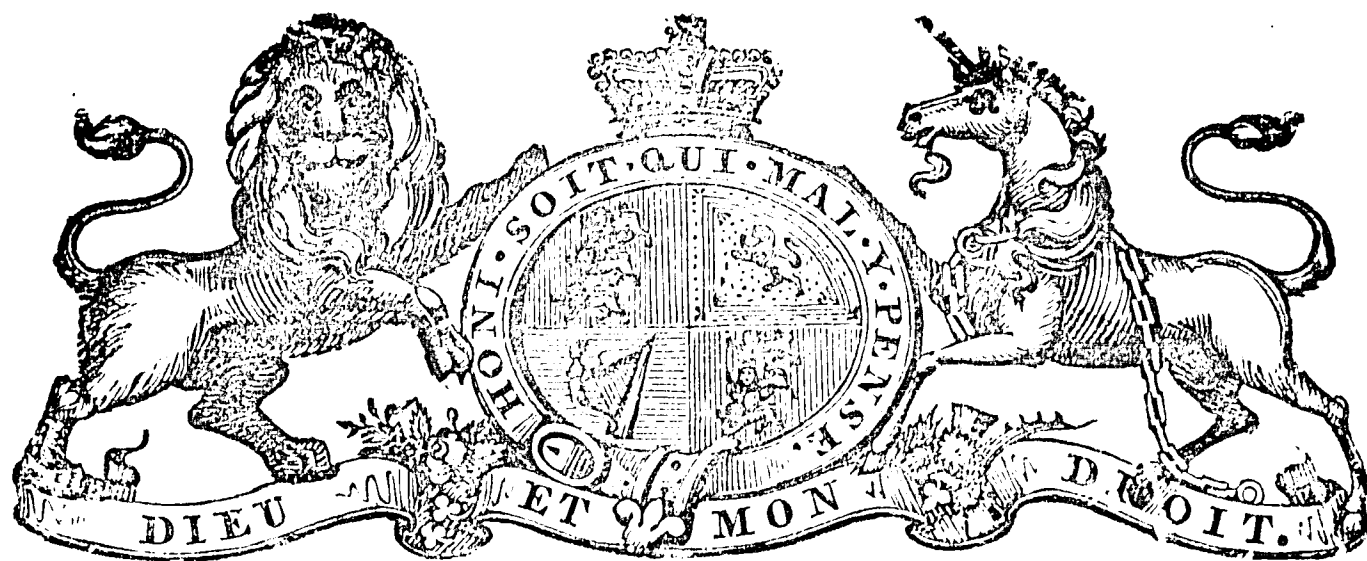


VICTORIA.



ANNO TRICESIMO SEPTIMO

VICTORIÆ REGINÆ.

No. CCCCLXXVIII.

An Act to amend the Law relating to the Impound-
ing of Cattle. [25th November 1873.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria and by the authority of the same as follows :—

1. This Act shall be called "*The Pounds Act 1874.*"

Short title.

2. This Act shall come into operation on the first day of January One thousand eight hundred and seventy-four.

Commencement of Act.

3. From and after the coming into operation of this Act the "*Pounds Statute 1865*" shall be repealed except as to anything done or commenced, or any right or title accrued, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this Act.

Repeal of the "*Pounds Statute 1865.*"

4. In this Act—

Interpretation of terms.

The term "Cattle" shall include any horse mare gelding colt filly or foal, and any bull cow ox steer heifer or calf, and any ram ewe sheep or lamb, and any ass mule goat or pig.

The term "great cattle" shall include any horse mare gelding colt filly or foal and any bull cow ox steer heifer or calf and any ass or mule.

The term "sheep" shall include any ram ewe wether or lamb.

The term "poundkeeper" shall mean the person for the time being in the authorized charge of any pound.

The term "occupier" of land shall include any person occupying any Crown land under any lease license or other authority granted by or on behalf of the Crown and also any agent or overseer of any occupier.

The

The term "tillage" shall mean and include any land that has been cultivated with a plough or cultivator and sown with a grain crop, but it shall not mean any pasture land nor land from which a crop shall have been harvested, save and except land sown with artificial grasses for the purpose of obtaining a crop of hay or grass seed.

The term "municipality" shall include any city town borough shire or road district.

The term "council of a municipality" shall include the board of any road district.

Establishment and abolition of pounds.

5. In any part of Victoria not within any municipality the Governor in Council and within any municipality the council of such municipality from time to time may appoint places to be pounds and any pound may abolish.

