

T H E L A W R E F O R M C O M M I S S I O N

A N C O I M I S I Ú N U M A T H C H Ó I R I Ú A N D L Í

(LRC 2 - 1982)

REPORT ON CIVIL LIABILITY
FOR ANIMALS

IRELAND

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610

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LAW REFORM COMMISSION

REPORT ON CIVIL LIABILITY FOR ANIMALS

CHAPTER 1 INTRODUCTION

1.1 Civil liability for animals was the subject of the Law Reform Commission's Third Working Paper, published in December 1977. Comments on this paper were invited, and the persons and bodies listed in Appendix A submitted their views. The Commission wishes to express its gratitude to them for their kind assistance.

1.2 As the Working Paper pointed out, all the general rules of tortious liability apply to animals in much the same way as they apply to other chattels. Thus, the owner of an animal which causes damage may be liable in negligence - as where he brings a dog on to the highway and fails to exercise reasonable care in controlling it.¹ He may incur liability in nuisance if he keeps animals in such numbers that they unreasonably interfere with his neighbour's enjoyment of his property.² The occupier of premises may be liable if, for example, injury is caused to a lawful entrant by the occupier's dog.³ Liability may also arise, in appropriate circumstances, in trespass⁴ or

¹ Gomberg v Smith [1963] 1 Q.B. 25.

² O'Gorman v O'Gorman [1903] 2 I.R. 573.

³ Kavanagh v Stokes [1942] I.R. 596.

⁴ Cronin v Connor [1913] 2 I.R. 119.

under the rule in Rylands v Fletcher.⁵ In the case of negligence or nuisance, the liability would be based on fault; but liability under Rylands v Fletcher or in trespass would be strict - that is, it would arise irrespective of any fault in the owner.

1.3 The law has also evolved certain specialised rules of liability for injuries done by animals. It imposes strict liability in cases of cattle trespass, i.e. where certain kinds of animals⁶ stray on to the land of another. Under the scienter action, strict liability also arises in regard to injury caused by a wild animal (an animal ferae naturae). However, to recover for injuries caused by a domesticated animal, the plaintiff must prove

- (a) that the animal had a vicious or mischievous propensity, and
- (b) that the defendant knew of this.⁷

The law is particularly indulgent to the owners of animals which stray on to the highway. Here the general rule is that no liability whatsoever attaches in respect of any injuries such animals may cause.

⁵ (1868) L.R. 3 H.L. 330.

⁶ As Working Paper No. 3 points out, "cattle" includes much more than heifers, bullocks, cows and bulls; it also covers horses, sheep, goats, pigs, asses, domestic fowl and, seemingly, domesticated deer'. (p.49)

⁷ Note, however, that the Dogs Act 1906 imposes strict liability on the owner of a dog which causes injury to certain types of animals. (See Working Paper No. 3, pp. 43-47.)

1.4 In its Working Paper No. 3, the Commission made two main proposals for reforming this branch of the law:

- (a) The immunity of the keeper of straying animals for damage caused on the highway should be abolished;
- (b) The keeper of an animal which causes injury should be strictly liable therefor. This principle would be qualified in three ways:
 - (i) the defence of Act of God would be available;
 - (ii) ordinary negligence principles should apply to the case of a trespasser injured by an animal; and
 - (iii) in all cases the plaintiff's own fault would be a ground for reducing damages.

1.5 The Law Reform Commission has reconsidered this subject in the light of the views expressed to it. The Commission's final recommendations are set out in the succeeding chapter.

1.6 This final Report deals with certain matters not touched upon in Working Paper No. 3. One such topic is the provision of a remedy where livestock stray on to property. The Commission's recommendations on this subject appear in Chapter 3, infra. The problem caused by animals wandering on the public roads was also drawn to the Commission's attention. Its recommendations on this matter will also be found in Chapter 3.

1.7 Appendix B (pp. 16-27) to this Report contains a Draft Animals Bill 1982, which implements all the recommendations of the Commission.

