

No. III.

An Act for the better prevention of Cattle Stealing and the Sale of Stolen Cattle. [4th July, 1853.]

CATTLE STEALING
PREVENTION.
—

WHEREAS it is expedient to make provision for the better protection of Cattle and for the better prevention of Cattle Stealing Be it enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows:—

1. From and after the passing of this Act the Act of the Governor and Legislative Council of the Colony of New South Wales passed in the fourteenth year of the reign of Her present Majesty Queen Victoria numbered fourteen intituled “*An Act for the better protection of Cattle in New South Wales*” shall be and the same is hereby repealed save and except as to any offences committed under the said Act which offences may be proceeded with heard and determined and the offenders punished under this Act. Repeal of 14 Vic. No. 11.

2. In the construction of this Act the word “cattle” shall extend to and include horses mares fillies foals geldings colts bulls bullocks cows heifers steers calves sheep lambs goats pigs mules and asses and the word “vendor” shall include and mean the auctioneer or other agent of such vendor as well as such vendor himself. Construction of terms.

3. Any Justice of the Peace upon complaint or information on oath that any cattle suspected to have been stolen is in the possession of any person may issue a summons to such person requiring him to appear at a time and place mentioned in such summons before any two Justices of the Peace or in the discretion of such Justice may issue a warrant in the first instance to apprehend and bring such person at a time and place mentioned in such warrant before any two Justices of the Peace and also if such Justice shall think fit may issue his warrant to any constable commanding him to seize any such cattle suspected to have been stolen and detain the same until such information or complaint shall have been disposed of and if on the appearance Restitution of stolen cattle may be awarded.

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appearance of such person so summoned or apprehended or on proof of the service of such summons personally or by leaving the same at the usual or last known place of abode of such person two days before he was required to appear it shall seem to such Justices after hearing evidence on oath or affirmation that such cattle were stolen within the period of one year preceding from the person making complaint or laying the information it shall be lawful for such Justices to adjudge him to be the owner of such cattle and to issue a warrant under their hands and seals to any constable of the said Colony commanding him forthwith to seize such cattle wheresoever the same may be found and to restore and give peaceable possession thereof to the person so adjudged to be the owner as aforesaid. Provided always that nothing herein contained shall be construed or taken to discharge any person from any criminal prosecution for felony to be afterwards brought against such person or to prevent the Justices committing such person for trial or to deprive any person of any right he may have or might have had before the passing hereof.

Vendee who delivers cattle or pays back sum received may recover from his vendor.

4. Any person from whom or from whose possession any cattle shall have been taken under any such warrant as last aforesaid may recover from his vendor the amount paid by him as the purchase money of such cattle and any vendor of such cattle who may repay or be compelled to repay the purchase money he may have received for such cattle may in like manner recover back from his vendor the amount he may have paid such last-mentioned vendor as the purchase money of such cattle and it shall be lawful for any Justice of the Peace upon complaint on oath made by any such person or vendor as aforesaid or any person on his behalf that such person or vendor has paid for such cattle and that such cattle have been taken from him or that he has paid or been compelled to repay the amount he received to summon the party selling to such last-mentioned person or vendor to appear before any two Justices of the Peace or to issue his warrant for the apprehension of such party selling and upon his appearance or in default thereof upon proof of the due service of such summons such Justices are hereby empowered to examine the parties or either of them and their respective witnesses (if there be any) upon oath touching the purchase and payment of the amount of the purchase money for such cattle and the restitution of the cattle purchased by such complainant or the repayment of the sum received by him and to make such order for the repayment of that amount with the costs incurred in the recovery thereof as shall to such Justices appear reasonable and in case such amount shall not be paid forthwith or at the time to be appointed by such Justices the same shall be levied by distress and sale of the goods and chattels of the party on whom such order for payment shall be made and if such distress cannot be made or shall prove insufficient such Justices are hereby empowered to cause the party upon whom the order shall be made to be apprehended and committed to any gaol or house of correction there to remain for any period not exceeding three months unless payment of the said amount and of all costs and expenses attending the recovery thereof shall be sooner made. Provided that the execution of such order shall be stayed for such time as such Justices may order if the person from whom or from whose possession such cattle may have been taken or on whom such order for payment shall be made shall forthwith enter into a bond to the complainant with two sufficient sureties to the satisfaction of such Justices and in such amount as they may think reasonable conditioned to prosecute to conviction within the time aforesaid the person guilty of having stolen such cattle and such conviction within the time aforesaid shall supersede the order so made by such Justices as aforesaid and no subsequent proceedings shall be laid thereon or upon the said bond
Provided

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Provided also that it shall be lawful for such Justices on the application of such party and notice to the said complainant to extend the time aforesaid.

