

No. XXXVI.

An Act to regulate the Impounding of Cattle. [18th December, 1855.]

IMPOUNDING.

WHEREAS it is expedient to amend the Law relating to the impounding of Cattle Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows:—

Preamble.

1. In the construction of this Act the following terms shall have the meaning hereby assigned to them that is to say—

Construction of terms used in this Act.

The term “cattle” or “head of 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 and calves and the word “sheep” shall mean and include rams ewes sheep and lambs and shall be deemed and taken to mean include and apply to any one animal of the said several kinds.

The term “poundkeeper” shall mean imply and include any person who may have the authorized charge of any pound whether such poundkeeper shall be gazetted as such poundkeeper or not or whether such poundkeeper shall hold any other office or have any other designation or not.

The term “Petty Sessions” shall mean and refer to the Justices assembled in Petty Sessions at a Court of Petty Sessions holden nearest to the pound respecting which such reference shall be made or to the place where any cattle may be detained instead of being impounded in accordance with the provisions of this Act.

The terms “owner” and “occupier” of any lands shall include any and every person occupying any waste lands belonging to the Crown under any lease license or other proper authority as also any superintendent overseer or other duly authorized person acting for and on behalf of any such owner or occupier.

2. It shall be lawful for the Governor to appoint convenient places in any part of New South Wales for establishing erecting and maintaining public pounds and from time to time whenever it may seem expedient to abolish any pounds already established or to be established under this Act and establish other pounds.

Governor to establish pounds.

3. The majority of the Justices in Petty Sessions assembled in and for any district in which any pound established under this Act may be situate shall select and appoint some fit and proper person as and to be poundkeeper of any such pound Provided that until such

Majority of Justices to appoint pound-keepers.

Impounding.

Existing pounds
continued.

appointments respectively all pounds and poundkeepers established or appointed at the time of the passing of this Act shall be deemed to be pounds and poundkeepers established and appointed under this Act and subject to the provisions hereof.

Poundkeepers may
be removed by
majority of Justices.

4. If at any time any such poundkeeper shall be guilty of any neglect or offence under this Act or shall not perform the duties of poundkeeper to the satisfaction of such Justices such poundkeeper shall be removed from such pound and any vacancy caused by such removal or the death or resignation of any poundkeeper shall be filled in the manner hereinbefore provided for the appointment of poundkeepers Provided always that the order for the removal of any such poundkeeper shall be made by the majority of such Justices in Petty Sessions assembled.

Pounds and pound-
keepers to be
gazetted.

5. A notification of the appointment or removal of any poundkeeper or the establishment or abolition of any public pound shall be inserted in the *Government Gazette* and such notification shall be deemed and taken for all intents and purposes to be evidence that such poundkeeper or pound hath been legally appointed removed established or abolished as in the said notification is mentioned.

Governor to advance
money to erect
pounds.

6. 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 termination of his office by removal or otherwise in the like order as the same may have been received by him to such persons 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.

Pound fees.

7. The keeper of every pound legally constituted by virtue of this Act may demand and receive 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 head of cattle goats or swine the sum of sixpence and for every additional head of cattle goats or swine impounded at the same time and upon the same account the sum of three-pence each and for the first or only sheep the sum of four-pence and for every additional sheep impounded at the same time and upon the same account the sum of one penny each.

Fees on impounding
cattle.

8. 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 after such three days it shall be lawful for any poundkeeper to demand and take one-half the like sum at the rate hereinbefore mentioned for every additional seventy-two hours during the whole or
any

Impounding.

any part of which any cattle of the description hereinbefore mentioned shall remain in the custody of such poundkeeper in such pound.

9. The fees as herein set forth shall and may be demanded by any poundkeeper as the pound fees irrespective of the fees for food or for giving notice as hereinafter provided and all such fees shall be paid to such poundkeeper as remuneration for his services as poundkeeper and keeping the pound in repair.