CHAPTER 2 PROPOSALS FOR REFORM

A LIABILITY FOR DAMAGE CAUSED BY ANIMALS STRAYING ON TO THE HIGHWAY

2.1 In Working Paper No. 3 the immunity from liability given to the keepers of animals which stray on to the highway was criticised as anomalous. It is out of step with modern legal developments, current conceptions of responsibility and, in particular, present-day traffic conditions.⁸ No compelling arguments against the abolition of this immunity have been advanced to the Commission.

⁸ The following table - kindly supplied to the Commission by An Foras Forbartha - indicates the incidence of highway accidents which involved animals during the period 1968-1980.

Personal Injury Accidents on the Highway: Totals (Fatal and Non-Fatal) and those Involving Animals

Year	Fatal			Injury			Total		
	Number	Animals Involved	%	Number	Animals Involved	%	Number	Animals Involved	%
1968	415	2	0.48	6406	115	1.8	6821	117	1.7
1969	438	3	0.68	6092	109	1.8	6530	112	1.7
1970	503	2	0.40	5902	114	1.9	6405	116	1.7
1971	538	8	1.49	5948	102	1.7	6486	110	1.7
1972	610	9	1.48	5613	106	1.9	6223	115	1.8
1973	556	7	1.26	5464	89	1.6	6020	96	1.6
1974	551	6	1.01	5081	102	2.0	5632	108	1.9
1975	523	2	0.38	4391	81	1.8	4914	83	1.7
1976	489	8	1.64	4628	56	1.2	5117	64	1.3
1977	534	4	0.75	5083	75	1.5	5617	79	1.4
1978	577	4	0.69	5566	70	1.3	6143	74	1.2
1979	562	3	0.53	5132	60	1.2	5694	63	1.1
1980	503	2	0.40	5180	54	1.0	5683	56	1.0

<u>Animals Involved</u>	<u>1975 (May-Dec)</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Cattle, Horses, Sheep	36	56	67	55
Dogs	2	4	3	4
Other animals or not known	9	4	9	15
Total	47	64	79	74

2.2. The Law Reform Commission therefore recommends that the immunity conferred on the keepers of animals which cause injury while straying on the public highway should be abolished.

2.3. As a consequence, the keepers of such animals would be subject to the regime of strict liability proposed *infra*. Prudence would therefore suggest adequate fencing; but it is recognised that in some areas of the country this would be virtually impossible. The new dispensation must take account of this.

2.4 The Law Reform Commission recommends that where damage is caused by animals straying from unfenced land to a highway, the person who placed them thereon should not be liable merely on that basis, if (a) the land is common land, or is situated in an area where fencing is not customary, and (b) he had a right to place the animals on that land.

B STRICT LIABILITY FOR INJURY CAUSED BY ANIMALS

2.5 In its Working Paper No.3 the Commission proposed that the owner of an animal which causes injury should be strictly liable, that is, liable irrespective of fault. It was pointed out that such liability exists in many instances under the present law, and that what was being suggested was the extension of an existing principle rather than the creation of a new one. The Commission has not been presented with any argument which would cause it to modify its earlier view.

2.6 The draft Bill which is annexed to this Report would impose liability on the "keeper" of an animal. This term is so defined as to include the owner; but its scope is wider. It will also include a person who has the animal in his

possession⁹; or who is the head of a household of which a member under the age of sixteen owns the animal or has it in his possession. This latter extension has been enacted into law in England¹⁰ and Northern Ireland¹¹. It is essential lest liability be evaded by transferring the property in, or possession of, an animal to a child.

2.7 The definition of "keeper" in the draft Bill will also have the effect that if at any time an animal ceases to be owned or possessed by anyone, liability in respect of it will attach to the previous owner or possessor. However, a person who takes into and keeps in his possession an animal for the purpose of preventing it from causing damage or restoring it to its owner is not thereby to be regarded as a "keeper". Thus, if the animal causes injury, that person will not be strictly liable; but he will owe the common law duty to take reasonable care.

