

A BY-LAW
FOR
RESTRAINING AND REGULATING THE
RUNNING AT LARGE OF ANIMALS,
DEFINING THE
DUTIES OF POUND KEEPERS,
Fixing the amount of Fees to be taken by such Pound
Keepers and others, and providing Rules
and Regulations respecting the
IMPOUNDING OF ANIMALS,
FOUND RUNNING AT LARGE OR TRESPASSING IN THE
TOWNSHIP OF ASPHODEL,
CONTRARY TO THE BY-LAWS OF THE SAID CORPORATION.
1860.



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BY-LAW NO. 5.

A BY-LAW for restraining and regulating the running at large of certain animals ; for defining the duties of Pound Keepers, and for other things therein mentioned.

WHEREAS, by an Act passed by the Provincial Parliament, in the 22nd Vict, Cap. 54, and Section 359 of the Consolidated Statutes of Upper Canada, power was given to the several Municipal Councils of Upper Canada, to pass By-Laws for restraining and regulating the running at large of animals, providing for impounding them, and for defining the duties, and fixing the fees of Pound Keepers and others affected thereby. And whereas, it is desirable and necessary that such rules and regulations be provided and enforced in the Township of Asphodel.

BE IT THEREFORE ENACTED, by the Municipal Council of the Township of Asphodel, and it is hereby enacted by the authority of the same, that By-Law No. 41 of this Corporation, passed on the third day of May, 1853, be, and the same is hereby repealed.

2. *And be it enacted*,—That from and after the passing of this By-Law, no Horses, Swine, or breachy Cattle, shall be allowed to run at large within this Municipality.

3. *And be it enacted*,—That where Swine are found running at large in the vicinity of Mills, Stores, or Taverns, the owner or owners thereof, shall be liable to a penalty of not less than one dollar, nor more than five dollars, which, on complaint being made, may be levied and collected, with costs, together with the amount of award for damages, if any have been committed, before any Justice of the Peace residing within the Municipality, in the same manner as other fines imposed under this By-Law ; and when so levied and collected, such fine shall be paid over to the Treasurer for the use and benefit of the said Municipality.

4. *And be it enacted*,—That no Stud Horses, Bulls, Rams, or Boars, shall be allowed to run at large under a penalty of not less than two dollars, nor more than ten

dollars, which, on complaint, may be levied and collected, with costs from the owner, in the same manner as other fines provided for in this By-Law; and shall be similarly disposed of, for the benefit of the Municipality. Provided always that when such Stallions, Bulls, Rams, or Boars, shall suddenly escape from the enclosure where they or any of them have been confined, and the owner shall exert himself to restrain them, and such running at large shall not continue for more than twelve hours after the owner has become aware of the escape, no fine shall be inflicted. Nevertheless, such exemption from fine shall not free the owner or owners from liability for the damages which the said animal may have committed during the time he was so running at large, and such damages shall be ascertained, and dealt with in the same manner as other damages hereinafter provided for.

5. *And be it enacted*,—That in Villages and their vicinities, no Geese, Turkeys, Hens, or other domestic fowl shall be allowed to run at large, from the 15th day May to the 15th day of July, under a penalty of not less than half a dollar, nor more than two dollars, with costs.

6. *And be it enacted*,—That persons appointed to the office of Pound Keeper, in this Municipality, shall be, and they are hereby required, to provide a suitable enclosure for impounding any Horse, Bull, Ox, Cow, Sheep, Pig, or other Cattle, or any poultry distrained for running at large, or for trespassing, or doing damage, delivered to him for that purpose, by any person resident within his division who distrained the same.

7. *And be it enacted*,—That “the person distraining and impounding the animal shall, at the time or within twenty-four hours thereafter, deliver to the Pound Keeper duplicate statements in writing of his demands against the owner for damages (if any), not exceeding twenty dollars, done by such animal, and shall at the same time give his written agreement under seal (with a surety if required by the Pound Keeper,) which agreement may be after the form following, or in words to the same effect :

I (or we as the case may be), do hereby agree that I (or we) will pay to the owner of the (describing the

animal) by me (A. B.,) this day impounded, all costs to which the said owner may be put in case the distress by me the said (A. B.,) proves to be illegal, or in case the claim for damages now put in by me the said (A. B.,) fails to be established.

