

TRESPASS AND POUNDS AT THE CAPE OF GOOD HOPE BEFORE AND DURING THE 19TH CENTURY

V.C. Malherbe
Department of History
University of Cape Town
Private Bag
7700 RONDEBOSCH

Oortredings en skutte aan die Kaap die Goeie Hoop vóór en gedurende die 19de eeu

Dwarsdeur die grootste gedeelte van sy geskiedenis kon Suid-Afrika akkuraat beskryf word as 'n land van weiding. Die inheemse bevolking, behalwe diegene wat 'n bestaan deur middel van jag of insameling gemaak het, was beesboere. Na 1652 het beesboere die grense van die Europese nedersetting uitwaarts gestoot. Toe die eerste Kommissie van die Rondgaande Hof wat deur die Hof van Justisie aangestel is (1811) sy toer van die Kaapse binneland voltooi het, het die kommissarisse opgemerk dat almal van die menige setlaar jeugdige "daarna uitsien om beesboere te word". Hierdie verwagting het uitgebrei na die dele wat later Natal, die Oranje-Vrystaat en Transvaal geword het. Teen 1800 was Kaapstad die enigste sentrum van redelike grootte, en die drie setels van plaaslike owerheid (Stellenbosch, Swellendam en Graaff-Reinet) was maar klein dorpie in die oë van Europa. Daar was in die negentiende eeu 'n groot aanwas in die getal dorpie. Toespitsing op landbou was 'n eienskap van hierdie dorpe waar boorde en tuine op dorpersele 'n groot deel van die vars voedselbehoefes voorsien het. Hierdie feit, en die wetgewers se besorgdheid dat die onderskeid in wese tussen die dorpe en die pastorale omgewing behou moet word, het genoodsaak dat lewende hawe streng beheer moes word. Die vroeë bepaling met betrekking tot betreding en skutte het dus spesifiek net na dorpe verwys, en 'n gepaste stelsel vir plattelandse distrikte het maar stadig ontwikkel. Die pligte van die skutmeester was dus nie baie duidelik nie, en die skutregulasies is dikwels omseil. Aspekte hiervan word in hierdie artikel ondersoek. Dit handel ook oor die effek van die skutstelsel op die Khoikhoi.

Throughout most of its history, South Africa could accurately be styled a 'grazing country'. The indigenous people, except for those who subsisted by hunting and gathering were cattlekeepers. After 1652, graziers pushed out the frontiers of European settlement. When the first Commission of Circuit appointed by the Court of Justice (1811) completed its tour of the Cape interior, the commissioners observed that all of the numerous settler youth 'look forward to become graziers'. This expectation was carried to what became Natal, the Orange Free State and Transvaal. By 1800, Cape Town was the only centre of any size and the three seats of local government (Stellenbosch, Swellendam, and Graaff-Reinet) were little more than villages to European eyes. The nineteenth century saw a rapid increase in the number of small towns. The pursuit of agriculture was a feature of these towns where orchards and gardens on town allotments supplied much of the fresh produce consumed. This fact, and the legislators' concern that towns be distinct in character from their pastoral surrounds, dictated that livestock should be strictly controlled. Thus the early regulations

Historia 39(2), November 1994

respecting trespass and pounds referred specifically to towns and a system suitable for rural districts only slowly evolved. The office of poundmaster was somewhat anomalous, while the pound regulations were frequently abused - aspects which this article explores. It also is concerned with the impact of the system of impoundment on the Khoikhoi.

In their report on the colonial police in 1828, the Commissioners of Inquiry sent from Britain to report on Cape affairs alleged that 'the trespass and impounding of Cattle formed one of the most general causes of vexation and disturbance' at the Cape of Good Hope.¹ 'Vexation' naturally occurred when gardens were trampled, stock diseases were spread, and prize ewes, heifers, or mares were impregnated by inferior animals as a result of livestock trespass. But the sources of vexation were as likely to be found in the behaviour of farmers, poundmasters, and the inhabitants at large who sought advantage through the very system by which trespass was controlled.

The two Commissioners were well aware of tensions which resulted from pervasive competition for land. They attributed the wide dispersal of the graziers' farms to the former Dutch government's desire to avoid 'disputes which are incidental to the pursuit of agriculture in grazing Countries'. This policy was flawed, as they perceived, because the scarcity of water and pasturage (also of fencing) ensured that 'the temptation to the trespasses of cattle' remained high.² They regretted, furthermore, that Khoikhoi pastoralists had almost no access to grazing at all: 'Altho' the original occupiers of the greatest portion of the Land of the Colony lying within the Fish River, they now possess none save that which they share in common with the Members of the Missionary Societies'.³ These factors - as well, no doubt, as incidents involving British subjects which will be mentioned below - spurred the commissioners to urge amendments to existing law.

The Dutch governments (the East India Company, 1652-1795), and the Batavians, (1803-1806) had regulated trespass and impoundment by numerous *plakkaaten* which remained in force after the British took permanent control. No new legislation has been found before a proclamation issued by Lord Charles Somerset in 1823 concerning trespass by 'entire horses' above the age of two - reflecting his well-known interest in improving the quality of horses and other livestock breeds. A Government Minute of 1825 detailed the pound regulations 'for general Information'. This publication appears to embody the law as it stood and not, in any important sense, to legislate anew (but see a reference to reduced fees below). The regulations were 'intended principally to apply to the Towns and Townships of the several Districts', with the option of establishing pounds elsewhere 'upon the principles and in the spirit of the Minute'.⁴

George McCall Theal (ed.), *Records of the Cape Colony [RCC]* (36 vols) (London, 1897-1905), XXXV, Report of the Commissioners of Inquiry to the Right Honourable William Huskisson upon the Police at the Cape of Good Hope, 10-5-1828, p. 177. J.T. Bigge and W.M.G. Colebrooke were selected to form a Commission of Eastern Inquiry in 1822 and arrived at the Cape in 1823.

RCC, XXXV, p. 177; RCC XXXIII, Report of the Commissioners of Enquiry to Earl Bathurst upon Criminal Law and Jurisprudence, 18-8-1827, p. 18.

3. RCC, XXXV, p. 147.

Cape Archives [CA], CO 5826, Proclamations, Ordinances, Government Minutes and Advertisements from January to December 1825, Government Minute of 17-6-1825. A proclamation of 2-5-1825 had established a council to 'advise and assist in the Administration of the Government'. New laws took the form of ordinances from this time. A Government Minute differed from an ordinance in that it could be issued by the governor 'without the advice of his Council'. The Commissioners recommended that the pound regulations be published 'in a more solemn and authentic form' than a mere Government Minute, RCC, XXXV, pp. 178, 180.

