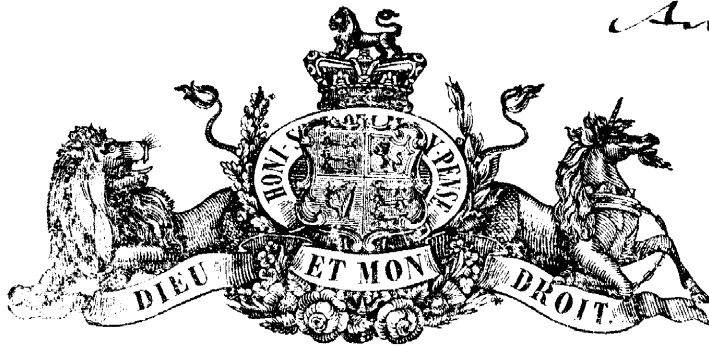


*In Brands Act No 111 of 78 part VIII
Amended No 625 of 95*



ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

A.D. 1858.

L 2 2 118

No. 8.

An Act to consolidate and amend the Laws relating to the Impounding of Cattle.

[Assented to, 24th December, 1858.]

WHEREAS it is expedient to consolidate and amend the Laws relating to the impounding of cattle—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

*Left its operation
Freamble. Gazette, 14. July, 1859*

1. From and after the commencement of this Act, an Act, No. 8, of the third year of the reign of Her present Majesty, intituled "An Act to prevent Entire Horses being suffered to stray or run at large;" and also an Ordinance, No. 3 of 1847, "To amend the Laws relating to the Impounding of Cattle;" and also an Act, No. 4 of 1856, to amend the said Ordinance, shall be and the same are hereby repealed, but the repeal of the same shall not have the effect of reviving any Act or Ordinance which was by the aforesaid Acts and Ordinance repealed.

Repeal of recited Acts and Ordinance No. 8, 3 Vict., No. 3, 1847, No. 4, 1856.

2. In the construction and for the purposes of this Act (if not inconsistent with the context), the word "Owner" shall include occupier of land, and also agent, overseer, bailiff, and manager of land, or of cattle; and the word "Cattle" shall include the several animals described in the Schedules hereto, marked A and B respectively; and words importing the singular number shall include the plural number, and shall apply to a plurality of persons or animals; and words denoting the masculine gender shall apply to persons and animals of the feminine gender.

Interpretation of terms.

See S. 50 for definition of "owner"

The powers to District Councils.

3. Every Municipal Corporation and District Council shall, within the boundary of their respective limits, carry into execution the several provisions of this Act, in relation to the erection and maintenance of pounds, and the appointment and removal of poundkeepers, and in relation to the varying of the sums to be received by poundkeepers as fees on the impounding of cattle, and for the sustenance of such cattle while impounded, and in relation to recognizances to be entered into by poundkeepers.

Appointment of pounds and poundkeepers.

4. It shall be lawful for Municipal Corporations and District Councils to establish within their respective limits one or more public pounds, and to appoint fit and proper persons to be keepers of such pounds, and with regard to those portions of the said Province which do not come within the limits of any Municipal Corporation or District Council, it shall be lawful for the Governor to establish public pounds and to appoint poundkeepers at such places as may be deemed necessary; and it shall be lawful for the Governor, or for such Municipal Corporation or District Council, respectively, to remove such poundkeepers.

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

5. A notification of the appointment or removal of any public pound or poundkeeper, as the case may be, shall be inserted in the *Government Gazette*, and such notice shall in all Courts, and before all Justices of the Peace, in the said Province, and for all intents and purposes, be deemed and taken to be evidence that such pound or poundkeeper hath been legally appointed or removed as in such notification is mentioned.

No ranger to be at the same time a poundkeeper.

6. No person holding the office of ranger under the Crown or under any Municipal Corporation or District Council, or holding a publican's licence, shall at the same time fill the situation of poundkeeper.

Pound to be fenced, enclosed, and kept clean, and in repair.

7. Every public pound shall be properly fenced and enclosed and adapted, so far as may be, for keeping cattle infected with any contagious or infectious disease, separate and apart from other cattle, and shall be kept in good repair and cleaned by the keeper thereof; and if the keeper of any public pound shall not keep the same clean and in good repair, or shall knowingly keep or permit to be kept any cattle infected with any contagious or infectious disease in the same enclosure with cattle not so infected, or shall not keep the cattle which shall from time to time be impounded therein supplied with a sufficiency of wholesome food and water, at least twice a day, between the hours of eight and nine o'clock in the forenoon, and the hours of four and five o'clock in the afternoon, every such poundkeeper shall, upon conviction of any such neglect, incur a penalty not exceeding Five Pounds, to be recovered and applied as hereinafter mentioned.

Constant supply of water to be maintained.

8. There shall be a constant supply of wholesome water in every pound, supplied either by troughs or in any other manner, that shall afford the animals impounded free access to the water at all times.

9. It

9. It shall be lawful for every poundkeeper to charge and receive, for cattle impounded under the provisions of this Act, the rates or fees specified in the Schedule hereto, marked A; and to charge and receive, for the daily sustenance of such cattle while impounded, the rates or fees, in respect of such sustenance, specified in the Schedule hereto, marked B; and such several rates or fees shall be charged according to the description of cattle contained in the said Schedules, and for each day, or part of a day, during which such cattle shall remain impounded.

Fees to be paid to poundkeeper.

see 695 of '95, S.S. 4.7.

