

No. XXVII.

An Act for preventing the extension of the Diseases called the Scab and the Influenza or Catarrh in Sheep. [24th October, 1853.]

SCAB IN SHEEP.

WHEREAS it is expedient to amend the Laws now in force for preventing the Diseases called Scab and Catarrh in Sheep Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows :—

Preamble.

1. From and after the commencement of this Act an Act of the Governor and Legislative Council of the Colony of New South Wales passed in the tenth year of the reign of Her Majesty Queen Victoria intituled “ *An Act to consolidate and amend the Laws now in force for preventing the extension of the Diseases called the Scab and the Influenza or Catarrh in Sheep and Lambs in the Colony of New South Wales* ” shall be repealed Provided that nothing herein contained shall be held to revive any Act repealed by the said Act hereby repealed.

Repeal of 10 Vic. No. 8.

2. Any person who shall turn out keep depasture drive or conduct or permit or suffer to be turned out kept depastured driven or conducted any sheep infected with the disease called scab or the disease called influenza or catarrh within a quarter of a mile of any public road or way used as a public way or within a quarter of a mile of the boundary line of the land upon which such sheep so infected as aforesaid are kept or depastured shall upon conviction forfeit and pay for every such offence any sum not exceeding fifty pounds.

Diseased sheep not to be kept near a public road or way or near the boundary lines of a run.

3. If any person shall knowingly drive conduct permit or suffer to be driven or conducted or shall wilfully abandon or set at large any sheep infected as aforesaid upon or along any public road or way used as a public way or upon over or across any land whatever not being in the actual occupation of such person he shall be held guilty of a misdemeanor and being convicted thereof shall be liable to be imprisoned for any term not exceeding twelve months and it shall be lawful for any Justice of the Peace on oath made before him that any sheep are so driven or conducted or abandoned as aforesaid to issue a warrant for the apprehension of the person actually driving such sheep and for the seizure of such sheep or for the seizure of such sheep alone in the event of their being abandoned and any two Justices of the Peace may after taking evidence respecting their condition direct them to be immediately destroyed if such Justices shall then be of opinion that such sheep are infected as aforesaid.

Penalty.

Diseased sheep not to be driven on a public road or way or upon land not occupied by the owners of them. Offence made a misdemeanor.

4. Whenever any sheep kept or depastured upon any land whatever shall be or become infected with the disease called scab the owner of such sheep shall within ten days after the commencement of this Act in case any sheep shall then be infected with such disease or if not then infected within ten days after the first appearance of the disease cause all such sheep and all other sheep kept or depastured in the same flock with such infected sheep to be marked and branded with pitch tar or paint with the mark or brand of the letter Z such letter to be not less than three inches in length which mark or brand shall be affixed on the back above the shoulders of such sheep and every such owner shall so long as any of such sheep shall remain or be infected with the said disease renew and refresh such mark or brand from time to time so that the same shall be and remain legible and distinct and if the owner of any sheep which shall be or become infected

Scabby sheep to be branded.

infected

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Penalty for neglect.	infected with the aforesaid disease shall neglect or refuse to mark or brand such sheep with the letter Z as aforesaid or to renew and refresh such mark or brand as aforesaid he shall forfeit and pay for every such offence any sum not less than five pounds nor more than fifty pounds.
Brand to be evidence of infection.	5. For 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.
Notice of appearance of diseases to be given to Clerks of Benches	6. The owner of any sheep which may be or become infected as aforesaid shall within ten days after the commencement of this Act in case any sheep shall then be infected or if not then infected within ten days after the first appearance of either of such diseases cause to be delivered to the Clerk of the Bench of the Police District in which such infected sheep are kept or depastured a notice in writing signed by such owner to the effect that the disease called scab or the disease called the influenza or catarrh as the case may be has broken out and appeared amongst the sheep of such owner and such notice shall likewise contain the name of the owner of such infected sheep of the station or place where the same are depastured or kept and of the
who shall affix copy of notice outside Police Office.	person managing or superintending such station or place and every such Clerk of the Bench shall cause a true copy of such notice to be affixed in some conspicuous place on the outside of the Police Office of such Police District there to remain for one month from the day of the receipt of such notice and the original of such notice shall be kept by the said Clerk of the Bench in the Police Office for purposes of reference and every owner as aforesaid shall likewise cause to be delivered within the time specified as aforesaid to the owner of sheep kept or depasturing upon any land adjoining that upon which such infected sheep as aforesaid are kept or depastured a written notice to the effect that the diseases aforesaid or either of them have or has appeared amongst such sheep and shall affix the like notice in distinct legible characters not less than one inch in length at each point of entrance of any public road which may intersect the land upon which such infected sheep are depastured or kept and any owner of sheep which may be or become infected as aforesaid who shall neglect or refuse to cause such notices as aforesaid or either of them to be delivered as aforesaid or shall neglect omit or refuse to affix such notice in some conspicuous place as aforesaid shall for every such offence forfeit and pay any sum not exceeding fifty pounds.
Notice to be given also to adjoining sheep owners.	
And public notice to be affixed where roads intersect land.	
Penalty.	
Suspected sheep may be examined by warrant from a Justice of the Peace.	7. If it shall appear to any Justice of the Peace either from information on oath made before him or any other Justice by any owner of sheep or by any constable or upon the view of such Justice that there is reasonable cause to believe that any infected sheep are turned out kept depastured driven or conducted contrary to the provisions of this Act it shall be lawful for such Justice to issue a warrant in the form or to the effect set forth in the Schedule to this Act annexed marked A under his hand to some fit and proper person or persons to be named in such warrant to authorize him or them to examine such sheep and if necessary to cause the same to be driven to the nearest pen where the same are ordinarily kept or to some other convenient place for examination and any owner of such sheep who shall refuse to allow such person to enter on any lands of such owner or to allow such sheep to be examined or shall refuse or neglect when so required to cause them to be driven to the nearest pen or to some other convenient place for examination shall forfeit and pay for every such offence any sum not less than five pounds nor more than one hundred pounds.
Penalty for obstructing execution of warrant.	
Stray sheep may be destroyed if infected.	8. From and after the commencement of this Act it shall be lawful for any person being a sheep owner or the servant of a sheep owner whose