10. The Justices sitting in the nearest Court of Petty Sessions may from time to time appoint and fix the fees which it shall be lawful for the keeper of any pound to charge and receive for his own use for the sustenance of the cattle sheep goats or swine of whatever description which shall be impounded in any such pound and may also appoint and fix the rates as and for ordinary damages which shall and may be demanded by the owner or occupier of any lands for the trespass of any cattle sheep goats or swine thereon which rates shall be proportioned according to the respective descriptions and value of the crops or grass growing upon the lands trespassed upon and also to the respective descriptions and nature of the cattle sheep goats or swine trespassing according to the form in the Schedule to this Act annexed marked A subject to the approval of the Governor and such fees and rates may alter or amend subject as aforesaid and such fees or rates or any altered or amended fees or rates being notified in the *Government Gazette* shall and may be lawfully taken charged demanded and recovered respectively as aforesaid Provided that no provision shall be made for damages committed upon cultivated land not securely enclosed to a greater amount than would be payable if the trespass had been committed on land not cultivated Provided further that in case any cattle sheep goats or swine shall be impounded off the same land more than once within three months the person so impounding may legally claim and obtain double the amount of damages so fixed as aforesaid and if any such cattle sheep goats or swine shall be impounded three or more times within the period of six months from off the same land such persons so impounding may claim and be legally entitled to three times the amount of damages so fixed as aforesaid and every provision of this Act shall apply and be equally in force in reference to such double or treble damages as if the ordinary damages alone were claimed.

11. It shall be lawful for the Justices in Petty Sessions assembled to assess the costs charges and expenses attending the driving of any cattle sheep goats or swine to pound Provided always that if the owner of any animals so trespassing shall be dissatisfied with any such charges he may apply to the Court of Petty Sessions nearest to such pound which shall have power to summon all parties with their witnesses and to examine them upon oath in a summary way and to assess such damages as may appear to be reasonable and fair and such assessment of damages shall be final and conclusive between such parties and such Court of Petty Sessions shall have power (if necessary) to order so many of any such trespassing animals to be sold as shall be required to pay all such damages as well as all fees and other charges due to the keeper of any pound in which any animal so trespassing shall be impounded.

12. All cattle sheep goats or swine impounded under the provisions of this Act shall be sent to the public pound nearest to the land where the same were trespassing and the person impounding any such cattle sheep goats or swine shall in a written memorandum specify to the keeper of the pound the number and kinds of the cattle sheep goats or swine impounded and the name of the owner if he be known or supposed owner or otherwise state that he is wholly unknown to the person impounding the place where the said cattle sheep goats or swine

Pound fees to be paid.

Justices to fix rates of damage and fees for food.

Double damages for a second impounding and treble for a third.

Justices to assess charges for damages.

Cattle trespassing to be impounded in nearest pound.

Impounding.

swine were trespassing and the amount of damages claimed for the trespass and if any owner occupier of land or other authorized person shall impound any cattle sheep goats or swine in any pound or place not authorized by this Act or in any manner contrary to the directions and provisions hereof every person so offending shall upon conviction forfeit and pay a fine not exceeding ten pounds for every such offence.

Poundkeeper to keep book for entry of all impounded cattle which book may be inspected.

13. The keeper of every public pound shall have and preserve at or near to the said pound a copy of this Act and shall also keep a pound book ruled marked and divided into columns as near as may be in the form in the Schedule to this Act annexed marked B and he shall enter into the said pound book in a legible hand the particulars of all cattle sheep goats or swine lodged in the 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 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 once in every month if such pound be distant not more than twenty-five miles from any Court of Petty Sessions be produced before the nearest Bench of Magistrates and shall at all reasonable times be produced by the said poundkeeper to and be open for the inspection of any Justice or member of the police force free of charge and of any other 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 if any poundkeeper shall neglect or refuse to produce a copy of this Act or the said pound book for the inspection of any Justice or member of the police force or 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 five pounds 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 not exceeding twenty pounds.

Poundkeeper to erect board with fees to be taken painted thereon.

14. The keeper of every public pound shall erect and maintain on or near some conspicuous part of the said pound a board having painted thereon in legible white characters on a black ground a table of all the fees and charges he is by this Act authorized to demand have and receive together with all rates of damages as allowed under and by virtue of the authority of the Justices in Petty Sessions as aforesaid and if he shall fail to keep and maintain such board in proper repair after it has been erected or neglect to make any 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 a lawful alteration be not made after a reasonable time for making the same respectively shall have elapsed as aforesaid the sum of one pound and for every day that he shall knowingly

Impounding.

