

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbishire & George Desbarats, 1857.

20 Victoria – Chapter 31

An Act to prevent the cruel and improper treatment of Cattle and other Animals, and to amend the Law relating to impounding the same. Assented to 10th June, 1857.

Whereas accidents have arisen from improperly driving Cattle, and many cruelties are practised by improperly driving and conveying cattle to, at and from public markets and otherwise, and by severely beating and binding them, as well as by keeping and detaining them without food and nourishment for a considerable time, to the great and needless increase of the sufferings of dumb animals, and to the demoralization of the people, and whereby the lives and property of Her Majesty's subjects are endangered and injured; And whereas it is expedient to prevent as far as possible the cruel and improper treatment of Cattle and other animals, and to make divers provisions in regard thereto: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. If any person shall, from and after the passing of this Act, wantonly, cruelly, or unnecessarily beat, bind, ill treat, abuse or torture any Horse, Mare, Gelding, Bull, Ox, Cow, Heifer, Steer, Calf, Mule, Ass, Sheep, Lamb, Pig or other Cattle, or any Poultry, or any Dog, or domestic Animal or Bird, or if any person who shall drive any Cattle or other animal shall, by negligence or ill-usage in the driving thereof, be the means whereby any mischief, damage or injury shall be done by any such cattle or other animal, every such offender being convicted of any or either of the said offences before any one Justice of the Peace for the City, Town, District or County in which any such offence shall have been committed, shall, for every such offence, forfeit and pay (over and above the amount of the damage or injury, if any, done thereby, which damage or injury shall and may be ascertained and determined by such Justice,) such a sum of money not exceeding two pounds ten shillings, nor less than five shillings, with costs, as to such Justice shall seem meet; or the offender shall in default of payment be committed to the Common Gaol or House of Correction, for the City, Town, District or County in which such offence shall have been committed, there to be imprisoned for any time not exceeding fourteen days; provided that nothing in this Act contained shall prevent or abridge any remedy by action against the employer of any such offender where the amount of the damage is not sought to be recovered by virtue of this Act; Provided that nothing in this section contained shall make it unlawful for any person to bind any sheep, lambs, calves or pigs for the purpose of conveying and delivering them to or at any market, at a distance not exceeding fifteen miles from the owner's house or premises; but such animals shall not remain so bound for a longer space than half an hour after their arrival at such market.

II. And whereas cruelties are sometimes practised by reason of keeping and detaining Horses, horned Cattle, Pigs and other cattle and animals, impounded and confined without food, water and shelter, for a length of time; For remedy thereof, be it enacted, that from and after the passing of this Act, every Poundkeeper and every person who shall impound or confine, or cause to be impounded or confined, any Horse, horned Cattle, Sheep, Pigs, or other cattle or any poultry, in any common Pound, open Pound, or close Pound, or in any inclosed place, (and it shall and may be lawful for any person to

