

THE TRESPASS AND BRANDS ORDINANCE OF 1891. ⁽¹⁾

No. 4 of 1891.

An Ordinance to deal with Trespass by Animals and to Provide for the Registration of Cattle Brands and Animals.

BE it enacted by the Administrator of British New Guinea with the advice and consent of the Legislative Council thereof as follows:—

PART I.—PRELIMINARY.

1. This Ordinance is divided into parts as follows:—

Preliminary.

Part I.—Preliminary.

Part II.—Trespass by Animals.

Part III.—Registration of Cattle.

BRANDS AND ANIMALS.

2. For the purposes of this Ordinance the following terms in inverted commas shall unless the context otherwise indicates bear the meanings set against them respectively:—

Interpretation.

“Cattle”—Any horse mare gelding colt filly ass mule bull
cow steer heifer calf sheep or lamb;

“Animal”—Any “cattle” and any goat or swine.

3. It shall be lawful for the Administrator in Council by Proclamation⁽²⁾ in the *Gazette* from time to time to extend the provisions of this Ordinance to any kind of beast that is not enumerated in the last preceding section by declaring that the term

Power to extend law to other beasts.

(1) Particulars of this Ordinance of British New Guinea (which was continued in force in the Territory of Papua by Section 6(1) of the *Papua Act, 1905*) are as follows:—

Date of assent by Administrator.	Date on which published in British N.G. <i>Govt. Gaz.</i>	Date on which took effect.
24.8.1891	24.8.1891	24.8.1891 (Supplement to British N.G. <i>Govt. Gaz.</i> of 25.7.1891)

(2) No proclamation has been published in British N.G. *Govt. Gaz.* or Papua *Govt. Gaz.*

ANIMALS AND BIRDS—

“Cattle” or the term “Animal” shall also include and mean a beast of any kind declared in the Proclamation.

Proceedings to be under “Justices Act.”

4. Every breach of the provisions of this Ordinance that renders any person liable to a penalty or imprisonment shall be deemed a simple offence or a breach of duty according to the nature of the case within the meaning of “*The Justices Act of 1886*”⁽³⁾ (Queensland adopted) and shall be dealt with under the provisions of that Act.

Magistrate of district in which animal found to have jurisdiction.

5. Any resident magistrate of the district in which an animal respecting which something is alleged in a complaint is found shall have authority to receive such complaint and shall have jurisdiction in all matters and proceedings arising out of or connected with such complaint notwithstanding that any person affected by such complaint does not reside in or is not within such district.

PART II.—TRESPASS OF ANIMALS.

Trespass by animal an offence.

6. If an animal or animals trespasses or trespass upon any land the person who at the time of the trespass is keeping or using such animal or animals for his own benefit or who has charge of the animal or animals shall upon the complaint of any owner or occupier of the land trespassed upon or of some person on behalf of any such owner or occupier be liable—

- (1) to forfeit and pay an aggregated penal sum based on and computed in accordance with the scale of penal sums specified in Schedule A to this Ordinance and the number and the kind of animals that are proved to have trespassed; and
- (2) to be ordered to pay as compensation for the damage (if any) occasioned by the trespass of the animal or animals a sum not exceeding in all Twenty pounds.

The sum so ordered to be paid as compensation shall when recovered be paid over to the person that laid the complaint or on whose behalf the complaint was laid.

In default of payment of any such aggregated penal sum or of any sum awarded as compensation as aforesaid or of costs (if any) payment thereof may be enforced in the manner provided in “*The Justices Act of 1886*”⁽³⁾ (Queensland adopted) for enforcing judgments.

(3) Repealed and replaced in the Territory of Papua by the *Justices Ordinance*, 1912-1940.

7. When a complaint has been laid under the last preceding section of this Ordinance the summons issued on such complaint may be personally served upon the person complained of wherever he may be in the Possession. And if he is not in the Possession then the summons may be served upon his agent or representative in the Possession. Such service on an agent or a representative shall be sufficient service on the person complained of to authorize the magistrate to hear and determine the case in the absence of the person complained of: Provided always that the provisions of this section shall be in addition to and not in derogation of the provisions of "*The Justices Act of 1886*"⁽³⁾ (Queensland adopted).

