and publication of this Act turn out keep 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 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

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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 unless the same shall cross or pass through land owned or rented by such person and then only in the place or places where the same shall cross or pass through such land every such person shall upon the complaint upon oath of any proprietor or overseer in charge of any sheep and upon conviction before two or more Justices of the Peace for the said Colony forfeit and pay for every such offence a penalty or sum not exceeding fifty pounds nor less than ten pounds together with all reasonable costs and charges to be ascertained by the Justices before whom the conviction shall take place and the like penalty for every hundred sheep which shall be so turned out kept depastured driven or conducted contrary to the provisions of this Act Provided always that all sheep or lambs belonging to any flock in which there shall be at the time or may have been within three months previously any sheep or lamb infected with the said disease shall be deemed to be infected within the meaning of this Act so as to render the proprietor thereof liable to the penalties hereby imposed.

2. Provided always and be it enacted That no conviction shall take place for any such offence as aforesaid if it shall be made to appear to the satisfaction of the Justices before whom the case is tried that any such sheep or lambs became infected after they were so turned out kept depastured driven or conducted as aforesaid and had not been so infected or mixed with sheep or lambs so infected within three months previously to the time when the offence shall be alleged to have been committed Provided also that no conviction shall take place for any such offence as aforesaid in any case in which such disease shall break out in any sheep or lambs when depastured upon the accustomed run where the same or other flocks of the same owner or overseer have been ordinarily kept unless they shall be removed thereto or therefrom so as to endanger the flocks of any other person and if a question shall arise as to what is the accustomed run where the sheep or lambs of such owner or overseer have been ordinarily kept the fact shall be determined by the Justices before whom the case is tried as incidental to the same.

Not to extend to cases in which the disease shall appear after being so turned out &c.

nor when depastured upon their accustomed run.

3. And be it enacted That it shall be lawful for any Justice of the Peace upon information on oath from any proprietor or overseer in charge of sheep that he has reason to apprehend that infected flocks will be driven through the run where his flocks are depastured to grant a warrant for the immediate seizure and detention of such flocks until the same can be properly examined as hereinafter provided and the fact determined as to their being so infected or otherwise and if upon examination such sheep prove to be infected the proprietor thereof shall be liable to the penalties imposed by this Act but if they be proved to be free from such infection the person so informing shall be liable to defray to the proprietor all expenses and damages which may ensue from the seizure and detention as aforesaid to be assessed and recovered by and before any two or more Justices of the Peace.

Justice to grant a warrant for seizure and detention of sheep suspected to be infected.

4. Provided always and be it enacted That in case such disease as aforesaid shall break out or prevail in any flock of sheep or lambs at the time of their being driven or conducted upon any public road or way used as a public way for driving sheep from one part of the Colony to another every such sheep or lamb which may become affected with such disease shall be immediately killed and the carcase thereof forthwith completely consumed by fire or buried at least three feet in depth under a penalty on the owner or proprietor thereof of a sum not less than ten shillings nor more than five pounds for every such sheep or lamb which shall not be so killed and consumed

Sheep becoming infected on any run to be killed.

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consumed or buried as aforesaid to be recovered upon the complaint on oath of any proprietor or overseer in charge of sheep or any constable or mounted policeman before any two or more Justices of the Peace Provided always that it shall be lawful to bury or burn the carcasses of any infected sheep which shall be killed or die upon any public road as aforesaid in any waste Crown Land whatever near or adjoining to such road or within the nearest convenient distance from either side of such road upon any adjoining land being private property and it shall be lawful either to plead this Act specially or to give the same in evidence under the general issue in defending any action of trespass which shall be brought against any person or persons employed in burying or burning such carcasses in manner hereby authorized.

Justices to grant a warrant for the removal of sheep.

5. And be it enacted That when and so often as any sheep or lambs shall become so infected at the time of being driven or conducted as last aforesaid or any offender shall be convicted under this Act for turning out keeping depasturing driving or conducting of sheep or lambs infected with the said disease or for permitting or suffering any such sheep or lambs to be turned out kept depastured driven or conducted contrary to the provisions of this Act shall be made to appear to any two or more Justices of the Peace that it is necessary to remove the said sheep or lambs to some place where the same may be lawfully turned out kept or depastured it shall be lawful for such Justices to grant a warrant under their hands in the form in the Schedule hereunto annexed authorizing the removal of the said sheep or lambs and in every such warrant there shall be stated the place to which and the route by which the said sheep or lambs shall be removed and the time for which the same is granted not exceeding one calendar month and in case any such person shall detain or continue any such sheep or lambs on any lands or road or shall turn out keep depasture drive or conduct any such sheep or lambs without such warrant or contrary to the directions thereof such person shall be subject and liable to the penalties imposed and inflicted upon persons for turning out keeping depasturing driving or conducting such sheep or lambs contrary to the provisions of this Act.