10. The owner of cattle impounded for damage by trespass shall pay the rates for trespass specified in the Schedule hereto, marked B, according to the description of cattle, and according to the description of land or crop contained in such Schedule; regard being had to the description of fences hereinafter mentioned.

Rates for trespass.

Sec. 50.

11. It shall be lawful for a majority of Justices of the Peace of the said Province, present at any meeting to be holden in Adelaide, of the purpose of which due notice shall have been given by the Clerk of the Magistrates, from time to time as the same may become necessary, so far as concerns these portions of the said Province as ~~are~~ not within the boundaries of Municipal Corporations or District Councils, to vary the rates specified in the said Schedule marked A, and also the rates specified in the said Schedule marked B; and also to vary the rates for the daily sustenance of cattle while impounded; and also to vary the rates specified in the said Schedule marked B, for the ordinary damage and trespass of such cattle; and such rates, when so varied, shall be respectively notified in the *Government Gazette*, and shall and may, when so varied from time to time, be lawfully charged and recovered, according to the provisions of this Act.

Justices to have a table of charges for food, and estimate rates of ordinary damage, subject to allowance, &c., of Governor.

see sub-stituted words 625 of '95, S. 3

12. Every poundkeeper shall be bound by recognizance, himself in the sum of One Hundred Pounds, and one or more sureties, to be approved of by the Justice of the Peace taking the same, or by the Bench of Magistrates at any Local Court of full jurisdiction within the said Province, in the further sum of Twenty-five Pounds, in the form and with the condition contained in the Schedule hereto annexed, marked D, which recognizance any Justice of the Peace or Bench of Magistrates is hereby authorized and empowered to take, conditioned for the faithful performance by such person of his duty as poundkeeper, and of every act, matter, and thing by him required to be done and performed by virtue and according to the provisions of this Act; and in case of forfeiture, the sum payable by virtue of such recognizance shall be payable to the Treasurer for the public uses of the said Province and the support of the Government thereof, if the forfeiture shall not have occurred within the limits of a Municipal Corporation or of a District Council, or for the benefit of such Municipal Corporation or District Council, as the case may be, if it shall have occurred within the limits thereof.

Poundkeeper to enter into recognizance with sureties.

13. It shall be lawful for the owner, tenant, occupier, agent, overseer, or bailiff of any land on which any cattle, the owner whereof shall

Party aggrieved may impound, on his own land, cattle trespassing.

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shall be known to him, may be found trespassing, to impound and detain the same in any convenient place upon his own land: Provided that he shall, within twenty-four hours of such impounding, give or cause to be given to the owner of the said cattle, or leave at his usual or last known place of abode in the said Province, the like notice as is hereinafter required to be given to the keeper of any public pound by any person sending cattle thereto: And provided that he shall feed and maintain the cattle while so impounded, and shall not keep them impounded longer than three whole days of twenty-four hours each, and at the expiration of that time if not sooner released, upon payment of the rates which by this Act are chargeable by the keeper of the nearest public pound for feeding and maintaining such cattle, to lead or drive the same cattle to such pound.

His duty, and lawful charges.

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

Penalty for impounding contrary to this Act.

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

14. It shall be lawful for any person, or the tenant, agent, overseer, or bailiff of any person upon whose land any cattle shall be found trespassing, or for any ranger, to lead or drive such cattle to the public pound nearest to the said land, and the person impounding any such cattle shall give a notice to the keeper of the said pound specifying the number and kinds of the cattle impounded, and the name of the owner, if he be known, or of the supposed owner, or that he is wholly unknown, and also specifying the place where the cattle were trespassing, and the amount of damage claimed for the trespass, and the charges, if any, for the sustenance thereof, and if any owner or occupier of land, or tenant, his agent, overseer, or bailiff, shall impound any cattle unlawfully or in any place not authorized by this Act, he shall incur a penalty not exceeding Ten Pounds for every such offence.

15. The keeper of every public pound shall be provided by the authority appointing him with, and shall preserve near to the said pound a copy of this Act, and also a pound book, in the form in the Schedule hereto marked C, and he shall enter in each column in the said pound book in a legible handwriting, the particulars of all cattle lodged in the said pound, specifying the day and hour as near as may be, when, and the cause for which the same were respectively impounded, and by whom they were sent, the time and mode of giving notice of the said impounding, as by this Act required, and also when and in what manner the same were released, and by whose order and to whom delivered, and shall obtain the signature of the person to whom they were delivered, and his place of residence, and, if sold, the particulars of sales, by whose order the same were made, and the amount received as the proceeds thereof, as well as for maintenance and fees and charges under distinct columns, and the said entries shall be made, but not after any dispute concerning any such entry shall have arisen; and such pound book shall be and remain public property, and shall be delivered up to the authority appointing the poundkeeper, by every poundkeeper on his ceasing to hold that office, or sooner if demanded; and a copy of this Act and the said pound book shall at all reasonable times be produced by the said poundkeeper

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keeper to, and be open for the inspection of, any person desiring to see the same; and the said poundkeeper shall, if required, grant extracts (signed by himself) from the said pound book upon payment of Sixpence for every such extract not exceeding one hundred words, and of Sixpence for every subsequent number of words not exceeding one hundred; and the said poundkeeper shall file and preserve, for not less than two years, all orders made by any Justice of the Peace concerning any cattle impounded, and every poundkeeper shall on the last day of each month transmit to the Treasurer of the said Province, or of the Municipal Corporation or the District Council, as the case may be, a true copy of all the entries in the said pound book during such month, and if any poundkeeper shall neglect or refuse to produce for the inspection of any person desiring to see the same, a copy of this Act free of charge, or the said pound book, or shall neglect to make any such entry therein, as hereinbefore directed, such poundkeeper shall incur, for every such neglect or refusal, a penalty not exceeding Twenty Shillings, and if any such poundkeeper shall wilfully delay making any entry, or shall knowingly make any false entry in the said pound book, or shall erase or destroy any entry previously made therein, he shall incur for every such offence a penalty of Ten Pounds.