The 1825 Minute stood until the passage in 1847 of Ordinance 16.⁵ It is in the clauses of this ordinance that the hydra-headed difficulties of regulating livestock trespass and impoundment are most fully exposed.

The sources of these difficulties lay in the features of Cape society briefly sketched above. Everywhere but in the Western Cape, 'cash livestock' (rather than 'cash crops') remained the basis of the rural economy.⁶ The 1820 British Settlers - those who did not speedily turn to the 'more profitable avenues of trade and manufacture'⁷ - found that pastoral farming on large properties with Khoisan or Xhosa servants was more likely to provide a living than was family labour planting crops on hundred acre farms. Protection of the property and pecuniary rights of individuals against trespass (livestock) and peculation (human) was far from easy to secure where the vital economic interests of the burghers and these new settlers were involved.

At the same time, many Khoikhoi remained attached to their pastoral tradition, accepting livestock as payment in kind and spending wages to build flocks and herds.⁸ Since they lacked pasturage of their own they were dependent on mission membership, agreements with farmers, and ongoing access to public land.⁹ Friction inhered in all of these relationships but the officials realised - or were reminded from time to time - that stringent enforcement respecting trespass bore heavily upon the dispossessed and, added to other grievances, could provoke them to rebel. The pressure on 'waste' or unallocated land intensified in the 19th century when cattlekeepers from beyond the frontier were drawn into the labour market of the Cape Colony.¹⁰

With the establishment and growth of towns, yet other issues concerning livestock and trespass came to the fore. It will be seen how the pound regulations were used to shape the character of embryonic towns.

1. The regulation of livestock trespass under the Dutch governments

This article does not propose to begin with the mechanisms that pre-colonial pastoralists devised to prevent or punish encroachments on grazing.¹¹ Its focus is on trespass and pounds as an aspect

-
5. Ordinances were numbered consecutively from 1825 through 1833. From 1834 through 1853, the numbering began again with Ord. 1 each year. With the introduction of representative government in 1854, laws were termed acts.
 6. See S. Daniel Neumark, *Economic influences on the South African Frontier: 1652-1836* (Stanford University Press, 1957), p. 24.
 7. J.B. Peires, 'The British and the Cape, 1814-1834', in Richard Elphick and Hermann Giliomee (eds.), *The shaping of South African society, 1652-1840 [Shaping]* (Cape Town, 1989), p. 475.
 8. See e.g. *RCC*, XXXV, p. 147.
 9. Public land was variously described as 'Crown', 'waste', 'unappropriated', and 'government', see John Marinowitz, 'From "Colour Question" to "Agrarian Problem" at the Cape: Reflections on the interim', in Hugh Macmillan & Shula Marks (eds), *Africa and Empire*, W.M. Macmillan, historian and social critic (University of London, 1989), fn. 9, p. 306.
 10. See e.g. Saul Dubow, *Land, labour & merchant capital, the experience of the Graaff Reinet District in the pre-industrial rural economy of the Cape 1852-1872*, Centre for African Studies, University of Cape Town, Communications No 6/1982, esp. Chs. III & IV.
 11. Briefly: Khoikhoi pastoralists traditionally aimed at milk production for their own consumption, in contrast to the colonial ranchers who aimed to produce a surplus of slaughter stock, Kate Crehan, 'Khoi, Boer and missionary: An anthropological study of the role of missionaries on the Cape Frontier 1799-1850', unpubl. M.A. dissertation (University of Manchester, 1978), p. 56. Transhumant movement to exploit water and pastures occurred over 'generally consistent' routes, Richard Elphick, *Khoikhoi and the founding of white South Africa* (Johannesburg, 1985), p. 58. Before the introduction of agriculture and European systems of landownership the Khoikhoi had to protect their stock from wild predators and theft, without reference to private lands and crops. As livestock became the most important 'store of value', and land the most valuable resource, not only for Khoikhoi but for growing numbers of Dutch pastoralists, the rivalry for land and livestock grew more intense.

of the system of law introduced by the Dutch and British colonisers. These regulations applied within colonial boundaries - which were extended from time to time, with the result that 'the Cape of Good Hope' continued to expand throughout the period under discussion. In a sense, trespass was integral to this expansion, that is, to the means by which the colonists deprived the indigenes of essential resources, namely water and land. However, as said, it is intended here to look at the regulation of trespass in the context of property relations in the area controlled (nominally, at least) by the colonial government.

From being chiefly concerned with protecting the Company garden from predators and interlopers of all kinds, the Council of Policy in the 17th century saw fit, in 1670, to proclaim that freeburghers plagued with livestock trespass should drive the offending animals to the Company barn and demand compensation for damage to their planted fields. To the same end, the farmers were instructed to fence their crops. In 1686 it was decreed that, to eliminate the stench, filth, and danger due to large stock stabled in and driven through the town, horses, cows, bulls and others should be banished. Draught animals, which unavoidably entered the built-up areas, were to be carefully controlled.¹² The first reference to a pound (*skuthok*) as such appears in an edict of April 1687 when more precise regulations with regard to fines, the sale of unclaimed stock, compensation for damage, and so forth were laid down. Impoundment is included with a host of other concerns in the *Generaal plakkaat* of 1692 which was renewed from time to time.¹³

By the 18th century, trekboer expansion into the hinterland was underway. Before the application of formal trespass regulations to the frontiers of European advance, the trekboers expressed their sense of proprietary rights to grazing simply by ordering Khoikhoi rivals to 'decamp'¹⁴ - orders they could generally enforce by virtue of superior strength. The sense in which trespass conflates with conquest is evident in the proclamation of 26 April 1770. This ruling, which sought (vainly) to restrain trekboers from appropriating land east of the Gamtoos River, prohibited them from pasturing their herds and flocks elsewhere than on loan farms which the government had allotted to them.¹⁵ In 1829 a Uitenhage official construed this proclamation as a trespass measure, as will be seen below.

It appears that no new regulations were issued during the first British occupation (1795-1803). Among several important measures introduced by the Batavians was the detailed *Instructien* for the governance of the country districts published in 1805. By that time, five districts (in addition to Cape Town) had been placed under the control of local officials, the landdrosts. Article 118 of the 'instructions' names the sources of revenue available to district governments, pound fees being one along with the proceeds of mills, tolls, and so on. Another clause (Art. 126) includes disputes about impoundment among matters within the competency of district courts (composed of landdrosts and their burgher assistants, the *heemraden*) to decide.¹⁶

12. M.K. Jeffreys (ed.), *Kaapse plakkaatboek [KP]*, (Cape Town, 1944), I, pp. 112, 138-39, 221-22, 230-31, 286. With the spread of stockfarming, conservation (e.g. of pastures) became the subject of trespass-related measures, *Ibid.*, pp. 189-90, 238, 322.