Upon whom summons may be served.

8. Cattle kept on land which except where it is bounded by a natural or an artificial object that forms an effectual obstacle to the passage of cattle is enclosed by a proper fence in good repair shall for the purposes of this Ordinance be deemed to be kept duly confined. Any of the following constructions shall be deemed a proper fence:—

Cattle kept in certain enclosures to be deemed kept duly confined.

- (1) a post and rail fence at least three feet six inches in height of substantial material firmly erected with no greater distance between the rails or between the bottom rail and the ground than one foot and with posts not more than nine feet apart;
- (2) a substantial wire fence at least three feet six inches in height having wires tightly stretched with no greater distance between each of the three lowest wires or between the bottom wire and the ground than seven inches with posts not more than eleven feet apart and with straining posts not more than one hundred yards apart;
- (3) a wall of stone or other substantial material at least four feet in height and not less than two feet wide at the bottom and nine inches wide at the top;
- (4) a substantial paling fence at least three feet six inches in height with no greater distance between the palings than four inches;
- (5) a log or sapling fence or a ditch or a ditch and fence or a ditch and wall or a ditch and hedge: Provided that such construction is certified as a proper fence by a resident magistrate or by some person appointed by a resident magistrate to approve of such construction;

(3) Repealed and replaced in the Territory of Papua by the *Justices Ordinance, 1912-1940.*

ANIMALS AND BIRDS—

- (6) a construction of any other kind that may be declared by the Administrator in Council by Proclamation⁽⁴⁾ to be a proper fence for the purposes of this Ordinance.

Unconfined animal may be deemed a public nuisance.

9. Upon the complaint of any person that any animal by reason of its not being kept duly confined is a public nuisance any resident magistrate may summon any person in the Possession that is an owner of or has charge of such animal or if there is not in the Possession any owner or person who has charge of such animal then any person in the Possession that has or apparently has a legal authority over or a legal interest in such animal to show cause why an order to keep such animal confined should not issue. If after diligent inquiry the magistrate cannot find any person in the Possession that is the owner of or has charge of or has or apparently has any legal authority over or any legal interest in such animal the magistrate may proceed to hear and determine the case without summoning any person and without the presence at the hearing of any person as a defendant or as the representative of a defendant.

Orders to confine animals.

10. If upon the hearing of a complaint laid under the last preceding section of this Ordinance the magistrate who adjudicates upon it is of the opinion that any animal mentioned in the complaint is by reason of its not being kept duly confined a public nuisance the magistrate shall make an order requiring the animal to be kept confined. Such order may be in the form in Schedule B to this Ordinance or as near thereto as the circumstances admit. The time after which the animal is to be kept confined shall be fixed by the magistrate having regard to the circumstances of the case. Every such order shall be final and cannot be appealed against.

Upon whom order may be served.

11. Every such order shall be at the least in duplicate. One duplicate shall be kept by the magistrate who issues it and the other shall be served upon some person in the Possession that is an owner of or has charge of the animal to which such order relates. If the magistrate cannot find in the Possession a person that owns or has charge of the animal he shall cause the order to be served upon some person in the Possession that in the magistrate's opinion has any legal authority over or a legal interest in such animal. If the magistrate cannot after diligent inquiry find any person in the Possession that is the owner or has charge of or that in the magistrate's opinion has any legal authority over or any legal interest in such animal the order shall be published in the *Gazette* and such publication shall be equivalent to service

(4) No proclamation has been published in British N.G. *Govt. Gaz.* or Papua *Govt. Gaz.*

The Trespass and Brands Ordinance of 1891.

of the order. Service of the order in any of the modes aforesaid or publication in lieu of service shall be notice of the issue of the order to all persons to whom the order is addressed.

12. If a magistrate who makes an order under the last preceding section but one of this Ordinance or his substitute or successor in office is of opinion that honest efforts are being made to comply with the requirements of such order he may by a written endorsement on such order signed by him extend the time within which such order is to be obeyed.

Time within which order to be obeyed may be extended.

