



WESTERN AUSTRALIA.

ANNO TRICESIMO SEXTO

VICTORIÆ REGINÆ.

No. IX.

AN ACT to consolidate and amend the Laws relating to Trespasses by Live Stock and to promote the construction of Fences.

[Assented to, 30th August, 1872.]

WHEREAS it is expedient to consolidate into one Act and amend all the enactments and provisions respecting the law of Trespass by Live Stock and to encourage the construction of Boundary Fences: 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:—

Preamble.

1 ON proof before any Justice of the Peace that any entire horse or bull has been wilfully or negligently suffered to stray and be at large on lands in the occupation of any person other than the owner of such horse or bull such horse or bull being above the age of one year the owner thereof shall forfeit and pay any sum not less than Two pounds nor more than Four pounds if the offence be com-

Any person suffering any entire horse or bull to stray to forfeit any sum not less than Two pounds nor more than Four pounds if in the day time, and not less than Three pounds nor more than Five pounds if committed in the night time.

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mitted in the day time and any sum not less than Three pounds nor more than Five pounds if the offence be committed in the night time.

LAND OWNER'S POWERS AND DUTIES.

What he may do.

He may pound any animal
&c.
Private place of security if
no pound.

2 ANY person may seize any live stock of whatever description found trespassing in his house or land and secure the same in any public pound or if there be no public pound within three miles of the scene of trespass then in any private pound or place of security until satisfaction be made for such trespass in manner hereinafter provided: Provided that it shall be incumbent on the party so seizing and impounding in any private pound to make within a reasonable time a complaint of such trespass to some Justice of the Peace and until order made by such Justice to treat the animal so impounded with reasonable care to supply it with food proper for its sustenance and to protect it from ill-usage.

What he may not do.

But not kill or maim.

If he do either then com-
pensation and fine.
Value of animal.

Costs &c.

Fine Ten pounds maximum.

In default, gaol three
months.

3 IF any person shall after the passing of this Act unlawfully and wilfully kill wound or maim any animal whatever trespassing in his house or lands every such person being convicted thereof before any Justice of the Peace shall forfeit and pay to the party injured (over and above the value of the animal if killed and all the costs and expenses of the whole proceeding including necessary witnesses fees of Court and incidental expenses) any such sum of money not exceeding Ten pounds as to such Justice shall seem meet and in default of payment of the entire sum so adjudicated either forthwith or within such time as such Justice may allow the person so convicted shall be committed to the common gaol or house of correction for a period not exceeding three months with or without hard labor as to the convicting Justice may seem meet: Provided that nothing herein contained shall apply to any person killing any dog pig goat poultry or pigeon found trespassing in his house or land. Provided also that any person who shall kill any dog pig goat poultry or pigeon found trespassing as aforesaid shall leave the body of such animal or bird exposed to view on the premises where killed for the space of six hours and upon the expiration of that time if the owner of such animal or bird shall not have claimed and removed the body of such animal or bird the person so killing such animal or bird as aforesaid may dispose of the body of such animal or bird in any manner he may think fit. And provided also that any person who shall kill any dog pig goat poultry or pigeon and dispose of the body of any such animal or bird as aforesaid shall be entitled to compensation for any damage in his house or lands caused by such dog pig goat poultry or pigeon.

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4 IF any entire horse bull or ram above the age of one year shall be found trespassing on any land and without a keeper it shall be lawful for the lawful occupier of such land to castrate such animal forthwith if the owner thereof be unknown and three days after notice of such trespass to such owner if known such notice being personal or left at the usual place of residence of such owner and no compensation shall be given to such owner for any loss which he may sustain thereby: Provided always that nothing herein contained shall be deemed or taken to interfere with or in anywise affect any claim for compensation or any penalty (as hereinafter provided) which may have accrued by reason of the trespass.

May geld bulls stallions
rams and liable to no charge.

And notice must be given.

But the claims of either
party to compensation not
affected thereby.
Nor penalty.

5 IF any live stock shall be found trespassing upon any lands whether any damage shall be proved to have been committed by such live stock or not the owner of such live stock 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 and other small stock so found trespassing as last aforesaid upon the information and complaint of the owner or lawful occupier or the agent of such 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 or to the agent of such owner or occupier and shall be over and above and shall in no wise affect any claim that may be made by such owner or occupier or the agent of such owner or occupier for damage done by such stock in such trespass. Provided always that in every case where great cattle are found trespassing and not branded with a registered brand such penalties as aforesaid shall be doubled: Provided also that the total amount of penalties so imposed shall in no single case of trespass exceed the amount of Five pounds: Provided also 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 made under this Act before a Justice of the Peace shall be deemed and taken to constitute only one offence and to render the owner of such stock liable for only one such trespass.

