

*Cattle Trespass.***No. 9 of 1876.****An Ordinance to amend the Law relating to Cattle Trespass.**

Preamble.

WHEREAS it is expedient to amend the law relating to cattle trespass: It is hereby enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows:

Short title.

1 This Ordinance may be cited for all purposes as "The Cattle Trespass Ordinance, 1876."

Repeal of Ordinances No. 2 of 1835 and No. 5 of 1849.

2 The Ordinance No. 2 of 1835, intituled "To provide for the protection of cultivated and enclosed lands and of public roads and canals against the trespass and depredations of stray cattle, goats, sheep, and pigs," and the Ordinance No. 5 of 1849, intituled "To give jurisdiction to the Police Courts in cases of Cattle Trespass," are hereby severally repealed, except so far as they or either of them repeal other Ordinances or parts thereof, and except so far as relates to any acts which may have been done, liabilities incurred, or proceedings had or commenced before this Ordinance comes into operation.

Interpretation clause:
"Cattle."
"Animal."

3 The word "cattle," when used in this Ordinance, means bulls, cows, oxen, heifers, calves, and buffaloes:

The word "animal" means, except when it is otherwise expressed, cattle, sheep, goats, and swine:

"Irrigation works."

The expression "irrigation works" means tanks, bunds, anicuts, sluices, channels, and other works used for irrigation purposes:

"Duly authorized person."

The expression "duly authorized person" means any person specially or generally authorized to act under the provisions of this Ordinance by the government agent for the province or the assistant government agent for the district, wherein such person resides.

Cattle trespassing on fenced or cultivated lands may be seized.

4 It shall be lawful for any proprietor or occupier (or any other person by his direction) of any land, which shall be fenced in such manner as the local custom may prescribe, and of any land under cultivation, whether fenced or not, if by local custom no fence is prescribed, to seize any animals found trespassing therein or thereupon, and to tie up and detain them until the damages, if any, occasioned by such trespass, assessed in manner hereinafter mentioned, and the fair expense of the keep of such animals during their lawful detention, shall be paid or recovered as hereinafter mentioned.

Cattle found trespassing on irrigation works may be seized or pursued off the works and seized.

5 It shall be lawful for any duly authorized person to seize any animals found trespassing in or upon any irrigation works, and, if unable to seize them while so trespassing, to pursue and seize them elsewhere and to tie them up and detain them, until the damages, if any, occasioned by such trespass, assessed in manner hereinafter mentioned, and the fair expense of the keep of such animals during their lawful detention, shall be paid or recovered as hereinafter mentioned.

Cattle Trespass.

6 The owner or person in charge of any animals trespassing as aforesaid shall, in the case of such private lands as aforesaid, be liable to pay to the proprietor or occupier thereof, and in the case of such irrigation works as aforesaid, be liable to pay to the government agent of the province or the assistant government agent of the district within which such works are situated, the full amount of damages arising by reason of such trespass; and if such trespass shall have been committed in the night time, he shall be further liable to pay a fine to Her Majesty equal to the amount of the damages awarded.

Liability of owner of stray cattle for damages, and penalty.

7 Notice of the seizure of such animals shall, with as little delay as possible, be given to some police constable or local headman having jurisdiction in the district, who shall, as soon as may be, inspect the spot where the damage has been done, and the animals which have been seized, and with the assistance of three or more respectable persons of the neighbourhood, if their attendance can be procured (otherwise, without such assistance), endeavour to ascertain to whom the animals belong, and assess the amount of damages sustained by such trespass, and shall forthwith, in the case of trespass upon private lands, furnish the proprietor or occupier thereof or some other person in his behalf, and in the case of irrigation works, furnish some duly authorized person or some other person on his behalf, with a report of the particulars of the trespass, the amount of such assessment, and the names of the owners of the animals, if such have been ascertained, and also the names of the persons by whom such assessment shall have been made. The police constable or headman shall, unless the amount of the assessment be immediately paid, take charge of the animals so seized, and if the owner or person entitled to the charge thereof at the time of the trespass shall not, within forty-eight hours from the time of the police constable or headman so taking charge, tender the amount of damages so assessed as aforesaid and the fair and reasonable cost of keeping the said animals during detention, the proprietor or occupier of the land so trespassed upon, or, in the case of trespass upon irrigation works, some duly authorized person, shall produce before the police court or village tribunal, if any, having jurisdiction in the district, the aforesaid report, which, if verified by the oath or affirmation of such constable or headman in open court, shall be received in evidence; and the said court or village tribunal, after causing such notice to be served upon or left at the last known place of abode of the owner of the animals when such owner has been ascertained, as such court or village tribunal shall deem reasonable, or, if such owner has not after reasonable inquiry been ascertained, then without any notice, summarily inquire into the case and, after hearing such evidence as to the court or village tribunal may seem expedient, shall award such damages as shall have been proved to have been sustained, together with the fair and reasonable costs and charges for keep during the detention, and further a fine of an amount equal to such

Procedure.

Cattle Trespass.

damages, in case the trespass shall have been committed in the night time ; and the said damages, charges, and penalty, unless within twenty-four hours paid, shall be levied by sale of the animals so seized, and, if necessary, by distress on the other property of the person liable to pay the same as aforesaid, and shall be paid to the person or persons entitled thereto.

In cases where no damages have been proved, a fine may be imposed.

8 In any case when any trespass by animals shall be proved to have been committed as aforesaid, whether any damage shall be proved to have been sustained in consequence of such trespass or not, it shall be lawful for the police court or village tribunal to award a fine not exceeding five rupees for each animal which shall be proved to have been trespassing, to be paid by the owner or person in charge thereof ; and it shall be competent for such court or tribunal in its discretion, in the case of trespass on private land, to direct that a share, not exceeding one-half of such fine, be paid to the owner or occupier of the land and the remainder to Her Majesty.

