



1852.

No. 21.

An Act to prevent the extension of the Scab in Sheep in South Australia, and to make provision for the destruction of Sheep infected with that disorder.

[Assented to 2nd December, 1852.]

WHEREAS the Laws at present in force within this Province for preventing the extension of the disease called the scab in sheep have been found ineffectual for the purposes contemplated by the Legislature, and it is necessary to make new provisions in that behalf :

Be it therefore Enacted, by the Lieutenant-Governor of South Australia, with the advice and consent of the Legislative Council thereof, That from and after the first day of January, one thousand eight hundred and fifty-three, an Act or Ordinance of the Governor, with the advice and consent aforesaid, passed on the twenty-first day of February, one thousand eight hundred and forty-four, entitled "An Ordinance to prevent the extension of the scab in sheep in South Australia," and also an Ordinance of the Governor and Council aforesaid, passed on the twentieth day of August, one thousand eight hundred and forty-six, entitled "To amend an Ordinance to prevent the extension of the scab in sheep in South Australia," shall be and the same are hereby repealed (except as the said Ordinances repeal the then existing Acts or Ordinances of the Governor and Council aforesaid), and the present Act shall commence and take effect.

2. And be it Enacted, That it shall be lawful for the Lieutenant-Governor from time to time to appoint one or more Inspectors of sheep within this Province, or such parts thereof as to him shall seem fit, by a notice to be published in the *Government Gazette*; and every person who shall be so appointed shall have full power and authority to inspect any sheep within this Province, or such part thereof for which he shall be appointed, at any time, and whether such sheep are depasturing on private lands, or within the several

*Amended by
No. 17 - 1853
Repealed by No. 29 - 1856*

Preamble.

Repeal of 7 & 8 Vic.,
No. 3, and 1846, No.
9.

Governor to appoint
Inspector.

several hundreds into which this Province is now or may hereafter be divided, or upon the waste lands belonging to the Crown, or upon lands held under leases from the Crown or otherwise, and shall have, exercise, and discharge the several powers, authorities, and duties within this Province (or such part thereof for which he shall be appointed) hereinafter mentioned; and provided and if any person shall refuse to allow the Inspector to enter upon his pasturage or premises, or to examine any sheep belonging to him, or in his or their care or possession, or shall attempt to impede or hinder the Inspector from examining such sheep, every such person shall on conviction forfeit and pay the sum of Fifty Pounds.

Scabby sheep to be branded.

3. And be it Enacted, That all sheep within this Province infected with the said disease called "the scab," shall be legibly marked with pitch upon the rump with the initial letters of the first name and surname of the owner, and also with the letter S, such last mentioned letter to be at least three inches in length; and that such sheep, so long as they shall continue so infected, shall at all times be kept so legibly marked as aforesaid; and that every person who shall neglect to mark his sheep if infected with the said disease, or to keep the same so marked as aforesaid, shall, upon conviction, forfeit and pay the sum of Fifty Pounds.

4. And be it Enacted, That for all the purposes of this Act, all sheep so branded as aforesaid shall be deemed to be infected with the said disease, and such brands shall be conclusive evidence against the owner or owners of all sheep so branded that such sheep are so infected.

Sheep offered for sale in any market if infected with scab to be destroyed.

5. And be it Enacted, That if any sheep infected with scab, or any flock or number of sheep amongst which some are so infected, shall be offered for sale in any market in this Province, or shall be driven to any place within this Province for the purpose of slaughtering the same for food, the Inspector shall have power, and he is hereby authorized and required upon receiving information thereof, to repair without delay to such market or other place and to examine such sheep, and if he shall find that such sheep, or any of them, are infected with the said disease, to seize and cause as well the said sheep which are so infected, as the remainder of the flock to be destroyed: Provided always, that if the owner of such sheep or some person on his behalf, shall, at the time of such seizure give notice to the inspector under whose authority such seizure shall be made of his intention to replevy the said sheep so seized in manner hereinafter provided, then the inspector shall retain possession of such sheep for the period of three days from the day of such seizure, at the expiration of which period the same shall be destroyed unless replevied by the owner thereof, or some person on his behalf.

Sheep seized by the Inspector may be replevied.

No scabby sheep to be removed from their run.