2.8 Two exceptions to the proposed rule of strict liability were suggested in Working Paper No.3. The first was that the defence of Act of God should be available. This would negative liability for injury caused by straying animals where the fence or gate through which they escaped was blown down by an extraordinary gale. The defence appears to exist under the present law and, in the Commission's view should continue to do so. The draft Bill annexed to this Report makes provision accordingly. It will be noted that the relevant section (6) provides that the defence will apply only where the damage was

⁹ This would appear to be the law at present. See paras. 69-70 and 87-93 of Working Paper No.1.3. The Dogs Order 1966 (S.I. No. 229 of 1966) imposes obligations on the owner or keeper.

¹⁰ Animals Act 1971, s.6(3) and (4).

¹¹ Animals (Northern Ireland) Order 1976 (1976 No.1040 (N.I.13)).

"attributable solely to act of God". This is designed to cover a situation where a hazard is created by act of God and, subsequently, the landowner - though having the time and resources to rectify the situation - does nothing. The British Privy Council has held that liability in negligence may attach in such circumstances¹². Section 6 will preserve this possibility.

2.9 The second exception proposed was that ordinary negligence principles should apply in determining liability towards a trespasser injured by an animal. The general law on this subject has recently been restated by the Supreme Court in McNamara v. E.S.B.¹³ as being that the occupier owes a duty of reasonable care to reasonably foreseeable trespassers. In such circumstances this seems more appropriate than strict liability, and the principles laid down in McNamara's case are flexible enough to deal with injuries caused to trespassers by the occupier's animals. The Commission adheres to its earlier proposal on this matter.

2.10 The Commission further proposed in Working Paper No.3 that in all cases the plaintiff's own fault should be a ground for reducing the damages awarded. This reproduces the present law, as contained in section 34 of the Civil Liability Act 1961. It has not been suggested to the Commission that any change is desirable here.

2.11 The proposed new system of strict liability would absorb the common law rules on cattle trespass, the scienter action and the statutory rules as to civil liability for harm caused

¹² Goldman v Hargrave [1967] 1 A.C. 645.

¹³ [1975] I.R. 1.

to cattle by dogs. At present, these matters are not free from doubts or complexities; and in the interests of clarity the proposed new Act should specifically abolish these rules.

2.12 The Law Reform Commission accordingly recommends:

- (a) that the keeper of any animal which causes injury should be strictly liable for that injury;
- (b) that Act of God should be a defence to any claim based on such injury;
- (c) that normal negligence principles should apply in determining liability towards a trespasser injured by an animal;
- (d) that in all cases the plaintiff's own fault should be a ground for reducing the damages awarded; and
- (e) that the common law rules on cattle trespass, the scienter action and the civil liability provisions of the Dogs Act 1906 should be abolished.

CHAPTER 3 REMEDIES IN RESPECT OF STRAYING ANIMALS

3.1 Under the present law, the occupier of land may detain trespassing animals until he has been compensated by their owner for the damage done. This is known as distress damage feasant or faisant (lit. doing damage). However, this power of detention arises only in cases of injury to land; it has no application to cases of personal injury or injury to chattels¹⁴. The English Law Commission recommended abolition of distress damage feasant because it was "hedged about with technicalities and gives the occupier no power of sale"¹⁵. Instead, a modernised remedy was proposed, and this was subsequently enacted as section 7 of the Animals Act 1971. A similar step was taken in Northern Ireland - Article 9 of the Animals (Northern Ireland) Order 1976. The arguments in favour of abolishing this remedy - which is obsolescent, if not indeed obsolete - are compelling. Accordingly, the Law Reform Commission recommends the abolition of distress damage feasant; and section 10(1) of the draft Bill is framed so as to achieve this.

3.2 Under the Summary Jurisdiction (Ireland) Act 1951, section 20(1), it is not lawful to impound any animal found trespassing on land when the owner of the animal is known. To do so is an offence, punishable on summary conviction by a fine not exceeding £5. The landowner is given instead a civil remedy in the District Court. Under section 20(2) of the same Act, where the owner of the trespassing animal is not known, impounding in the nearest pound of the country is lawful.