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11. It shall be lawful for the Justices in Petty Sessions assembled to assess the costs charges and expenses attending the driving of any cattle sheep goats or swine to pound Provided always that if the owner of any animals so trespassing shall be dissatisfied with any such charges he may apply to the Court of Petty Sessions nearest to such pound which shall have power to summon all parties with their witnesses and to examine them upon oath in a summary way and to assess such damages as may appear to be reasonable and fair and such assessment of damages shall be final and conclusive between such parties and such Court of Petty Sessions shall have power (if necessary) to order so many of any such trespassing animals to be sold as shall be required to pay all such damages as well as all fees and other charges due to the keeper of any pound in which any animal so trespassing shall be impounded.

12. All cattle sheep goats or swine impounded under the provisions of this Act shall be sent to the public pound nearest to the land where the same were trespassing and the person impounding any such cattle sheep goats or swine shall in a written memorandum specify to the keeper of the pound the number and kinds of the cattle sheep goats or swine impounded and the name of the owner if he be known or supposed owner or otherwise state that he is wholly unknown to the person impounding the place where the said cattle sheep goats or swine

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Impounding.

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13. The keeper of every public pound shall have and preserve at or near to the said pound a copy of this Act and shall also keep a pound book ruled marked and divided into columns as near as may be in the form in the Schedule to this Act annexed marked B and he shall enter into the said pound book in a legible hand the particulars of all cattle sheep goats or swine lodged in the 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 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 once in every month if such pound be distant not more than twenty-five miles from any Court of Petty Sessions be produced before the nearest Bench of Magistrates and shall at all reasonable times be produced by the said poundkeeper to and be open for the inspection of any Justice or member of the police force free of charge and of any other 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 if any poundkeeper shall neglect or refuse to produce a copy of this Act or the said pound book for the inspection of any Justice or member of the police force or 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 five pounds 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 not exceeding twenty pounds.

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Impounding.

ingly suffer any false statement to remain on the said board the sum of five shillings.

15. The keeper of every such public pound shall receive and detain in his custody any cattle sheep goats or swine 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 sheep goats or swine so impounded until the sum for which the same were impounded together with the lawful fees and charges shall be paid or tendered or until he shall receive the written order of the person impounding such cattle to deliver the same on payment being made of the lawful fees and charges exclusive of any damages that may be claimed.

Poundkeeper responsible for safe custody of cattle impounded.

16. The keeper of every public pound whenever and as often as any cattle sheep goats or swine 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 sheep goats or swine so impounded or in his possession and such notice shall remain so posted until such cattle sheep goats or swine shall have been claimed or otherwise disposed of by due course of law.

Poundkeeper to post notice of cattle in the pound on the gate.

17. Every poundkeeper shall keep a book in which shall be entered the brands or other marks of any cattle sheep goats or swine belonging to any person with his name and place of residence who may see fit to have his name and brands thus entered and for such entry the fee of five shillings shall be paid to the poundkeeper for his own use and if after any such entry any cattle sheep goats or swine having any brands or marks thus registered shall be impounded in any such pound it shall be imperative upon such poundkeeper as soon as possible to give notice of such impounding to the person so registering any brands or marks thus exhibited upon the cattle sheep goats or swine so impounded in the same manner and under the same regulations and upon payment of the same fees as hereinafter provided in case the owner of any cattle impounded shall be known to such poundkeeper or party impounding.

Poundkeeper to register brands of cattle owners.

18. When any impounded cattle sheep goats or swine shall not be followed to the pound or immediately claimed by the owner thereof or by some one on his behalf the keeper of the said pound shall within twenty-four hours after the same are impounded send notice in writing to be delivered personally or left at the usual place of residence of the owner if he be known or if the animals be branded with any brands registered with such poundkeeper to the person so registering such brands or to his agent or overseer provided the owner or registering person or his agent or overseer reside within ten miles of the said pound and if the said known owner or registering person shall reside at a greater distance and have no known agent or overseer residing within ten miles such notice shall be sent by the general post to the place of residence of such owner or person registering his brands or to his agent or overseer and every such 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 when and place where the said cattle sheep goats or swine will be sold if not sooner released from the said pound and also the sum of money for which the same were impounded and if neither owner nor agent nor overseer be known to the said poundkeeper and the brands on such cattle sheep goats or swine have not been registered then the poundkeeper shall cause the like notice to be posted at the nearest Court of Petty Sessions and a notice in the form in the Schedule marked C hereunto annexed to be inserted in the next *Government Gazette* which shall be published after the expiration

Notice of impounding to be sent to owners or parties registering brands.

