

No. XL.

An Act for the more effectual prevention of CRUELTY TO ANIMALS. Cruelty to Animals. [1st October, 1850.]

WHEREAS it is necessary to make more effectual provision for the Preamble.
prevention of the cruel and improper treatment of animals and
the mischiefs arising from the improper driving of cattle Be it there-
fore enacted by His Excellency the Governor of New South Wales by
and with the advice and consent of the Legislative Council thereof That
if any person shall from and after the passing of this Act cruelly beat
ill treat over-drive abuse or torture or cause or procure to be cruelly
beaten ill treated over-driven abused or tortured any animal every Penalty for cruelty
&c. to animals.
such offender shall for every such offence forfeit and pay a penalty
not exceeding five pounds.

2. And be it enacted That every person who shall keep or use Penalty for keeping
places for bull-bait-
ing dog-fighting &c.
or act in the management of any place for the purpose of fighting or
baiting any bull bear badger dog cock or other kind of animal whether
of domestic or wild nature or shall permit or suffer any place to be so
used shall be liable to a penalty not exceeding five pounds for every
day he shall so keep or use or act in the management of any such
place or permit or suffer any place to be used as aforesaid Provided
always

Cruelty to Animals.

always that every person who shall receive money for the admission of any other person to any place kept or used for any of the purposes aforesaid shall be deemed to be the keeper thereof and every person who shall in any manner encourage aid or assist at the fighting or baiting of any bull bear badger dog cock or other animal as aforesaid shall forfeit and pay a penalty not exceeding five pounds for every such offence.

As to damage done by persons guilty of cruelty to animals.

3. And be it enacted That if any person shall by cruelly beating ill treating over-driving abusing or torturing any animal do any damage or injury to such animal or shall thereby cause any damage or injury to be done to any person or to any property every such offender shall on conviction of such offence pay to the owner of such animal (if the offender shall not be the owner thereof) or to the person who shall sustain damage or injury as aforesaid such sum of money by way of compensation not exceeding the sum of ten pounds as shall be ascertained and determined by the Justice of the Peace by whom such person shall have been convicted Provided always that the payment of such compensation or any imprisonment for the non-payment thereof shall not prevent or in any manner affect the punishment to which such person or the owner of such animal may be liable for or in respect of the beating ill treating or abusing of the said animal Provided also that nothing herein contained shall prevent any proceeding by action against such offender or the employer of such offender where the amount of damage or injury is not sought to be recovered under this Act.

Penalty for improperly conveying or carrying animals.

4. And be it enacted That if any person shall convey or carry or cause to be conveyed or carried in or upon any vehicle any animal in such a manner or position as to subject such animal to unnecessary pain or suffering every such person shall forfeit and pay a penalty not exceeding five pounds for every such offence.

Apprehension of offenders.

5. And be it enacted That when and so often as any of the offences against the provisions of this Act shall happen it shall and may be lawful for any constable upon his own view thereof or upon the complaint and information of any other person who shall declare his or her name and place of abode to the said constable to seize and secure by the authority of this Act any such offender and forthwith without any other authority or warrant to convey such offender before a Justice of the Peace to be dealt with by such Justice for such offence according to law.

Justice may hear and determine summarily complaints made under this Act within one month after offence committed.

6. And be it enacted That every complaint under the provisions of this Act shall be made within one calendar month after the cause of such complaint shall arise and every offence committed against this Act may be heard and determined by any Justice of the Peace within whose jurisdiction such offence shall be committed in a summary way upon the complaint of any person and without any information in writing and it shall be lawful for any such Justice in all cases where any person complained of shall not be in custody to summon such person to appear before such Justice or before any other Justice of the Peace at a time and place to be named in such summons and on the appearance of the party accused or in default of such appearance upon proof of the service of such summons the said Justice or any other Justice who shall be present at the time and place appointed for such appearance shall proceed to examine into the matter and if upon the confession of the party accused or on the oath of one or more credible witness or witnesses the party accused shall be convicted of having committed the offence charged or complained of the party so convicted shall pay such penalty damage or compensation as the said Justice shall according to the provisions of this Act adjudge order or award together with the costs of conviction to be settled by such

Cruelty to Animals.

such Justice or be otherwise dealt with according to the provisions of this Act.