13. When an order to keep animals confined issued under this Ordinance has been served or published as aforesaid and has been disobeyed any animal to which such order relates shall be deemed to have become forfeited to and to be the property of the Crown and may be seized forthwith and the forfeiture may be declared in a summary way under the provisions of the "*The Justices Act of 1886*"⁽³⁾ (Queensland adopted). Every animal so becoming the property of the Crown shall be disposed of as the Administrator may determine.

Disobedience of order may entail forfeiture of animal.

14. If at any time any animal is found running at large in any part of the Possession and so far as the Administrator is able to ascertain no person in the Possession is the owner of or has charge of or has any legal authority over or legal interest in such animal the Administrator may cause to be published in the *Gazette* a notice relating to such animal in the form in Schedule C to this Ordinance or as near thereto as the circumstances admit. The time specified in such notice as the time within which a claim to the animal mentioned in such notice must be made is to be fixed by the Administrator. If within the time specified no person puts in a valid claim to the animal such animal may by order of the Administrator in Council be forfeited to the Crown.

Unclaimed animals running at large may be forfeited.

15. Any person who with intent to injure or annoy another person wilfully employs or disposes of any animal belonging to such other person in such a manner as to render such other person liable under this Ordinance in respect of such animal to any penalty or forfeiture or payment or in such a manner that an order may be made under this Ordinance relating to such animal shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding six months.

Using animals with intent to make other person liable to penalties an offence.

(3) Repealed and replaced in the Territory of Papua by the *Justices Ordinance, 1912-1940.*

ANIMALS AND BIRDS—

PART III.—REGISTRATION OF CATTLE BRANDS AND ANIMALS.

From the first January, 1892, all cattle over six months old except sheep to be duly branded or registered.

16. From and after the first day of January, 1892, it shall not be lawful to keep any head of cattle that is over six months old except sheep unless the same be either—

- (1) branded with the brand of its owner registered under this Ordinance; or
- (2) itself registered under this Ordinance.

Any person that offends against the provisions of this section shall on conviction be liable for each head of cattle in respect of which the offence is committed to a penalty not exceeding Five pounds and in default of payment of such penalty be liable to be imprisoned for a period not exceeding one month.

How brands can be registered.

17. A cattle brand may be registered at the office of the Registrar-General upon payment of a fee of Five shillings.

Registration of brands resembling other brands may be refused.

18. The Registrar-General shall refuse to register any unregistered brand that is similar to any brand already registered or that bears such a resemblance to a brand already registered as to render the unregistered brand not readily distinguishable from such registered brand.

Applications to register brands.

19. A person that requires a brand to be registered or his duly appointed agent shall fill up and sign in duplicate a form of request similar to that in Schedule D to this Ordinance and shall present the same at the office of the Registrar-General.

Applications to register animals.

20. Any person may on payment of a fee of Three shillings for each animal register any animal at the office of the Registrar-General. The person that requires any such animal to be registered or his duly appointed agent shall fill up and sign in duplicate a form of request similar to that in Schedule E to this Ordinance and shall present the same at the office of the Registrar-General.

Applications to be registered &c.

21. Upon the registration of any brand or of any animal the Registrar-General shall keep one duplicate of the request to register in his office and shall forward the other duplicate to a resident magistrate of the district in which the owner of the brand or of the animal specified in the request resides. Such magistrate shall file all such duplicates that he receives in book form and such book shall be open to the inspection of any person at any reasonable time that is convenient to the magistrate.

The Trespass and Brands Ordinance of 1891.

22. General registers of all brands and animals registered under this Ordinance shall be kept in the office of the Registrar-General and shall during office hours be open to the inspection of any person upon payment of a fee of One shilling. Every such general register shall be in a form approved by the Administrator.

General registers.

23. The Registrar-General shall at least once in every six months publish in the *Gazette* a notice containing the name address and description of every person who since the publication of the last antecedent notice has registered a brand or an animal and stating which of these each such person has registered.

List of persons that have registered to be published in *Gazette*.

24. If any person wilfully brands any cattle of which he is not the rightful owner or wilfully causes directs or permits any cattle of which he is not the rightful owner to be branded with his brand such person shall on conviction be liable to forfeit and pay a sum not exceeding Fifty pounds and in default of payment shall be liable to be imprisoned with or without hard labour for a period not exceeding six months.

Penalty for branding other people's cattle.

