



WESTERN AUSTRALIA.

ANNO DECIMO QUARTO

VICTORIÆ REGINÆ.

No. XXIV.

An Ordinance to prevent vexatious Proceedings in certain Cases of unavoidable Trespass.

WHEREAS the measure recently adopted in this Colony of Preamble. disposing of the lands of the Crown, under grazing and tillage leases, renders unavoidable the passing over tracts of ground either previously granted in fee or otherwise assigned under such

leases as aforesaid for the purpose of reaching other lands lying beyond the same: and whereas, with the force at present at the disposal of the Survey Department of this Colony, much time will be required to lay out and open such a system of main and branch lines of road as may be required for the purpose of the necessary internal communication consequent upon such a measure as aforesaid; and whereas

Where trespass unavoidable, justice may refrain from awarding damage;

it is expedient, in the meantime to prevent numerous vexatious complaints on account of such unavoidable trespass as above mentioned; Be it therefore enacted, by his Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that in any case of a complaint for trespass committed upon the land of another, either by driving flocks and herds or by riding, driving, or conducting any horse or vehicle across the same if it shall be made to appear to the satisfaction of the Justice or Justices hearing the said complaint that the party complained of was at the time of such alleged trespass, bona fide engaged in some lawful business or pursuit, which by reason of the non-existence of any neighbouring road or customary thoroughfare, could not have been accomplished without such trespass, save by a wide circuit and a considerable loss of time and labour, and that such party had traversed the ground and effected the passage in such a manner as to commit as little injury as practically possible to the said land or to the natural pasture growing thereon, and without wilfully making any unnecessary deviation from the most direct course across the same, and without loitering or making any wilful delay thereon, then in every such case it shall be in the discretion of the said Justice or Justices to refrain from awarding any sum whatever, either for damages, penalties or costs for such trespass. Provided always, nevertheless, that no fences were broken down, opened, or removed, no cultivated grounds passed over, and no actual damage done thereby, other than to the natural pasture growing on the soil, and that to such an extent only in each case as was practically unavoidable.

Provided no damage has been done other than to natural pasture.

Fords lying between private property may be constituted temporary public thoroughfares;

II. AND be it enacted, that if any river, creek, lagoon or estuary shall be fordable at a place where either of the banks thereof is private property, and it shall be made to appear to the satisfaction of the Governor that a thoroughfare across such ford would by reason of the want of any neighbouring ford or bridge, be a necessary or considerable public convenience to residents in, and travellers through the circumjacent district, it shall be lawful and competent to the Governor by notice to that effect in the Government Gazette, to constitute such ford, together with convenient access and egress, a temporary

1851.

16th Vict. No. 24.

public thoroughfare and, at the public expense, to cause to be laid out, and and fenced in on either side with post-and-two-rail fence, such access and egress (as far as the same shall run through land already enclosed) by means of a road-way not exceeding thirty-three feet in breadth over the lands adjacent to either extremity of such ford: Provided always that the right of property in the soil of any such road-way and in the fences thereof, laid out and erected under this Ordinance, shall, subject to the public right of passage erected by such notice, be in the person or persons who are or were proprietors of such soil at the time of making such road-way, his, her, or their heirs or assigns, but without prejudice to the powers of the Governor or of any other person or persons under any other Ordinance provided for the construction of public roads;—provided, further, that it shall be lawful for the Governor, by any notice to be published in the Government Gazette, to rescind and revoke any previous notice constituting any such public thoroughfare as aforesaid; and thereupon the ford, referred to by such rescinding notice, and any road leading thereto or therefrom over private property, laid out under the provisions of this Ordinance, shall cease to be a lawful public thoroughfare.

such roads through enclosed grounds are to be fenced at public expense ;

property in soil and fence to remain in owner of the ground, subject to right of passage.

Notice constituting thoroughfare may be rescinded.

III. AND be it enacted, that nothing herein contained shall be deemed or taken to interfere with any of the provisions of an Ordinance passed in the 7th year of the reign of Her present Majesty, intituled “ An Act to prevent the spreading of the infectious disease called the Scab in Sheep in the Colony of Western Australia.”

Not to interfere with 7 Vict. No. 15.

IV. AND be it enacted, that whenever and so often as any public line or lines of communication shall be opened and completed in any particular district, it shall be lawful for the Governor, by proclamation in the Government Gazette, to declare that the provisions of this Ordinance shall no longer apply in such district, and thereupon such provisions shall immediately cease to be applicable thereto, save and except as to any trespass or alledged trespass which shall have occurred before the time of publication of such proclamation.

Duration of this Ordinance.

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council, }
the 21st day of May, 1851. }*

A. O'GRADY LEFROY,
Clerk of the Council.