13. *KP*, I, pp. 233, 269, 330-31; II, pp. 183-84; III, pp. 76-77. No map showing the location of the pound in 17th-18th century Cape Town has so far been found but for a reference to it in Table Valley see a request by the burgher Paulus Artois for an extension to his erf in CA, C 1091, Politieke Raad, Rekweeste en Nominasies, 1726, pp. 110-11.

14. See e.g. Donald Moodie (ed.), *The record* (Cape Town, 1960), III, p. 3.

15. By 1770, when the Gamtoos was made the eastern boundary of the colony, 'a number of trekboers had already taken out loan farms beyond it', Leonard Guelke, 'Freehold farmers and frontier settlers, 1657-1780', *Shaping*, p. 85.

16. G.W. Eybers, *Bepalingen en instructien voor het bestuur van de buitendistricten van de Kaap de Goede Hoop* (Amsterdam, 1922), pp. 117, 120 (see English versions, p. 78); Gerrit Schutte, 'Company and colonists at the Cape, 1652-1795', *Shaping*, pp. 290-91.

2. Poundmasters

Before moving on, it is useful to understand the status of the keepers of the pounds. Though they performed a function in the execution of the law, their services did not incur a charge on the exchequer. Poundmasters were entitled to a share of income derived from a schedule of fees (or from the public sale of animals which the owners had not redeemed).¹⁷ Clearly the temptation to abuse was strong where income was so insecure. One solution was to allow a low-ranking public servant (for example, a gaoler) to operate the pound. The Commissioners of Inquiry found that the expedient of permitting gaolers to perform the 'duties of Pound keepers and Superintendents of the Markets', which 'afforded them a certain degree of profit', had been detrimental to the management of gaols, thus these functions should no longer be combined (looked at the other way around, this meant that poundkeepers would be deprived of the salary which a gaoler received).¹⁸ Their advice seems to have been ignored.¹⁹

Where rural areas exercised the option to establish a pound, the field cornets were normally entrusted with the job. From evidence concerning Uitenhage it appears that, prior to 1820, stray cattle from the farms were driven to the village pound. The question was raised whether they should be treated in the same way as animals impounded from the town, to which the governor recommended that they should. By 1828 the field cornets were operating pounds, but lacked certain powers vested in the poundmasters in the towns.²⁰ While older districts such as Uitenhage were questioning existing rules, newer districts on the frontier were at the stage of doubting whether rural pounds served a useful purpose at all. The Civil Commissioner of Somerset advised, regarding a belated experiment there: Mr W.S. Humphries the acting Field Cornet of Baviaans River having engaged to take charge of a Pound for that Field Cornetcy, I have directed such Pound to be established at his residence from this 1 February 1839'.²¹

-
17. The arrangement had roots in ancient village practice, see J.L. and Barbara Hammond, *The village labourer* (London, 1978), pp. 61-62; 'enclosure swept away the bureaucracy of the old village: the viewers of fields and letters of the cattle, who had general supervision of the arrangements for pasturing sheep or cows in the common meadow, the common shepherd, the chimney peepers who saw that the chimneys were kept properly, the hayward, or pinder, who looked after the pound. Most of these little officials of the village court had been paid either in land or by fees'. The Government Minute in fact allowed poundmasters to 'be paid a fixed Salary by Government' but no example of this has been found.
 18. *RCC*, XXXV, p. 163. The Government Minute laid down that poundkeepers should retain only half the pound fees, the balance to go to the District Chest. It is not clear if this was the case in 1813 when Landdrost Cuyler of Uitenhage found it necessary to ask if unclaimed monies from the pound could be applied to the cost of a schoolhouse and accommodation for teachers, CA, 1/UIT 15/1, 21-3-1813. In 1840, the chief officer of a country district recommended that the poundmaster be permitted to keep all of the pound fees, CA, 1/SSE 10/1A, Letters Despatched by Civil Commissioner and Resident Magistrate, 1836-1840, see letter addressed to H. Hudson Esq., 11-2-1840. Ord. 16 of 1847 decreed that such sums 'be paid into the Colonial Treasury', a stipulation which changed after the introduction of Divisional Councils to allow these bodies to receive them, see clause VI, Act 1 of 1857.
 19. On 25-12-1829 W.M. Waddell, Resident Magistrate of Albany, warmly supported gaoler Henry Ulyate's application to become poundmaster at Grahamstown, CA, CO 2713, pp. 488-89.
 20. For the situation in 1820, see CA, 1/UIT 1/1, Notulen van Landdrost en Heemraden, Meeting held 10-1-1820, Item 15, p. 71, and 1/UIT 10/5, Colonial Office - Landdrost en Heemraden, No. 194, 3-2-1820. By 1828 it appears that the field cornets were still required to drive impounded livestock not redeemed to the drostdy for sale by a licensed auctioneer. In that year they requested and were allowed 'to dispose of impounded Cattle themselves', CA, CO 2703, Civil Commissioner, Uitenhage - Acting Secretary, Colonial Office, Cape Town, 13-9-1828.
 21. CA, 1/SSE 10/1A, Civil Commissioner - H. Hudson, 29-1-1839.

3. The operation of the pound regulations published in 1825

To grasp the workings of the Government Minute of 1825, let us suppose that animals belonging to A trespassed upon a farm belonging to B. How might the various parties respond? How might the regulations be subverted or upheld?

If B observed the pound regulations he would:

*prepare a written statement that trespass had occurred and drive the offending livestock to the nearest pound within 24 hours (the poundmaster to compensate him for labour costs incurred, calculated on a mileage basis and entered as a charge upon A);

*if claiming damage, report this to the poundmaster within 12 hours of the animals' delivery to the pound and request the field cornet to assess the damage and inform A.

If B ignored the pound regulations, he might:

*detain the animals beyond 24 hours and employ them for his own benefit, committing what the Commissioners of Inquiry called 'the silent appropriation of their labour';²²

*Shoot or wound the animals, or otherwise maltreat them while in his care;²³

*send the animals to the pound but drive them in two batches, instead of one, in order to claim double mileage.

