

No. XXIII.

An Act to amend the “Impounding Act of 1865.” [28th May, 1879.]

IMPOUNDING ACT
AMENDMENT (No. 2).

WHEREAS it is desirable to amend the “Impounding Act of 1865” Be it therefore enacted by the Queen’s Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Preamble.

1. This Act may be cited as the “Impounding Act Amendment Act of 1879” the term “Principal Act” shall mean the “Impounding Act of 1865” and the word “damages” whensoever used or appearing in this Act shall unless the context otherwise indicate be taken to signify or include rates for driving tolls ferry dues or other charges authorized by the Principal Act.

Title and definitions.

2. In case the owner of any animal impounded shall dispute the damages claimed or the impounding as not being in accordance with the provisions of the Principal Act or if the owner of any entire horse

Owner of impounded animal may complain against damages or impounding.

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horse or bull impounded and for which special damages are claimed under the thirty-first section of the said Act shall dispute that any such damages did or could accrue from the trespass of such entire horse or bull he may in any such case make his complaint in manner hereinafter provided and may either allow the animal to remain in the pound or pay to the poundkeeper the pound fees and charges demandable by him as well as the damages claimed (if any) and release the animal and in either case shall give the poundkeeper notice in writing of his intention to complain and upon receipt of such notice the poundkeeper shall not pay over any such damages (if any) but keep the same in his possession until the decision of the Justices shall be made known to him in manner or until the expiration of the time hereinafter mentioned.

Proceedings at hearing of complaint against damages or impounding when upheld.

3. The owner aforesaid may make his complaint in writing within fourteen days of the date of the said notice to any Justice of the Peace who shall thereupon issue a summons to the impounder to appear before two or more Justices at the Court of Petty Sessions nearest to the pound where the animal shall have been impounded and the Justices then assembled shall summarily hear and determine such complaint and if it shall appear to them that the damages if any claimed are or the impounding was contrary to the provisions of the Principal Act or if special damages have been claimed under the thirty-first section of the said Act for the trespass of an entire horse or bull that no such damages did or could accrue therefrom they shall adjudge accordingly and may make such order for costs and expenses which shall include any pound fees which the owner has paid or will have to pay as they shall think fit and shall issue an order to the poundkeeper for the release of the animal impounded on payment by the owner of the pound fees and charges due up to the day of release or for the return of any damages which may have been paid to him as the case may be. Provided that nothing in this Act contained shall be taken to give jurisdiction to any Justices in any matter where the title to land is in question.

Steps to be taken if complaint dismissed.

4. If on the hearing of any complaint as aforesaid the Justices shall dismiss the same they shall deliver a minute of such dismissal to the impounder on receipt of which minute by the poundkeeper if the animal impounded shall have been left in the pound he shall take the same course in regard to the detention of the animal and its sale as if the animal had been retained under ordinary circumstances except that it shall not be released until payment shall have been made of the pound fees and charges due up to the day of release but if the animal shall have been released the poundkeeper shall pay over to the impounder any damages which he may have received and the Justices may make such order for costs and expenses as they shall think fit.

How poundkeeper to act on non-receipt of order after notice of intention to complain has been lodged.

5. If after a written notice of intention to complain as hereinbefore provided has been given to any poundkeeper he shall not have received an order or minute as aforesaid within one month from the date of such notice he shall act and proceed in regard to the animal impounded or the damages if any paid to him as if no such notice had been given to him.

Special damages for trespass of entire horse &c. not chargeable.

6. The liability of the owner of any entire horse or bull to pay damages under the thirty-first section of the Principal Act shall not be incurred if the land trespassed upon was not enclosed by a sufficient fence at the time of trespass.

Poundkeeper &c. punishable for certain acts or neglect.

7. Any poundkeeper or other person wilfully doing any act or thing contrary to the provisions of this or the Principal Act or wilfully neglecting to comply with any requirement or condition of the said Acts for which no other punishment is provided shall in each case be liable to a penalty not exceeding five pounds.

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8. Any person unlawfully and wilfully leaving open any gate or slip-panel or making any gap in any fence thereby permitting or causing any animal to trespass or otherwise wilfully causing any animal to trespass or who shall illegally impound any cattle or shall drive any cattle without proper authority on or from the land of any other person shall in each case be liable to a penalty not exceeding five pounds.

Leaving open gates &c. or causing trespass.

9. Any person impounding any animal shall in writing inform the poundkeeper of the place where the animal was trespassing when seized for impounding the kind of fence (if any) round it the crop (if any) upon it the amount of trespass and other charges claimed by him on such animal and the name and address if known to the impounder of the owner or supposed owner of such animal and failing to do so or wilfully making any misstatement thereof shall in any such respect be liable to a penalty not exceeding five pounds.

Impounder to furnish certain particulars.

10. The owner of any animal which shall have been seized for trespass or any person in his behalf any time before the animal shall have been placed in a pound or otherwise disposed of in accordance with the Principal Act may release the same by paying the damages lawfully chargeable up to the time of release which damages the person in charge of the animal shall make known on demand and on his failing to do so or to give up the animal on tender of the damages stated to be claimed he shall be liable to a penalty not exceeding five pounds.

Animals on their way to pounds &c. may be released.

11. Any costs and expenses awarded under sections three and four of this Act shall be recoverable by distress and sale of the goods and chattels of the person ordered to pay the same and in default of sufficient distress he shall be liable to imprisonment with or without hard labour for any time not exceeding one month unless such costs and expenses shall be sooner paid.

How costs and expenses to be recovered.

12. No poundkeeper or person authorized by him shall impound any animal in the pound of which he is the keeper unless the same was trespassing upon land occupied by him under a penalty not exceeding twenty pounds.

Poundkeeper not to impound in his own pound.

13. No charge for the sustenance of animals which shall have been impounded shall be demanded by the poundkeeper for the day on which the same were so impounded unless such animals shall have been impounded and fed and watered or sent out to pasture before three p.m. of that day nor shall such charge be payable for the day on which the animals are released if the same are released before nine a.m. of that day.

Limiting charges for sustenance.

14. The Minister may appoint Inspectors of pounds without salary who shall subject to his instructions have the supervision and control of pounds and poundkeepers as may from time to time by notice in the *Gazette* be committed to their charge and such Inspectors may enter at any time on any land to inspect any animals impounded or detained for the purpose of being impounded and any person refusing to allow an Inspector to enter as aforesaid or hindering or impeding him in the execution of his duty shall be liable to a penalty not exceeding ten pounds.

Inspectors of Pounds.

15. If the occupant of any land having an insufficient dividing fence fails to make or repair his share thereof and the occupant of the adjoining land has erected or kept in repair his portion such last-mentioned land shall be deemed to have a sufficient fence as against the trespass thereon of any animal of which the first-mentioned occupant is the owner.

Occupant failing to fence liable for trespass damages.

16. Every penalty under this or the Principal Act not otherwise provided for may be imposed and recovered in a summary way by and before two or more Justices of the Peace.

Summary jurisdiction.