7. And be it enacted That any summons issued by any such Justice requiring the appearance of any party charged as an 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 a copy thereof shall be served personally on such person as aforesaid or shall be left at his usual or last known place of abode in whatever place such summons may be served or left.

As to service of summons.

8. And be it enacted That any Justice of the Peace may without issuing any such summons as aforesaid forthwith issue his warrant for the apprehension of any person charged with any offence against the provisions of this Act whenever good grounds for so doing shall be stated on oath before such Justice.

Warrant may be issued by Justice without summons.

9. And be it enacted That any Justice of the Peace may summon any witness to appear and give evidence before him upon the matter of any offence against the provisions of this Act and if any such witness shall after tender of his reasonable expenses in that behalf neglect or refuse to attend at the time and place stated in such summons then proof on oath being first given of the personal service of the summons upon such witness and of such tender of expenses such Justice may issue his warrant for the apprehension of such witness and such Justice may commit any witness appearing or being brought before him who shall refuse to give evidence to the house of correction or common gaol within the jurisdiction of such Justice there to remain without bail or mainprize for any time not exceeding twenty-one days or until such witness shall sooner submit himself to be examined and to give evidence and in case of such submission the order of such Justice shall be a sufficient warrant for the immediate discharge of such witness from custody.

Justices may summon witnesses to appear

or may issue warrant to apprehend witness refusing to attend.

10. And be it enacted That in every case of a conviction under this Act where the sum imposed as a penalty or the amount awarded for compensation or damage together with costs (if any) by any Justice of the Peace for or in respect of any offence against the provisions of this Act shall not be paid immediately upon the conviction or within such time as the convicting Justice shall in the exercise of his discretion appoint and limit in that behalf it shall be lawful for such Justice and he is hereby required to commit the offender to the house of correction there to be imprisoned with or without hard labor for any time not exceeding two calendar months unless payment be sooner made Provided always that if such conviction shall take place before two Justices it shall be lawful for such Justices if they shall think fit instead of imposing a pecuniary penalty forthwith to commit any such offender to the common gaol or house of correction there to be imprisoned with or without hard labor for any time not exceeding three calendar months and in all proceedings under this Act the informer or party prosecuting shall be deemed and taken and is hereby declared to be a competent witness.

Offenders not paying penalty may be committed.

Informer to be a competent witness.

11. And be it enacted That whenever any person having charge of any vehicle or any animal shall be taken into custody by any constable for any offence against the provisions of this Act it shall be lawful for such constable to take charge of such vehicle or animal and deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof or the owner thereof may become liable and for payment of any expenses which may have been or may be necessarily incurred for taking charge of and keeping the same and it shall be lawful for any Justice of the Peace before whom the case shall have been heard to order such vehicle or such animal to be sold for the purpose of satisfying

Vehicles &c. may be detained.

Cruelty to Animals.

satisfying such penalty and reasonable expenses in default of payment thereof in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and expenses.

Penalty for obstructing constables.

12. And be it enacted That in case any person shall at any time or in any manner lawfully obstruct hinder molest or assault any constable while in the exercise of any power or authority under or by virtue of this Act every such person shall forfeit and pay a penalty not exceeding five pounds for every such offence.

Appropriation of fines and penalties.

13. And be it enacted That all fines forfeitures and penalties imposed by this Act shall be paid one moiety to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof and be applied in such manner as may from time to time be directed by any Acts of the said Governor and Legislative Council and the other moiety to the use of the informer or party prosecuting.

As to offences committed by drivers or conductors of hackney carriages &c. against this Act.