If the poundmaster observed the Pound Regulations he would:

*impound the animals brought to him, so long as B provided a written statement as required;

*levy the standard fee for animals admitted to the pound;²⁴

*feed and care for the animals, employing a herd or herds to take them out to graze;

-
22. This practice was 'so notorious' in certain districts that 'an annual muster ... of all strayed cattle' was necessary to give the rightful owners the opportunity to reclaim them, *RCC*, XXXV, p. 177. The Government Minute imposed a fine of 50 rixdollars (Rds) for detention beyond 24 hours. The Commissioners recommended an additional provision whereby B would forfeit compensation if he failed to notify the constable (field cornet) of the offence within that time, *RCC*, XXXC, pp. 179-80.
23. In this case he took a considerable risk. As the Commissioners observed: 'Amongst the injuries offered by individuals to private property there is one species which seems to have been marked with peculiar severity. By a clause in the general Colonial Placaat passed in the year 1740 it was enacted that "any Person who might shoot, wound, or maltreat in any other manner any horse or other beast which had broken into gardens or otherwise, should be publicly punished on the scaffold"', *RCC*, XXXIII, p. 18. See also M.K. Jeffreys & S.D. Naude (eds.), *KP* (1948), II, *Heraankondiging van sekere plakkate*, Clause 42, p. 184. This could mean scourging 'with or without branding', or waving a sword over the offender's head. The Commissioners deprecated this punishment as carrying 'more of personal indignity with it than of wholesome correction' and favoured fines or imprisonment instead, *RCC*, XXXIII, pp. 19, 30, 90-103. It may be remembered that, at this time, livestock theft was a capital crime - which the Commissioners argued against, except where a 'habit of subsisting by plunder' could be shown, *RCC*, XXXIII, pp. 5-6, 91.
24. One Rd. for each head of cattle and pig, or dozen sheep and goats, on town enclosures (less for rural districts), recoverable from A.

*post notices with descriptions of impounded stock to assist the owners to reclaim them, and give due warning of the date when unclaimed stock would go for public sale;

*hold the animals until A made good all the accumulated fees and fines;²⁵

*keep proper records of all animals impounded and by whom, the names of owners, and any fees and fines.²⁶

Or he could contribute to the prevalent vexation by a tendency to:

*procrastinate with regard to advertising the animals in his pound, whereby the fees incurred by A would be unnecessarily high;²⁷

*appropriate the labour of the animals to his own benefit, while the rightful owner was deprived;

*permit the animals to come to harm by his neglect, or that of his herds;²⁸

*retain more animals than were required to cover any possible default, unfairly penalising A.

If the field cornet carried out his duties according to the law, he would:

*respond promptly to B's request to inspect the damage to his property;

*make his assessment impartially, favouring neither A nor B.

On the other hand a field cornet might:

*delay his inspection until the evidence was less than clear;

*permit favouritism to influence his ruling, to the unfair advantage of A or B.²⁹

Owners of offending livestock (A) had little scope for exploiting the pound regulations for

25. These consisted of the pound fees mentioned above, the cost of feeding and herding the animals while in the pound (according to the daily rates laid down), the cost of advertising, and any damages awarded to B (including the fees due the Field Cornet and others involved in assessing said damage).
26. The only example of a pound book from this period seen is CA, 1/AY 12/5, Daily Report from the Pound, Grahamstown, 1825-26.
27. The Commissioners believed that the Government Minute should be amended to oblige the poundmasters to publish 'a description of each head of cattle or animal impounded before the expiration of one hour from ... their being impounded'. Otherwise, they feared, 'the profit derived by these persons from the herding of cattle ... will indispose them to make any active inquiry after the owners of impounded cattle'. They noted that, since the impounded cattle were always grazed on public land, poundmasters bore little cost beyond the wages of a 'Hottentot' herd amounting to some '72 rixdollars or £5 8s. Sterling' per year. *RCC*, XXXV, pp. 179-80.
28. On 25-2-1828, a colonist complained that when he came to release a horse impounded at Uitenhage, it had been 'lost thro' the drunkenness and negligence of the black constable Hendrik Manus'. The constable admitted his guilt as charged; the poundmaster had been absent at the time, see CA, 1/UIT 9/1, Day Book.
29. Disputed rulings must be submitted to the Landdrost and Heemraden or, alternatively, 'to arbitrators chosen by die parties'. In order to 'make the constables more careful in their decisions, and the parties less dependent on their favour', the Commissioners preferred that a dispute be heard by a jury of 'four persons summoned to try it before the Judge of the County Court, whose decision should be final' and who should have the power 'to condemn the unsuccessful appellant in the full costs of the appeal', *RCC*, XXXV, pp. 179-90. The terminology used here reflects British usage. The Cape legal system was reformed on the English model by the 1827 Charter of Justice.

their own ends. They could contest the field cornet's assessment of damage in the courts, or challenge a poundmaster who detained more animals than absolutely required to cover outstanding penalties and fees. They might appeal for restitution on the grounds that animals had been wrongfully - perhaps maliciously - delivered to the pound. Some owners attempted rescue of their animals by violent means, thus 'pound breach' was subject to a heavy fine.³⁰

The Commissioners of Inquiry had been sympathetic to the vulnerability of A, noting that the poundmaster's self-serving delays often led the owners of impounded cattle to prefer 'abandoning them altogether to the heavy expense of redeeming them'. They approved the reduction of the pound fees in 1825 which, they said, had previously been 'much too high and in some instances very oppressive'. In fact they proposed that the impoundment fee should be reduced even more 'in the districts where cattle are plentiful'.³¹

The rural pound experiment begun in Somerset in 1839 resulted in a confusion of views. After a year's trial, some residents favoured the new pounds, which were 'near at hand'. Others complained that they wasted more time tracing lost animals at the several nearby pounds than formerly, when all were driven to 'the District Town'. Poundmasters seemed unable to describe impounded stock so accurately that owners could avoid going personally to see. Animals not claimed in time were auctioned for so little that, often, it was not worthwhile to fetch the balance, after squaring fines and fees. Moreover, only neighbours 'on bad terms' made use of pounds! All in all, the Civil Commissioner believed, a single pound situated in the town of Somerset (East) was the better idea.³² By then an ordinance regulating pounds in rural areas, as opposed to towns, was felt by some officials to be overdue.³³

4. Regulating pounds and preventing trespass in terms of Ordinance 16 of 1747³⁴

Ordinance 16 of 1847 referred to 'the Country districts ... not being within, or belonging to any Municipality'. The ordinance was required because 'the existing Pound Regulations of this Colony are in many respects defective, and ... much injury and inconvenience are sustained by the inhabitants of the Country districts'. As has been seen, rural trespass was dealt with informally, or else in terms of regulations not specific to 'country' needs. The Government Minute of 1825, along with 'all other laws or usages', was repealed by Ordinance 16. By this time, an ordinance of 1836 (No. 9) enabled towns to apply to become municipalities. The separate ordinances which conferred municipal status, in terms of this umbrella ordinance, embodied clauses regulating the municipal pound. Towns and villages which had not attained municipal status fell outside both Ordinance 9 of 1836 and Ordinance 16 of 1847. Provision was made for them later on (see below).³⁵

30. 100 Rds or £7 10s., *RCC*, XXXV, p. 179.