16. The keeper of every public pound shall, within fourteen days next after his appointment, erect or put up and maintain, in some conspicuous part of the said pound, a board having painted thereon, in legible black characters on a white ground, a table of all such lawful fees and charges as he is by this Act authorized to demand, take, and receive, together with all rates of ordinary damages as estimated, assessed, and allowed under and by virtue of the same; and if he shall fail to erect or put up the said board, or to keep the same in proper repair, and the letters and fees marked thereon in a legible condition, after it has been erected and put up, or to make any alteration therein which may afterwards become necessary, within a reasonable time after the said alterations ought to be made, or shall knowingly paint or cause to be painted thereon any false statement, he shall forfeit and pay as a penalty for every day that such board shall not be erected or put up, 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 alteration be not made after a reasonable time for making the same respectively, shall have elapsed, the sum of Two Shillings and Sixpence, and for every day he shall knowingly suffer any false statement to remain on the board the sum of Five Shillings.

17. The keeper of every public pound shall receive and detain in his custody any cattle lodged in the pound, and shall be responsible to the owner thereof for loss or damage sustained by his wilful act or neglect, or his servants, but not otherwise; and the said poundkeeper shall and may detain all cattle so impounded until the same shall be liberated according to the provisions of this Act, or until the sum for which they were impounded,

K

together

Penalty

Poundkeeper to keep a board of fees and charges, and rates of ordinary damage.

Duty and responsibility of poundkeeper.

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together with his lawful fees and charges, shall be paid, or tendered or secured to be paid in the manner hereinafter provided, or until he shall receive the written order of the person impounding such cattle to deliver the same, and shall receive from such person his lawful fees and charges; and upon such payment, as aforesaid, being made or tendered, or secured as hereinafter provided, or such order being received from the person impounding, together with the fees and charges aforesaid, the said poundkeeper shall immediately deliver such cattle to the owner thereof, or his agent, overseer, or bailiff, or other person duly authorized by such owner to receive the same, and if such poundkeeper shall fail to deliver such cattle as hereby required and directed, he shall incur a penalty for every such offence of not less than Two Pounds nor more than Five Pounds.

Cattle not to be delivered except from sunrise to sunset.

18. No poundkeeper shall be required to deliver any cattle, except between the hours of sunrise and sunset.

Party impounding not liable for fees.

19. The party impounding cattle shall not be liable to pay to the poundkeeper any fees or charges in respect of the same.

Stray cattle not to be taken away without notice to owner of land where they are.

20. It shall not be lawful for any person to drive any cattle from the land, or out of the herds of any other person, without first giving notice to such last-mentioned person, his overseer, or bailiff, of the time he intends to drive away such cattle; and any person who shall fail to give such notice as hereby required, or who shall enter upon any other person's lands for the purpose of driving any cattle, or shall attempt to drive any cattle, without giving such notice, or who shall drive away any cattle other than his own, or his master's, or employer's, from the land and out of the herds of any other person, shall, on conviction for every such offence, forfeit and pay the sum of not less than Five Pounds nor more than Twenty Pounds: Provided that nothing herein contained shall operate to prevent any carrier from depasturing any cattle upon any Waste Lands of the Crown while actually employed for the purposes of traffic,

Party using cattle without consent of owner.

21. Any person who shall, without the authority or consent of the owner thereof, work or use any horse, mare, gelding, bull, bullock, steer, or heifer, or who, not being a poundkeeper, shall, without such authority or consent, milk any cow, shall for each such offence forfeit and pay a penalty of not less than One Pound and not more than Twenty Pounds, together with such sum as the Magistrates, at the hearing of the complaint, shall adjudge just and reasonable, to be paid to the prosecutor or complainant for his compensation and costs in that behalf.

Goats, pigs, fowls, &c., may be destroyed.

22. It shall be lawful for the proprietor or occupier, or any person in charge of any enclosed garden or enclosed land, to destroy by any means, except by the use of poison, and in six hours afterwards, if not claimed by the owner, to remove or bury any goats, pigs, dogs, poultry, or rabbits found trespassing therein: Provided that

that the proprietor or occupier, or person in charge of such garden or land, shall have given notice of such his intention in writing to the owner of any goats, pigs, dogs, poultry, or rabbits, so trespassing, or shall previously have advertised twice in any two or more of the public newspapers of the said Province, such his intention to destroy all goats, pigs, dogs, poultry, or rabbits found trespassing on such garden or enclosed land, as aforesaid.

23. If the sum payable for damages, rates, fees, and charges, be not paid forthwith, the same shall be secured to the poundkeeper by an undertaking in writing, in the form, or to the effect mentioned, in the Schedule hereto marked E, signed by the owner of the impounded cattle, or his agent, overseer, or bailiff, and the sum mentioned in every such security or undertaking shall be paid at the time and place therein mentioned, without any further notice or demand for such purpose; and upon failure of such payment, the amount or sum secured by such security or undertaking may be recovered by summary process of distress and sale of the goods of the owner of the cattle so impounded, to be issued by any Justice of the Peace (which process such Justice is hereby authorized and required to issue) upon the production before such Justice of such security or undertaking, and upon the oath of the poundkeeper that the sum secured by such security or undertaking is still due and unsatisfied.

