



1847.

No. 3.

ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

To amend the Laws relating to the Impounding of Cattle.

[23rd February, 1847.]

*Amended by*  
*No 10 - 1852*  
*No 23 - 1854*  
*No 10 - 1855-6*  
*& Secular*  
*No 4 - 1856*

Preamble.

WHEREAS it is expedient to amend the Laws for regulating the Impounding of Cattle and for preventing the vexatious impounding thereof:

Be it therefore Enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof, That from and after the commencement hereof, an Ordinance of the Governor of South Australia, with the advice and consent of the Legislative Council thereof, passed on the sixteenth day of January, one thousand eight hundred and forty-one, intituled "An Act to authorise and regulate the Impounding of Cattle;" and also, an Ordinance passed on the twenty-third day of May, one thousand eight hundred and forty-two, to amend the aforesaid Ordinance, shall be and the same are hereby repealed.

Repeal of recited Ordinances.

4 Vic. No. 8.

5 Vic. No. 17.

II. And

Appointment of  
Pounds and Pound-  
keepers.

II. And be it Enacted, That it shall and may be lawful for the Governor, when and so often as he may deem necessary, and at such places and for such districts as may appear convenient, to erect and maintain, and to authorise and empower any private person to erect and maintain, or to appoint any suitable premises already erected adjoining to some public highway, to be established and maintained as Public Pounds for the purposes of this Ordinance; and also to appoint fit and proper persons to be the keepers of any such Pound, at such reasonable and sufficient salaries as his Excellency may be pleased from time to time to appoint, not exceeding the whole amount of the fees received by such Poundkeeper; and for the greater convenience of resort thereto, to cause any such Pound to be removed to and erected in any other place; and also from time to time to displace and remove the keeper of any such Pound upon reasonable cause, and to appoint another fit and proper person in his stead.

Notification in Go-  
vernment Gazette to  
be evidence of ap-  
pointment or removal  
of a Pound or Pound-  
keeper.

III. And be it Enacted, That 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*, by order of the Governor, signed by the Colonial Secretary of the Province, and such notification shall be deemed and taken in all Courts in this Province, and for all intents and purposes to be evidence that such Pound or Poundkeeper hath been legally appointed or removed as in the said notification is mentioned.

Governor may ad-  
vance Fifteen Pounds  
for erection of a  
Pound.

IV. And be it Enacted, That it shall be lawful for the Governor to advance and issue, if required, any necessary sums not exceeding Fifteen Pounds for the erection and maintaining of any Pound being situated on Crown property; and every Pound erected, 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 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 nor less than One Pound.

Poundage fees, &c.

V. And be it Enacted, That the fees to be taken and charged by every Poundkeeper, for any matter or thing required to be done by him under and by virtue of this Ordinance, and not especially provided

provided for, shall be those specified in the Schedule hereto annexed, marked A, and no other: Provided always, that it shall be lawful for the Governor by notification in the *Government Gazette*, from time to time to reduce, or otherwise vary, and again to increase the said fees, as occasion may require, not exceeding the maximum fees in the said Schedule.

VI. And be it Enacted, That it shall be lawful for the Governor from time to time to appoint and declare that the several fees and charges payable to any Poundkeeper under this Ordinance, or any and what proportion thereof shall go to and be applied by such Poundkeeper in full payment or on account of salary or remuneration, or that any and what proportion of such fees and charges shall be appropriated to Her Majesty for the public uses of the Province and support of the Government thereof.

Governor may appropriate them, in whole or in part, to salary, &c.

VII. And be it Enacted, That it shall and may be lawful for the Justices of the Province, or the major part of them present at any meeting held 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, to appoint, fix, and vary the amounts which it shall be lawful for the keeper of every such Pound as aforesaid to charge and receive for the sustenance of the cattle of whatever description which shall be committed to any such Pound; and also to estimate and assess reasonable rates as and for the general or ordinary damages, which shall and may be demanded and recovered in a summary way by the owner of any lands, without proof of special damage for the trespass of any cattle thereon, which rates shall be proportioned according to the respective descriptions and value of the crops growing upon the lands trespassed upon, and the manner in which the same are fenced or enclosed, or according to the value of the natural pastures on unenclosed lands, and also to the respective descriptions and nature of the cattle trespassing; and to frame a table of such prices or rates as near as may be according to the form of the Schedule B hereunto annexed, such prices and rates being nevertheless subject to the allowance, or disallowance of the Governor, and the same, after such allowance being notified in the *Government Gazette*, shall and may be lawfully taken and charged, demanded and recovered respectively, as aforesaid.