Appointment, removal, and re-muneration of poundkeepers.

6. For every pound not within a municipality the Governor in Council and for every pound within any municipality the council of such municipality from time to time may appoint a poundkeeper and may suspend or remove the poundkeeper; and from and after the passing of this Act every poundkeeper shall be paid by a fixed salary and not by fees.

Application of Act to existing pounds poundkeepers' fees and rates.

7. All pounds existing and persons who are poundkeepers at the commencement of this Act shall be deemed to be pounds and poundkeepers respectively within the meaning of this Act; and all sustenance fees and rates of damage payable at any pound at the commencement of this Act shall so far as not inconsistent with this Act continue payable at such pound as if this Act had not been passed until sustenance fees and rates of trespass are fixed for such pound under the provisions of this Act.

Poundkeeper officer of any municipality in which is his pound.

8. The keeper of any pound within a municipality shall be deemed an officer of such municipality within the meaning of any law now or hereafter to be in force relating to municipalities.

Salary of poundkeeper and expenses of pound how paid.

9. The salary of the poundkeeper and the expenses of establishing maintaining removing or repairing any pound shall be paid, in the case of every pound not within a municipality, out of any money granted by Parliament for that purpose; and in the case of every pound within a municipality out of the municipal fund of such municipality.

Pound fees.
First Schedule.

10. Every poundkeeper shall demand and receive as pound fees the sums set forth in the First Schedule to this Act, and such fees and all other fees not otherwise appropriated by this Act shall, in case the pound at which they are received be not within a municipality, form part of the consolidated revenue, and in case the pound at which they are received be within any municipality form part of the municipal fund of such municipality.

Sustenance fees and trespass rates.

11. For every pound not within a municipality the Governor in Council and for every pound within a municipality the council of such municipality may from time to time subject to the approval of the Governor in Council fix sustenance fees and trespass rates; such sustenance fees shall be payable in respect of the sustenance in the pound of impounded cattle, and shall be received by the poundkeeper and

and may be applied by him after reimbursing to himself thereout any expenses incurred in the sustenance of such cattle in the same way in which pound fees are applicable; such trespass rates shall be payable as compensation in respect of any trespass committed by impounded cattle, and may vary according to the description of the cattle trespassing and as the land trespassed on be or be not tillage land enclosed with a substantial fence, so that the rate for trespass on land not being tillage land enclosed with a substantial fence do not exceed one farthing for every sheep and one penny for every head of other cattle so trespassing.

12. In respect of the trespass of any entire horse any bull or any ram there shall be payable as a trespass rate in addition to any other sum fixed under the provisions of this Act by way of trespass rate the sum of Five pounds.

Trespass rate for every entire horse bull or ram to be increased by Five pounds.

13. All trespass rates payable in respect of impounded cattle shall be payable in the first instance to the poundkeeper, who shall hold the same subject to the provisions of this Act for the person entitled thereto.

Trespass rate on impounded cattle payable in first instance to poundkeeper.

14. Except goats pigs entire horses bulls or rams no cattle shall be liable to be impounded by any person for trespass if the owner of the cattle his agent or overseer be resident within five miles of the place trespassed upon until forty-eight hours after notice to remove the said cattle shall have been given to such owner his agent or overseer by such person or by some other person acting on his behalf and to whom such owner agent or overseer and his residence be known, unless the land trespassed upon be under tillage and enclosed with a substantial fence, or the cattle have been found trespassing a second time within twelve months.

Cattle may be impounded.

15. The occupier of any land trespassed on by cattle may whether such cattle be liable to be impounded or not restore the same to the owner thereof, and in such case such occupier may demand and in case of non-payment recover in a summary way before any two justices from the owner of such cattle the amount of any trespass rates that would be payable under the provisions of this Act if such cattle were impounded in respect of the trespass thereof, and when no trespass rates have been provided for or fixed then such compensation as such justices may deem reasonable.

Occupier entitled to trespass rates on restoring trespassing cattle to their owner.

16. No trespass rates or other damages for trespass shall be payable to or recoverable by any person in respect of the trespass of any cattle who shall impound or detain such cattle for upwards of three days in any place not being a pound within the meaning of this Act.

No trespass rates or damages recoverable for cattle detained more than three days unimpounded.

