



WESTERN AUSTRALIA,

ANNO QUARTO

GULIELMI IV, REGIS,

NO. 5.

An Act to amend an Act intituled " An act to provide a summary remedy for Trespasses committed by Cattle and other Live Stock." [April 11th, 1834.]

WHEREAS, the Proprietors of Town Allotments of Land, have in many instances neglected to enclose the same, whereby the neighbouring Proprietors of Live Stock are subjected to frequent exactions of damages, poundage fees, and other expenses, under the provisions of an Act of Council, passed in the second year of His present Majesty, intituled " An Act to provide a summary remedy for Trespasses committed by Cattle and other Live Stock ;" by virtue whereof the Owners of such Allotments, when unfenced, are entitled to compensation for half the amount of damage committed thereon: And whereas it is expedient to alter the said recited Act, and to make the right to any compensation for damage committed by Live Stock upon Town Allotments, to depend altogether on a previous compliance with the conditions imposed from time to time, by Government for the enclosure of such Allotments: Be it therefore enacted by His Honor the Lieutenant Governor of Western Australia and its Dependencies, with the advice of the Legislative Council, that from and after the passing of this Act, the Proprietor or Tenant of any Town Allotment in any part of the Colony of Western Australia, or its Dependencies, shall not be entitled, either under the provisions of the said recited Act, or by virtue of any other Law in force in the said Colony, relative to Trespasses

Preamble.

From the passing of this Act, no compensation for damages committed by Live Stock on Town Allotments unless fenced.

by Cattle, damage feasant, to recover any compensation whatever, for any damage committed by any Live Stock whatsoever, trespassing on such Allotment,—or to recover any poundage fees, or other expenses incurred by reason of impounding such Live Stock, unless such Allotment shall, at the time of trespass, be enclosed by an external fence, of the particular description prescribed by the Government Regulations, which shall be in force, at the time of erecting the same relative to the Town-site in which such Allotment is situated.

Proprietors failing to join in erecting Party Fence not entitled to damages.

II. AND be it further enacted, that in every case in which the Proprietor, or Tenant of any Town Allotment shall, under the provisions of an Act of the Governor, with advice of the Legislative Council, passed in the current year of His present Majesty, intituled “ An Act to regulate the fencing of Town and Suburban Allotments,” have required the Proprietor of any adjoining land, or his or her Agent, to erect the Party or Common Boundary Fences between such their respective adjoining lands, and the Proprietor, or Agent to whom such requisition shall be addressed, shall refuse or neglect to comply with the same, in every such case no compensation whatever shall be recoverable for any damage committed, on the said adjoining land of the Proprietor, who, or whose Agent, shall be guilty of such refusal or neglect, by any Live Stock straying from, over or through the said Allotment belonging to the Proprietor, or occupied by the Tenant, making such requisition as aforesaid.

Release of Stock illegally pounded and damages.

III. AND be it further enacted, that, on complaint made to any Justice of the Peace, that any Live Stock have been impounded for a Trespass for which no compensation is recoverable under the provisions of this Act, it shall be lawful for such Justice to summon before him the person so impounding the same, and to summon and examine upon oath all necessary witnesses; and in case it shall appear to such Justice, that such Stock have been in fact impounded for any such Trespass as last aforesaid, it shall be lawful for such Justice to order the person so impounding such Stock to deliver the same to the Owner thereof; and to pay to such Owner such damages (not exceeding five pounds) and costs, as to such Justice shall seem proper and reasonable, And in case such order shall not be complied with, within twenty-four hours after the same shall have been served, either personally on such Proprietor or Tenant, or by leaving the same at his or her usual place of residence, it shall be lawful for such Justice, to levy and raise the damage and costs awarded by him, by distress and sale of the goods and chattels of the Offender, and to direct and authorize any Constable, or Peace Officer, to enforce the release and delivery of the stock impounded, and for that purpose to break open any doors or gates if necessary.

And enforce such order by distress and sale.

If Impounder fail to apply to a Magistrate within 24 hours. Owners of Stock impounded, may proceed by summons.

IV. AND be it further enacted, that if any person who shall impound any Cattle or other Live Stock, under the provisions of the said recited Act, shall not, within twenty-four hours thereafter make complaint to some Justice of the Peace, of the damage committed by such Cattle, or other Live Stock, it shall be lawful for any Justice of

the Peace residing nearest to the place of impounding, on complaint of the Owner of such Cattle or other Live Stock, to summon before him the person impounding the same as last aforesaid; and upon appearance of such last-mentioned person, (or in his or her absence upon proof of the service of such summons, either on his or her person, or at his or her last or usual residence,) to proceed in such and the like manner to all intents and purposes, as any Justice of the Peace is by the said recited Act authorised to proceed and act, on the return of any summons issued on the complaint of the person sustaining damage, by the trespass of Cattle or Live Stock.

V. PROVIDED always, and be it further enacted, that nothing in this Act contained shall extend to Trespass committed by Goats, Pigs, or Poultry, or to Trespasses committed by any kind of Live Stock which shall not at the time of trespass, be properly tended by a Herdsman or Keeper.

Act not to extend to Trespasses by certain kinds of Live Stock, or by Stock unherded.

VI. AND be it further enacted, that if it shall appear to any Justice of the Peace, on the hearing of any complaint for any Trespass committed by Cattle or other Live Stock, that such trespass was committed by the neglect, or other culpable conduct of the person, under whose care such Cattle or other Live Stock were, at the time of trespass, it shall be lawful for the said Justice to mulct the person guilty of such neglect, or other culpable conduct, of any portion of his or her wages, not exceeding Five Pounds, or to commit such last-mentioned person to any Public Gaol, or House of Correction, there to be kept to Hard Labour, for any Term not exceeding Two Calendar Months.

Summary punishment of Herdsman, &c., guilty of negligence or other misconduct.

RICHARD DANIELL,

LIEUTENANT GOVERNOR AND COMMANDER-IN-CHIEF.

Passed the Legislative Council, }
this 11th day of April, 1834. }

H. C. SUTHERLAND,
Clerk of the Council.