Penalty for neglecting to obey such warrant.

Justices upon information to grant a warrant for the examination of sheep suspected to be diseased.

6. And be it enacted That upon information on oath made before any Justice of the Peace by any proprietor or overseer in charge of sheep or lambs that there is reasonable cause to suspect and believe that any sheep or lambs are infected with the said disease and are turned out kept depastured driven or conducted contrary to the provisions of this Act or in case any sheep or lambs shall be seized and detained for examination under the provisions of this Act it shall be lawful for such Justice to grant a warrant under his hand to some fit and proper person to be named by such Justice in the warrant to authorize him to examine any such sheep or lambs as aforesaid and if necessary to cause the same to be driven to the nearest pen where the same are ordinarily kept or to some convenient place for examination and any proprietor or person in charge of such sheep or lambs who shall refuse to allow the same to be examined or shall refuse or neglect when so required to cause them to be driven to the nearest pen or to some other convenient place for examination shall be subject to such and the like fines or penalties as by this Act are imposed or inflicted for turning out keeping depasturing driving or conducting any sheep or lambs contrary to the provisions thereof.

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

7. And be it enacted That whenever any sheep or lambs infected with the said disease called the influenza or catarrh shall be turned out kept or depastured upon any land whatsoever 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

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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 for three months thereafter and if any proprietor or person in charge of such infected sheep or lambs or his or her overseer or manager shall 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 and for three months thereafter according to the true intent and meaning of this Act 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 two or more Justices of the Peace to pay a penalty or sum of ten pounds.

8. 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 influenza or catarrh to the danger of infecting other sheep with such disease every person so offending shall be liable upon complaint made upon oath and upon conviction before any two or more Justices of the Peace to forfeit and pay a penalty or sum of not less than five pounds nor more than twenty pounds for every such infected sheep or lamb which may be so abandoned as aforesaid. Penalty for abandoning infected sheep.

9. And be it enacted That the carcase of every sheep or lamb which at the time of its death shall have been infected with such disease as aforesaid shall be immediately thoroughly consumed by fire or buried at least three feet in depth and the owner or proprietor of any such sheep or lamb shall be liable on conviction before any two or more Justices of the Peace to a penalty or sum of not less than ten shillings nor more than five pounds for every such carcase which shall not be so consumed or buried as aforesaid. Penalty for not burning or burying infected carcasses.

10. And be it enacted That if any person shall cast or cause to be cast into any running stream or water hole the carcase of any sheep or lamb which at the time of its death shall have been infected with such disease as aforesaid such person shall be liable on conviction before any two or more Justices of the Peace to a penalty or sum of not less than five pounds nor more than twenty pounds for every carcase which may be so cast contrary to the provisions hereof. Penalty for casting infected carcasses into running streams.

11. 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 influenza or catarrh 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 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 if such infected sheep or lambs shall while so turned out kept depastured driven or conducted or permitted or suffered to be so turned out kept depastured driven or conducted communicate the said disease to any sheep or lambs of any 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 Persons having charge of infected sheep by whose misconduct such infection shall be communicated to the sheep of any other person liable to reimburse such other person.

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infected as aforesaid shall be subject and liable over and above any other penalty imposed by this Act 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

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

as any fine or penalty imposed by this Act 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.

Penalty for butchers having infected sheep or lambs in their possession for the purpose of slaughtering or exposing the carcass for sale.

12. And be it further enacted That if any 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 or lamb so infected as aforesaid or shall expose the carcass 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 two or more Justices of the Peace to a penalty of not less than five pounds nor more than twenty pounds for every such infected sheep or lamb so in his possession or slaughtered or of which the carcass 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 Her Majesty Her 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 Justices may direct.

Proviso for destroying meat the produce of infected sheep.

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

13. And for the more effectual prosecution of all offences punishable by summary conviction under this Act 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 Justices may proceed to hear and determine the case *ex parte* 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 his or their warrant and when the person charged shall appear proceed to hear and determine the case.

Recovery of penalties.

14. And be it further enacted That upon any person being convicted before any Justices as aforesaid in any penalty for any offence committed against the provisions of this Act and the said penalty not being forthwith paid it shall and may be lawful for the Justices
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to issue 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 ten 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 months nor less than one month unless the whole of such penalties forfeitures and costs be sooner satisfied. Penalty on convicts.

15. And be it further enacted That in all cases where any conviction shall be had for any offence or offences committed against this Act by any free person or persons the conviction shall be according to the form in the Schedule hereunto annexed or to the effect thereof. Form of conviction.