¹⁴ See Glanville Williams, Liability for Animals (Cambridge 1939) p. 68.

¹⁵ Civil Liability for Animals (Law Com No.13), para. 69.

3.3 Provision for the sale of impounded animals is made by section 19(8) of the Summary Jurisdiction (Ireland) Act 1851 and section 71 of the Towns Improvement (Ireland) Act 1854 - as amended, in both cases, by the Pounds (Maintenance and Provisions) Act 1935. Under the 1851 Act the power of sale arises where an animal, found wandering or straying, is impounded. The pound-keeper is required to notify the Garda Síochána, who are then responsible for posting a notice. If the owner of the animal cannot be discovered, the District Justice may direct the sale of the animal. The provisions of the 1854 Act, though more restricted, are less formal. Under section 71, "cattle" found at large in any street of a town without any person in charge of them may be impounded. The power to impound is exercisable by the Gardaí or by any person residing within the town. If the owner has not paid a stipulated penalty and reasonable expenses within three days of the impounding, the animals may be sold.

3.4 The power of sale under the 1854 Act is not contingent on the giving of notice, and is exercisable without recourse to the District Court. The procedure is thus less formal than that under the Summary Jurisdiction (Ireland) Act 1851. However, the latter applies generally throughout the State, whereas the 1854 Act relates only to towns. Moreover, the 1851 Act is applicable to any animal, whereas the Towns Improvement (Ireland) Act 1854, section 71, deals only with "cattle" (defined in section 1 as "any Horse, Mare, Gelding, Foal, Colt, Filly, Bull, Cow, Heifer, Ox, Calf, Ass, Mule, Ram, Ewe, Wether, Lamb, Goat, Kid or Swine").

3.5 The Law Reform Commission is of the view that these provisions should be replaced by a modernised and simplified statute, as they have been in Northern Ireland. The Commission therefore recommends that, where livestock not

under the control of any person strays on to land, the occupier should be able to detain it for forty-eight hours. This period should be capable of extension where the Garda Síochána - and the keeper, if known - are notified of the detention. The keeper should be able to terminate the right to detain by tendering an amount of money sufficient to satisfy the detainer's claim for any damage caused. A power to sell at a market or by public auction should arise after fourteen days' detention.

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3.6 Section 10 of the draft Bill annexed to this Report is framed so as to give effect to these recommendations. It will be noted that, under section 10(5), where the power of sale is exercised, any excess of the proceeds over the sum of the amount claimed and the costs of the sale (including any costs incurred in connection with the sale) will go to the keeper of the livestock. Further, anyone detaining livestock under section 10 will be obliged to treat it with reasonable care and to supply it with adequate food and water.

Animals Wandering on Public Roads

3.7 The Commission's attention has been drawn to the serious problem caused by (apparently) ownerless animals straying on the roads. The traffic hazard posed by such animals need hardly be stressed.

3.8 It is not the function of the Commission to prescribe administrative measures to deal with this problem. It is, however, the Commission's task to consider whether the existing law can be improved, so as to facilitate the adoption of such measures. The Commission notes that the legislation on this matter - originally common to both Irish jurisdictions - has been modernised in Northern Ireland, where similar problems

have been experienced. Modernisation on similar lines is desirable in this jurisdiction. The Law Reform Commission accordingly recommends that any member of the Garda Síochána be empowered to impound animals found wandering on any public road; and that if such animals are not claimed by their owner within fourteen days of such impounding, it should be lawful to have them sold at a market or by public auction.

3.9 Section 11 of the draft Bill makes provision accordingly. It will be noted that where the power to impound is exercised, a notice must be posted - and remain posted for fourteen days - outside the nearest Garda Síochána station. Thereafter, the power of sale will arise, but only at the instance of a senior Garda officer. Section 11 further specifies how the proceeds of any such sale are to be applied.

3.10 Section 12 of the draft Bill is a provision consequential upon sections 10 and 11. It constitutes rescuing livestock detained under section 10, or animals impounded under section 11, an offence punishable on summary conviction by a fine not exceeding €100.