17. Whenever any cattle have been seized for trespass by any occupier for the purpose of impounding the same if the owner of the cattle or some person on his behalf pay or tender to the person seizing or having charge of such cattle before the same have been actually impounded the trespass rate provided under this Act the person having charge of such cattle shall forthwith deliver up the same to the owner or the person tendering the said rates on his behalf.

Cattle to be restored to owner on payment or tender of trespass rates.

18. The

Power to destroy
goats pigs and
geese trespassing.

18. The occupier of any land and a Crown lands bailiff upon Crown lands may destroy or cause to be destroyed any goats or pigs or geese trespassing on such land, and if the owner of such goats or pigs or geese fail to remove their carcasses within twelve hours after the destruction of them, the person destroying such goats or pigs or geese shall cause such carcass to be buried.

Cattle to be im-
pounded in nearest
pound.

19. No cattle shall be impounded under the provisions of this Act except in the nearest accessible pound to the place where such cattle were found trespassing, and the person by whom or by whose order any cattle are sent to the pound shall in a written memorandum specify to the poundkeeper the description number brands or apparent brands and marks of such cattle, the place where they were found trespassing, the amount of damage claimed for such trespass according to the rates fixed by this Act, and so far as the person impounding can state the same the name of the owner of such cattle; and such animals may be either led conveyed or driven to such pound.

Occupier of adjoin-
ing land may im-
pound off road.

20. The occupier of any land adjoining a public road which road shall be fenced on both sides by a substantial fence may impound any cattle wandering without control upon such road, and such cattle when impounded shall be liable for the same amount as they would be chargeable with if trespassing upon land other than tillage land, and such amount shall be received by the keeper of the pound in which such cattle are impounded and shall be paid by him to the council of the municipality in which such pound is situated.

Poundkeeper to keep
pound-books.
Third Schedule.

21. Every poundkeeper shall keep a pound-book in the form in the Third Schedule to this Act and shall make all entries therein as soon after the doing of the several things required to be entered therein as possible, and shall not make any entry after any dispute as to the subject-matter of such entry shall have arisen; and the said pound-book and a copy of this Act, which the poundkeeper is hereby required to keep, shall at all reasonable times be open to the inspection of any justice or member of the police force free of charge, and of any other person upon payment of the sum of Sixpence.

Notice of impounded
cattle to be posted
on conspicuous
part of pound.

Second Schedule.

22. On the gate or some other conspicuous part of every pound there shall be erected and maintained a board having painted thereon in white letters on a black ground the name of the poundkeeper and a table in the form in the Second Schedule to this Act of all fees charges and rates which he is authorized by this Act to receive: And whenever any cattle are impounded the poundkeeper shall forthwith post a written notice on the gate or other conspicuous part of the pound giving the number particulars brands or apparent brands and marks of the cattle so impounded; and such notice shall remain so posted until such cattle have been claimed or disposed of in due course of law.

Poundkeeper to de-
tain impounded
cattle in custody.

23. Every poundkeeper shall receive and detain in his custody any cattle lodged in such pound until the trespass rates for which the same were impounded and all lawful fees and charges shall be paid, or until he shall receive notice of the decision or order of justices as hereinafter provided, or receive an order in writing signed by the person impounding

impounding such cattle for their release without payment of the trespass rates.

24. Every poundkeeper shall upon payment of a fee of Five shillings register any brands and marks used in branding and marking cattle with the name and address of the person causing the same to be registered, and when any cattle are impounded the poundkeeper shall forthwith in case such cattle are branded or marked with any registered brand or mark deliver at or post to the registered address of the person causing such brands or marks to be registered and in case such cattle are not so branded or marked insert in the *Government Gazette* and in a newspaper published in the district a notice in the form in the Fourth Schedule to this Act.

Poundkeeper to give notice to persons registering brands of cattle.

Fourth Schedule.

25. When cattle shall not have been released from the pound within twenty-one days after the giving or inserting the notice in the last section mentioned the same shall be sold by public auction, and such sale shall be made on the first day next after the expiration of such twenty-one days which shall be for the time being appointed by the Governor in Council or the council of the municipality by notice in the *Government Gazette* and a newspaper published in the district for the holding of pound sales : And at such sale the poundkeeper shall act as auctioneer, and such sale shall be held at the pound and shall commence at the hour of noon, and not more than one head of great cattle nor more than ten sheep goats or pigs shall be sold in one lot, and the poundkeeper shall neither in person nor by his agent purchase any cattle at any such sale or have any interest of any kind in cattle so purchased.