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

VIII. And be it Enacted, That every Poundkeeper appointed under the provisions of this Ordinance, shall become bound by recognizance, himself in the sum of Twenty Pounds, and one or more sureties, to be approved by the said Justices, or the major part of them, in the further sum of Twenty Pounds, in the form and with the conditions contained in the Schedule hereunto annexed, marked

Poundkeeper to be bound in recognizance, &c.

marked D, which recognizance the Clerk of the Magistrates is hereby authorised and empowered to take, and for the taking whereof a fee of Two Shillings and Sixpence, and no more, shall be chargeable by him, conditioned for the faithful performance 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 Ordinance; and in case of the default of the said Poundkeeper in any of the premises, the said recognizance shall be forfeited, and may be forthwith put in suit for the recovery of any penalties incurred, and for the benefit of any party aggrieved by such default, as the case may be.

Party aggrieved may impound on his own premises cattle trespassing.

His duty and lawful charges thereon.

IX. And be it Enacted, That it shall and may be lawful for any person, or the agent, overseer, or bailiff of any person, upon whose land any cattle the owner whereof shall be known to him may be found trespassing, to impound and detain the same in any convenient place upon his own lands if he shall think fit to do so: Provided that he shall, within twenty-four hours of such last-mentioned impounding, give or cause to be given to the owner of the said cattle the like notice as is hereinafter required to be given to the keeper of any such Public Pound by any person sending cattle thereto: And Provided that he shall feed and maintain the same cattle whilst so impounded, and shall not keep them impounded longer than three whole days of twenty-four hours each, but shall, at the expiration of the said time, if not sooner released upon payment of his lawful charges thereon, drive, or cause the same to be driven to the nearest Public Pound, and lodged therein in manner hereinafter mentioned: Provided also, that any person impounding cattle on his own land as aforesaid, or his agent or overseer, shall not be entitled to demand or receive any compensation for damage done by the said cattle, save and except for such damage as was done before their first-mentioned impounding, and shall not be entitled to demand or receive any fee or charge for the said impounding, except such as shall be by law chargeable by the keeper of the nearest Public Pound for feeding and maintaining.

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

X. And be it Enacted, That it shall and may be lawful for any person, or the agent, overseer, or bailiff of any person, upon whose land any cattle shall be found trespassing, to drive and lodge the same, or cause the same to be driven or lodged in the Public Pound nearest to the said land; and the person impounding any such cattle, shall specify to the keeper of the said Pound the number and kinds of the cattle impounded, and the name of the owner, if he be known, or supposed owner, or that he is wholly unknown, the place where the said cattle were trespassing, and the amount of damage claimed for the trespass; and if any owner or occupier of land, or his agent or overseer, shall impound any cattle in any Pound

Pound or place not authorised by this Ordinance, or in any manner contrary to the directions and provisions thereof, every person so offending shall, upon conviction, forfeit and pay a fine not exceeding Ten Pounds and not less than Five Pounds for every such offence.

Penalty for impounding cattle contrary to this Ordinance, in unauthorised places.

XI. And be it Enacted, That the keeper of every Public Pound shall have and preserve at or near to the said Pound, a copy of this Ordinance, and also a Pound-book, ruled and divided into columns as near as may be in the form in the Schedule C, hereunto annexed, and he shall enter into 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 Ordinance required; as, also, when and in what manner the same were released, and by whose order, and to whom delivered—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 under distinct columns; 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 Ordinance and the said Pound-book shall at all reasonable times be produced by the said Poundkeeper to and be open for the inspection of any person desiring to see the same, and for every inspection of the Pound-book, the Poundkeeper shall be entitled to payment of the sum of Sixpence and no more, 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 of Sixpence for every subsequent number of words not exceeding one hundred; and the said Poundkeeper shall file and preserve, for not less than twelve calendar months, all orders made by Justices concerning any cattle impounded; and the said Poundkeeper shall, on the last day of every month, transmit to the Colonial Treasurer 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 a copy of this Ordinance free of charge, or the said Pound-book, for the inspection of any person desirous 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, or to transmit a copy thereof to the Colonial Treasurer as aforesaid, he shall forfeit and pay for every such default a sum not exceeding Twenty Shillings; and if any 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

Poundkeeper to have a copy of the Ordinance, and also to have a pound-book form, and requisites of the latter.

he shall forfeit and pay for every such offence a sum of Ten Pounds.