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whose sheep may be running or depasturing upon any lands belonging to the Crown or upon any private land to seize and destroy all such sheep as are infected either with the disease called the scab or with the disease called the influenza or catarrh that may be running loose without a shepherd or that shall be found in or approaching to any of his flocks of sheep.

9. It shall not be lawful to remove any sheep which have been infected with the disease called the scab or the disease called the influenza or catarrh from their accustomed run or station until the expiration of three months from the time when the said diseases or either of them shall have entirely disappeared from such sheep nor after the expiration of such period of three months until the expiration of a further period of three months without a permit in the form or to the effect of the Schedule to this Act annexed marked B which permit it shall be lawful for any Justice of the Peace to grant upon the oath of the owner of such sheep and of one or more credible witness or witnesses that such sheep have not been diseased within three months then next preceding such permit to be of effect and remain in force for one week and no longer and if any owner of sheep which have been infected as aforesaid shall remove the same off their accustomed run or station at any time within three months after the disappearance of any such disease as aforesaid with or without a permit or within six months of the disappearance of any such infection without such permit as aforesaid he shall forfeit and pay for every such offence any sum not less than five pounds nor more than fifty pounds.

Justice may grant a permit for sheep to be removed on proof that they have not been diseased for three months.

Penalty for removing sheep that have been diseased without a permit.

10. If any person shall cast or cause to be cast into any stream or waterhole the carcass of any sheep which at the time of its death was infected as aforesaid he shall forfeit and pay for every sheep so cast as aforesaid any sum not less than one pound nor more than five pounds.

Casting carcasses of diseased sheep into streams or water-holes.

Penalty.

11. If any person shall have in his possession for the purpose of slaughter for sale or shall slaughter or cause to be slaughtered for sale any sheep infected as aforesaid or shall expose the carcass or any part thereof in any public shop stall market or other place he shall for every such offence forfeit and pay any sum not less than one pound nor more than twenty pounds and it shall be lawful for the convicting Justices to direct that the flesh of all such infected sheep so slaughtered as aforesaid shall be seized condemned and destroyed in such manner as they may think fit.

Slaughtering or exposing for sale infected sheep.

Penalty.

Justices may order flesh of diseased sheep to be seized and destroyed.

12. If any person shall remove or carry away the wool or skin of any sheep infected as aforesaid otherwise than in bags or bales securely packed and sewed up he shall forfeit and pay for every such offence any sum not exceeding fifty pounds.

Wool or skins of infected sheep not to be removed except in bags or bales securely packed and sewed.

13. If any owner of sheep within fifty miles of whose run or station any sheep infected with the disease called the scab shall be depasturing shall be desirous of purchasing such infected sheep for the purpose of destroying them it shall be lawful for such person to exhibit an information in the form or to the effect of the Schedule to this Act annexed marked C before any Justice of the Peace who may issue a summons for the appearance of the owner of such infected sheep returnable in not less than one month and in the form or to the effect of the Schedule to this Act annexed marked D and on the return day of such summons and on proof of the service thereof on the owner of such infected sheep either personally or on some resident at the station on which such infected sheep shall be running it shall be lawful for any two Justices of the Peace then sitting at the Court House at which such summons shall have been made returnable to proceed upon the said information as in other cases of summary jurisdiction and after the examination of such witnesses as may be produced by both

Owners of sheep may apply for an order to purchase scabby sheep for the purpose of destroying them.