confine any Cattle, Poultry or other animals in any inclosed place when found trespassing, where the common Pound of the City, Town, Township or place wherein the distraining occurs is not secure) shall, and he is hereby required to find, provide and supply such horse or other cattle, animal or poultry so impounded or confined, daily, with good and sufficient food, water, shelter and nourishment, for so long a time as such horse or other cattle, animal or poultry shall remain and continue so impounded or confined as aforesaid; and every such person who shall so find, provide and supply any such horse or other cattle, animal or poultry with such daily food, water, shelter and nourishment as aforesaid, shall and may, and he and they are hereby authorized and empowered to recover of and from the owner or owners of such cattle, animal or poultry, the value of the food and nourishment so supplied to such cattle, animal or poultry as aforesaid, together with a reasonable allowance for his time, trouble and attendance in and about impounding and taking care of such cattle, animal or poultry, by proceeding before any one Justice of the Peace within whose jurisdiction such cattle, animal or poultry shall have been so impounded and supplied with food as aforesaid, in like manner as any penalty or forfeiture, or any damage or injury may be recovered under and by virtue of any of the powers or authorities in this Act. contained, and which value of the food and nourishment, loss of time, trouble and attendance, so to be supplied as aforesaid, such Justice is hereby fully authorized and empowered to ascertain, determine and enforce as aforesaid; and every person who shall have so supplied such food, shelter and nourishment, time and trouble as aforesaid, shall be at liberty, if he shall so think fit, instead of proceeding for the value thereof as last aforesaid, after the expiration of not less than four clear days from the time of impounding the same, to sell any such Pig or Poultry, and after the expiration of not less than eight clear days from the time of impounding the same, to sell any such Horse or other cattle or animal, openly in or near the place wherein the same shall be so impounded or confined as aforesaid, or openly at any public market, street or other public place, (after having given three days public written or printed notice thereof, by affixing such notice upon the door of the nearest School House, or of the nearest Church, Chapel or other public place in the City, Town, Village, Township or place wherein the distress was made,) for the most money that can be then got for the same, and to apply the produce in discharge of the value of such food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and the expenses of driving or conveying and impounding or confining such horse or other cattle, animal or poultry, and of such sale and attending the same, or incidental thereto, as well as the damage done by such horse or other cattle, animal or poultry, to the property of the person at whose suit the same was distrained, (such damage not to exceed five pounds in any case, and which the Justice is hereby fully authorized and empowered to ascertain, determine and enforce as aforesaid,) rendering the overplus, if any, to the owner of such horse, cattle or animal; Provided always, that no such sale shall be lawful unless the party claiming to sell any such horse or other cattle, animal or poultry, by virtue of the power herein contained, shall have first made oath or affidavit, in writing, before the said Justice, that the notice or notices of sale, as above mentioned, were duly affixed and published in the manner prescribed by this Act, and shall satisfy the said Justice that such was the case.

III. In case any such person or Poundkeeper who shall so impound or confine, or cause to be impounded or confined, or keep impounded or confined any such horse or other cattle or animal as aforesaid, shall refuse or neglect to find, provide, and supply such daily good and sufficient food, water, shelter and nourishment to such cattle, animal or poultry so impounded and confined as aforesaid, he and they shall, for every day during which he or they shall so refuse or neglect to find, provide and

supply the same as aforesaid, forfeit and pay a sum not less than five shillings nor more than twenty shillings, which last sum and sums of money shall and may be recoverable by proceeding before any one Justice of the Peace, in like manner as hereinbefore provided for the recovery of any penalty, forfeiture, damage or injury, as hereinbefore mentioned.

IV. And for the more easy and effectual apprehension of all offenders against this Act, Be it enacted, That when and so often as any of the said offences shall happen, it shall and may be lawful to or for any constable or other peace officer, or for the owner of any such horse, cattle, animal or poultry, upon view thereof, or upon the information of any other person (who shall declare his or their name or names and place or places of abode, to the said constable or other peace officer), to seize and secure by the authority of this Act, and forthwith and without any other authority or warrant, to convey any such offender before any one Justice of the Peace within whose jurisdiction the offence shall have been committed, to be dealt with according to law; and such Justice shall forthwith proceed to examine upon oath any witness or witnesses who shall appear or be produced to give information touching any such offence, which oath the said Justice is hereby authorized and empowered to administer.

V. If any person who shall be apprehended for having committed any offence against this Act shall refuse to discover his name and place of abode to the Justice before whom he shall be brought, such person refusing shall immediately be delivered over, to a constable or other peace officer, and shall by him be conveyed to the Common Gaol or House of Correction for the City, Town, District or County within which the offence shall have been committed, or in which the offender shall have been apprehended, there to remain for a space not exceeding one calendar month, or until he shall make known his name and place of abode to the said Justice.

VI. The prosecution of every offence punishable under this Act shall be commenced within three calendar months next after the commission of the offence, and not otherwise; and the evidence of the party complaining shall be admitted in proof of the offence, and shall be sufficient in the absence of any other evidence.