Form of security to poundkeeper on releasing cattle.

24. The keeper of every public pound, whenever and so soon as any cattle shall be impounded therein shall post a written notice on a board on some conspicuous part of the said pound, setting forth a description of such cattle and such notice shall remain so posted until such cattle shall have been released or otherwise disposed of according to the provisions of this Act; and every poundkeeper, who shall neglect to post such notice or to keep the same so posted as aforesaid, shall for every such neglect forfeit and pay a fine not exceeding Two Pounds.

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

25. If any impounded cattle shall not be claimed by the owner thereof, or some one on his behalf, within twenty-four hours after the same shall have been impounded, the keeper of the pound shall, within forty-eight hours, give or cause to be given notice in writing to such owner, if he be known to him and shall reside within ten miles of the said pound, or to his agent, overseer, or bailiff, if the said owner shall reside at a greater distance and have a known agent, overseer, or bailiff, residing within ten miles of the said pound, which notice shall contain the same particulars as are required to be given to the poundkeeper by the person impounding such cattle; and shall also contain notice of the time and place of the sale of the said cattle if not sooner released from the said pound, and shall also state the sum for which the same were impounded; and the said notice shall, within the distance aforesaid, be delivered personally to the said owner, agent, overseer, or bailiff, or be left for him at his usual or last known place of abode in the said Province; and if the said owner, agent, overseer, or bailiff, be

Poundkeepers to give notice to owners of cattle impounded.

*is he do 48 hours
begin from? from
of 24 hours? or for
the amount of im-
pounding?
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known

known and shall reside at a greater distance than ten miles from the said pound, then the said poundkeeper shall send the like notice addressed to the owner, agent, overseer, or bailiff, by the earliest post after the expiration of twenty-four hours from the time of impounding; and if neither owner, agent, overseer, or bailiff, be known to the said poundkeeper, then he shall cause the notice in the form of the Schedule hereto marked F to be inserted in the *Government Gazette*, which shall be published next after the expiration of the said twenty-four hours in which it shall be possible to cause the same to be inserted; and every poundkeeper is hereby required to keep a file of the *Government Gazette*, a copy of which shall in each week be furnished to him by the Government Printer; and such copy of the *Gazette* may be inspected by any person, during the hours from sunrise to sunset, free of charge: Provided always that when the cattle impounded under the provisions of this Act shall consist of sheep, goats, swine, or calves, and be not more than two in number, it shall not be necessary to give any other notice of such impounding than the affixing of notice thereof on the pound in the manner hereinbefore directed; and if any poundkeeper shall, without sufficient excuse, the proof whereof shall rest on the poundkeeper, incorrectly or in an insufficient manner describe such impounded cattle, in any notice or advertisement required by this Act, such poundkeeper shall forfeit and pay a fine of not more than Ten Pounds; and if any poundkeeper shall by error incorrectly describe any cattle, the same shall be re-advertised, and after such re-advertisement shall be kept the full time in pound, as hereinafter provided, and any additional costs for advertising, fees, and maintenance arising from such error, shall be paid by the poundkeeper.

*John
Robertson*

Poundkeeper to charge
for service of notice.

26. Every poundkeeper may charge, for delivering or sending such last-mentioned notice, and causing the same to be posted in the Post Office and inserted in the *Government Gazette*, the sum of One Shilling; and may also charge for personal delivery, by himself or by a person to be employed by him for that purpose, of such notice, the sum of Sixpence per mile for every mile of the distance of the place at which such notice shall be served from the pound wherein the cattle to which such notice relates are impounded: Provided always, that when the owner, agent, overseer, or bailiff of any impounded cattle, shall reside at a greater distance from such pound than the nearest Post Office through which any notice may be conveyed to him, the poundkeeper may charge for putting such notice into such Post Office Sixpence per mile for every mile of the distance of such Post Office from the pound to which such notice shall relate, and no more.

Pound fees and
charges how to be
accounted for.

27. The keeper of every pound, not situate within the boundary of a Municipal Corporation or District Council, shall duly and faithfully, on the last day of every month render an account to the Treasurer of all fees received by him, and of all unclaimed proceeds of the sale of cattle; and also shall then pay over to the Treasurer, for disposal by

by him, as hereinafter mentioned, so much of the proceeds of the sales of cattle as shall have remained in his hands one month without being claimed by the owner; and every poundkeeper whose pound shall be situate within the boundary of a Municipal Corporation or District Council, shall, on the last day of every month, duly and faithfully account to such Municipal Corporation or District Council for all fees received by him and for all unclaimed proceeds of the sale of cattle; and shall, on the last day of every month, pay over to such Municipal Corporation or District Council so much of the proceeds of the sales of cattle as shall have remained in his hands one month without having been claimed by the owner of such cattle; and such Municipal Corporation or District Council shall retain all proceeds of the sales of cattle, for the period of two years, for the use of the respective owners of such cattle, and shall pay over the same to such owners on the order of a Justice of the Peace, to, or to the order of, the respective owners of such cattle, and after such period of two years, in case the same shall not have been paid over, shall apply the same proceeds in aid of the funds of such Municipal Corporation or District Council.

28. If the owner of any cattle impounded shall release the same upon payment to the keeper of the pound of the sum of money for which the said cattle were impounded, the said poundkeeper shall pay such money to the party who impounded the said cattle, on his demand thereof and every poundkeeper who shall fail to do so shall incur a penalty for every such offence not exceeding Five Pounds.