16. Provided always and be it enacted That when any offence against this Act shall be committed by any convict or offender under sentence of transportation such convict or offender being convicted of the said offence shall and may at the discretion of the Justice or Justices before whom such conviction shall take place be punished for the same as any offender under sentence of transportation convicted of a misdemeanor or of disorderly conduct is liable to be punished under an Act of the Governor of this Colony with the advice of the Legislative Council passed in the third year of the reign of His late Majesty King William the Fourth intituled "*An Act to consolidate and amend the Laws for the transportation and punishment of Offenders in New South Wales and for defining the respective powers and authorities of General Quarter Sessions and of Petty Sessions and for determining the Places at which the same shall be holden and for better regulating the summary jurisdiction of Justices of the Peace and for repealing certain Laws and Ordinances relating thereto*" any thing herein contained to the contrary notwithstanding unless it shall appear and be proved to the satisfaction of the Justice or Justices before whom the case is tried that the offence was committed by such convict or offender 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. Punishment of convicts for offences under this Act.

17. 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 before any two or more Justices of the Peace as aforesaid shall think himself or herself aggrieved by the judgment of such Justices such person in case the penalty awarded shall exceed the sum of ten pounds but not otherwise 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 of every judgment so appealed from shall be suspended in case the person so convicted shall with two sufficient sureties immediately before such Justices enter into a bond or recognizance to Her Majesty Her Heirs and Successors in the penal sum of double the amount of the penalty so incurred or forfeited which bond or recognizance respectively such Justices 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 Appeal to the Quarter Sessions.

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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 decision shall be final between the said parties to all intents and purposes.

Limitation of conviction.

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

Penalty upon persons summoned as witnesses not appearing or refuse to give evidence.

19. 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.

Limitation of actions.

20. And be it further enacted That no action at law shall lie against any Justice of the Peace constable or mounted policeman 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 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 constable or mounted policeman shall be sued for any matter or thing done in pursuance of this Act the defendant or defendants in any such action may plead the general issue and give this Act and the special matter in evidence.

Proceedings not to be quashed for informality nor removed by *certiorari*.

21. 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 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.

Appropriation of fines.

22. And be it further enacted That all fines and penalties which shall be levied under this Act and for the appropriation of which no special directions are given shall at the discretion of the Justices be paid one-half to the informer or part thereof and the remaining part shall be paid into the Colonial Treasury for the use of Her Majesty Her Heirs and Successors for the public uses of the said Colony and the support of the Government thereof.

Commencement of Act.

23. And be it further enacted That this Act shall commence and take effect from and after the expiration of ten days from the passing and publication thereof and shall be and continue in force for two years.

SCHEDULES REFERRED TO.

Form of Warrant for removing Sheep after Conviction.

District of

In the Colony of New South Wales. }

WE A. B. and C. D. Justices of the Peace for the District of in the Colony of New South Wales having this day convicted E. F. of

(or G. H. overseer of E. F. of) of having turned out (*kept depastured driven or conducted as the case may be*) certain sheep (*or lambs*) infected with the disease called the catarrh or influenza the property of the said E. F. contrary to the provisions of the Act of the Governor and Council in such case made and provided and it has been made

to

Minors' Marriages.

to appear to our satisfaction that it is necessary to remove the said sheep (or lambs) &c. [or whereas it has been made to appear to us A. B. and C. D. Justices of the Peace for the District of _____ in the Colony of New South Wales that certain sheep (or lambs) the property of E. F. have while being driven or conducted on the public road leading from _____ to _____ become infected

with the disease called the catarrh or influenza and it has also been made to appear to our satisfaction that it is necessary to remove the said sheep or lambs &c.] to

in the District of _____ where the same may be lawfully turned out kept and depastured do hereby in pursuance of the authority in us vested by a certain Act of the Governor and Council passed in the second year of the reign of Her Majesty Queen Victoria intituled "*An Act for preventing the extension of the Disease commonly called the Catarrh or Influenza in Sheep and Lambs in the Colony of New South Wales*" authorize and direct the said E. F. (or the said G. H. overseer of the said E. F.) to drive or conduct the said sheep (or lambs) or cause the same to be driven or conducted to

_____ aforesaid by (here point out the nearest or most convenient route or that by which the said sheep or lambs are the least likely to spread the infection) This Warrant to be and continue in force from the date thereof until the _____ day of _____

Given under our hands at _____ this _____ day of _____ one thousand eight hundred and _____

A. B.
C. D.

Form of Conviction.

NEW SOUTH WALES }
TO WIT. }

BE it remembered That on this _____ day of _____ in the _____ year of the reign of _____ A. B. is convicted before _____ of Her Majesty's Justices of the Peace for the Colony of New South Wales by virtue of an Act of the Governor and Council made in the second year of the reign of Queen Victoria intituled "*An Act for preventing the extension of the Disease commonly called the Influenza or Catarrh in Sheep and 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 we the said Justices do adjudge him (her or them) to forfeit and pay for the same the sum of _____

Given under our hands and seals the day and year aforesaid.