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

XII. And be it Enacted, That the keeper of every Public Pound shall erect 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 Ordinance authorised to demand, have, 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 the said board, or to keep and maintain the same in proper repair after it has been erected, or to make any lawful 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, 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 lawful alteration be not made after a reasonable time for making the same respectively shall have elapsed as aforesaid—the sum of Two Shillings and Sixpence; and for every day that he shall knowingly suffer any false statement to remain on the board, the sum of Five Shillings.

**Duty and responsibility of Poundkeeper.**

XIII. And be it Enacted, That the keeper of every such Public Pound shall receive and detain in his custody any cattle 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 so impounded until the same shall be replevied or liberated in due course of law, or until the sum for which the same were impounded, 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, together with his lawful fees and charges; and upon such payment as aforesaid being tendered or paid, or secured as hereafter provided, or such order being received from the person impounding, together with his fees and charges as aforesaid, the said Poundkeeper shall immediately deliver such cattle to the owner thereof, or his agent or overseer, or other person duly authorised by such owner to receive the same; and if such Poundkeeper shall fail to deliver such cattle as hereinbefore required and directed, he shall forfeit and pay for every such offence a fine of not less than Forty Shillings, nor more than Five Pounds.

XIV. And

XIV. And be it Enacted, That the sum payable for damages, fees, and charges, when not paid forthwith, shall be secured by an undertaking in writing, and shall be in the form, and to the effect mentioned in the Schedule hereunto annexed, marked with the letter E, and shall be signed by the owner of such impounded cattle, or his agent or overseer; and every agent or overseer who shall sign such note, whereby such cattle shall be released from Pound, shall be deemed to be the authorised agent of his employer, without any further proof being required thereof, and every such security or undertaking shall be paid at all events 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 undertaking shall and may be recovered by summary process of distress and sale, to be issued by any Justice of the Peace (which such Justice is hereby authorised and required to issue) upon the production of such undertaking or security before such Justice, and the oath of the Poundkeeper that the same is still due and unsatisfied, against the goods and effects of the owner of the cattle so impounded. *Form of security.*

XV. And be it Enacted, That the keeper of every Public Pound, whenever and as often as any cattle shall be impounded therein for any space, 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 so impounded, or in his possession, and such notice shall remain so posted until such cattle shall have been claimed or otherwise disposed of by due course of law; and every Poundkeeper who shall neglect to post such notice, or to keep the same so posted, shall, for every such neglect, forfeit and pay a fine of *ten* Shillings. *Poundkeeper to post notice at the Pound of all cattle under his charge.*

XVI. And be it Enacted, That when any impounded cattle shall not be followed to the said Pound, or claimed by the owner thereof, or by some one on his behalf, within twenty-four hours after the same shall have been impounded, the keeper of the said Pound shall, as soon as possible after the expiration of the said twenty-four hours, send notice in writing to the said owner, if he be known to him, and shall reside within ten miles of the said Pound, or to his agent or overseer, if the said owner shall reside at a greater distance, and have a known agent or overseer residing within ten miles, which 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 and place where the said cattle will be sold, if not sooner released from the said Pound by the owner or some one on his behalf, and the sum of money for which the same were impounded; and the said notice shall within the distance aforesaid be delivered personally

*Poundkeeper to give notice to owners of cattle impounded.*

personally to the said owner, agent, or overseer, or left for him at his usual place of abode; and if the said owner, agent, or overseer be 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, or overseer by post as soon as possible after the expiration of twenty-four hours from the time of impounding; and if neither owner, nor agent, nor overseer be known to the said Poundkeeper, then he shall cause the like notice to be posted at the nearest Post-office, and the notice in the Schedule marked F, hereunto annexed, to be inserted in the *Government Gazette* which shall be published next after the expiration of the said twenty-four hours, and in which it shall be possible to cause the same to be inserted: Provided always, -that when the cattle impounded under the provisions of this Ordinance 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.