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

29. If any poundkeeper shall receive any greater sum than he is authorized to receive, under the provisions of this Act, or shall fail duly to account for and pay any sum of money as by this Act directed, he shall incur a penalty for every such offence not exceeding Five Pounds.

Penalty on poundkeeper taking more than he is authorized to take, or neglecting to account.

30. If any impounded cattle shall not be released from the pound within seven days after notice, as hereby required, or within twenty-one days after such notice shall have been dispatched through the Post Office, 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 notice shall have been delivered or dispatched, or inserted as aforesaid, the poundkeeper shall apply to a Justice of the Peace, not being a party interested in the matter, for an order for the sale of the said cattle, and the said poundkeeper shall, at the time of such application, produce and show to such 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 shall produce on oath such other proofs as such Justice may require, that he has complied with the terms and provisions of this Act; and thereupon such Justice shall, if he be satisfied that such terms and provisions have been complied with, make an order under his hand authorizing the sale of the said cattle on the day whereof notice shall have been

Proceedings of the poundkeeper respecting unclaimed cattle prior to sale.

order

given as aforesaid; or otherwise shall direct such acts to be done as may have been omitted, and shall thereupon suspend the order for such sale until a future day to be appointed by him, until such 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 of the said cattle, or his agent, overseer, or bailiff, personally or at his usual or last known place of abode, in the said Province, or through the Post Office, or by insertion in the *Government Gazette*, as the case may require, and in the same manner as by this Act provided for giving the original notice: and if any such delay and suspension of sale shall have become necessary in consequence of the neglect of the poundkeeper, the costs of all proceedings and notices thereby incurred, as well as of the future feeding and maintaining of the said cattle, shall be borne by the poundkeeper.

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

31. All sales of impounded cattle shall take place not less than ten clear days after such cattle shall have been impounded, in all cases where notice of impounding shall have been given to the owner, or his agent, overseer, or bailiff personally, or by leaving the same at his usual or last known place of abode in the said Province; and in all other cases, not less than twenty-four clear days after such notice shall have been dispatched through the Post Office, or inserted in the *Government Gazette*, 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, or more than one animal of any other description, shall be put up in one lot, and for all the purposes of this Act, a suckling, under six months old, with its mother shall be considered as one animal, and neither the person who impounded the said cattle, nor the keeper of the said pound, nor his servant, nor his surety, nor the Justice of the Peace who made the order for the sale, nor any member of the Municipal Corporation or District Council, nor the clerk of the Corporation or Council for the district in which such pound shall be situate, shall either personally, or by any other person, purchase the said cattle, or any of them, and every person so offending shall incur a penalty for every such purchase of the sum of Five Pounds, and shall also restore the cattle purchased to the person entitled to receive the same: Provided that if any cattle impounded are not of sufficient value to defray the poundage fees and charges and expenses of keeping the same during the time by this Act prescribed, it shall be lawful for any Justice of the Peace, not interested in the matter, to authorize the sale of such cattle on a day earlier than hereinbefore directed, and notice of such sale shall, previous to such sale, be given by the poundkeeper to the owner of such cattle personally, or left at his usual or last known place of abode in the said Province, or by advertisement, as the case may require.

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Penalty,

No. 625 of '95, S. 5

Poundkeepers not to act as auctioneers, unless licensed.

32. All impounded cattle directed to be sold under the provisions of this Act, shall be sold by auction to the highest bidder, by some person

625 of '95, S. 8

No. 419 of '87, S. 256.

person duly licensed as an auctioneer for that purpose by the Governor: Provided nevertheless that it shall be lawful for the Governor, from time to time to revoke any such licence.

33. No purchaser of cattle sold under the provisions of this Act shall be bound to prove that such sale was regular, or that the terms and conditions required by this Act were complied with, or be affected by any default or irregularity in respect of such sale.

Purchaser not bound to prove regularity of sale.

34. It shall be lawful for every poundkeeper to receive the price of any cattle impounded, which shall be sold under and by virtue of this Act, and to apply the same first, in payment to the licenced auctioneer, not being a poundkeeper, of a commission of five per cent. on the gross amount realized; secondly, in payment to himself of all lawful fees and charges; thirdly, in payment of the sum due to the party at whose instance the same were impounded, and the residue he shall pay over to the owner of the cattle sold, where he is known, or to his known agent, overseer, or bailiff upon the same being demanded; and if the owner of the cattle sold shall be unknown and have no known agent, overseer, or bailiff, the keeper of every pound, not being within the boundary of a Municipal Corporation or District Council, shall within one calendar month after the sale pay the amount into the hands of the Treasurer, in trust for the party entitled thereto, and the receipt of the Treasurer shall be a legal discharge to the said poundkeeper for the amount specified therein: Provided that, at any time within two years next after the said money shall have been so paid into the hands of the Treasurer, it shall be lawful for any Justice of the Peace, on proof of ownership to his satisfaction, to make an order authorizing payment of the said money to the party entitled thereto, and the said Treasurer shall make payment accordingly, and shall be by such order indemnified against all adverse claims in respect to the said money; and in case no claim to the same shall be duly made within two years next after the said money shall have been so paid into the hands of the Treasurer, the same may be applied to the public uses of the said Province, and to the support of the Government thereof.