Impounding.

expiration of twenty-four hours from the time that such cattle sheep goats or swine were impounded and in which it shall be possible to cause the same to be inserted but 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 Provided that no such notice as aforesaid shall be delivered or left as aforesaid but shall in all cases if the person being such owner or registering person or his agent or overseer shall by writing addressed to the poundkeeper so require be sent by the general post.

Fees for sending notices of impounding.

19. The keeper of any public pound shall and may lawfully demand and receive for his own use from every owner of such cattle sheep goats or swine or person registering his brands for every notice in writing of cattle impounded as aforesaid sent to the owner of any cattle sheep goats or swine impounded registering person or his agent or overseer as by this Act required where the said owner person agent or overseer shall reside within ten miles of the said pound for writing and sending the same the sum of one shilling for each mile of such distance travelled in proceeding to the residence of such owner agent or overseer for every such notice sent by general post where the same is by this Act required so to be sent the sum of two shillings and sixpence 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 sending the same to the Post Office as hereinbefore mentioned Provided that only one notice shall be charged for any number of cattle sheep goats or swine belonging to the same owner and impounded at the same time.

Poundkeepers to give security.

20. Previously to the appointment of any such poundkeeper the Justices in Petty Sessions making such appointment shall require the person so to be appointed poundkeeper to enter into a bond to Her Majesty with sufficient sureties in such amount as they may deem advisable conditioned that such poundkeeper shall well and truly perform the duties of such poundkeeper and shall well and truly account for and pay over all fees or moneys received by him in such capacity as is by this Act directed.

Penalty on neglect of duty on part of poundkeeper.

21. If any poundkeeper shall take or demand any greater sum for the impounding of any cattle sheep goats or swine or for pound fees or fees for damage or for sustenance or for doing any other matter or thing than such poundkeeper is authorized by this Act or by the Justices in Petty Sessions assembled or shall fail to pay to the person impounding any cattle sheep goats or swine any damage he may have received from the owner of such cattle sheep goats or swine an account of any such impounding or shall neglect or fail to provide proper and sufficient sustenance to any cattle sheep goats or swine impounded or to take due care thereof respectively or shall ride or use any cattle sheep goats or swine or if the keeper of any pound shall fail to comply with or shall offend against any of the provisions of this Act or otherwise misconduct himself as such poundkeeper every such person so offending shall on conviction before the Justices of the Peace assembled in Petty Sessions at or nearest to the place for which such poundkeeper is shall or may have been acting forfeit and pay a penalty not exceeding fifty pounds and at the discretion of the Justices before whom such conviction shall take place be removed from his office of poundkeeper.

Proceedings of the poundkeeper respecting unclaimed cattle prior to sale.

22. 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

Impounding.

same at his usual place of abode or within twenty-one days after notice shall have been dispatched 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 dispatched or inserted it shall and may be lawful for the said poundkeeper to apply to a 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 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 mean time 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.

23. Every such poundkeeper shall at the termination of every calendar month furnish to the Clerk of the Petty Sessions of the district in which any such pound may be situated for the information of the Justices composing such Petty Sessions and for disposal as herein provided an account in writing in the form and containing the several particulars set forth in the Schedule to this Act annexed marked D of all impounded cattle sold during the previous month and the Clerk of the Petty Sessions immediately on receipt of such account shall proceed under the orders and directions of the said Justices to verify the same and to compare the entries of sales with the notices thereof required to be given by this Act and shall cause any error or omission therein to be duly rectified by such poundkeeper and on being satisfied of the correctness of such account shall forward the same with a certificate of the correctness thereof forthwith to the said Colonial Treasurer and a copy of such account shall also be affixed by such Clerk of Petty Sessions on some conspicuous part of the Court House of such district for at least one month for general information and if any poundkeeper or Clerk of Petty Sessions shall fail or neglect to do and perform the several matters hereby directed by them respectively to be done and performed or any of them he shall forfeit and pay any sum not exceeding five pounds for every such offence.

Monthly account sales to be furnished by poundkeeper to Clerks of Petty Sessions and certified copies thereof to be by them forthwith transmitted to Colonial Treasurer.

Penalty on poundkeepers and clerks for neglect.

24. 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 dispatched through the general post or inserted in the *Government Gazette* unless the said tenth day or twenty-fourth day

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

as

Impounding.

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 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.