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parties or by one party if the other does not appear and on proof of the facts alleged in such information to order and direct that such infected sheep shall be valued at a certain sum to be then fixed by such Justices and it shall be lawful for such Justices thereupon to grant their warrant for the seizure and destruction of such sheep in the form or to the effect set forth in the Schedule to this Act annexed marked E which warrant shall be a sufficient authority for the purposes therein named. Provided that the amount of such valuation as aforesaid be first paid or tendered to the owner of such infected sheep and provided also that in the event of the owner of such infected sheep declining to accept such amount the bond of three sufficiently responsible persons in four times the amount of such valuation be first delivered or tendered to such owner such bond to be in the form or to the effect set forth in the Schedule to this Act annexed marked F and to be executed in the presence of and attested by the Justices signing such warrant as aforesaid and provided further that it shall be lawful for the owner of such infected sheep notwithstanding such valuation as aforesaid if he shall think his sheep to have been undervalued as aforesaid to sue the person at whose instance such summons shall have been issued as aforesaid for the value of such sheep and to recover the value thereof in the event of their having been seized and destroyed by virtue of any such warrant as aforesaid and in such action the defendant shall be at liberty to plead such tender as aforesaid and pay the amount thereof into Court with such plea in which case he shall be entitled to a verdict if the plaintiff shall not recover a larger amount than such value so fixed as aforesaid.

Penalty for depasturing sheep on infected runs.

14. If any person shall depasture or cause or permit to be depastured any sheep upon any run on which any infected sheep shall have been destroyed under the last preceding section within six months after such destruction he shall for every such offence forfeit a sum not exceeding one hundred pounds.

No fresh information to be laid until after expiration of 14 days from a previous conviction.

15. No information shall be laid or brought under the provisions of this Act unless within three calendar months after the commission of the offence complained of nor for any second or subsequent offence until the expiration of fourteen clear days from the date of the previous conviction.

Penalty for obstruction.

16. In case any person shall wilfully obstruct or impede any person acting under the authority of this Act or of any warrant order or direction made or issued in pursuance thereof he shall forfeit any sum not exceeding one hundred pounds and in default of payment may be imprisoned for any term not exceeding three calendar months unless the amount of such penalty shall have been sooner discharged and such person so offending may if necessary be apprehended and detained in custody by any person acting under the authority of this Act or any other person who may be called to his assistance until such offender can be conveniently taken before some Justice of the Peace for the said district who is hereby authorized upon complaint upon oath by any person or persons to take cognizance thereof and to act summarily in the premises.

Power to summon witnesses.

17. It shall be lawful for any Justice to summon any person to appear before him as a witness in any matter in which such Justice shall have jurisdiction under this Act at a time and place mentioned in such summons and to administer to him an oath or affirmation and if any person so summoned shall without reasonable excuse refuse or neglect to appear at the time and place appointed for that purpose or to produce any documents or appearing shall refuse to be sworn or examined on oath or give evidence he shall forfeit a sum of not less than ten pounds and not more than one hundred pounds.

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18. All penalties and forfeitures incurred under the provisions of this Act may be sued for and recovered by any owner or person in charge of sheep or lambs or by any constable and shall be paid one moiety to Her Majesty Her Heirs and Successors for the public uses of this Colony and in support of the Government thereof and the other moiety to the use of the informer or party prosecuting who shall be deemed in all cases a competent and credible witness and no penalty shall in any case exceed the sum of one hundred pounds.

Penalties may be sued for by owner person in charge or constable.

Limitation of amount of penalty.

19. Every proceeding under this Act before Justices of the Peace shall be had and taken in a summary way and no such proceeding shall be quashed for want of form or removed by writ of *certiorari* or otherwise into the Supreme Court of the said Colony.

Summary jurisdiction.

No *certiorari*.

20. In the interpretation of this Act the word "owner" shall mean and include proprietor lessee overseer superintendent and person in possession or charge unless there shall be something in the context repugnant to such construction the word "sheep" shall include rams ewes wethers and lambs the words "public road" shall be construed to mean any road or way used uninterruptedly by the public for not less than six years without any opposition from the proprietor of the land or over which sheep cattle horses or drays have been usually and commonly driven by the inhabitants of the said Colony and all sheep or lambs shall be deemed infected within the meaning of this Act which may have been infected as aforesaid or mixed with sheep or lambs infected as aforesaid at any time within three months previously and all sheep required by this Act to be destroyed shall be entirely consumed by fire.

Interpretation clause.

What may be deemed diseased sheep.

21. This Act shall commence and take effect from and after the first day of December which will be in the year of our Lord one thousand eight hundred and fifty-three.

Commencement of Act.