CHAPTER 4 SUMMARY OF RECOMMENDATIONS

1. The immunity conferred on the keepers of animals which cause injury while straying on the highway should be abolished. (Paragraph 2.2)

2. Where damage is caused by animals straying from unfenced land to a highway, the person who placed them thereon should not be liable merely on that basis, if (a) the land is common land, or is situated in an area where fencing is not customary, and (b) he had a right to place the animals on that land. (Paragraph 2.4)

3. (a) The keeper of any animal which causes injury should be strictly liable for the injury.

(b) Act of God should be a defence to any claim based on such injury.

(c) Normal negligence principles should apply in determining liability towards a trespasser injured by an animal.

(d) In all cases the plaintiff's own fault should be a ground for reducing the damages awarded.

(e) The common law rules on cattle trespass, the scienter action and the civil liability provisions of the Dogs Act 1906 should be abolished. (Paragraph 2.12)

4. The existing remedy by way of distress damage feasant should be abolished. (Paragraph 3.1)

5. Where livestock not under the control of any person strays on to land, the occupier should be able to detain it for forty - eight hours. This period should be capable of extension

624

where the Garda Síochána - and the keeper, if known - are notified of the detention. The keeper should be able to terminate the right to detain by rendering an amount of money sufficient to satisfy the detainer's claim for any damage caused. A power to sell at a market or by public auction should arise after fourteen days' detention. (Paragraph 3.5)

6. Any member of the Garda Síochána should have power to impound animals found wandering on the public road. If such animals are not claimed within fourteen days of such impounding, a power of sale should arise. (Paragraph 3.8)

NOTE

As the provisions in the proposed Animals Bill 1982 are straightforward, the Law Reform Commission does not consider any Explanatory Memorandum to the Bill is required. Moreover, the reforms in the law that will be effected by these provisions are clearly explained in this Report (supra).

APPENDIX A

PERSONS AND BODIES THAT SUBMITTED VIEWS TO THE COMMISSION

Mr T. Ahern, Cloondara, Tralee, Co. Kerry

Chief State Solicitor's Office

Professor S. Cooney, Cill Moconog, Co. Cill Mantain

County Dublin Committee of Agriculture

Department of Fisheries (Forest and Wildlife Service)

Mr T. Kelly, Inch Laurence, Caherconlish, Co. Limerick

The Hon. Mr Justice Kenny

Mr Robert Molloy, T.D.

APPENDIX B

ANIMALS BILL 1982

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. New provisions as to strict liability for damage done by animals
4. Liability for damage caused by an animal
5. Liability for damage caused to a trespasser by an animal
6. Act of God a defence in action
7. Damage under this Act deemed to be attributable to a wrong within the meaning of the Civil Liability Act 1961
8. Duty to take care to prevent damage from animals straying on the public road
9. Liability for injury by dogs to livestock
10. Detention and sale of straying livestock
11. Animals wandering on to the public road
12. Penalty for rescuing livestock detained or animals impounded under section 10 or 11
13. Repeals

ACTS REFERRED TO

Civil Liability Act 1961	1963	No. 23
Dogs Act 1906	1906	c. 32
Pounds (Provision and Maintenance) Act 1935	1935	No. 17
Statute of Limitations 1957	1957	No. 6
Summary Jurisdiction (Ireland) Act 1851	1851	c. 92
Towns Improvement (Ireland) Act 1854	1854	c. 103

ANIMALS BILL 1982

 BILL

ENTITLED

An Act to make provision with respect to civil liability for damage done by animals; to amend the law relating to the impounding of animals; and for connected purposes.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Short
title and
commence-
ment

1.-(1) This Act may be cited as the Animals Act 1982.

(2) This Act shall come into operation on the day of 1982.