Poundkeeper to receive proceeds of sale of cattle not released and after deducting fees and damages to pay balance to Colonial Treasurer.

If not claimed in two years to go to charitable institution.

Cattle trespassing may be taken home and legal rates demanded for damages

Where damages or impounding disputed cattle to be given up but pound keeper to keep damages until Justices decide.

25. It shall be lawful for every poundkeeper appointed under this Act to receive the price of any impounded cattle sheep goats or swine which shall be sold under and by virtue thereof and to apply the same first in the payment of all lawful fees and rates next in payment of the sum due to the person at whose instance the same were impounded and the residue he shall pay over to the Colonial Treasurer of the Colony and such moneys shall be held by him in trust for the party entitled thereto 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 such person it shall and may be lawful for the Governor by warrant under his hand to direct the same to be paid to the treasurer or other authorized officer of any benevolent society or hospital established or to be established in any district of the Colony for the relief of such poor persons as through age sickness accident or infirmity are unable to support themselves Provided that in any district in which there is no benevolent society or hospital the same shall be paid towards the support of the nearest benevolent society or hospital.

26. It shall be lawful for the person entitled to impound to send any cattle sheep goats or swine found trespassing to their owner or his known agent or overseer and to demand payment of the amount of damage done according to such rate and thereupon such owner or his agent or overseer shall 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 sheep goats or swine or some person in his behalf shall not pay the amount of such fixed rate of damage upon the same being demanded the party aggrieved by such trespass may instead of impounding the cattle sheep goats or swine make his complaint to a Justice of the Peace and such Justice shall summon the owner of any cattle sheep goats or swine so having trespassed to appear before the Justices of the Peace assembled and sitting in Petty Sessions at or nearest to the place where the said trespass was committed and summarily inquire into and hear and determine upon the matter of such complaint and upon satisfactory proof that such cattle sheep goats or swine had trespassed as alleged and of the neglect or refusal of the owner to pay the damages claimed to order and award that the damages so claimed be immediately paid and upon neglect or refusal to obey such order to issue their warrant to levy the same together with such costs as to the said Justices shall appear just and reasonable.

27. In case any cattle sheep goats or swine shall be impounded and a larger amount of damages claimed than the scale authorized by the Justices assembled in Petty Sessions as for ordinary damages and the owner of such cattle sheep goats or swine shall dispute the amount of such damages or shall dispute the nature of the trespass committed

Impounding.

committed by such cattle sheep goats or swine or shall deny the legality of such impounding then and in any such case such owner may allow the cattle sheep goats or swine to remain in such pound until the case shall be decided as hereinafter provided or otherwise pay the damages demanded with the authorized pound fees and release the said cattle sheep goats or swine giving at the same time notice in writing to the poundkeeper that he intends to appeal against such damages or impounding as the case may be and upon the receipt of any such notice such poundkeeper shall not pay over to the impounding party such damages but keep the same in his possession until the decision of the Justices shall be given as hereinafter provided.

28. The owner of the cattle sheep goats or swine so impounded where the impounding or damages shall be disputed as aforesaid may make his complaint to any Justice of the Peace who shall summon the person complained of to appear before the Justices assembled in Petty Sessions at or nearest to the place of the said pound and such Justices shall summarily inquire and examine into and hear and determine such complaint and upon satisfactory proof of such trespass and of the injury done or damages sustained or of the legality of the impounding respectively such Justices shall order and award that the damages so claimed are legal and proper and thereupon if the cattle so impounded shall have continued in the pound the same course shall be observed in regard to their detention sale and other matters as if they had been impounded under ordinary circumstances excepting that they shall not be released by the owner thereof until payment be made of the damages so confirmed by the Justices as aforesaid and in case the owner shall have released the said cattle sheep goats or swine by payment of the damages and fees then on receiving a written order to that effect from the Justices or one of them adjudicating in such case the poundkeeper shall hand over to the party impounding the amount of damages he has so received but if it shall appear to the said Justices that such impounding was illegal or that the damages claimed were excessive and that the ordinary damages as settled by such Justices would have satisfied the merits of the case then such Justices shall order accordingly and shall assess the amount of compensation for loss of time labor additional pound fees or otherwise which the owner of such cattle so impounded illegally or upon which such excessive damages may have been claimed shall be entitled to in consequence of any such illegal impounding or claim of excessive damages and such owner shall recover the same as hereinbefore directed for the recovery of any damages according to any rate so allowed as aforesaid.