Cattle not released to be sold by auction at the pound

26. When any cattle have been offered for sale at any pound sale and no bid has been made at such sale for such cattle and the same are not worth the sustenance fees that would be payable in respect thereof during the interval between such sale and the next day appointed for holding a sale at such pound, the poundkeeper may cause such cattle to be destroyed and dispose of the carcasses in such way as he may think best, and any proceeds of any sale of such carcasses or any portion thereof shall be deemed the proceeds of the sale of impounded cattle.

If no purchaser at sale cattle to be destroyed and sold.

27. The proceeds of all sales of impounded cattle sold under the provisions of this Act shall be applicable in payment—Firstly, of any costs and charges attending such sale ; secondly, of all sustenance fees ; thirdly, of fees and charges payable as the case may be into the consolidated revenue or any municipal fund ; and fourthly, to the impounder of such cattle of the rates due to him for the trespass thereof, and the residue if any shall be payable to the owner of such cattle ; but if such rates or residue be not claimed by any person entitled thereto within six years after such sale, or in case such person shall have been an infant *feme covert* of unsound mind or beyond the seas at the time of such sale within six years after the termination of such disability, the same shall form part of the consolidated revenue or the municipal fund of any municipality within which such pound is situated as the case may be. The proceeds of every pound sale shall in case the pound be not within

Application of the proceeds of pounds sales.

within a municipality be received by such person and dealt with for the purposes aforesaid in such manner as may be directed from time to time by the Governor in Council, and in case the pound be within a municipality shall be received by such person and dealt with for the purposes aforesaid as may be directed by the council of such municipality, and in default of any such directions the proceeds of such sale shall be received by the poundkeeper, and by him applied as hereinbefore directed. And if within fourteen days after any pound sale any person entitled to any trespass rates or to any residue of the proceeds of such sale, shall not have claimed payment thereof, such poundkeeper shall pay the amount of such trespass rates or residue in case his pound be not within any municipality to some receiver of revenue, and in case his pound be within a municipality into the municipal fund of such municipality, but such payment shall not prejudice the right of any person to the amount so paid or any part thereof.

Poundkeeper may release cattle and retain damages upon notice of and payment of rates and fees.

28. The owner of impounded cattle may give notice in writing to the poundkeeper that he intends to complain to a justice against the person impounding such cattle that such impounding was illegal under this Act, or that the rates demanded for the trespass of such cattle are excessive; and upon receipt of such notice and payment of such rates with the pound and other authorized fees and charges the poundkeeper shall release such cattle and shall retain such trespass rates to abide the order of justices as hereinafter provided.

Complaint of illegal impounding or excessive damages to be heard before justices.

29. Every such complaint shall be made within ten days after the giving of such notice in writing, and shall be heard and determined in a summary manner before any two or more justices, who may dismiss the same or may find that the cattle were not trespassing or that such impounding was illegal under this Act or that the rates demanded for the trespass of such cattle are excessive, and may make an order against the defendant for the amount of damages sustained by the owner in consequence of such illegal impounding or excessive demand and for the amount of all pound and other authorized fees and charges paid by the owner to the poundkeeper as aforesaid, and such order shall be an authority to the poundkeeper to pay to such owner such trespass rates so retained by him: And the said justices may hear and determine the said complaint notwithstanding any question of title to the property or suggestion of right that may be involved therein.

The Government Gazette *prima facie* evidence.

30. A copy of the *Government Gazette* containing a notification of the establishment or abolition of any pound or of the appointment suspension or removal of any poundkeeper, or of the fixing of any rates fees or charges under this Act, or of any matter or thing required to be done by or under this Act, shall be *prima facie* evidence that such pound was duly established or abolished, and that such poundkeeper was duly appointed suspended or removed and that such matter or thing has been duly done and performed.

Penalty for offences by poundkeeper.

31. If any poundkeeper commit any of the next following offences he shall on conviction forfeit and pay a penalty not exceeding Fifty pounds

pounds or be imprisoned for any period not exceeding six months or both in the discretion of the justices before whom the complaint shall be heard :—

- (I.) Impounding or assisting or inciting or employing any person to impound any cattle :
- (II.) Purchasing in person or by his agent cattle sold by auction at a pound of which he is at the time of such sale the poundkeeper :
- (III.) Demanding or receiving any sums for pound notices sustenance and other fees and charges not authorized by or under this Act :
- (IV.) Failing to pay over any money held by him under the provisions of this Act for any person after payment of the same has been demanded by or on behalf of such person :
- (V.) Neglecting to provide sustenance for cattle impounded, or losing such cattle through negligence, or using the same in any manner while so impounded :
- (VI.) Omitting or neglecting to keep books and to make entries therein as required by this Act, or wilfully making any incorrect or untrue entry in such books :
- (VII.) Or failing to comply with or committing any offence against the provisions of this Act not hereinbefore provided for.