14. And be it enacted That when any complaint shall be made before any Justice of the Peace against the driver or conductor of any hackney carriage or the driver or conductor of any stage carriage or the driver of any cart wagon van or other vehicle for any offence committed by him against the provisions of this Act it shall be lawful for such Justice if he shall think proper forthwith to summon the proprietor of such hackney or stage carriage or the owner of such cart wagon van or other vehicle to produce before him the driver conductor or other servant by whom such offence was committed to answer such complaint and in case such proprietor or owner after being duly summoned shall fail to produce the driver conductor or servant it shall be lawful for the Justice of the Peace before whom such driver conductor or servant shall be required to be produced if he shall think fit to proceed in the absence of such driver conductor or servant to hear and determine the case in the same manner as if he had been produced and to adjudge payment by the proprietor or owner of any penalty or sum of money and costs in which the driver conductor or servant shall be convicted and any sum of money which shall be so paid by the proprietor or owner shall and may be recovered in a summary way from the driver conductor or servant through whose default such sum shall have been paid upon proof of payment thereof and of such servant's refusing or neglecting to be produced pursuant to the order of the Justice in the same manner as penalties are to be recovered under the provisions of this Act Provided always that if the said Justice of the Peace shall deem it proper it shall be lawful for him when such proprietor or owner shall fail to produce his driver conductor or servant without any satisfactory excuse to be allowed by such Justice to impose a fine of forty shillings upon such proprietor or owner and so from time to time as often as he shall be summoned in respect of such complaint until he shall produce the said driver conductor or servant.

Proprietors of vehicles to be summoned to produce their servants.

Penalty on proprietors for not producing their servants.

Form of conviction.

15. And be enacted That every conviction for any offence against this Act may be drawn and made according to the following form or to the effect thereof or as near thereto as the case shall permit—

to wit. }

Be it remembered that on the _____ day of _____ in the year of our Lord _____ A. B. is brought before me (or us) _____ a Justice (or Justices) of the Peace for the (here insert the city town or other jurisdiction of the Justice or Justices) and is charged before me (or us) with having (here describe the offence) contrary to the provisions of a certain Act passed in the fourteenth year of the reign of Her present Majesty intituled "*An Act for the more effectual prevention of Cruelty*

Cruelty to Animals.

Cruelty to Animals” and it appearing unto me (or us) upon the confession of the said A. B. (or upon the oath of a credible witness or witnesses as the case may be) that the said A. B. is guilty of the said offence I (or we) do therefore adjudge the said A. B. (here insert the adjudication) Given under my (or our) hand (or hands) at (here insert the place where the Justice or Justices may be) the day and year first above written.

16. And be it enacted That every Justice of the Peace before whom any person shall be convicted of any offence against this Act shall transmit the conviction to the next General or Quarter Sessions which shall be holden in or nearest to the district or place wherein the offence shall have been committed there to be kept by the proper officer among the records of the said Court.

Convictions to be transmitted to the General or Quarter Sessions.

17. And be it enacted That in all cases where the sum adjudged to be paid on any conviction shall exceed two pounds and in all cases where imprisonment shall be adjudged any person who shall think himself aggrieved by any such conviction may appeal to the next Court of General or Quarter Sessions which shall be holden not less than fourteen days after the day of such conviction in or nearest to the district or place wherein the cause of appeal shall have arisen Provided that such person shall give to the complainant a notice in writing of such appeal and of the cause and matter thereof within three days after such conviction and seven clear days at the least before such Sessions and shall also either remain in custody until the Sessions or enter into a recognizance with two sufficient sureties before a Justice of the Peace conditioned personally to appear at the said Sessions and to try such appeal and to abide the judgment of the Court thereon and to pay such costs as shall be by the Court awarded and upon such notice being given and such recognizance being entered into the Justices before whom the same shall be entered into shall liberate such person if in custody and the Court at such Sessions shall hear and determine the matter of the appeal and shall make such order therein as to the Court shall seem meet and in case of the dismissal or non-prosecution of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction and to pay such costs as shall be thereby awarded and also the costs of such appeal or incident thereto or occasioned thereby and shall if necessary issue process for enforcing such judgment Provided always that it shall be lawful for the said Court to adjourn the hearing of any such appeal to any succeeding Sessions if such Court shall think fit and such Court in the event of such postponement may make any order for the payment of costs not to exceed in any case the sum of ten pounds by either party to the other as to such Court shall seem reasonable.