6. And be it Enacted, That if any person being the owner of sheep infected with the said disease, called the scab, shall cause, or permit, or suffer any sheep so infected to be driven or removed from the land occupied by such owner to any other land, the Inspector

spector shall, and he is hereby empowered to cause such sheep to be destroyed, unless the same shall be replevied as herein provided: Provided always, that until the first day of March, one thousand eight hundred and fifty-four, any person being the owner of sheep, infected as aforesaid, may, upon application to the nearest Local Court, established under the provisions of an Act of the Lieutenant-Governor and Council aforesaid, passed in the year one thousand eight hundred and fifty, and numbered 5— all which Courts are hereby empowered to grant the same, obtain an order allowing the removal of any infected sheep from the land occupied by the owner of such sheep to any slaughter-house established for the killing and boiling down of sheep for the purpose of extracting the tallow from the carcasses thereof, such slaughter-house to be named in the order, and the sheep to be removed by a route to be described therein, or as near thereto as practicable: Provided also, that every lessee of Crown lands, and every person duly authorized to occupy the waste lands of the Crown for the purpose of depasturing thereon, shall be, and is hereby empowered to examine any sheep which shall be driven through, over, or found upon any part of the lands occupied by such lessee or other person, unless the person having the charge of such sheep shall produce such order as aforesaid, and it shall appear that such sheep are travelling for the purpose last aforesaid, and in the route described in the said order, and if such sheep or any of them shall upon such examination be found to be infected with the said disease, then it shall be lawful for such lessee, or other person as aforesaid, to detain and keep possession as well of the sheep so infected as of the whole flock in which such infected sheep are found, until the Inspector shall examine such sheep and decide whether or not the same or any of them are infected as aforesaid, and the owner or person in charge of such sheep shall give notice of such detention to the Inspector, who is hereby required to repair without delay to the place where such sheep are detained, and to examine the same and ascertain whether or not such sheep are infected with the said disease: and if, upon such examination, the said sheep or any of them shall be found by the Inspector to be diseased, then the Inspector is hereby empowered and required to cause the whole flock to be destroyed: Provided also, that if, upon examination by the Inspector, the sheep so detained as aforesaid, shall be found not to be infected with the said disease, then the person or persons detaining the same shall forfeit and pay the sum of One Hundred Pounds: And provided also, that the owner of any sheep driven through, over, or found upon any part of the lands lawfully occupied by any other person shall forfeit and pay the sum of One Hundred Pounds, in case the person or persons having charge of or driving such sheep shall refuse to permit the same to be examined or detained in manner aforesaid: And provided also, that any sheep detained as hereinafter mentioned may be replevied as hereinbefore provided.

where is there a fr applicable to this case

Except for boiling down.

7. And be it Enacted, That it shall be lawful for the Inspector at any time and from time to time, after the first day of March, one thousand eight hundred and fifty-four, to enter upon any land

Scabby sheep to be destroyed twelve months after the passing of this Act, if found north of the County of Adelaide.

land within this Province, whether held in fee simple or otherwise, and to seize and retain possession of all sheep there found infected with the the said disease, and to cause the same to be destroyed unless replevied under the provisions of this Act.

8. And be it Enacted, That from and after the passing of this Act, it shall be lawful for any person being a sheepowner, or the servant of a sheepowner, whose sheep may be running or depasturing in any hundred, or upon any waste or common lands of the Crown in such hundreds, or upon private land, to seize and destroy all such sheep as are infected with the disease called the scab, that may be running loose without a shepherd, or that shall be found in, or approaching near to any of his flocks of sheep.

9. And be it Enacted, That from and after the first day of September, one thousand eight hundred and fifty-three, it shall not be lawful for any person to depasture sheep infected with the said disease upon any waste lands of the Crown situate within any of the hundreds into which this Province, or any part thereof, is now, or may hereafter be divided, by virtue of any right of commonage, or any right acquired in respect of the occupation of purchased land: And that it shall be lawful for any person depasturing sheep upon such waste lands as last aforesaid, to detain and keep possession of any sheep infected with the said disease found upon such waste lands within any hundred, together with the flock in which such sheep are found, until the inspector shall examine such sheep, and decide whether or not the same, or any of them are infected as aforesaid, and the inspector shall, and is hereby required upon receiving notice of such detention from the person detaining such sheep, or the owner or person in charge of the same, to repair without delay to the place where such sheep are detained, and to examine the same, and if upon such examination the said sheep or any of them shall be found by the inspector to be diseased, then the inspector is hereby empowered and required to cause the sheep so infected to be destroyed: Provided always, that such sheep may be replevied as hereinbefore provided.

Sheep seized by the
Inspector may be
replevied.