29. If any person shall rescue or incite or assist any person to rescue any cattle sheep goats or swine 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 or shall rescue or attempt to rescue or in any manner interfere with any cattle which may have been impounded and then in the charge or custody of any poundkeeper every such person upon conviction of any such offence before such Justices as aforesaid assembled in Petty Sessions shall forfeit and pay a penalty not exceeding twenty pounds and it shall be lawful for the said Justices to award the whole or any portion of such penalty to the person or persons on whose behalf such cattle were distrained.

30. Any poundkeeper may send any cattle sheep goats or swine which may have been impounded out of such pound at such times and

Justices to inquire into and decide upon damages or legality of impounding.

Penalty for rescue or committing pound breach.

Poundkeeper may take cattle &c. out of pound to feed or water.

Impounding.

to such places as he may see fit for the purpose of feeding grazing or watering of any such cattle Provided all such cattle sheep goats or swine shall be placed in some secure yard or other enclosure each night and that such cattle sheep goats or swine shall not be taken more than six miles from any such pound and every poundkeeper so allowing any such cattle sheep goats or swine to leave such pound shall be personally responsible for the value of the same if any of them be lost or not forthcoming in consequence of being so allowed to leave such pound without reasonable guard or security.

Stray animals not to be taken away without notice to owner of run where they are.

31. It shall not be lawful for any person to drive any cattle sheep goats or swine from the land and out of the herds or flocks 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 sheep goats or swine and any person who shall drive away any cattle sheep goats or swine other than his own or his master's or employer's from the land and out of the herds or flocks of any other person or who shall fail to give such notice as hereby required or who shall enter upon any other person's lands for the purpose of driving any such cattle sheep goats or swine or shall attempt to drive the same without giving such notice shall on conviction of every such offence forfeit and pay any sum not exceeding ten pounds and shall and may be apprehended on the spot by the owner or agent or other person authorized by such owner and taken before the nearest Justice who shall admit such person to bail to appear at the Court of Petty Sessions to be holden nearest to such place to be dealt with accordingly Provided that no such entry shall be made on the lands of another more than once in three consecutive months.

Fine not to exceed ten pounds.

Owners of entire horses and bulls trespassing to pay £5 damages.

32. 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 be liable to pay by way of damages for every such horse or bull any sum not exceeding five pounds to the party impounding any such animal besides all the legally authorized poundage fees and if the owner or other authorized person shall not release any such animal and such animal shall not realize at the poundkeeper's sale sufficient to pay the said sum of five pounds besides the poundage fees as authorized by this Act such owner shall pay the balance to such impounding party to be recovered before any two Justices.

Occupants of Crown lands may impound.

33. Any person in occupation of land by lease license or other authority granted by or on behalf of the Crown is hereby empowered to impound any cattle sheep goats or swine trespassing thereon Provided that it shall be lawful for any occupier of any such land through which any public road or thoroughfare may pass such land not being enclosed to impound the cattle sheep goats or swine of any person who may be travelling along or through any such road or who may stop upon such land during one night or day for necessary rest provided that such cattle shall not be at a greater distance from the centre of such road or thoroughfare than one quarter of a mile and that no such cattle shall be affected with either of the diseases known as catarrh or scab or other infectious disease.

This Act not to prevent actions for special damages.

34. 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 Provided that if the plaintiff in any suit or action for 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 or recover from the

Impounding.

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.

35. Whenever any fine penalty or forfeiture shall have been imposed under the provisions of this Act and the person convicted shall not forthwith pay the same it shall be lawful for the convicting Justices to order that the same be levied by distress and sale of the goods and chattels of such offender or in default of such distress or in the discretion of such Justice without ordering any such distress to direct that such person be imprisoned in any gaol or house of correction in the said Colony with or without hard labor as he shall think fit for a period not exceeding two calendar months if the penalty shall not exceed ten pounds and for a period not exceeding four calendar months if the penalty be above ten and not exceeding twenty pounds and for a period not exceeding six calendar months if the penalty be above twenty pounds and such person shall be detained accordingly unless such respective penalties and costs shall be sooner paid.

Imprisonment in default of payment of penalties.

