



WESTERN AUSTRALIA.

ANNO DECIMO

VICTORIÆ REGINÆ.

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No. XIII.

**An Ordinance to provide further remedies  
against Trespasses by Live Stock, and  
to promote the construction of Fences.**

**W**HEREAS it is expedient to provide further and more effec-<sup>Preamble.</sup>  
tual remedies against trespasses by live stock, and to pro-  
mote the construction and preservation of fences, and for these  
purposes to amend in certain respects the existing laws upon these  
subjects;—Be it therefore enacted, by His Excellency the Governor  
of Western Australia and its Dependencies, by and with the advice

Penalty for trespass;—  
Great stock, 3d.  
Small stock, 1d.  
Maximum, £2.

and consent of the Legislative Council thereof, that if any cattle or other live stock shall be found trespassing upon any lands, whether any damage shall be proved to have been committed by them or not, the owner thereof shall forfeit and pay the sum of threepence for each head of horses or other great stock, and one penny for each head of sheep or other small stock, so found trespassing as aforesaid, upon the information or complaint of the owner or lawful occupier of the land upon which such stock shall have so trespassed, and that such sum or sums of money so imposed as a penalty, shall be paid to such owner or occupier, and shall be over and above, and shall in no wise affect, any claim which may be made by such owner or occupier for damages done by such stock in such trespass;—Provided always that the total amount of such penalty to be imposed for any one case of trespass shall not exceed the amount of two pounds.

Entire horse, bull, &c,  
may be castrated.

II. AND be it enacted, that if any entire horse, bull or ram above the age of one year, shall be found trespassing on any land without a keeper, it shall be lawful for the lawful occupier of such land to impound the same, and to advertise the same in each newspaper published in the colony, for three successive weeks, with a description of such stock, including marks, if any, and if no person shall appear at the end of one week after the last of such advertisements as aforesaid, to establish his claim to such stock, then it shall be lawful for such occupier as aforesaid to castrate such horse, bull, or ram, and no compensation shall be given to the owner thereof for any loss which he may sustain thereby;—Provided always that nothing herein contained shall be taken to interfere with any claim for damages or with any penalty which may have accrued from such stock being so found trespassing or at large as aforesaid.

No expenses for keep beyond one week, unless advertised.

III. AND be it enacted, that no expenses for keep of any stock impounded for trespass shall be recovered for more than the period of one week, unless the said stock shall have been advertised with a full description thereof in each newspaper published within the colony as soon as possible after the same shall have been found so trespassing as aforesaid.

No stock to be sold by Justice till advertised.

IV. AND be it enacted, that no stock shall be sold by any order of any Justice for default of discovery of the owner thereof, unless the same shall have been advertised as aforesaid for three successive weeks, nor until fourteen days after the last of such advertisements as aforesaid.

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V. AND be it enacted, that every owner of horses or other great cattle shall have a separate and distinct brand for such horses and cattle, and shall register the same with the Resident Magistrate of the district, and such Resident shall refuse to register any brand which is identical with any other brand already registered by any other party in the said district. Stock to be branded.

VI. AND be it enacted, that wheresoever any penalties shall be sued for on account of any stock trespassing on any lands, the sum awarded by way of penalty shall be doubled in every case where the animal trespassing shall not be branded with a registered brand as aforesaid. Penalties double where stock not branded.

VII. PROVIDED always and be it enacted, that from and after six months from the passing of this Ordinance no more damages or penalties shall be awarded in respect of trespasses committed upon any grain or other crops unless the same shall have been at the time of such trespass enclosed by a sufficient fence, than if such trespass had been on uncultivated land. After 6 months no special damage for crops not fenced.