SCHEDULES REFERRED TO.

A.

THESE are to authorize you and your assistants at any time within seven days from the date hereof to enter by force if necessary on the lands on which the sheep specified below are now running and to cause them to be driven to the most convenient part or parts of such lands for the purpose of examining them and to thereupon examine them in order to ascertain if they are diseased.

General description of sheep.	Where now running or being.	Name of person in ostensible possession.	Name of supposed owner.

Dated the _____ day of _____
at _____ in the Colony of New South Wales.

A.D. 185

A. B. J.P.

To Mr. _____ and his assistants.

B.

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B.

WHEREAS it has been proved on oath before me in accordance with the provisions of an Act intituled "*An Act for preventing the extension of the Diseases called the Scab and the Influenza or Catarrh in Sheep*" that the sheep and lambs of ^{now} depasturing at ^{are not now nor have been for three months affected by} any disease I hereby permit the said sheep and lambs to be removed off their accustomed run or station at ^{This permit is to be in force for one week} and no longer.

Dated the

day of

185

A. B. J.P.

C.

BE it remembered that on the ^{day of} ¹⁸⁵ at ^{in the Colony of New South Wales} A. B. an owner of sheep personally comes before me ^{Esquire one of Her Majesty's} Justices of the Peace and informs me that C. D. of ^{in the said} Colony is the owner of certain sheep to wit [*here insert probable number*] sheep which are now running and depasturing at ^{in the said Colony and within} fifty miles of his the said A. B.'s run and which are infected with the scab and that he the said A. B. is desirous of purchasing the same for the purpose of destroying them and the said A. B. prays that the said Justice will proceed in the premises according to law.

A. B.

Exhibited at
in the Colony of New South Wales
before me.

E. F. J.P.

D.

To G. H. Chief [*or any other*] Constable for the District of
and to his assistants.

You are hereby commanded to summon C. D. of ^{to} appear before the Justices assembled in Petty Sessions at ^{on} the ^{day of} ^{A. D. 185} at the hour of ^{of the clock in the} noon to shew cause why his sheep running at ^{should not be valued for the purpose of being destroyed} at the instance of A. B. who has exhibited an information stating such sheep to be infected with scab and his desire to purchase them for the purpose of destroying them.

Given under my hand at ^{in the Colony} of New South Wales this ^{day} of ^{A. D. 185}

E. F. J.P.

E.

WHEREAS on the information of A. B. we the undersigned Justices have valued the infected sheep specified below at the sum of ^{Now these are to authorize} you and your assistants at any time within seven days from the date hereof to enter by force if necessary on the lands on which the sheep specified below are running or being and to kill destroy and burn them and every part of them.

Description of sheep to be destroyed.	Number.	Where being.	Name of person in ostensible possession or charge.	Supposed owner.
Ewes				
Wethers				
Lambs				
Rams				

Given under our hands and seals at
in the Colony of New South Wales this
day of ^{A. D. 185}

To Mr.

and his assistants.

J. K. J.P.
L. M. J.P.

F.

Sydney University.

F.

Know all men by these presents That we A. B. of _____ in the Colony of New South Wales sheepowner [*or otherwise as the case may be*] C. D. of _____ in the Colony aforesaid [*addition as before*] and E. F. of _____ in the Colony aforesaid [*addition as before*] are held and firmly bound to G. H. of _____ in the Colony aforesaid [*addition as before*] his certain Attorney Executors Administrators and Assigns in the sum of [*here insert eight times the amount of valuation*] of lawful money of Great Britain to be paid to the said G. H. his certain Attorney Executors Administrators and Assigns to which payment to be well and truly to be made we bind ourselves and each of us and each of our Heirs Executors and Administrators firmly by these presents Scaled with our seals and dated this _____ day of _____ A.D. 1855 .

WHEREAS on the information of the above-named A. B. [*or if the party informing and purchasing should not be a party to the bond*] of O. P. of _____ J. K. and L. M. two of Her Majesty's Justices of the Peace on the _____ day of _____ instant [*or last*] valued certain infected sheep of the above-named G. H. at the sum of [*insert amount of valuation*] and whereas the said J. K. and L. M. thereupon granted their warrant for the seizure and destruction of the said sheep and whereas the said G. H. is not satisfied with such valuation and has refused to accept the amount thereof Now the condition of this obligation is such that if the said G. H. do bring an action in the Supreme Court of New South Wales against the said A. B. [*or O. P. as the case may be*] and the said A. B. [*or O. P.*] do pay to the said G. H. the full amount of any damages and costs which may be recovered in any such action not exceeding four times the amount of such valuation as aforesaid then this obligation to be void otherwise to be and remain in full force and virtue.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed sealed and delivered in the }
presence of }

J. K. J.P.
L. M. J.P.