

# WESTERN AUSTRALIAN GOVERNMENT GAZETTE.

(PUBLISHED BY AUTHORITY.)

FRIDAY, SEPTEMBER 24, 1847.

[NUMBER 103

WESTERN AUSTRALIA.

ANNO DECIMO,

VICTORIÆ REGINÆ.

*By His Excellency Lieutenant Colonel  
FREDERICK CHIDLEY IRWIN, Knight  
Companion of the Royal Hanoverian  
Guelphic Order, Governor and Com-  
mander-in-Chief of the Territory of  
Western Australia, and Vice-Admiral  
of the same; with the advice and con-  
sent of the Legislative Council thereof.*

NO. XIII.

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

Whereas it is expedient to provide further and more effectual remedies against Trespasses by Live Stock, and to promote the construction and preservation of Fences, and for these purposes to amend 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 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 three pence 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.

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 in 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.

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.

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.

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.

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.

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.

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.

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 or tenants 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.

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 expense of such repairs in like manner in due course of law.

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.

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.

XIII. And be it enacted, that in all cases of trespasses 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 trespasses.

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 penny, and shall not be made the subject of several complaints.

XV. And be it enacted, that all information and proceedings for the recovery of damages or penalties under this ordinance or any other law relative 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 information and proceedings 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 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 and be in force for a period of two years from the date of the passing thereof.

FREDERICK CHIDLEY IRWIN,  
Governor and Commander-in-Chief.

Passed the Council,  
2nd Sept, 1847.

WALKINSHAW COWAN,  
Clerk of the Councils.

Colonial Secretary's Office, Perth,  
September 13, 1847.

His Excellency the Governor directs it to be notified for general information, that the following applications for Depasturing Licenses have been received:—

4,000 acres, W. Padbury, Swan River district, adjoining Locations 108 and 109, granted in fee to G. F. Moore, Esq.

12,000 acres, J. Yorke, Swan River district, adjoining Location 96, granted in fee to W. L. Brockman, Esq., and Nos. 108 and 109 granted in fee to G. F. Moore Esq.

By His Excellency's command,  
G. F. MOORE.

Colonial Secretary,

Colonial Secretary's Office, Perth,  
September 3, 1847.

His Excellency the Governor directs it to be notified for the information of all whom it may concern that J. H. Monger has applied for a Depasturing License for 6,000 acres adjoining the Land held in Fee simple by W. Knight, and known as Avon Location Y No. 16.

By His Excellency's command,  
G. F. MOORE.

Colonial Secretary.

NOTICE is hereby given that the next General Quarter Sessions of the Peace of our Sovereign Lady the Queen in and for the Colony of Western Australia, will be holden at the Court House at Perth, on Wednesday, the Sixth day of October next at the hour of nine in the forenoon of the same day. Dated the 13th day of Sept., in the year of our Lord 1847.

A. H. STONE,  
Clerk of the Peace.