32. When any poundkeeper is charged with neglecting to provide sustenance for cattle impounded the burden of proving that proper sustenance was provided for such cattle shall be on such poundkeeper, and when any poundkeeper is charged with losing any impounded cattle through negligence if it be proved that any cattle were impounded in the custody of such poundkeeper such cattle shall be deemed to have been lost through his negligence unless such poundkeeper shall prove the contrary : And every poundkeeper shall for the purposes of this section be allowed to give evidence on his own behalf.

Burden of proof in certain cases to be on poundkeeper.

33. If any other person commit any of the next following offences he shall on conviction forfeit and pay a penalty not exceeding Fifty pounds or be imprisoned for any period not exceeding six months or both in the discretion of the justices before whom the complaint shall be heard :—

- (I.) Rescuing or attempting to rescue or interfering with cattle impounded or seized for the purpose of being impounded :
- (II.) Destroying or injuring or attempting to destroy or injure any pound :
- (III.) Illegally impounding any cattle :
- (IV.) Removing cattle from any one place to any other place for the purpose of impounding such cattle from such last-mentioned place :
- (V.) Being in charge of or assisting in driving cattle and refusing to disclose or stating untruly the name and address of the owner of such cattle his agent or overseer on demand by

Penalty for offences by other persons.

by any member of the police force or by or on behalf of any person upon whose land such cattle are trespassing:

(vi.) Driving cattle not his own without proper authority from the land of any other person without previous notice to such person his agent or overseer:

(vii.) Wilfully leaving open any gate or slip-panel or making a gap in any fence for the purpose of permitting or causing any cattle to trespass or otherwise wilfully causing any cattle to trespass:

(viii.) Failing to comply with or committing any offence against the provisions of this Act not hereinbefore provided for.

Not to affect "*The Land Act 1869.*"

34. Nothing herein contained shall be deemed to affect "*The Land Act 1869.*"

SCHEDULES.

Section 10.

FIRST SCHEDULE.

For every sheep the sum of one penny.

For every head of other cattle the sum of threepence.

For writing and delivering or sending by post any notice the sum of two shillings and sixpence.

For inserting any notice in the *Government Gazette* and a newspaper in addition to the actual cost of such insertion the sum of two shillings and sixpence.

Section 22.

SECOND SCHEDULE.

TABLES of Rates to be charged for the trespass of Cattle and their sustenance while impounded, fixed by His Excellency the Governor in Council [*or by the Council of the shire city or as the case may be*].

Description of Cattle trespassing.	Upon Land other than tillage Land enclosed by a substantial Fence.	Upon tillage Land enclosed by a substantial Fence.	Amount to be charged daily for sustenance while impounded.
	£ s. d.	£ s. d.	£ s. d.
For every sheep			
For every goat			
For every pig			
For every head of other cattle			

Signed

Chief Secretary.

or By order of the Council

Town Clerk or Secretary.

THIRD

THIRD SCHEDULE.

Section 21.

FORM OF POUNDKEEPER'S BOOK.

Progressive number.	Date.	Time.	Particulars of Cattle im- pounded.	Brands or Marks.	Owner.	By whom im- pounded.	For what cause impounded.	Time and mode of giving notice to owner.	How disposed of	Time when re- leased or sold.	Particulars of Sale.									Signature of purchaser or of owner releas- ing.
											Name of purchaser.	Gross amount of sale.	Deduc- tions.			Net amount of sale.				
																			£	

FOURTH SCHEDULE.

Section 24.

FORM OF NOTICE TO BE SENT OR INSERTED IN THE "GOVERNMENT GAZETTE"
AND NEWSPAPER.

Impounded at [*here state the place and the number and kind of cattle and where and how branded and the particular sex colour and descriptive marks of each and by whom impounded.*]

If not claimed and expenses paid to be sold on

A.B.

Poundkeeper.

MELBOURNE:

By Authority: JOHN FERRES, Government Printer.