10. And be it Enacted, That if any person whose sheep shall be seized by the Inspector or detained by any other person under this Act, or any other person on behalf of the owner of such sheep, shall upon such seizure, give notice to the Inspector or other person detaining the same of his intention to replevy the same, and shall thereupon enter into a recognizance with two sufficient sureties before any Justice of the Peace (who is hereby authorized to take the same) in the form set forth in the Schedule hereto marked A, with condition to commence and prosecute a suit without delay against the Inspector making such seizure or other person detaining the said sheep, in the nearest Local Court of full jurisdiction, established under the provisions of the said Act of the Governor and Council aforesaid, passed in the year one thousand eight hundred and fifty—numbered 5, and to abide by and perform the judgment of the

the said Court; it shall be lawful for the said Justice before whom such recognizance shall be entered into, to issue an order, directing the Inspector or such other person as aforesaid who shall have made such seizure to liberate the sheep seized by him and deliver them to the person claiming the same; and thereupon such Inspector, or other person as aforesaid, shall liberate the same in like manner as if the same had been replevied in the ordinary way: Provided always, that no Inspector or other person as aforesaid, shall be bound to liberate any sheep seized by him under the provisions of this Act, unless such order as aforesaid or a copy thereof, shall be personally served upon the Inspector or other person making the seizure, or the person or persons in actual possession of the said sheep, within seven days after the seizure thereof.

11. And be it Enacted, That such recognizance as aforesaid, when entered into, shall without delay be forwarded by the Justice taking the same, to the Clerk of the Local Court mentioned in the condition of such recognizance; and that upon hearing the parties, and upon examination of the merits of the case, it shall be lawful for the said Court to make such orders as to damages and costs, to be paid by either party; and as to the detention or delivery of the sheep; and as to the destruction thereof, in case the same shall appear to the said Court to be liable to destruction under the provisions of this Act; and for the recovering and levying of such damages and costs, the said Court shall have the same powers as in the case of an ordinary action for recovery of a money demand in the said Court: Provided always, that if it shall appear to the said Court, upon hearing the parties, and upon examination of the merits of the case, that the plaintiff is entitled to a verdict, and has sustained damages to an amount exceeding the sum of Thirty Pounds, then it shall be lawful for the said Court, at the request of the plaintiff, to direct the recognizance entered into by the plaintiff to be cancelled, and a verdict for nominal damages to be entered for the plaintiff; and the plaintiff in such action shall be at liberty to commence and prosecute an action, for the recovery of damages against the person or persons so seizing or detaining such sheep, in the Supreme Court; and provided also, that if the person replevying any sheep in manner aforesaid shall fail to perform the condition of the said recognizance, then it shall be lawful for the Court named in the said condition, upon the application of any person, and upon due proof of such default, to estreat the said recognizance, and to issue a warrant to the bailiff of the said Court authorizing the said bailiff to levy the sum of One Hundred Pounds and costs, upon the goods and chattels of the persons making such recognizance, or any of them, in like manner as for judgment recovered in the ordinary way in the said Court.

Court to hear and determine, and make orders for damages and costs.

12. And be it Enacted, that every owner of sheep within this Province, and the person having the care and management of sheep depasturing within this Province, where the owner of such sheep is

Owners of sheep to deliver correct accounts of infected sheep.

absent therefrom, shall from time to time, and at any time when thereunto required, by a notice in writing to be personally delivered to such owner or other person as aforesaid, deliver to the Inspector a correct account of all sheep infected with scab in his possession or custody, with the marks or brands of such sheep, and the description of their age and sex, and where they may be depasturing; and if any owner or other person as aforesaid shall neglect to deliver such account on being thereunto required, he shall forfeit and pay for every offence the sum of Twenty Pounds.

Interpretation clause.

13. And be it Enacted, that in this Act every word importing the singular number shall include the plural number also, and every word importing the masculine gender shall include the feminine also, that the word sheep shall include rams, wethers, ewes and lambs, that the Inspector shall mean the Inspector appointed under this Act for the particular part (if any) of the Province to which his duties are confined.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this thirtieth day }
of November, one thousand eight hundred }
and fifty-two. }*

F. C. SINGLETON,
Clerk of the Legislative Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Lieutenant-Governor.

Government House, Adelaide,
December 2, 1852.

SCHEDULE REFERRED TO.

A

FORM OF RECOGNIZANCE.

South Australia } Be it remembered that on the day of in
to wit. } the year of the reign of our Sovereign Lady Queen Victoria,
 of in the Province of South Australia, of
 in the Province aforesaid, and of in the
 Province aforesaid, 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
 One Hundred Pounds of lawful British money, to be made and levied of their
 respective goods and chattels, to the use of Her Majesty, Her heirs and successors, if
 the said shall fail in the condition hereunder written.

The condition of the above recognizance is such, that if the said shall
 within one calendar month from the date hereof, commence a suit against
 of in the Local Court of full jurisdiction established under the
 Ordinance passed in the year one thousand eight hundred and fifty, No. 5, and to be
 holden at for the seizing and unjustly detaining certain sheep, the property
 of and shall duly prosecute the same with effect and without delay, and
 make a return of the said sheep, if a return thereof shall be adjudged, or otherwise
 abide by and perform the judgment or award of the said Court; 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

Justice of the Peace.