25. If any person wilfully blotches defaces or otherwise renders illegible or alters a brand upon cattle such brand being a brand registered under this Ordinance or wilfully directs causes or permits any brand upon any cattle such brand being a registered brand as aforesaid to be blotched defaced or otherwise rendered illegible or altered such person shall on conviction for every such offence be liable to forfeit and pay any sum not exceeding Twenty pounds for every head of cattle on which the brand has been so defaced blotched or rendered illegible or altered and in default of payment of any such sum shall be liable to be imprisoned for any period not exceeding three months.

Penalty for altering brands on cattle.

26. A complaint against any person for a breach of any of the provisions of the two last preceding sections of this Ordinance must be made within three months from the discovery of such breach.

Complaint under last two preceding sections must be made within three months of offence being committed.

27. The Administrator in Council may make regulations⁽⁵⁾ with respect to the kind number and size of the characters letters or figures that are to constitute a registered brand under this Ordinance and with respect to the portion of the surface of any head of cattle that is to be branded with a first or any subsequent brand. All such regulations shall be laid before the Legislative Council and shall be published in the *Gazette* and shall be subject to disallowance by Her Majesty.

Regulations as to brands.

(5) No Regulations have been made.

ANIMALS AND BIRDS—

Short title.

28. This Ordinance may be cited as *The Trespass and Brands Ordinance of 1891.*⁽¹⁾

SCHEDULE A.

PENAL SUMS TO BE IMPOSED FOR THE TRESPASS OF ANIMALS.

	s.	d.
For every several horse mare gelding colt filly ass mule bull cow steer heifer or calf a sum not exceeding ..	5	0
For every several sheep or lamb a sum not exceeding ..	1	6
For every several goat kid or swine a sum not exceeding	4	0

SCHEDULE B.

ORDER TO KEEP ANIMALS CONFINED.

(Under *The Trespass and Brands Ordinance of 1891.*)

To all persons that are owners of or have charge of or any legal authority over or legal interest in any animal specified in the schedule hereto.

You are hereby required after the expiration of the period of from the service or publication in the *Gazette* of British New Guinea of this order to keep confined the animals specified in the schedule hereto.

If after the expiration of such period any of the said animals is not kept confined it will become forfeited to the Crown.

SCHEDULE.

(Here the magistrate is to insert to the best of his knowledge and information)—

- (1) *The number and kind of animals.*
- (2) *Any brand that is on any of the animals.*
- (3) *The localities which the animals usually frequent.*
- (4) *The name of the owner or supposed owner of the animals.*
- (5) *Any other information that in the opinion of the magistrate may enable any person to recognize the animals.*

Dated at _____ in the Possession of British New Guinea
this _____ day of _____, 18 _____

(Signed)

Resident Magistrate.

(1) See footnote (1) printed on p. 111.

The Trespass and Brands Ordinance of 1891.

SCHEDULE C.

NOTICE.

(Under Section 14 of *The Trespass and Brands Ordinance of 1891.*)

To all persons that are owners of or have charge of or any legal authority over or any legal interest in any animal specified in the schedule hereto.

Take notice that if within _____ from the publication of this notice in the *Gazette* of British New Guinea no person puts in a valid claim to the animals specified in the schedule hereto such beasts may be forfeited to the Crown.

SCHEDULE.

(Here insert similar particulars to those specified in the schedule to the order contained in Schedule B of this Ordinance).

Dated this _____ day of _____, 18 ____
By order

Government Secretary.

SCHEDULE D.

Request to register brand under *The Trespass and Brands Ordinance of 1891.*

I _____ of _____ in the Possession of British New Guinea request the registration of the form of brand for cattle herein set forth as my brand for the purpose of distinguishing cattle used by me.

Form of brand—

Dated this _____ day of _____, 18 ____
(Signed)

Applicant.

SCHEDULE E.

Request to register animal under *The Trespass and Brands Ordinance of 1891.*

I _____ of _____ in the Possession of British New Guinea request that the following animal or animals of which (I am or) _____ (is) the owner be registered.

(Here is to follow a full description of the animal and of any brands or marks that are on it and where such brands or marks are placed).

Dated this _____ day of _____, 18 ____
(Signed)

Applicant.

ANIMALS AND BIRDS—