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

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35. Every poundkeeper, whose pound shall be situate within the limits of any Municipal Corporation or District Council, shall pay over to such Municipal Corporation or District Council all moneys directed by this Act to be paid to them respectively, and the said Municipal Corporation or District Council shall hold such moneys for the period of two years for the use of the owner of the cattle by the sale whereof the same shall have been produced, and shall pay over the same in pursuance of any order of a Justice of the Peace, as by this Act authorized, to, or to the order of, the owner of such cattle, and after such period of two years, shall apply the same moneys to the general purposes of the said Municipal Corporation or District Council.

Application of surplus proceeds of sale, where pound situate within a district.

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36. It

Governor, Municipal Corporation, or District Council may close pound.

36. It shall be lawful for the Governor, or for any Municipal Corporation or District Council to close any pound, as against the receipt of any more cattle; and the keeper of the said pound, shall, under a penalty of Fifty Pounds, do and perform all the duties of his office relating to the disposal of the cattle impounded at the date of such closing of the pound being officially notified to him; and upon the said pound so becoming empty in course of law, the appointment of such Poundkeeper shall cease and determine, except in so far as relates to his liability to render accounts and pay over moneys, as prescribed by this Act: Provided that every such closing of a Pound and intended cancelment of the appointment of the keeper thereof shall be duly notified in the *Government Gazette* prior to or on even date with the delivery of the notification to the said keeper.

Pound rescues or breaches.

37. If any person, at any time shall rescue or release, or attempt to release, any cattle lawfully seized for the purpose of being impounded, or shall injure any pound legally constructed, or any lock or bolt belonging thereto, whether any cattle shall be impounded therein or not, or shall commit any pound-breach whereby any cattle shall escape from any such pound, every person so offending shall, upon conviction of such offence before any two of Her Majesty's Justices of the Peace, forfeit and pay any sum not exceeding Five Pounds, together with reasonable charges and expenses, or in default of payment be committed by such Justices, by warrant under their hands and seals, to the common gaol of the said Province, there to be kept to hard labor for any time not exceeding three calendar months nor less than fourteen days, unless such penalty and costs as aforesaid shall be sooner paid, and it shall be lawful for the said Justices to award the whole or any portion of such penalty to the owner of such cattle.

Penalty.

Penalty on any bull or entire horse at large.

38. If any bull above the age of one year shall stray at large, the owner shall be liable to pay a penalty not exceeding Two Pounds, and if any entire horse above the age of one year shall stray at large, the owner shall be liable to pay a penalty of not more than Five Pounds; and such penalties respectively shall be incurred and shall be payable at the suit of any person, in addition to all other sums which, under the provisions of this Act, may become payable for damage by trespass by such bull or entire horse.

Ranger may impound off Crown Lands, or roads in the district.

occupier of fenced land may impound

39. It shall be lawful for the ranger duly appointed in that behalf to impound any cattle found trespassing upon the Waste Lands of the Crown, or upon any road within any district; and it shall be lawful for any occupier of any fenced land, whether within such district or not, to impound any cattle found wandering, straying, being fed, although tailed, or lying on parts of the main or district roads immediately adjacent or fronting to the fenced land of such occupier; and the owner of such cattle shall pay for each of such cattle, if impounded, the fees specified in the Schedule hereto, marked A, and also the rates for sustenance specified in the Schedule hereto, marked B, according to the description of such cattle; and the same

same cattle, and the money to arise from the sale thereof (if sold), shall remain and be subject to such and the same provisions as are by this Act made applicable to cattle impounded for damage by trespass, and to the money arising from the sale thereof.

40. If any cattle shall be found trespassing upon any unfenced land after the expiration of three days after notice not to trespass upon any such land by or on behalf of the owner or occupier thereof shall have been served upon the owner of such cattle, or left for him at his usual or last known place of abode in the said Province, or after fourteen days' notice not to trespass on such land, describing the same by the numbers of the Sections, or other precise and accurate description, shall have been inserted in the South Australian Government Gazette, the owner or occupier of such land may lawfully demand and recover in respect of such cattle, one-fourth of the same rate as though the land upon which such cattle shall be found trespassing was enclosed with a fence, and the owner of such unfenced land shall be authorized to recover by action, as and for ordinary damage, by trespass of cattle, one-fourth only of the rate specified in the Schedule hereto marked B, according to the description of cattle trespassing thereon.

Cattle trespassing after notice.

41. Any person who shall unlawfully remove or take down any fence, rail or slip-panel, or open any gate for the purpose of allowing cattle to trespass upon or escape from any enclosed land, shall be guilty of a misdemeanor, and being convicted thereof ~~in any Local Court~~, shall be liable to a penalty not exceeding Ten Pounds, or to imprisonment with hard labor for any period not exceeding three calendar months.

Penalty for taking down rails, or opening gates, to let cattle into fenced land.

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42. It shall not be lawful for any person to suffer any cattle belonging to him or under his charge to stray, or be at large, or to be tethered or depastured in any street or public place within any town, village, or district, and any person who shall so offend, shall incur a penalty not exceeding Two Pounds; and it shall be lawful for any person to seize and impound in the nearest pound any such cattle, there to remain subject to the provisions of this Act, in like manner as cattle impounded when found wandering or straying at large upon main or district roads: Provided that this clause shall not apply to any town or village, which shall not have been brought under the operation thereof by Proclamation in the *South Australian Government Gazette*.

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

43. Until public lines of road shall have been defined and marked out, nothing in this Act contained shall prevent the driving of cattle to market or travelling from one part of the said Province to another, along customary lines of road, or in the immediate vicinity thereof: Provided that nothing in this clause shall authorize any person to remove or injure any fence.

Not to prevent the driving of cattle along customary lines of road.