VII. In every case of a conviction under this Act where the sum which shall be awarded for the amount of the damage or injury done, or which shall, be imposed as a penalty by any such Justice as aforesaid, for any offence contrary to this Act, shall not be paid either immediately, upon or after the conviction, or within such period as such Justice shall at the time of the conviction appoint, it shall be lawful for such Justice (unless where otherwise specially directed) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept, to hard labour, according to the discretion of such Justice, for any term not exceeding fourteen days, where the amount of the sum awarded or the penalty imposed, or both (as the case may be) together with the costs, shall not exceed five pounds, and for any term not exceeding two calendar months where the amount with costs shall exceed five pounds; the commitment to be determinable in each of the cases aforesaid upon payment of the sum or sums awarded and costs.

VIII. It shall be lawful for any one such Justice as aforesaid, in all cases in which no other mode of proceeding is specially provided or directed by this Act, or in any case where any person shall not be

conveyed before any Justice by the authority of this Act, upon information or complaint made by any person of any offence against the provisions of this Act, within fourteen days next after the commission of any such offence, to summon the party accused to appear before such Justice, or before any other Justice of the Peace, at a time and place to be by him named, and either on the appearance of the party accused or in default thereof, it shall be lawful for such Justice or any other Justice, at the time and place to be appointed for such appearance, to proceed to examine into the matter, and upon due proof made thereof by voluntary confession of the party, or by oath of one or more credible witness or witnesses, to award, order, give judgment, or convict for the damage or injury, penalty or forfeiture, as the case may be.

IX. In every case where there shall be a conviction for any offence contrary to this Act, the same shall be drawn or made out according to the form following, or to the effect thereof, or as near thereto as may be:

County, (or as the Case may be of _____) } Be it remembered, that on the _____ day of _____, in the year of Our Lord, _____ at _____ in die County (or as the case may be) of _____, A. B. is convicted before me, J. P., one of Her Majesty's Justices of the Peace for the said County, (or as the case may be), for that lie the said A. B. on the day of _____, in the year _____, at _____ in the said _____, did (here specify the offence), and I, the said J. P., do adjudge the said A. B. for his said offence, to forfeit and pay the sum of (here state the penalty actually imposed, or the penalty and also the amount of damages for the injury done, or as the case may be), and also to pay the sum of _____ for costs, and in default of immediate payment of the said sums, to be imprisoned in the _____ (and as the case may be), to be there kept to haul labour for the space of _____, unless the said sums shall be sooner paid: and I direct that the said sum of (the penalty) shall be paid as follows, that is to say: one moiety thereof to the of the said _____, of _____, to be by _____ applied according to _____; and the other moiety thereof, to C. D., of _____, the prosecutor, (or as the. case may be); and that the said sum of _____ (the sum for the amount of injury done, if any sum is awarded) shall be paid to E. F. (or the said C. D. as the ease may be); and I order that the said sum of _____ for costs shall be paid to the said C. D.

Given under my hand and seal, the day and year first above mentioned.

J. P. [L. S.]

X. Any summons issued by any such Justice, requiring the appearance of any offender against any of the provisions of this Act, shall be deemed and taken to be well and sufficiently served, in case either the summons or copy thereof be served personally on such person as aforesaid, or be left, at his usual or last known place of abode, in whatever county or place the same may be served or left.

XI. If any constable or other Peace Officer shall refuse or neglect to serve or execute any such summons or warrant granted or issued by any such Justice of the Peace, pursuant to any of the provisions of this Act, every such Constable or Peace Officer so offending, and being convicted thereof upon the information of any person before any Justice of the Peace, shall forfeit any sum, not exceeding five pounds, as shall be awarded by such Justice, and in default of payment thereof shall be

committed by such Justice to the County Gaol or House of Correction of the City, Town, District, or County in which such Justice has jurisdiction, there to be kept for the space of time not exceeding one calendar month, unless such penalty shall be sooner paid.