31. *RCC*, XXXV, pp. 178-79.

32. The duties of landdrosts, the senior district officials, were divided and assigned, as of 1-1-1828, to Civil Commissioners (administrators) and Resident Magistrates (judicial officers).

33. In 1833 the Acting Secretary to the Governor requested the Attorney-General to prepare 'a Draft Ordinance, in lieu of existing Pound Regulations' but nothing further has been found, *CA*, AG 73, No. 207, 18-12-1833.

34. Considerable consultation with district officials preceded the framing of this ordinance, see *CA*, 1/UIT 10/42, Montagu - Resident Magistrate, 9-4-1846, and the draft ordinance was recommended to be shown to 'the most intelligent persons' in each district, *Ibid.*, 29-4-1847.

35. Ord. 9 of 1836 established procedures for electing municipal boards. The 'first town in the colony to take advantage of the municipal act' was Beaufort West, followed by Somerset East, George, Grahamstown, and Cradock, see George McCall Theal, *History of South Africa* (Cape Town, 1964), VI, p. 167. Prior to Ord. 9, provision had been made for trespass in Cape Town to be controlled by the 'executive police', see Ord. 48 of 1828, *Ordinances, Cape of Good Hope, 1825-1828*.

The Commissioners of Inquiry had noted that impounded cattle were always grazed on public land. This referred to towns, which owned the pound (they might lease it by public tender for a fixed term).³⁶ Poundmasters in rural areas were landowners themselves - see the letter appointing an acting field cornet cited above.

Ordinance 16 laid down that no one should be appointed 'who shall not possess sufficient Pasturage for the number of animals likely to be at any time impounded'. The new law addressed a point which the Commissioners had raised by allowing the districts to alter the standard fees upwards or downwards within a given range.

The 61 Clauses of this law reveal the kinds of behaviour which gave rise to 'injury and inconvenience'. From the first 24 it may be seen that the old curbs on poundmasters had to be reinforced by new. For example, they were now forbidden to purchase animals at pound sales where they themselves were auctioneers. Other clauses forbade the public at large to, say, leave animals to graze on the official outspans (meant for travellers) for more than 24 hours, or permit them to damage the government-provided water tanks and dams. Owners could be heavily penalised for allowing sheep with scab or goats with scurvy among animals which were free from disease, or onto property not their own.³⁷

In 1855, the new Cape parliament introduced a system of divisional councils for the 'better administration of the functions now performed by the divisional road boards, the district school commissions, and of the court for the better regulation of pounds and prevention of trespasses'.³⁸ These councils immediately acquired such powers respecting pounds and trespass as had been exercised by Civil Commissioners and Justices of the Peace in terms of Ordinance 16.³⁹ An Act 2 of the same year, 'towns and villages not being municipalities' were empowered to deal with 'public nuisances' committed by cattle, sheep and goats, horses, mules, ducks, geese and pigs. In 1857, 'certain Powers and Functions relating to the Public Pounds' which belonged to the central government were transferred to the divisional councils. These bodies, named above - divisional councils, municipal boards, and town or village authorities without the status of municipal boards - continued for some decades to regulate trespass and pounds, without significant change.⁴⁰

5. Pound regulations and the character of towns

It appears that the regulations prior to 1825 allowed no compensation for trespass on town *erven* which were not properly enclosed. As the Commissioners explained

The motive assigned ... (and which we conceive to have been a judicious one) was the limitation of the size of new town allotments, the discouragement of their cultivation in grain, and the holding out inducements to the settlement in towns of tradesmen and mechanics instead of farmers and graziers.⁴¹

36. *RCC*, XXXV, p. 179; CA, 1/SSE 10/1A, Civil Commissioner - H. Hudson, 11-2-1840.

37. This infringement carried a six-month prison sentence, with or without hard labour, over and above normal fines. The measure went some way to meet a serious problem: in 1829 the Colonial Office had advised that no 'law exists or can be framed' to force an owner to destroy diseased stock, thus the onus lay on owners of healthy livestock to avoid contact with infected animals or pastures, CA, 1/UIT 10/14, 4-7-1829, pp. 143-44.

38. Act 5 of 1855, in *Statutes of the Cape of Good Hope*, First Parliament, 1854 to 1858 (Cape Town, 1863).

39. See Clause 33 which repealed Clause 37 of Ord. 16.

40. Later acts altered the powers of municipal boards with regard to common pasturelands, legislated for ostriches, and so on. Ord. 16 and later acts were repealed by Act 15 of 1892.

41. *RCC*, XXXV, p. 177. A Government Advertisement of 11-3-1825 affords details of *erven* size, announcing the forthcoming sale by auction of 94 one-morgen sites in the town of Somerset (East), CA, CO 5826.

The Government Minute of 1825 permitted the award of 'half of the damage assessed' if the property were not enclosed.

Ideally, the residents of towns should keep milk cows for their own needs but not animals enabling them to live 'in idleness upon the profits derived from the employment of their cattle'. Nor should they try to live by cultivating grain. At Grahamstown and Uitenhage the two Commissioners had seen the 'evils' which arose from tolerating rural lifestyles in a town. For example, people grew forage commercially or kept oxen for hire, appropriating the commonage for private gain. The landdrosts themselves were known to set a bad example.⁴²

One practice which the Commissioners deplored corresponds with an incident recounted by George Thompson, whose travels were familiar to them:

I had intended to have prosecuted my journey this morning at an early hour, but on calling for the horses I had engaged, found they had been put in the *schut-kraal* or pound. This is an inconvenience very much and justly complained of at Graham's Town, and arises chiefly from a considerable portion of the public grounds formerly belonging to the town having been inconsiderately granted to private individuals, so that the instant cattle or horses are turned out on the common, they are sure, if not carefully tended, to trespass on some of the adjacent ill-fenced fields, and are hurried off to the *schut-kraal* till the damage is adjusted.⁴³

This happened in 1823. At least two other incidents involving British subjects, new to the Cape, were in dispute while the Commissioners were there.