Proviso as to small cattle.

Pound fees and charges, &c., how to be accounted for.

XVII. And be it Enacted, That from and after the commencement of this Ordinance, it shall and may be lawful for the keeper of every Pound in this Province lawfully constituted by virtue of this Ordinance, to demand and receive as Pound fees for the impounding of any cattle, and for feeding and maintaining the same whilst impounded, and for giving notice thereof to the owner, and for all other matters and things which are by this Ordinance required to be done by him, all such fees and charges as shall at any time be authorised to be taken and charged as in this Ordinance is mentioned, and the said Poundkeeper shall duly and faithfully account to the Colonial Treasurer 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 him on account of Her Majesty, her heirs and successors, for the public uses of the Province, so much of the said fees as shall not have been allowed him by the Governor as salary, and shall also then pay over to the Colonial Treasurer, subject to the provisions hereinafter mentioned, 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 owners; and if any Poundkeeper shall demand or take any greater sum for the impounding of any cattle, or doing any act, matter, or thing than such Poundkeeper is so authorised to demand or take, or shall fail duly to account and pay as aforesaid, every such Poundkeeper shall forfeit and pay for every such offence a sum not exceeding Five Pounds, nor less than One Pound.

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

XVIII. And be it Enacted, That if the owner of any cattle impounded shall release the same upon payment to the keeper of the said Pound, of the sum of money for which the said cattle were impounded,



impounded the said Poundkeeper shall pay the same to the party who impounded the said cattle on his demand thereof; and if he shall fail so to do, he shall forfeit and pay for his default the sum of Five Pounds.

XIX. And be it Enacted, That 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, his agent, or overseer, by delivering the same to him personally, or by leaving the same at his usual place of abode, or within twenty-one days after the notice shall have been despatched through the 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 any 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 show to the said Justice the Pound-book kept by him as by this Ordinance directed, or an extract of so much thereof as may apply to the case, and also such other proofs 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 Ordinance; and thereupon the said Justice shall and may, if he be satisfied that such terms and provisions have been complied with, make an order under his hand, authorising the sale of the said cattle on the day whereof notice shall have been given as aforesaid, or otherwise shall 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 Post-office, or by insertion in the *Government Gazette*, as the case may require, and in the same manner respectively as by this Ordinance 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.

Proceedings of the Poundkeeper respecting unclaimed cattle, prior to sale.

Proviso if suspension of sale be caused by neglect of Poundkeeper.

XX. And be it Enacted, That all sales of impounded cattle under and by virtue of this Ordinance, shall take place not less than ten clear days after the same shall have been impounded, in all cases

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

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 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 shall be put up in any 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 over and above restitution of the animals so purchased.

Poundkeepers to act  
as auctioneers.

XXI. And be it Enacted, That all impounded cattle directed to be sold under the provisions of this Ordinance shall and may be sold by the Poundkeeper by public auction to the highest bidder, notwithstanding that he shall not have taken out a licence as an auctioneer; and all such sales shall be free of auction duty: anything in any other Ordinance or Law to the contrary notwithstanding.

As to the application  
of money arising from  
sale of cattle im-  
pounded.

XXII. And be it Enacted, That it shall and may be lawful for every Poundkeeper appointed under this Ordinance to receive the price of any impounded cattle, which shall be sold under and by virtue thereof, and to apply the same, first in the payment of all lawful fees and charges to himself; secondly, 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 or overseer upon the same being demanded; and if the owner of the cattle sold shall be unknown, and have no known agent or overseer, the said Poundkeeper shall within one month after the sale pay the amount into the hands of the Colonial Treasurer in trust for the party entitled thereto, and the receipt of the said Treasurer shall be the legal quittance and discharge of 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 Colonial Treasurer, it shall be lawful for any Justice of the Peace, on proof of ownership to his satisfaction, to make an order, authorising payment of the said money to the party entitled thereto, and the said Colonial 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

same shall be duly made within two years next after the said money shall have been so paid into the hands of the Colonial Treasurer, it shall be lawful for the Governor by warrant under his hand to direct the same to be applied to the public uses of the Province and to the support of the Government thereof.

XXIII. And be it Enacted, That if the proceeds of any cattle impounded by any person or his overseer, for trespassing and doing damage upon the lands of such person, and sold under and by virtue of this Ordinance, shall be insufficient to satisfy the lawful fees and charges of the Poundkeeper respecting the same, the residue of such fees and charges shall be paid to the said Poundkeeper by the party who impounded the said cattle.