8. *And be it enacted*,—That “in case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if the same is distrained by a resident of the Township for straying within his premises, such person, instead of delivering the animal to a Pound Keeper, may retain the animal in his own possession, provided he makes no claim for damage done by the animal, and duly gives the notices hereinafter in that case required of him.

9. *And be it enacted*,—That “if the owner is known to him, he shall forthwith give to the owner notice in writing of having taken up the animal.

10. *And be it enacted*,—That “if the owner is not known to the person taking up and retaining possession of the animal, such person shall, within forty-eight hours, deliver to the Township Clerk a notice in writing of having taken up the animal, and containing a description of the color, age, and natural and artificial marks of the animal as near as may be.

11. *And be it enacted*,—That “the Township Clerk, on receiving this notice, shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post the notice he received, or a copy thereof, in some conspicuous place on or near the door of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner.

12. *And be it enacted*,—That “if the animal or any number of animals taken up at the same time, is or are of the value of ten dollars or more, the distrainer shall cause a copy of the notice to be published in a newspaper in the County, if one is published therein, and if not, then in a newspaper published in an adjoining County, and to be continued once a week for three successive weeks.

13. *And be it enacted*,—That “in case an animal is impounded, notices for the sale thereof shall be given by the Pound Keeper or person who impounded the animal within forty-eight hours afterwards, but no pig

or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same.

14. *And be it enacted*,—That “in case the animal is not impounded, but is retained in the possession of the party distraining the same, if the animal is a pig, goat or sheep, the notices for the sale thereof shall not be given for one month, and if the animal is a horse or other cattle the notices shall not be given for two months after the animal is taken up.

15. *And be it enacted*,—That “the notices of sale may be written or printed, and shall be affixed and continued for three clear successive days in three public places in the Municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one in his behalf, paying the penalty imposed by law (if any), the amount of injury (if any) claimed or decided to have been committed by the animal, to the property of the person who distrained it, together with the lawful fees and charges of the Pound Keeper, and also of the fence viewers (if any), and the expenses of the animal’s keeping.

16. *And be it enacted*,—That “every Pound Keeper and every person who impounds or confines, or causes to be impounded or confined, any animal in any common, open or close pound, or in any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter, during the whole time that such animal continues impounded or confined.

17. *And be it enacted*,—That “every such person who furnishes the animal with food, water and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises.

18. *And be it enacted*,—That “the value or allowance as aforesaid may be recovered with costs, by summary proceedings before any Justice of the Peace within whose jurisdiction the animal was impounded, in like manner as fines, penalties, or forfeitures for the breach of any By-law of the Municipality may by law be recovered and enforced by a single Justice of the Peace, and the Justice shall ascertain and determine the

amount of such value and allowance when not otherwise fixed by law, adhering so far as applicable to the Tariff of Pound Keeper's fees and charges that may be established by the By-laws of the Municipality.

19. *And be it enacted*,—That “the Pound Keeper, or person entitled so to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereinafter mentioned.

20. *And be it enacted*,—That “in case it is proved by affidavit in writing, before one of the Justices aforesaid, to his satisfaction, that all the proper notices were duly affixed and published in the manner and for the respective times above prescribed, then if the owner or some one for him does not within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the Pound Keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any Pound Keeper, but retained the same in his own possession, then any Pound Keeper of the Township shall publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and shall, after deducting the penalty and the damage (if any), and fees and charges aforesaid, apply the produce in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and the damage when legally claimable not exceeding twenty dollars, to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and return the surplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the Pound Keeper shall pay such surplus to the Treasurer or Chamberlain, of and for the use of the Municipality.

21. *And be it enacted*,—That “if the owner within forty-eight hours after the delivery of such statements as provided in the third sub-section of this clause, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fence-viewers of the Municipality, one to be named by the owner of

the animal, one by the person distraining or claiming damages, and the third by the Pound Keeper.

22. *And be it enacted*,—That “such fence viewers or any two of them shall within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the Statutes or By-laws in that behalf at the time of the trespass, and if it was, then they shall appraise the damages committed, and within twenty-four hours after having made the view, deliver to the Pound Keeper a written statement signed by at least two of them of their appraisement, and of their lawful fees and charges.

23. *And be it enacted*,—That “any fence viewer neglecting his duty as arbitrator as aforesaid shall incur a penalty of two dollars, to be recovered for the use of the Municipality, by summary proceeding before a Justice of the Peace upon complaint of the party aggrieved, or the Treasurer of the Municipality.