Interpret-
ation

2.-(1) In this Act -

"damage" includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition) and injury to or total or partial destruction of property;

"fencing" includes the construction of any obstacle designed to prevent animals from straying;

"livestock" means cattle, horses, asses, mules, hinnies, sheep, pigs, goats and poultry, and also deer not in the wild state and, in section 9, also, while in captivity, pheasants, partridges, grouse and quails;

"nearest Garda Síochána station" means the Garda Síochána station nearest to the place where the animal was found;

"occupier" in relation to land, includes any person who, by virtue of any agreement, has a right to the exclusive use of the land for cropping or grazing;

"poultry" means the domestic varieties of the following, that is to say, fowls, turkeys, geese, ducks, guinea-fowls, pigeons and peacocks;

"pound" has the meaning assigned to it by section 1(1) of the Pounds (Provision and Maintenance) Act 1935;

"premises" includes land;

"public road" means a road the responsibility for the maintenance of which lies on a road authority;

"road authority" means -

- (a) the council of a county,
- (b) the corporation of a county or other borough,
or
- (c) the council of an urban district.

(2) For the purposes of this Act -

- (a) subject to paragraph (b), a person is a keeper of an animal if -
 - (i) he owns the animal or has it in his possession; or
 - (ii) he is the head of a household of which a member under the age of sixteen owns the animal or has it in his possession, and if at any time an animal ceases to be owned by or to

be in the possession of a person, any person who immediately before that time was a keeper thereof by virtue of the preceding provisions of this subsection continues to be a keeper of the animal until another person becomes a keeper thereof by virtue of those provisions;

(b) where an animal is taken into and kept in possession for the purpose of preventing it from causing damage or of restoring it to its owner, a person is not a keeper of it by virtue only of that possession.

(3) In this Act -

(a) a reference to a section is to a section of this Act, unless it is indicated that a reference to some other enactment is intended;

(b) a reference to a subsection, paragraph or subparagraph is to be subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended;

(c) a reference to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

- New provisions as to strict liability for damage done by animals
- 3.- The provisions of sections 4 to 7 and section 9 replace -
- (a) the rules of the common law imposing strict liability in tort for damage done by an animal on the ground that the animal is regarded as ferae naturae or that its vicious or mischievous propensities are known or presumed to be known;
- (b) the rules of the common law imposing a liability for cattle trespass; and
- (c) subsections (1) and (2) of section 1 of the Dogs Act 1906.
- Liability for damage caused by an animal
- 4.- Where any damage is caused by an animal any person who is a keeper of the animal is liable for the damage, except as otherwise provided in sections 5 to 9.
- Liability for damage caused to a trespasser by an animal
- 5.- A person is liable for any damage caused by an animal kept on any premises or structure to a person trespassing thereon only in accordance with the rules of law relating to liability for negligence.
- Act of God a defence in action
- 6.- In an action for damage caused by an animal it shall be a defence to show that the damage was attributable solely to act of God.
- Damage under this Act deemed to be attributable to a wrong within the meaning of the Civil Liability Act 1961
- 7.- (1) Any damage for which a person is made liable under this Act shall be deemed to be attributable to a wrong within the meaning of the Civil Liability Act 1961; and the provisions of that Act relating to breach of statutory duty shall apply accordingly.
- (2) Section 11(2) (a) and (b) of the Statute of Limitations 1957 shall apply in relation to any such damage.

Duty to
take care
to prevent
damage from
animals
straying
on to the
public road

8.-(1) So much of the rules of the common law relating to liability for negligence as excludes or restricts the duty which a person might owe to others to take such care as is reasonable to see that damage is not caused by animals straying onto a public road is hereby abolished.

(2) Where damage is caused by animals straying from unfenced land onto a public road a person who placed them on the land shall not be regarded as having committed a breach of the duty to take care by reason only of placing them there if -

(a) the land is situated in an area where fencing is not customary; and

(b) he had a right to place the animals on that land.

Liability
for injury
by dogs to
livestock

9.-(1) Where a dog causes damage by killing or injuring livestock, any person who is a keeper of the dog is liable for the damage.

(2) A person is not liable under this section, if the livestock was killed or injured on land onto which it had strayed and either the dog belonged to the occupier or its presence on the land was authorised by the occupier, unless the person caused the dog to attack the livestock.

Detention
and sale of
straying
livestock

10.-(1) The right to seize and detain any animal by way of distress damage feasant is hereby abolished.