XII. All pecuniary penalties which shall be recovered before any Justice of the Peace under the provisions of this Act, shall respectively be divided, paid, and distributed in the following manner, that is to say: one moiety thereof to the Treasurer of the City, Town, Village, Township or Parish in which any of the offences aforesaid shall have been committed, to be by such Treasurer applied in repairing streets or roads therein, and the other moiety thereof, with full costs, to the person who shall inform and prosecute for the same, or to such other person as to such Justice shall seem fit and proper; and that all and every sum or sums of money which shall or may be ascertained, determined, adjudged, and ordered by any Justice of the Peace under the authority of this Act, to be paid as the amount of any damage or injury occasioned by the commission of any of the offences hereinbefore mentioned, shall be paid to the person who shall or may have sustained such damage or injury.

XIII. Upon the hearing of any information or complaint exhibited or made under any of the provisions of this Act, any person giving or making such information, or complaint, or other person, shall be deemed and is hereby declared to be a competent witness, notwithstanding he may be entitled to any part of the pecuniary penalty, on the conviction of any offender, upon any such information or complaint as aforesaid.

XIV. All actions and prosecutions which may be brought or commenced against any person for any thing done in pursuance or under the authority of this Act, shall be commenced within one calendar month next after the fact committed, and not afterwards, and shall be brought and tried in the County or place where the cause of action shall arise, and not elsewhere; and notice in writing of any such action and specifying the cause thereof shall be given to the defendant fourteen clear days at least before the commencement of any such action; and the defendant, in such action, may plead the general issue, and give this Act and any other matter or thing in evidence at any trial to be had thereupon; and if the cause of action shall appear to arise from or in respect of any matter or thing done in pursuance and by the authority of this Act, or if any such action shall be brought after the expiration of one calendar month, or shall be brought in any other County or place than as aforesaid, or if notice of such action shall not have been given in manner aforesaid, or if tender of sufficient amends shall have been made before such action commenced, or if a sufficient sum of money shall have been paid into Court after such action commenced, by or on behalf of the defendant, the jury shall find a verdict (or if the case be not tried by Jury, judgment shall be given) for the defendant; and if a verdict, shall pass for the defendant, or if the plaintiff shall become non-suit, or shall, discontinue any such action, or if on demurrer or otherwise judgment shall be given against him, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as every defendant may have for costs of suit in other cases at law; and although a verdict be given (or judgment be rendered) for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge or Judges before whom the trial shall be had shall certify his or their approbation of the action and of the verdict (if any) obtained thereupon.

XV. In case any person shall consider himself aggrieved by adjudication or conviction made by any Justice of the Peace under the authority of this Act, such party shall and may appeal against such adjudication or conviction, on giving fourteen days' notice of such appeal, and of the cause and matter thereof to such Justice to the next Quarter Sessions, to be held next after the expiration of the said fourteen days, in or for the town, city, riding, district, county or division within which such adjudication or conviction shall have been made, and such Court of Quarter Sessions shall hear and determine the said appeal in the same manner and form as appeals are usually conducted in the General Quarter Sessions in that part of the Province in which the appeal shall be brought, and shall award to the party appealing against or supporting such adjudication or conviction, such costs as to them the said Justices shall seem reasonable.

XVI. In order to avoid the repetition, and to prevent any misconstruction of the terms and expressions used in this Act, Be it enacted, That wherever in this Act, with reference to any person, cattle, animal, matter or thing, any word or words, is or are used, importing the singular number or the masculine or feminine gender only, yet such word or words shall be understood to include several persons of animals, as well as one person or animal, and females as well as males, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction, and that where the word "cattle" is used alone in this Act, the same shall be understood and taken for any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep or lamb, or any other cattle or domestic animal.

XVII. Nothing in this Act contained shall be held to repeal any By-laws made which may be construed to have reference to any of the provisions, matters and things contained in this Act, by any Municipal Council under and by virtue of the provisions of the Municipal laws of this Province, excepting in so far as the same may be at variance with the provisions of this Act; but such By-laws, so made, shall remain and continue in full force and effect, any thing in this Act contained to the contrary notwithstanding.

XVIII. The second and third sections of this Act shall extend to Upper Canada only.

XIX. This shall be a Public Act.