44. It shall be lawful for any two Justices of the Peace, not interested

Two Justices of the Peace to have juris-

diction in all matters arising out of the impounding of cattle, in causes under Twenty Pounds.

interested in the matter in dispute, to take cognizance of and decide in a summary way all complaints and causes of action arising out of the impounding of cattle for trespass, or arising out of the trespass of cattle, wherein neither the party whose cattle are impounded nor the party impounding the cattle claims any greater amount of damages than Twenty Pounds, and also in like manner to decide all questions of damages to any amount to which any poundkeeper shall be subject by reason of his own neglect or default.

If excessive damages claimed, owner may pay under protest.

45. It shall be lawful for any person whose cattle are impounded for any claim which such person may deem excessive, to pay to the poundkeeper the amount of such claim, under protest, in writing, and within one month from the date of such payment, to institute proceedings in the nearest Local Court of Full Jurisdiction for the recovery of the amount so paid, or such part thereof as may be deemed excessive; and, in every case of such payment, the poundkeeper shall forthwith release such cattle.

As to delivery of cattle on payment of sum claimed for damage by trespass.

46. If the owner of any cattle impounded for any claim not exceeding Twenty Pounds, and which claim such owner shall deem to be excessive, shall pay to the poundkeeper the sum so claimed, and also all fees and charges due to such poundkeeper in respect of such cattle, and at the same time hand to the poundkeeper a notice stating his intention to prosecute his suit against the poundkeeper or the party impounding such cattle, and to abide by and perform the judgment of any two Justices of the Peace, such poundkeeper shall forthwith release such cattle, and in case such owner shall cause a summons to be issued and served upon such party or poundkeeper within a reasonable time after releasing such cattle, it shall be lawful for such Justices to direct the poundkeeper or person who impounded the cattle, to return to such owner all sums of money paid by him over and above the lawful rates, fees, and charges due in respect of such cattle.

As to order for delivery of cattle on recognizance without payment of damages.

47. If the owner of any cattle impounded for any claim not exceeding Twenty Pounds shall take out a summons in prosecution of his suit in a summary way, and enter into a recognizance with one sufficient surety before any Justice of the Peace, in the form and with the condition set forth in the Schedule hereto marked G, it shall be lawful for such Justice to make an order on the poundkeeper to liberate such cattle, and thereupon such poundkeeper shall, on payment of all fees and charges due to him in respect of such cattle, liberate the same in pursuance of such order.

As to actions for full compensation for trespass.

48. Nothing in this Act contained shall prevent the owner or occupier of any lands trespassed on by cattle from suing, in the Supreme Court or in a Local Court, for compensation for ordinary damages, specified in the Schedule hereto, marked B, or varied or allowed as hereinbefore provided, or for special damages by the trespass of cattle: Provided that no action or suit in the Supreme Court shall be brought to recover special damages by such trespass until seven days next after notice

notice in writing shall have been delivered to the party complained against personally or left at his usual or last known place of abode in the said Province, in which notice shall be expressed the cause of action or complaint, the name and place of abode of the person bringing the same, and the amount of compensation claimed; and it shall be lawful for the party to whom such notice shall be given, at any time within the seven days, to tender amends to the party complaining or to his attorney or agent; and, in case the same is not accepted, to plead such tender in bar to any such action or complaint, and the party complained against shall have also such benefit of paying money into Court and of pleading as is given to defendants in personal actions by the Statute passed in the Fourth year of His late Majesty King William the Fourth, intituled "An Act for the further amendment of the Law and the better advancement of Justice:" Provided that in actions brought in any Court to recover ordinary or special damages for the trespass of cattle, no damages shall be recoverable except for damages sustained within one calendar month before the commencement of such actions.

3 and 4 Wm. IV.,
cap. 42.

49. A judgment or conviction duly made under this Act may be pleaded in bar of any suit, action, or information which shall be commenced, instituted, or prosecuted for the same cause or offence in any other Court.

Effect of judgment or conviction under this Act.

50. All fences mentioned in this Act shall consist of good and substantial fences or enclosures; and in every case brought before Justices of the Peace, where any dispute shall arise as to the sufficiency of any fence or enclosure, the question shall be settled by such Justices.

Definition of the word "fence."

Sec 10.

51. All penalties incurred under this Act, may be recovered by summary proceeding, as provided by an Ordinance, No. 6 of 1850, for regulating summary proceedings before Justices of the Peace.

Recovery of penalties.

52. Except where otherwise provided, all penalties recovered under this Act, if incurred within the boundary of any Municipal Corporation or District Council, shall be paid to such Municipal Corporation or District Council in aid of the funds of such Municipal Corporation or District Council, as the case may be; and it shall be lawful for every Municipal Corporation or District Council to remit such penalties, in whole or in part, as such Municipal Corporation or District Council may deem expedient; and such penalties as shall not be incurred within any such boundary shall be paid to the Treasurer, for the public uses of the said Province and the support of the Government thereof, and such last mentioned penalties may be remitted, in whole or in part, by the Governor, as he may deem expedient.

Mode of distribution of fines, &c.

penalties & fines

53. If any person shall be aggrieved by any adjudication, conviction, or order made in pursuance of this Act, where the sum to be paid on adjudication, conviction, or order shall exceed the sum of Ten Pounds, he shall be entitled to appeal therefrom in manner and form

Appeals.

form and on the terms prescribed by the Ordinance No. 6 of 1850.

Commencement.

54. This Act shall take effect from and after the 1st day of March, 1859.

Short title of Act.

55. This Act may be cited as "The Impounding Act of 1858."

SCHEDULE A.