Proceeds of cattle impounded for private trespass proving insufficient to defray the expenses, the residue to be paid by party impounding.

XXIV. And be it Enacted, That if any person at any time after the passing of this Ordinance shall rescue any cattle which shall have been lawfully seized for the purpose of being impounded, or shall break down, injure, or destroy any Pound legally constructed, 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, 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 thereof, be committed by such justices, by warrant under their hands and seals to the House of Correction, there to be kept to hard labour for any time not exceeding three calendar months, nor less than fourteen days, unless such sum of money 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 person on whose behalf such cattle were distrained.

Pound rescues or breaches.

Penalty.

XXV. And whereas serious inconvenience and loss have been occasioned by reason of persons whose cattle have strayed upon the land, and into the herds of others, driving off the cattle of other persons together with their own: Be it Enacted, That any person 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, without giving notice to such last-mentioned person, his overseer, or bailiffs, of the time he intends to drive away such cattle, shall, on conviction of every such offence, forfeit and pay the sum of Five Pounds.

Cattle not to be driven from the land or herd of any person without notice.

XXVI. And whereas great injury has arisen to the breed of horned cattle by reason of bulls of inferior kinds being allowed to stray and run at large: Be it Enacted, That the owner of any bull

Additional penalty on bulls impounded.

above

above the age of one year, which may be impounded or detained under the provisions of this Ordinance, shall, upon complaint of the owner or occupier of the land trespassed upon, or of his agent or overseer, and on proof before any two or more Justices of the Peace, that such bull has been wilfully and negligently suffered to stray and run at large, forfeit and pay the sum of Two Pounds over and above any other penalty or charge to which he may be liable under this Ordinance.

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

XXVII. And be it Enacted, That it shall not be lawful for any person whomsoever to suffer any cattle belonging to him, or under his charge, to stray or go about, or to be tethered or depastured in any street or public place within such limits of the City of Adelaide, or of any other town, as may be proclaimed by the Governor as coming within the operation hereof; and any person who shall so offend shall, on conviction, forfeit and pay for every such offence a sum not exceeding Forty Shillings, nor less than Five Shillings; and it shall and may be lawful for any Constable or other person to seize and impound in the nearest Pound any such cattle as aforesaid, there to be detained until released upon payment of Poundkeeper's lawful fees and charges, or otherwise disposed of, according to the provisions of this Ordinance: Provided always, that if any dispute shall arise as to the limits of any of the towns aforesaid, the same shall be determined by the Justice before whom the case shall be brought.

Proviso.

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

XXVIII. And be it Enacted, That until public lines of road shall have been defined and marked out, nothing in this Ordinance contained shall be construed to prevent the driving of cattle to market, or travelling from one part of the Province to another, along customary lines of road, or in the immediate vicinity thereof.

Two Justices of the Peace to have jurisdiction in all matters arising out of the impounding of cattle in causes under Twenty Pounds.

XXIX. And be it Enacted, That it shall be lawful for any two Justices of the Peace not 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 impounding on the one hand, nor the party whose cattle are impounded on the other, claims any greater amount of damages than Twenty Pounds, and all questions of damages to any amount, to which any Poundkeeper may be subject by reason of his own neglect or default.

As to order for delivery of cattle, on recognizance with one surety being entered into by the owner of the cattle, to abide by award of Justices.

XXX. And be it Enacted, That upon the party whose cattle are impounded for any claim not exceeding Twenty Pounds taking out a summons in prosecution of his suit, and upon entering into a recognizance with one sufficient surety before any Justice of the Peace

...ace, in the form set forth in the Schedule hereto marked G, with condition duly to prosecute his suit, and abide by and perform the judgment of the Justices, it shall be lawful for the said Justices to direct the Poundkeeper, or party in whose custody the cattle shall be, to liberate the same, and thereupon such Poundkeeper or party, upon payment to him of the lawful fees and charges due in respect of such cattle, shall liberate the same, in like manner as if the said cattle had been replevied in the ordinary way.