36. All offences under this Act shall and may be heard and determined in a summary way before any two or more Justices in Petty Sessions as by law or this Act is or shall be provided and no proceedings under this Act shall be removed by *certiorari* into the Supreme Court and all the forms of information summons warrants orders and convictions under this Act may be prepared in the form required by the Act of Parliament passed in the Session of the eleventh and twelfth year 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*" Provided always that such proceedings shall not be invalidated if prepared in any other form which may substantially meet the merits of the case.

Proceedings to be in a summary way No *certiorari*.

37. Any person ordered or adjudged to pay any sum fine penalty or forfeiture amounting to the sum of twenty pounds who shall think himself aggrieved by the judgment of the Justices adjudicating or before whom he was convicted may appeal to the next Court of General and Quarter Sessions to be holden at or nearest to the district within which the same shall have taken place upon giving immediate notice to the Justices of his intention so to appeal and finding sufficient security to their satisfaction for duly prosecuting such appeal at the said next Court of General and Quarter Sessions and for abiding the determination of the said last-mentioned Court thereon and the Justices in such General and Quarter Sessions assembled are hereby authorized and required to hear and determine the matters of such appeal in a summary way and either to confirm or set aside the said conviction and to award such costs to either party as to them shall seem reasonable and such decision shall be final and conclusive.

Appeal allowed.

38. Any 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.

Conviction under this Act bar to other proceedings.

39. From and after the commencement of this Act the several Acts hereinafter mentioned shall be and the same are hereby repealed excepting as to any matter or thing done under or by virtue of any such Act or any offence committed against any such Act all which offences may be heard and determined under this Act that is to say— An Act of the Governor and Legislative Council passed in the fourth year of the reign of His late Majesty King William the Fourth and numbered

Repeal of Acts.

4 Wm. IV. No. 3.

Impounding.

4 Vic. No. 1.

9 Vic. No. 7.

14 Vic. No. 42.

Title.

numbered three intituled “ *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*” and also an Act of the said Governor and Legislative Council passed in the fourth year of the reign of Her present Majesty and numbered one intituled “ *An Act to amend an Act intituled ‘ 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’ and to extend the provisions thereof*” and also an Act of the said Governor and Legislative Council passed in the ninth year of the reign of Her present Majesty and numbered seven intituled “ *An Act to amend an Act intituled ‘ 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’*” and also an Act of the said Governor and Council passed in the fourteenth year of the reign of Her present Majesty and numbered forty-two intituled “ *An Act declaratory of the right of occupants of Crown Lands to impound Cattle and other animals found trespassing thereon*” Provided that any moneys which may at the time of the passing of this Act have been collected or received under the provisions of any of the said Acts and remaining in the hands of the Colonial Treasurer or any poundkeeper respectively shall go and be applied as by the said Acts or any of them is provided anything in this Act to the contrary notwithstanding.

40. This Act may be cited as “The Impounding Act of 1855.”

SCHEDULES REFERRED TO.

(A.)

TABLES of Rates to be charged for trespass of cattle and the sustenance thereof whilst impounded in the District of _____ under the provisions of the Act of Council 19 Vic. No. 36.

Fixed by the Justices in Petty Sessions assembled at _____ on the _____ day of _____

185 .

Description of Cattle 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 uncut meadow or growing crop of any kind enclosed by a good substantial fence.	Amount to be charged daily for sustenance whilst impounded.
	£ s. d.	£ s. d.	£ s. d.	
For every horse mare gelding colt filly ass mule bull cow ox heifer steer calf ..				£ s. d.
For every ram ewe sheep or lamb.. ..				£ s. d.
For every goat				£ s. d.
For every pig.. ..				£ s. d.

(Signed) By Order of the Justices

Clerk of Petty Sessions.

Allowed by His Excellency the Governor.

Colonial Secretary.

(B.)

Impounding.

(B.)

FORM OF POUNDKEEPER'S BOOK.

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

(C.)

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 described by stating age colour or any mark.

(D.)

Particulars of the Sale of Cattle at . . . for the Month of . . . by
Order of the Petty Sessions of

Date of Sale.	Description of Cattle.	Brands or Marks.	To whom sold.	Gross amount of Sale.	Particulars of expenses deducted.	Net produce of sale.	To whom paid.	REMARKS.

Dated at . . . the . . . day of . . . 18 . . .

Examined by order of the said Petty }
Sessions and certified to be correct. }

A. B.
Poundkeeper.

C. D.
Clerk of Petty Sessions.