5. If any witness shall prove on oath before a Justice of the Peace that there is reasonable cause to suspect that the skin or carcass or any parts of the skin or carcass of any cattle stolen from any person is concealed in any dwelling-house or other place it shall be lawful for such Justice to issue a warrant directing any constable to search such dwelling-house or place and if the skin or carcass of any cattle or any part of any such skin or carcass so suspected to have been stolen shall be found in the possession of any person in or at such dwelling-house or other place specified in such warrant with his knowledge it shall be lawful for any Justice before whom such person shall be brought (unless such person shall satisfy the said Justice that he came lawfully by the same) to commit such person to the nearest gaol or lock-up in which he can be conveniently confined in order that he may be brought forward for trial at the next Court of Petty Sessions (unless he enter into such bail with one or more sufficient securities as may be required for his appearance before such Court which any Justice is hereby authorized and required to take) and if such person so apprehended after proof upon oath of such finding of such skin or carcass or any part thereof as aforesaid shall not satisfy the Justices sitting at Petty Sessions in open Court that he came lawfully thereby he shall forfeit and pay any sum not exceeding fifty pounds together with the charges previous to and attending his conviction.

Penalty for possession of carcass of stolen cattle.

6. If any person shall take use or in any manner work any cattle the property of any other person without the consent of the owner or other person in lawful possession thereof such person so offending shall be deemed guilty of a misdemeanor and on being convicted thereof by any two Justices of the Peace in Petty Sessions assembled and in open Court shall forfeit and pay for every head of cattle so used any sum not exceeding twenty pounds together with the costs to be assessed by such Justices or at the discretion of such Justices be imprisoned in any gaol or house of correction with or without hard labor for any period not exceeding twelve months.

Penalty for working another person's cattle.

7. If any person convicted as last aforesaid under this Act shall have paid the sum adjudged to be paid together with costs if awarded under such conviction or shall have received a remission thereof from the Crown or shall have suffered the imprisonment awarded for the non-payment thereof he shall be released from all further or other proceedings for the same cause.

Bar to further proceedings.

8. If the Justices before whom any person shall be brought under this Act charged with the offence of working another person's cattle shall from the evidence given against such person be of opinion that there ought to be a prosecution for felony it shall be lawful for such Justices to abstain from adjudicating in a summary manner thereon and to deal with the case as one to be prosecuted at the Supreme or Circuit Court or Court of General Sessions and if the jury upon the trial of any person charged before any Court with the offence of stealing any cattle shall be of opinion that such person did not commit the felony with which he is charged but did commit the misdemeanor before mentioned it shall be lawful for such jury to acquit such person of the felony and to find him guilty of such misdemeanor and he shall thereupon receive sentence accordingly although such person may never have been charged or accused of such misdemeanor before any Justices or otherwise.

Cases of felony.

9. Upon non-payment of any fine forfeiture or penalty under this Act either immediately or within such period after the conviction

Non-payment of penalty.

Trustees.

as such Justices at the time of such conviction shall appoint and where no mode of proceeding is hereby prescribed such Justices shall commit such offender to any gaol or house of correction in the said Colony with or without hard labor for any period not exceeding three months where the sum remaining unpaid shall not exceed ten pounds four months where the said sum shall exceed ten pounds and not exceed twenty pounds and six months where the said sum shall exceed twenty pounds unless the said sums shall be sooner paid.

Proceedings in a
summary way.

11 and 12 Vic. c. 42.

Want of form no
certiorari.

Informer a competent
witness.

Actions against
Justices.

10. All proceedings under this Act for the recovery of penalties or forfeitures shall be had and taken in a summary way and where not otherwise provided for may be carried on in the manner directed by an Act of Parliament passed in the Session of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria intituled "*An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders*" or according to the law in force for the time being regulating summary proceedings before Justices of the Peace out of Sessions and no information in writing shall be necessary previous to the issuing a summons and no information summons warrant conviction commitment or other proceeding before or by any Justices of the Peace for any offence under this Act shall be quashed or set aside or judged void or insufficient for want of form or be removed by *certiorari* or otherwise into Her Majesty's Supreme Court of the said Colony and in any information summons warrant conviction commitment or other proceeding for any offence contrary to this Act it shall be sufficient if the offence be stated in the words thereof declaring the offence and in all proceedings under this Act the informer or party prosecuting shall be deemed a competent witness and it shall be lawful for the Justices to amend any proceedings before them on such terms as they shall think fit.

11. No action at law shall lie against any Justice of the Peace for any matter or thing done or commanded to be done by him in pursuance of the provisions of this Act unless there be 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 shall be sued for any matter or thing done in pursuance of this Act he may plead the general issue and give the special matter in evidence.