XXXI. And be it Enacted, that upon hearing the parties and upon examination of the merits of the case, it shall be lawful for the Justices to make such orders as to damages and costs, to be paid by either party, and as to the detention or delivery of the cattle, and as to the sale thereof, or of any part thereof, in case of the non-payment of the amount of damage found to be done by them, or of any costs payable by the owner of them, as shall be just; and for the recovering and levying of such damages and costs, the said Justices shall have the same powers as in the case of a summary proceeding for any penalty.

Power of Justices to determine as to damages and costs.

XXXII. Provided always and be it Enacted, that nothing in this Ordinance contained shall be construed to prevent the occupier of any lands trespassed on by cattle from suing for compensation for any damage sustained by him in consequence of such trespass, without impounding the cattle trespassing: Provided that no greater damages shall be recovered by the party suing than the ordinary damages assessed and allowed by the Justices assembled in manner appointed by this Ordinance, unless such greater damage shall be specially found to have been done: Provided also, that no action of suit shall be brought to recover such damage until seven days next after notice in writing shall have been delivered to the party complained against, personally, or left at his usual place of abode, 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 said 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 also have 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."

As to actions for full compensation for trespass.

*Should not have used. Effect - the Ordinance Remedy is Compensation. They will take away a part of the right to sue by ordinary Right of Common Law. \* How is it to be proved? \* How is it proved?*

*If this is meant to be a total case of trespass cattle is not to be kept to law as interfering a party's Common Law Right of Common Law.*

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

XXXIII. And be it Enacted, that a judgment or conviction duly

Effect of judgment or conviction under this Ordinance.

D

duly made under this Ordinance, 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.

**Recovery of penalties.**

XXXIV. And be it Enacted, that all fines, penalties, and other sums of money whatsoever incurred under this Ordinance, shall and may be recovered; and all parties aggrieved by any conviction, order, or adjudication, shall be entitled to appeal in like manner as in the case of any penalty by summary proceeding, before any two Justices of the Peace, under and according to the laws for regulating summary proceedings before Justices of the Peace.

**Appeal.****Mode of distribution of fines, &c.**

XXXV. And be it Enacted, that in so far as not otherwise provided, all fines which shall be levied or paid under this Ordinance, shall go and be paid to the Colonial Treasurer on behalf of Her Majesty, Her Heirs and Successors, for the public uses of this Province and the support of the Government thereof: Provided that all such fines may be remitted in whole or in part by the Governor.

**Construction of the Ordinance.**

XXXVI. And be it Enacted, that in the construction of this Ordinance, the word cattle shall in all cases be deemed and taken to mean and include horses, mares, geldings, colts, fillies, asses, mules, camels, bulls, cows, oxen, heifers, steers, calves, deer, rams, ewes, sheep, lambs, goats and swine, and shall be deemed and taken to mean, include, and to apply to any one animal of the said several kinds.

**Commencement.**

XXXVII. And be it Enacted, that this Ordinance shall commence from and after the passing hereof, so far only as regards the appointment of pounds and poundkeepers, the convening of a meeting of Magistrates for fixing the charges for food, and rates of damage on trespass, the appointing such charges and rates, and other matters preparatory to the operation hereof; and this Ordinance shall commence and take effect from and after the fifteenth day of March next, so far as regards the repeal of the recited Ordinances and the operation hereof in all other respects.

FREDK. H. ROBE,  
Lieutenant-Governor.

*Passed the Legislative Council, this twenty-third day of February, One Thousand Eight Hundred and Forty-seven.*

W. L. O'HALLORAN,  
Clerk of Council.

SCHEDULE

SCHEDULE A.

POUNDKEEPER'S FEES.

Fees for Poundage.

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

*[The above Poundage Fees to be paid for each day, or part of a day, during which the animal is kept in Pound.]*

For delivering or sending notice, and causing the same to be posted at the Post Office, and inserted in the *Government Gazette*..... 1 0

SCHEDULE B.

TABLE OF RATES to be charged for trespass of Cattle, and the sustenance thereof whilst impounded, in the District of \_\_\_\_\_ under the Laws relating to the Impounding of Cattle.

Description of Cattle, &c., trespassing.	In any forest, open pasture land, open stubble, after-grass, or other uninclosed land.	In any paddock or meadow of grass enclosed by a good and substantial fence.	In any garden, growing crop, if any, of any kind, enclosed by a good and substantial fence.	Amount to be charged daily for sustenance while impounded.
	£ s d	£ s d	£ s d	£ s d
For every horse, mare, gelding, filly, ass, mule, bull, cow, calf, &c. ....				
For every ram, ewe, sheep, lamb, or goat .....				
For every pig .....				