Poundkeeper's Fees for Cattle, other than Sucklings under the age of six months.

	Fees for Poundage
	s. d.
For every entire horse above the age of twelve months	2 6
For every mare, gelding, colt, filly, foal, mule, ass, and camel	0 6
For every goat and pig	1 0
For every bull above the age of twelve months	1 0
For every ox, cow, steer, heifer, calf, and deer of the first ten	0 6
" " " the next ten	0 4
" " " the next thirty	0 3
" " " all others above fifty	0 2
For every ram, ewe, wether, and lamb, of the first twenty	0 2
" " " the next thirty	0 1½
" " " the next fifty	0 1
" " " all others above one hundred	0 0½

*(Daily 62.5 d 95,
S.S.A. 7
query charge every
day! see sec. 9.*

SCHEDULE B.

Table of Rates to be charged for trespass of Cattle, and for the sustenance thereof whilst impounded, and no additional daily charge to be made till the expiration of twenty-four hours from the impounding of the Cattle, and no charge to be made for the sustenance of Suckling Animals under the age of six months.

Description of cattle.	Trespass in unenclosed forest, pasture land, stubble, after-grass, or other unenclosed land.			Trespass in any enclosed paddock or meadow of grass or stubble.			Trespass in any enclosed growing crop of any kind, or any garden or enclosure whence the crop has not been removed, or in any enclosed public cemetery.			Amount to be charged daily for sustenance.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
For every horse, mare, gelding, filly, ass, mule, bull, ox, steer, heifer, cow, calf, colt, foal, camel, and deer	0	0	0½	0	1	0	0	2	6	0	0	9
For every ram, ewe, sheep, wether, and lamb	0	0	0½	0	0	1	0	0	3	0	0	1½
For every goat.....	0	1	0	0	1	0	0	5	0	0	0	1½
For every pig	0	3	0	0	3	0	0	5	0	0	0	4

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SCHEDULE C.

Form of Poundkeeper's Book.

RELEASED OR SOLD.		Signature of person receiving cattle and paying charges.					
Amount received for							
Sales.	Maintenance.	Fees.	Charges.				
				£	£	£	£
				s.	s.	s.	s.
d.	d.	d.	d.				
To whom delivered, or proceeds paid.							
By whose order.							
Whether released or sold.							
Date and time.							
IMPOUNDED.		Time and mode of giving notice.					
		Owner or supposed owner.					
		For what cause.					
		By whom impounded.					
		Description of cattle, colors, and brands.					
		Date and time.					

SCHEDULE D.

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

South Australia, } BE IT REMEMBERED, that, on the _____ day of
(to wit.) } 18 _____, A.B. of _____, C.D. of _____, and E. F. of _____, came personally before me, _____, and severally acknowledged themselves to owe to our Sovereign Lady the Queen, to wit, the said A.B. the sum of One Hundred Pounds, and the said C.D. (or the said C.D. and E.F.) the sum of Twenty-five Pounds, to be levied of their respective goods and chattels, lands and tenements, to the use of her Majesty, Her heirs and successors, if the said A.B. shall make default in the performance of the condition hereunder written: Now the condition of this recognizance is such that if the said A.B. shall well and faithfully perform his duty as poundkeeper, and every act, matter, and thing by him required and directed to be done and performed by virtue and according to the provisions of the Impounding Act of 1858, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year above written before me.

SCHEDULE E.

Form of Security of Undertaking.

I, A.B. (describing the residence of the owner of the cattle impounded), hereby promise to pay, within thirty days hereof, to C.D. (the poundkeeper) at (naming either the pound, or place and residence of the poundkeeper, as may be required), the sum of _____ (specifying the full amount of poundage, as well as the fees and charges thereon), without any deduction whatsoever; and in default thereof, I consent that the said sum, together with the costs necessarily incurred by such default, shall be levied by distress and sale of my goods and effects wheresoever found.

Dated at _____ this _____ day of _____ 18 _____ .

(Signed) _____ A. B.
Or, for A. B., C. D.
Overseer of the said A. B.

SCHEDULE F. Sec 25

Form of Advertisement in the Government Gazette.

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

If not claimed, will be sold on _____

_____, A. B., Poundkeeper.

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

SCHEDULE

SCHEDULE G.

Form of Recognizance to abide by Judgment of Justices.

South Australia } BE IT REMEMBERED, That on the day of , 18
 (to wit.) } A.B. of , in the Province of South Australia,
 and C.D. of , in the said Province, personally came before
 me , Esquire, one of Her Majesty's Justices of the Peace for the said
 Province, and acknowledged themselves jointly and severally to owe to our Sovereign
 Lady the Queen, the sum of Pounds to be levied of their respective goods and
 chattels, lands and tenements, to the use of Her Majesty, Her heirs and successors, if
 the said A.B. shall fail in the condition hereunder written: Whereas the said C.D.
 hath taken out a summons against , in prosecution of a certain suit, in a
 summary way, under the provisions of the Impounding Act of 1858, in respect of the
 taking and unjustly impounding of his cattle, to wit (*here state the substance as
 in the summons*): Now, the condition of this recognizance is such, that if the
 said A.B. shall duly prosecute such suit with effect and without delay, and make
 a return of the said cattle, if a return thereof shall be adjudged, and in all respects
 abide by and perform the judgment of the Justices of the Peace before whom such
 suit shall be heard, then this present recognizance shall be void; or else shall remain
 in full force.

A.B.
C.D.Taken and acknowledged at
before me, }

J. P.