VIII. AND be it enacted, that it shall be lawful for any lawful occupier of private land, whether within the limits of a townsite or not, having cleared and kept clear his own side of any boundary fence, to call upon by notice in writing the occupier of the adjacent private land, or if unoccupied, then upon the owner of such land, to clear of brushwood and other rubbish such boundary fence between the said lands to the distance of six feet from the said fence, and if the person so called upon shall neglect to keep the said boundary fence so clear as aforesaid, then it shall be lawful for the said first mentioned owner or occupier at any time, and from time to time, after the expiration of one month from the date of the service of such notice, to enter on the said lands and to clear away all such brushwood and other rubbish, and to recover all the costs of so doing from the party so neglecting as aforesaid, as money paid to his use. Boundary fence to be kept clear by each party from brushwood, &c.

IX. AND be it enacted, that if any person shall heretofore have erected, or shall hereafter erect, a sufficient fence dividing his land from the land adjoining thereto, and the occupier of the adjoining land shall, after the passing of this Ordinance, in enclosing the same, avail himself of the dividing fence so erected, or any part thereof, he shall be liable to pay to the person or persons having for the time being an estate for life or other greater estate in the land by the owner Party using boundary fence to pay half value.

or tenant whereof the said fence was erected, the half of the then value of so much of the dividing fence as shall be made available as a fence to such adjoining land; and if the person so liable to pay such half value shall not, on demand thereof by the person to whom it shall be payable, forthwith pay the same, the same shall be recoverable in due course of law, as for so much money laid out and expended by the plaintiff for the use of the defendant, or otherwise, as the case may be.

Repairs of mutual fence chargeable on occupiers.

X. AND be it enacted, that whensoever any mutual fence shall fall into disrepair, and become insufficient, any occupier of adjoining land, having given notice to the other occupiers of the land divided by such fence, may, on their refusal or neglect for a week to contribute to the maintenance thereof, cause the same to be repaired and made a sufficient fence, and shall thereupon be entitled to recover from such adjoining occupiers rateably their proportions of the expence of such repairs, in like manner, in due course of law.

Cost of fence not to exceed that of a 3-rail fence of split timber.

XI. PROVIDED always and be it enacted, that no greater sum shall be recovered from any person under this Ordinance, in respect of the making or repairing of any fence, than the proportionate share of such portion of the actual cost that would be incurred according to the price in the district at the time for erecting or repairing an ordinary three-railed fence of split posts and rails.

Meaning of "sufficient fence."

XII. AND be it enacted, that the term "sufficient fence," as used in this Ordinance, shall be construed to mean any fence capable of resisting the trespass of great cattle.

Occupier of land in charge of stock to be treated as owner.

XIII. AND be it enacted, that in all cases of trespass committed by cattle, horses, or other live stock, the occupier of land in whose charge the said stock shall be at the time of such trespass shall be deemed to be sufficiently the owner of such stock to render him liable for all damages and penalties arising from the said trespass.

All trespasses before information but one of fence.

XIV. PROVIDED always and be it enacted, that all trespasses committed by the same stock upon the same land, and against the same individual, prior to the date of any complaint or information under this Ordinance, shall be deemed and taken to constitute only one offence, and to render the party liable only to one penalty, and shall not be made the subject of several complaints.

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XV. AND be it enacted, that all informations and proceedings Limitation 3 months for the recovery of damages or penalties under this Ordinance, or any other law relating to trespasses by live stock, shall be commenced within three calendar months after the trespasses thereby respectively complained of shall have been committed

XVI. AND be it enacted, that all informations and proceedings Jurisdiction 7 V. 12. for recovery of damages or penalties under this Ordinance shall be heard and determined, and such damages and penalties awarded and imposed, in a summary way before any two Justices of the Peace according to the provisions of an Act passed in the seventh year of the reign of Her present Majesty, entitled "an Act to regulate summary proceedings before Justices of the Peace."

XVII. AND be it enacted, that if any person shall think himself Appeal to Quarter Sessions. aggrieved by any summary decision under this Ordinance, he may appeal therefrom to the next Court of Quarter Sessions.

XVIII. AND be it enacted, that this Ordinance shall continue Duration of Ordinance and be in force for a period of two years from the date of the passing two years thereof.

FREDERICK CHIDLEY IRWIN,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council }  
2nd Sept., 1847. }*

WALKINSHAW COWAN,  
Clerk of the Councils.