24. *And be it enacted*,—That “if the fence viewers decide that the fence was not a lawful fence, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the Pound Keeper, who shall upon payment of all lawful fees and charges, deliver such animal to the owner, if claimed before the sale thereof, but if not claimed, or if such fees and charges are not paid, the Pound Keeper, after due notice, as required by this By-law, shall sell the animal in the manner before mentioned, at the time and place appointed in the notices.

25. *And be it enacted*,—That “in case any Pound Keeper or person who impounds or confines, or causes to be impounded or confined any animal as aforesaid, refuses or neglects to find, provide and supply such good and sufficient food, water and shelter to the animal, he shall, for every day during which he so refuses or neglects, forfeit a sum not less than one dollar nor more than four dollars, which shall be recoverable by proceeding before any Justice of the Peace.”

26. *And be it enacted*, That it shall be the duty of any and every Pound Keeper in this Municipality, who shall have impounded any animal brought to him for

that purpose, in addition to his own legal charges, and any damages claimed or awarded, to charge, demand and recover in the manner hereinbefore provided, the following penalties, that is to say :—For each stallion, bull, boar, or ram, one dollar; for each horse, mare, colt, or breachy animal, forty cents; and for each pig and sheep, ten cents; which sums, when so collected, he shall pay over to the Treasurer of the Corporation, half yearly, that is to say: on the first day of August, and on the first day of February, in each and every year, and shall deliver with the same, a return, to be laid before the Council at the next sitting thereafter, by said Treasurer, which return shall show the date of the impounding of each animal, the person by whom impounded, and also whether such penalty was paid by the owner, or recovered by the sale of the animal, or animals, as hereinbefore provided.

27. *And be it enacted*,—That the fees to be charged by Pound Keepers, shall be as follows :—For horses, each, poundage twenty cents, food and water per day, twenty cents; oxen each, poundage fifteen cents, food and water, fifteen cents per day; cows, each, poundage twelve and a half cents, food and water per day, twelve and a half cents; young cattle, each, poundage, ten cents, food and water per day, ten cents; swine, each, poundage, ten cents, food and water, per day, ten cents; sheep, each, poundage, five cents, food and water per day, five cents; and for advertising, selling, and making returns, fifty cents.

28. *And be it enacted*,—That in each and every case where it is necessary for a Pound Keeper to have damages appraised or fences examined as to their legal height, it shall be lawful for him to charge, and recover in the same manner as his other fees, the sum of fifty cents for his own use and benefit, together with a like sum of fifty cents for each of the said appraisers, or fence viewers, which said Pound Keeper shall pay over to them, as soon as received or recovered by him.

Provided always, that whenever it is found by the Report of the fence viewers as aforesaid, that the fence forming the enclosure wherein the trespass or damage was committed, is not, or was not at the time the said trespass or damage was committed, of the full height

of five feet, and well and substantially built, and if the animal impounded for trespass or damage as aforesaid, was one of those allowed by the By-laws of this Municipality to run at large, then the fees and costs of the said Pound Keeper and fence viewers shall be paid by the person impounding the animal, and not by the owner.

29. *And be it enacted*,—That if any Pound Keeper shall refuse to receive any animal brought to him under the provisions of this By-law to be impounded, or shall make any undue charge, or shall in any manner fail in the performance of his duties, he shall forfeit the sum of two dollars, to be levied and collected in the manner hereinafter provided ; one half of the said sum to be paid to the person lodging the complaint, and the other half to the Treasurer for the use of the Municipality.

30. *And be it enacted*,—That “every fine and penalty imposed by this By-law may be recovered and enforced with costs, by summary conviction, under the summary convictions Act, before any Justice of the Peace of the County, or of the Municipality, in which the offence was committed, and in default of payment, the offender may be committed to the common gaol, house of correction, or lock-up house of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting and committing Justice, not exceeding fourteen days, unless such fine and penalty and costs, including the costs of said committal, be sooner paid.

31. *And be it enacted*,—That “upon the hearing of any information or complaint exhibited or made under this Act, any person giving or making the information or complaint, and any other person shall be a competent witness, notwithstanding such person may be entitled to any part of the pecuniary penalty on the conviction of the offender.”

(Signed)

P. M. GROVER, *Reeve*.

T. W. POOLE, *Town Clerk*.

Council Chamber, March 17th, 1860.