(2) Where any livestock strays onto any land and is not then under the control of any person the occupier of the land may, subject to subsection (3), detain it.

(3) Where any livestock is detained in pursuance of this section the right to detain it ceases -

(a) at the end of a period of forty-eight hours, unless within that period notice of the detention has been given to the officer in charge of the nearest Garda Síochána station and also, if the person detaining the livestock knows to whom it belongs, to that person; or

(b) when such amount is tendered by or on behalf of a person entitled to possession of the livestock to the person detaining the livestock as is sufficient to satisfy any claim he may have in respect of damage caused by the livestock; or

(c) if he has no such claim, when the livestock is claimed by a person entitled to its possession.

(4) Where livestock has been detained in pursuance of this section for a period of not less than fourteen days the person detaining it may sell it at a market or by public auction, unless proceedings are then pending for the return of the livestock or in respect of damage caused by it.

(5) Where any livestock is sold in the exercise of the right conferred by this section and the proceeds of the sale, less the costs thereof and any costs incurred in connection with it, exceed the amount of any claim for damages which the vendor had in respect of the livestock, the excess shall be recoverable from him by the person who would be

entitled to the possession of the livestock but for the sale.

(6) A person detaining any livestock in pursuance of this section is liable for any damage caused to it by a failure to treat it with reasonable care and supply it with adequate food and water while it is so detained.

Animals
wandering
on to the
public
road

11.- (1) Where an animal is found wandering on any public road, and its owner is not known, any member of the Garda Síochána may impound it in a pound or with some suitable person and agree to pay that person such an amount as is reasonable in the circumstances for keeping and feeding the animal.

(2) Where an animal is impounded under subsection (1) a notice describing the animal and stating where it was found shall forthwith be posted, and shall be kept posted for fourteen days, in a conspicuous position outside the nearest Garda Síochána station.

(3) Subject to subsection (4), if the owner of the animal has not been ascertained within fourteen days after it has been impounded an officer of the Garda Síochána may cause it to be sold at a market or by public auction.

(4) The officer shall keep posted outside the Garda Síochána station and outside the premises where the animal is to be sold, for at least forty-eight hours before the time of the sale, a notice stating the time of the sale and describing the animal and where it was found.

(5) The officer shall pay out of the proceeds of the sale -

- (a) to the person who kept the animal, the amount agreed upon for keeping and feeding it; and
- (b) the expenses (if any) of the sale.

(6) If the owner of the animal is ascertained within six months from the date of the sale the balance of the proceeds of the sale shall be paid to him; otherwise the balance of the proceeds of the sale shall be applied in the same manner as is provided for with respect to fines imposed by or by virtue of any enactment.

(7) If the owner of the animal is ascertained before the sale, he shall be entitled to receive the animal on paying to the officer the amount agreed upon for keeping and feeding it and any expenses which may have been incurred with a view to selling the animal, but if the owner refuses or fails to pay the amount or expenses, the animal shall be sold in accordance with this section.

(8) So much of the amount agreed upon for keeping and feeding the animal and the expenses (if any) of the sale, as exceeds the proceeds of the sale shall be defrayed out of funds provided by the Oireachtas.

(9) In this section -
"officer" means an officer of the Garda Síochána not below the rank of Superintendent.

Penalty for
rescuing
livestock
detained
or animals
impounded
under
section 10
or 11

12.- Any person who -

- (a) rescues or does any act by means of which livestock detained under section 10 or an animal impounded under section 11 escapes or is unlawfully liberated; or
- (b) unlawfully prevents a person entitled by virtue of section 10 or 11 to custody or control of the livestock or animal from exercising in relation to it any right conferred by that section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100.

Repeals

13.- The following are hereby repealed, that is to say -

- (a) so much of sections 19 and 20 of the Summary Jurisdiction (Ireland) Act 1851 and of section 71 of the Towns Improvement (Ireland) Act 1854 as remains unrepealed; and
- (b) subsections (1) to (3) of section 1 of the Dogs Act 1906.