In the first of these, a Bathurst settler spent eight days in the Grahamstown gaol after refusing to pay damage and poundage to the constable, and then these sums plus the costs incurred by unsuccessful litigation in a court of law. Without attempting to unravel rights and wrongs, one notes that the settler claimed that the garden in question 'had no fence whatever around it to prevent trespass'. If this were so, it should have meant no damage could be claimed (this being previous to the Minute of 1825). The landdrost - who was both owner of the gardens trespassed upon and judge at the trial (in which the poundmaster was the plaintiff, not he) - did not comment on this point in his detailed reply to a petition which the settler's family brought in 1823.⁴⁴ The second case concerned the loss of six oxen from the 'Scutt Kraal' at Grahamstown. The owner's difficulties with officials, with townsmen who (he implied) had privileged access to the pound, and with the law throw light on what he calls 'the general dissatisfaction on all subjects connected with the impounding of cattle'.⁴⁵

By 1850 the Cape had 45 small towns. By 1870, South Africa was still 'overwhelmingly an agrarian society and there were hardly twenty towns with populations exceeding 1 000 inhabitants.'⁴⁶ Conflicts of interest arose through the persistence of rural lifestyles in these towns

42. RCC, XXXV, pp. 177-78. Officials along with other prosperous individuals often held more than one town allotment, which gave them space for activities which the law meant to discourage.

43. Vernon Forbes (ed.), George Thompson, *Travels and adventures in Southern Africa* (Cape Town: The Van Riebeeck Society, 1967), I, p. 26. Thompson's book was ghostwritten by Thomas Pringle who was in close touch with the Commissioners of Inquiry.

44. RCC, XVI, Lt. E. Biddulph - Earl Bathurst, 20-8-1823, pp. 209-12, & Major J. Jones - R. Wilmot Horton, 21-9-1823, pp. 292-95.

45. RCC, XVII, Statement of Mr B. Wilmot, 9-2-1824, pp. 59-66, and Memorial of Mr B. Wilmot, 24-4-1824, pp. 273-75.

46. David Welsh, 'The growth of towns', in Monica Wilson & Leonard Thompson (eds.), *The Oxford history of South Africa* (Oxford, 1978), II, p. 172.

Between 1845 and 1880, as one historian explains, the western end of Graaff-Reinet 'was populated largely by those who made a living from the produce of their vineyards and orchards, supplemented by transport riding, and whose livestock grazed on the commonage'. Their interests were at odds with those of merchants and professionals on the east side of town.⁴⁷ Towns were attractive to persons otherwise exposed to loneliness and insecurity, who did not necessarily propose to live by strictly urban occupations once they took up residence there. As well, longstanding farmer-townsmen like the Graaff-Reineters just described would not readily forgo their easy access to a market. But notions of what 'towns' ought to be, and of their putative role in progressive and stable societies, impelled the authorities to mould them by whatever means - of which the regulation of trespass and impoundment was one.

6. How the Khoikhoi experienced the pound regulations

A problem arose in 1804 when Khoikhoi recruits in the Cape Regiment assembled at Graaff-Reinet, bringing with them animals - horses, cattle, sheep and goats.⁴⁸ It was alleged that they were poorly guarded - 'dat gelyk die Natie eigen, op't zelve slegte wagt wierd gehouden' - and thus were driven to the pound. Since the wives and children of soldiers in this Regiment often accompanied the men, they may have been the culprits. In any event, the soldiers had other duties to perform. The matter was complicated by the desertion of some and by questions concerning fees and fines. Among other things, this case illustrates a difficulty faced by Khoikhoi stockkeepers when they were drawn from rural areas to the towns where trespass led to costly penalties connected with the pound.

By the early 19th century, Khoikhoi pastoralists within the colony were by and large reduced to keeping stock on mission stations, on farms on which they worked, or on public land where they contrived to squat.⁴⁹ Of Bethelsdorp, Jane Sales has said:

Cattle were always ... the backbone of the Bethelsdorp economy. The relative prosperity at the end of the first decade [upon the end of a severe drought] is evident from the increase in cattle: from 1808 to 1812, the number of cattle had increased from 1 200 to 1 774. These gave the milk that kept the people alive.⁵⁰

Trespass appears to have been a frequent source of vexation to near neighbours of Bethelsdorp, especially after the numbers of cattle so greatly increased. It occurred despite compliance with an official request to build strong kraals: in the Annual Report for 1809, Dr Van der Kemp wrote that the residents had made a kraal 'more substantial than any one in the country' - 200' square, protected by a ditch 6' wide and 4' deep, with 'a watch-house at the entry, for two men armed, keeping watch at nights'.⁵¹

47. Kenneth Wyndham Smith, *From Frontier to Midlands, a history of the Graaff-Reinet district, 1786-1910* (Rhodes University, 1976), p. 116.

48. CA, GR 1/4, Meeting of the Landdrost and Heemraden, 30-6-1806, where this matter was discussed.

49. After their right to own land was established by Ord. 50 of 1828, few had the means to acquire it and access was confined mainly to those who found a place in the Kat River Settlement.

50. Jane Sales, *Mission stations and the Coloured communities of the Eastern Cape, 1800-1852* (Cape Town, 1975), p. 49.

51. *Transactions of the [London] Missionary Society to the end of the year 1812* (London, 1813), III, p. 296. In 1823 George Thompson noted the palisaded kraal at Theopolis, another LMS mission to the Khoikhoi, *Travels and adventures*, I, p. 17.

Effective kraaling at night did not, of course prevent careless herding when animals were taken out to graze. In 1811, 133 cattle strayed onto the property of L.M. van Rooyen, and in 1813 the landdrost of Uitenhage reported that the same farmer had sent '197 head of cattle ... which have again (now the fourth time) trespassed on his place'. Meanwhile it was alleged in 1812 that stray cattle damaged the gardens of another neighbour, Messrs Pohl & Co. Landdrost Cuyler expressed irritation, accusing the owners of 'great neglect', but seems to have dealt fairly, even leniently, with them.⁵² In 1817, this landdrost earned a rare tribute from the missionaries on account of his impartiality respecting the pound fines:

Sept. 5. Some cattle, belonging to the Institution, having strayed to a neighbouring farm, the farmer sent them to the drosdy, where they became liable to a fine. The Landdrost, Col. Cuyler, being informed thereof, delivered up the cattle without any charge, and informed Brother Messer, that if any of our people had paid any fines for their cattle, they must appear before him, and receive their money back. Capt. Cuyler administers his office very impartially, defending the rights of all, whether Hottentots or others.⁵³

In January 1829 the British settler Thomas Phillips, Justice of the Peace at Rietfontein in the District of Albany, appealed to establish a pound so that livestock need no longer be driven to Bathurst or Grahamstown. The Civil Commissioner supported his request and added a further justification:

... the lands granted to the Theopolis Institution are likely to be overstocked in consequence of the number of Hottentots who have lately quitted the service of the Boors, assembling there with their cattle, and the expedient proposed by Mr Phillips appears to be the only one likely to prevent serious injury from trespass on the surrounding lands.⁵⁴

It must be recalled that Ordinance 50 which extended equality before the law to all the free inhabitants of the Cape had come into force a few months before - hence the reference to Khoikhoi who had 'lately quitted the service of the Boors'. The impact of the new pound was felt immediately: Dr Phillip, superintendent of the London Missionary Society institutions, cited the crushing burden of the pound fees payable by members of Theopolis during March and April 1829 when he appealed, in 1830, for additional land.⁵⁵

Even Hankey, one of the better-favoured institutions, had insufficient grazing. Its members were impoverished by 'the large amount' they lost 'to neighbouring farmers, on whose grounds their cattle trespass, and by whom they are impounded'.⁵⁶ The problem of trespass was not confined to mission neighbours. Stock in gardens was a principal cause of internal disputes at

-
52. CA, 1/UIT 15/1, Letters despatched 1806-1813, Cuyler - Ulbricht, 13-7-1811, 20-12-1812 & Cuyler-Read, 7-3-1813, 8-3-1813 (2). Careless herding was often alleged against the colonists, see e.g. the charge that they bore responsibility for thefts by driving cattle out without attendance, CA, CO 122, Sundry Military and Naval Officers, 10-2-1820; see also Andrew Ross, *John Philip (1775-1851) Missions, race and politics in South Africa* (Aberdeen University Press, 1985), p. 125.
 53. *Transactions*, V, Extracts from the Journal of the Missionaries at Bethelsdorp, for 1817, p. 251.
 54. CA, 1/AY 9/6, Civil Commissioner, Albany & Somerset - Acting Secretary Bell, Cape Town, 9-1-1829, p. 163.
 55. CA, CO 381, No. 150, Philip - Bell, 4-3-1830 and enclosure.
 56. J.J. Freeman, *A tour in South Africa* (London, 1851), p. 58.

the Moravian institution near Caledon, Genadendal.⁵⁷

Hard on the heels of his appointment in 1839, Poundmaster Humphries of Somerset was accused by Klaas Witbooy, a Khoi, of taking 'his best ox worth much more' to cover the pound fees Witbooy owed, so that five more impounded oxen could be released. Humphries replied that he had bought the ox - 'not the best of the lot' - at the 'repeated and urgent request of the complainant himself' who had tried but failed to find another purchaser. The Civil Commissioner saw no reason to disbelieve the poundmaster's account. Whatever the truth, it is noteworthy that Ordinance 16 forbade poundmasters to purchase animals on sale from their own pounds.⁵⁸ Those who believed themselves to have been wronged by private persons or officials through the operation of a pound could seek satisfaction through a civil suit - with the risk, of course, of bearing costs if the action failed. A number of examples have been found of Khoikhoi who sought justice through the district or circuit courts.⁵⁹

In assessing the ways in which the Khoikhoi, when compared with other free inhabitants of the Cape, experienced the 'vexation' attached to livestock trespass and the operation of the pounds, one is reminded afresh of the chance nature of the records on which such an assessment must be based. In early January 1829, the Khoi Jacob Jacobs of Bethelsdorp intervened to stop farmers in the Under Bushman's River field cornetcy of Uitenhage District from impounding his stock. In the event this incident produced a wealth of documentation, revealing layers of interaction between the Khoikhoi and the colonists, but the aspect of particular relevance at this point is that the alleged beating, illegal detention and torture of Jacobs at the hands of a frontier burgher would almost certainly have dropped from sight had not a zealous humanitarian, Saxe Bannister, been on the spot and taken the matter up. After investigation by a special appointee of the central government, two Uitenhage officials were relieved of their posts - a rare outcome where the welfare and claims to justice of the Khoikhoi were at stake. At the least, the incident suggests that extremes of violence could and did take place where private citizens believed they had *carte blanche* to act to protect their privileged access to a basic resource.⁶⁰ (It is this circumstance which prompted an official to hark back to the 'Publication of the 26th April 1770', as mentioned above.)⁶¹

The devolution of power to local authorities was 'no unmixed blessing' for the Khoikhoi, as W.M. Macmillan has pointed out: 'after 1836, control passed into the hands of local municipalities, whose coloured labourers might have had more to hope from the beneficent administration of enlightened magistrates than from being handed over to the tender mercies of their lords and masters'.⁶² In many districts, newly empowered colonists took steps to remove 'coloured' people from more desirable *erven*, arbitrarily restrict their access to the public commonage, and much else. Dr John Philip observed these assaults on their civil status, by old enemies, with acute distress:

-
57. Johannes William Raum, 'The development of the Coloured community at Genadendal under the influence of the missionaries of the Unitas Fratrum, 1792-1892', unpubl. M.A. dissertation (University of Cape Town, 1953), p. 132.
 58. CA, 1/SSE 10/1A, Civil Commissioner - W.S. Humphries, 19-5-1839 & Civil Commissioner - E.M. Cole, 4-6-1839.
 59. E.g., Kupido Wildeman vs poundmaster Jacob Kok, for wrongfully detaining two oxen and appropriating them to his own use, CA, 1/UIT 5/2, No. 76, 2-5-1829; Prins Boosman vs J.P. Roscher, for illegally taking his horse and impounding it at Uitenhage where it was sold, CA, 1/UIT 7/1/1, No. 212, 10-12-1829.
 60. This incident, in outline, may be found in: CA, CO 3941, Memorials, No. 49, pp. 369-72, 392-94; Saxe Bannister, *Humane policy; or Justice to the Aborigines of New Settlements ...* (London, 1830), pp. 29-34.
 61. CA, 1/UIT 16/6, Resident Magistrate Aspelung - D. Moodie, 4-4-1829. Aspelung cited too a proclamation of 1812 concerning encroachment on Crown Lands, also seemingly of little or no relevance to the case. He was one of the officials dismissed.
 62. W.M. Macmillan, *The Cape Colour question, a historical survey* (Cape Town, 1968), pp. 268-69.