Appeal to Quarter Sessions allowed.

18. And be it enacted That no conviction made under the authority of this Act nor any order judgment or proceeding relative thereto shall be quashed for want of form or be removed by *certiorari* or otherwise into Her Majesty's Supreme Court and no warrant of commitment under the provisions of this Act shall be held void by reason of any defect therein provided it be therein alleged that the party committed has been convicted and there be a good and valid conviction to sustain the same.

Proceedings not to be quashed for want of form no *certiorari* allowed.

19. And be it enacted That no action shall be brought against any Justice of the Peace or other person for anything done in pursuance or under the authority of this Act unless such action shall be commenced within three calendar months next after the fact committed and no such action shall be commenced until one calendar month at least after a notice in writing of such intended action shall

Limitation of actions.

Cruelty to Animals.

have been delivered to the defendant or left for him at his usual place of abode by the party intending to commence such action or by his attorney or agent in which said notice the cause of action shall be clearly and explicitly stated and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue and also the name and place of abode or of business of the said attorney or agent if such notice have been served by such attorney or agent and the defendant in any such action shall be allowed to plead the general issue therein and to give any special matters of defence excuse or justification in evidence under such plea at the trial of such action and in every such case after notice of action shall be given as aforesaid and before such action shall be commenced the defendant to whom such notice shall be given may tender to the party complaining or to his attorney or agent such sum of money as he may think fit as amends for the injury complained of in such notice and after such action shall have been commenced and at any time before issue joined therein such defendant if he have not made such tender shall be at liberty to pay into Court such sum of money as he may think fit and which said tender and payment of money into Court or either of them may be afterwards given in evidence by the defendant at the trial under the general issue aforesaid and if it shall be found at the trial that the plaintiff is not entitled to damages beyond the sum tendered or paid into Court or beyond the sums so tendered and paid into Court the defendant shall be entitled to a verdict and the plaintiff shall not be at liberty to elect to be nonsuit and the sum of money if any so paid into Court or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf shall thereupon be paid out of Court to him and the residue if any shall be paid to the plaintiff or if where money is so paid into Court in any such action the plaintiff shall elect to accept the same in satisfaction of his damages in the said action he may obtain from any Judge of the Court in which such action shall be brought an order that such money shall be paid out of Court to him and that the defendant shall pay him his costs to be taxed and thereupon the action shall be determined and such order shall be a bar to any other action for the same cause.

If actions not brought within a certain time plaintiff to be nonsuit.

Costs.

Interpretation clause.

20. And be it enacted That if at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf or that such notice as aforesaid was given one calendar month before such action was commenced or if he shall not prove the cause of action stated in such notice then and in every such case such plaintiff shall be nonsuit or the defendant shall be entitled to a verdict and the defendant shall in all cases where he shall obtain judgment upon verdict or otherwise be entitled to his full costs in that behalf to be taxed as between attorney and client.

21. And be it enacted That for the purposes of this Act the following words and expressions are intended to have the meanings hereby assigned to them respectively so far as such meanings are not excluded by the context or by the nature of the subject matter (that is to say) the word "Justice" shall be taken to mean a Justice of the Peace or Magistrate for the city town or other jurisdiction in which any offence against this Act shall be committed or in which the matter requiring the cognizance of any Justice of the Peace or Magistrate shall arise the word "animal" shall be taken to mean any horse mare gelding bull ox cow heifer steer calf mule ass sheep lamb hog pig sow or goat or any dog cat or other domestic animal and subject to the context and to the nature of the subject matter words denoting the singular number are to be understood to apply to a plurality of persons animals or things and words denoting the masculine

Sydney Corporation.

masculine gender are to be understood to apply also to persons and animals of the feminine gender and the word "over-drive" shall also signify over-ride.

22. And be it enacted That this Act may be amended or Act may be altered repealed by any Act to be passed in the present Session of the Legis- or amended. lative Council of New South Wales.