Liability of owners of stray cattle which are not seized.

9 When, in the case of trespass on any private land, the proprietor or occupier thereof or other person acting in his behalf, and when, in the case of any trespass on any irrigation works, the person in charge thereof or other duly authorized person, is unable to seize and secure animals trespassing as aforesaid, but can prove the trespass, and whose or in whose charge the said animals were at the time of such trespass, the owners or persons in charge thereof shall be liable, notice being given of the trespass in the manner directed in section 7 of this Ordinance, to the same penalty, cost, and damages as in the case of seizure, and the course of proceeding in respect thereof shall be similar, as far as the circumstances admit, to that prescribed by section 7.

All rights under Ordinance forfeited unless due notice is given to headman.

10 All right to the benefit of any of the provisions of this Ordinance shall be forfeited unless the notice required by section 7 shall have been given within forty-eight hours from the time of seizure (if any) or of trespass (if no seizure) to some police constable or local headman having jurisdiction in the district, if any such shall be resident within ten miles, or if no police constable or headman be resident within that distance, then within a reasonable period after such seizure or trespass. And nothing herein contained shall be held to apply to any trespass on any private land which shall not be protected by such fence as the local custom prescribes, if such custom prescribes any fence. Provided always that nothing herein contained shall be held to take away or affect any right which the Crown or any person may have at common law for redress in respect of any damage sustained by trespass of animals.

Ordinance not to apply to unfenced lands, where custom requires a fence.

Common law right reserved.

All cattle over eighteen months old to be branded.

11 Every person possessing cattle not already branded, and being eighteen months old or upwards, shall cause the same to be branded, and shall furnish in the month of January of every year a correct description of the mark or marks with which his cattle are branded, to the chief

Cattle Trespass.

headman of the district wherein he resides, and in default thereof shall be liable to a penalty not exceeding twenty-five cents for every head of cattle not branded, and to a penalty not exceeding two rupees for every omission to furnish such description. It shall be the duty of such chief headman of the district to cause the description of such brandmarks and the names of the persons using the same to be entered in a book to be kept for that purpose, which book shall be transmitted to the kachchéri of his province on or before the 1st of March in each year. The moiety of any penalty recovered under this section shall go to the informer. Provided always that nothing in this section contained shall extend or be applicable to any chief headman's division or part thereof which shall be within the operation of "The Village Communities' Ordinance, 1871."

12 Any person without lawful right removing or taking away or causing to be removed and taken away any cattle from the custody of the person entitled to keep or detain the same under the provisions of the Ordinance, shall be guilty of an offence, and liable on conviction to such punishment as a police court has jurisdiction to award.

Penalty for unlawful removal.

13 Any person without lawful right driving any animals upon any land in the occupation of or cultivated by others, with intent that such animals should feed upon or otherwise injure any growing crop or produce thereof; and any person driving any animals into or upon any irrigation works; and any person driving the animals of others upon his own land or conniving at such animals being so driven, with intent to take proceedings for cattle trespass under the provisions of this Ordinance, shall be guilty of an offence, and liable on conviction to such punishment as a police court has jurisdiction to award.

Penalty on causing animals to trespass.

14 It shall be lawful for the government agent or the police magistrate to grant permission in writing for the shooting of any stray cattle within his province or district, if it shall be shown to his satisfaction that stray cattle are in the habit of trespassing upon or in any such private land as aforesaid, or any irrigation works, and cannot be seized or identified, so that the owner or owners thereof may be ascertained and proceeded against; and thereupon such government agent or police magistrate may, at his discretion, direct some fit person to proceed to such land or irrigation works; and such person, if after every reasonable exertion he shall find it impracticable to seize or identify such animals, then and not otherwise shall shoot or otherwise destroy the same or cause the same to be shot or otherwise destroyed in his presence; and this notwithstanding that in the endeavour to seize the animals they may have been driven off such land or irrigation works. Provided that such order shall not be in force for more than one month from the date thereof. Provided further, that it shall at all times be lawful for any proprietor or occupier of any cultivated field or enclosed garden, or any other person by

When animals may be shot.

Order for shooting not to be in force for more than one month.
Proviso: pigs

trespassing may be shot without any order.

Disposal of carcass.

Wild buffaloes trespassing on irrigation works may be shot at all times without a license.

Police court or village tribunal may impose full amount of damages or penalty.

his direction, to destroy any pigs found straying therein; and for any duly authorized person to destroy any pigs found straying in or upon any irrigation work or any land set apart or lawfully used for the recreation of the public.

15 The carcass of any stray animal shot under the provisions of the preceding clause shall be the property of the owner of such animal, and he shall be entitled to remove the same; but if no owner be found, nor any claim made therefor by any person entitled to it, then the carcass shall be sold by the local headman where such animal was shot, and the proceeds of such sale shall be paid to the nearest kachchéri to be carried to the credit of the general revenue.

16 It shall be lawful for any duly authorized person to shoot or otherwise destroy, at all times of the year and without any license, any elephants or wild buffaloes found trespassing in or upon any irrigation work, anything in the Ordinance No. 13 of 1869, entitled "An Ordinance to prevent the wanton destruction of Elephants," or in Ordinance No. 6 of 1872, intituled "An Ordinance to prevent the wasteful destruction of Buffaloes and Game throughout the Island," to the contrary notwithstanding.

17 It shall be competent for the police court or village tribunal, taking cognizance of any case of trespass by animals under the provisions of this Ordinance, to award and impose the full amount of the damages, charges, and penalties payable under the 7th, 8th, and 9th sections hereof or any of them, notwithstanding that such amount might otherwise be beyond the jurisdiction of such court or tribunal to award or impose.

20th November, 1876.