Having failed in all their other attempts to bring 80 000 people under the most cruel bondage by Vagrancy Acts, the Municipalities have by surreptitious means got hold of a power from the Government by which they hope to prevent them residing at the villages or grazing their cattle on the common lands and so oblige them to reside on the lands of the farmers.⁶³

The focus here has been on the Khoikhoi but, as William Beinart and Kevin Shillington report, trespass and impoundment were factors also where African and colonial stockkeepers contended for space.⁶⁴ Beinart observes that, on a closing frontier where white farmers were gaining control over land, 'grazing herds and flocks in disputed zones could be a deliberate provocation as well as a mistake', and cites instances where this appears to have occurred. The object might be harassment, or a challenge to boundaries recently defined. In Shillington's examples the motive for impoundment was sometimes theft, disguised as a response to trespass. He points out that 'The law that allowed colonists to seize cattle which strayed onto their private farms extended no such protection to the Africans in the locations for theirs was crown land, not subject to the rights of private property'.⁶⁵ Their stratagems succeeded very well since the Africans lacked access to effective channels of redress.⁶⁶

7. Conclusion

The regulation of livestock trespass may strike one as a rural issue having little relevance for urban dwellers. Not so long ago, in fact, preventing nuisances committed by livestock in built areas was the more urgent task. Thus the 1825 Government Minute proclaimed that pound regulations were 'intended principally to apply to the Towns'. These regulations were not mere aspects of policing, as the Commissioners of Inquiry pointed out. In tandem with rulings concerning plot size, fencing, and so forth, they aimed at constituting human aggregations on well-ordered and progressive lines: "tradesmen and mechanics instead of farmers and graziers" were the proper denizens of towns.

Of course trespass occurred every place where graziers settled or roamed with their herds and flocks. On the peripheries of towns, two friendly parties might sort the matter out between themselves while bad neighbours had the option of a not-too-distant pound. In more distant wards, the field cornets were called on to resolve disputes. As rural settlement became more dense, the need to control trespass and provide for impoundment increased and the field cornets appealed for extensions to their powers. The step-by-step responses to this need have here been traced. The tightly worded 1847 ordinance represents official recognition of the fact that trespass in country areas required regulation in its own right. Without satisfactory resolution was the fact that mission institutions were home to concentrations of pastoralists, where the provision for grazing was chronically inadequate. When residents incurred fines or faced the confiscation of their stock, the missionaries might appeal on their behalf to the magistrates, who

63. Philip to Tidman, 11-3-1845, quoted in Ross, *John Philip*, p. 185.

64. A recent example at Weenen, Natal, has been the subject of investigation by the Association for Rural Advancement in Pietermaritzburg, see the *AFRA Newsletter*, May, 1992.

65. Kevin Shillington, *The colonisation of the Southern Tswana 1870-1900* (Braamfontein, 1985), p. 100.

66. W. Beinart, 'Settler accumulation in East Griqualand from the demise of the Griqua to the Natives Land Act', pp. 290-91 & K. Shillington, 'Irrigation, agriculture and the state: the Harts Valley in historical perspective', pp. 318-19, in William Beinart, Peter Delius and Stanley Trapido (eds.) *Putting a plough to the ground, accumulation and dispossession in rural South Africa, 1850-1930* (Johannesburg, 1986).

sometimes were sympathetic to their plight. Some officials, at least, were more sensitive than other colonists to matters of simple justice, or to factors which might endanger the peace. Applications for additional land, though frequently pressed, met with very limited success.

My interest in the pound regulations had its start in an assumption that Khoikhoi pastoralists, a subordinate group (in law before Ordinance 50 of 1828 and *de facto*, by and large, after that) would have felt these measures in ways distinct from the experience of colonists, the dominant group. Regarding the breakdown by Khoikhoi polities, beginning in the Western Cape, it has been said: 'Two facets of the Khoikhoi economy - land and cattle - must be considered here: for pastoralists one without the other was useless'. Though the Khoikhoi (according to this analysis) are said to have suffered more from the loss of livestock than of land at first,⁶⁷ their economy was gravely threatened where access was reduced to unclaimed land between the farms belonging to the colonists. Clearly, a consequence of dispossession was that, where the laws respecting trespass were enforced, those Khoikhoi who retained some livestock faced the greater difficulty in avoiding offence.

Before 1828, it appears that the protection from private use of the vast tracts of Crown Land in the frontier districts was fairly lax. As a result of Ordinance 50, Khoikhoi were encouraged to look about for vacant lands to which they might gain title. Alert to this, some burghers sought to pre-empt by applying on their own account or asking that adjacent Crown Land be attached to farms they already possessed.⁶⁸ This contest was prevented from becoming a crisis by the creation of the Kat River Settlement in 1829. The project aimed to draw off 'the better and more efficient part' of the Khoikhoi - that is to say, those whose success in accumulating wealth (which, at that time and place, was chiefly stock) had made their need for land acute.⁶⁹ Apart from landlessness, the problems which the Khoikhoi faced due to race prejudice (subtle and overt) can be both 'obvious' and unsusceptible to proof. However, in one case of trespass and impoundment which has come to light, alleged partiality in the justice system was acknowledged and addressed. After intervention in the Jacob Jacobs case caused the farmer who mistreated him to be charged and convicted of assault, the question was asked whether, had the victim and perpetrator been reversed, the magistrate's sentence would have been as light. With respect to this official and the clerk of the peace, the Attorney-General pronounced that 'Justice is ill-administered to the Hottentots at Uitenhage'. The clerk, he found, had been 'actuated by a spirit of partiality towards the Boors or against the Hottentots ... not in respect of the individuals, but of the class of subject to which they belong'.⁷⁰ As we have seen, both officials were removed from their posts.

It is hoped that the issue of impoundment will be taken up by researchers with a different focus from my own - the Khoisan of the eastern Cape. For the present it is fair to say that the history of trespass and pounds provides many instances of evasion and greed - among the rival claimants to resources and against the edicts of the law. In this it resonates with that already familiar account where land and livestock are at the centre of events.

67. Richard Elphick and V.C. Malherbe, 'The Khoisan to 1828', in *Shaping*, p. 18.

68. CA, CO 3941, Memorial for land by Khoikhoi of Bethelsdorp, 2-1-1829, p. 352 & 23-1-1829, p. 367.

69. C.W. Hutton, *The autobiography of the late Sir Andries Stockenstrom, Bart.* (Cape Town, 1964), II, p. 358; *Shaping*, pp. 46-48; CA, CO 367, Letters Received from the Civil Commissioner [A. Stockenstrom], *passim* May-July 1829. Stockenstrom did not, in fact, represent the Settlement as mainly for the Khoikhoi's benefit but more as a measure for frontier defence.

70. CA, CO 372, Attorney-General A. Oliphant - Secretary to Government, 17-6-1829, pp. 552-53; 1/UIT 15/6, Resident Magistrate Aspeling - D. Moodie, 4-4-1829.