Fixed by the Justices assembled at \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ the

Allowed by His Excellency the Governor.

By order,

Colonial Secretary.

SCHEDULE



SCHEDULE C.

Impounded						Released or sold							
Date and time.	Description of cattle, colors, and brands.	By whom impounded.	For what cause.	Owner or supposed owner.	Time and mode of giving notice.	Date and time.	Whether released or sold.	By whose order.	To whom delivered or produced.	Amount received for			Signature of person receiving cattle and paying charges.
										Sales.	Maintenance.	Fees.	
										E A D	E A D	E A D	

FORM OF POUNDKEEPER'S BOOK.

SCHEDULE

SCHEDULE D.

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FORM OF RECOGNIZANCE TO BE ENTERED INTO BY A POUNDKEEPER  
WITH ONE OR MORE SURETIES.

---

South Australia } BE IT REMEMBERED, That on the  
to wit. } day of 18 A B, of  
C D, of and E F, of came personally  
before me. G H (*Clerk of the Magistrates for*), and  
severally acknowledged themselves to owe to our Sovereign Lady the Queen,  
to wit, the said A B, the sum of twenty pounds, and the said C D (*or the*  
*said C D and E F*), the sum of twenty pounds of lawful money of Great  
Britain, to be levied off their respective goods and chattels, lands, and tene-  
ments, to the use of our said Lady the Queen, Her Heirs and Successors, in  
case default shall be made in the performance of any of the conditions here-  
under written: Now, therefore, the condition of this recognizance is—whereas  
the said A B shall well and faithfully perform his duty as Poundkeeper, and  
every act, matter, and thing, by him as such Poundkeeper required and  
directed to be done and performed by virtue and according to the provisions  
of the Ordinance of the Governor and Council in such case made and provided,  
then this recognizance to be void: otherwise to remain in full force. Taken  
and acknowledged the day and year first above written (*as by the said Ordi-*  
*nance is authorised and directed*), before me,

G H.

**SCHEDULE E.**

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**FORM OF SECURITY OR UNDERTAKING.**

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I, A B (*describing the residence of the owner of the cattle impounded*), hereby promise to pay within thirty days from the date 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 whatever; and in default thereof, I consent that the said sum, together with the costs necessarily incurred by the said 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.**

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**FORM OF ADVERTISEMENT IN THE GOVERNMENT GAZETTE.**

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**IMPOUNDED at** (*here state the place, the number and kind of cattle, where and how branded*).

**If not claimed, to be sold on**

**A B, Poundkeeper.**

---

Where there is no brand, the animals are to be shortly described by stating age, colour, 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  
*to wit.* } in the \_\_\_\_\_ year of the reign of our  
 Sovereign Lady Queen Victoria in the Province of South Australia, and  
 of \_\_\_\_\_ in the said Province  
 personally came before me, \_\_\_\_\_ Esquire, one  
 of Her Majesty's Justices of the Peace in and for the said Province, and  
 acknowledged themselves jointly and severally to owe to our Sovereign Lady  
 the Queen the sum of \_\_\_\_\_ pounds, of lawful money of Great  
 Britain, to be made and levied of their respective goods and chattels, lands  
 and tenements, to the use of Her Majesty, Her Heirs and Successors, if the  
 said \_\_\_\_\_ and \_\_\_\_\_ shall fail in  
 the condition hereunder written:

THE CONDITION of the above recognizance is such, that whereas the  
 said \_\_\_\_\_ hath taken out a summons against  
 in prosecution of a certain suit in a summary way, under the provisions of the  
 Ordinance in that behalf, in respect of the taking and unjustly impounding  
 of his cattle, to wit (*here state the substance as in the summons*): Now, if the  
 said \_\_\_\_\_ shall duly prosecute the same with effect and  
 without delay, and make a return of the said cattle, if a return thereof shall  
 be adjudged, or otherwise abide by and perform the judgment or award of the  
 Justices, then this present recognizance shall be void and of none effect; or  
 else shall be and remain in full force and virtue.

Taken and acknowledged at

before me.

J. P.