He can claim penalties
which are distinct from
compensation for damages.

Three pence per head large
and One penny per head
small stock.

Double penalties on un-
branded stock.

But in any case Five pounds
maximum.

One adjudication of penal-
ties clears all of prior dates.

6 NO expense for keep of any live 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 as hereinafter provided as soon as possible after the same shall have been found so trespassing as aforesaid.

No expense for keep beyond
one week unless advertised.

7 NO live stock shall be sold by any order of any Justice of the Peace for the default of discovery of the owner thereof unless the same

No stock to be sold by
Justice of the Peace unless
advertised.

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same shall have been advertised with full description thereof including marks brands color and height in two newspapers published in the Colony for three successive weeks nor until seven days after the last of such advertisements.

CATTLE OWNER.

His liabilities, &c.

If impounder complain to a Justice of the Peace he may issue summons to answer alleged trespass.

Justice of the Peace has jurisdiction to enter into plaint.

Distress.

The impounder's ill-treatment or neglect of animal to be considered and allowed.

Seven days after third advertisement.

May proceed in absence.

Remedies.

Cattle owner may complain to Justice of the Peace after undue delay of impounder.

8 IT shall be lawful for any Justice of the Peace in this Colony on complaint upon oath made to him by any person sustaining damage from live stock as aforesaid to issue his summons for the appearance of the owner of the animal so trespassing (when known or his agent) and on the appearance of the owner or agent or in his absence on proof of the service of the summons either personally or by leaving the same at the usual place of residence of such owner or agent to examine into the nature and amount of the damage so alleged to have been committed and to make such order for the payment of the value thereof by the said owner or agent to the party injured (whether the last-mentioned party shall have been examined or not) together with all reasonable costs of pounding feeding constable's fees witnesses and other incidental charges as to such Justice shall seem meet and for that purpose to compel the attendance of all necessary witnesses and to administer oaths to all parties examined and in case such order shall not be complied with it shall be lawful for the Justice making the same by warrant under his hand to direct any constable of the said Colony by public sale of the animal so trespassing when impounded and if needful by distress and sale of other the goods and chattels of the owner of such animal to levy and raise the sum awarded by such order together with all the expenses of sale. And further that it shall be lawful for such Justice making such order as aforesaid to make at his discretion reasonable deduction from the amount of damages so ascertained on account of any negligence or other misconduct on the part of the person complaining either by undue delay in making his complaint or by ill-treatment of the animal impounded.

9 IN all cases in which the animal so trespassing as aforesaid shall be impounded and the owner thereof shall not be discovered within seven days after the last of the advertisements hereinbefore required by section seven it shall be lawful for any Justice of the Peace on application and complaint on oath of the party injured or his agent to make such examination order and sale as are hereinbefore directed to be made in case such owner shall be known.

10 IF any person who shall impound any live stock under this Act as hereinbefore provided shall not within reasonable time after make complaint to some Justice of the Peace of the damage com-

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mitted by such live stock it shall be lawful for any Justice of the Peace residing near the place of impounding on complaint of the owner of such live stock to summon before him the person impounding the same and upon appearance of such last-mentioned person (or in his absence upon proof of the service of such summons either personally or at his last place of residence) to proceed in such and the like manner to all intents and purposes as any Justice of the Peace is by this Act authorised to proceed and act on the return of any summons issued on the complaint of the person sustaining damages by the trespass of live stock.

Who can be summoned by Justice of the Peace.

Who can forthwith examine into the case as *ante*, when impounder complains.

11 ON complaint being made to any Justice of the Peace that any live stock has been impounded for a trespass for which no compensation or penalty 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 has been in fact impounded for any such trespass as last aforesaid it shall be lawful for the said Justice to order the person so impounding such stock to deliver the same to the owner or agent thereof and to pay to the said owner or agent such damages (not exceeding Five pounds) and costs as to such Justice shall seem meet proper and just. And in case such order shall not be complied with within such time as such Justice shall thereby limit and express for that purpose it shall be lawful for such Justice to levy and raise the damages and costs awarded by him by distress and sale of the goods and chattels of the offender and to direct and authorise any constable or police officer to enforce the release and delivery of the stock impounded and for that purpose if necessary to break open any doors or gates.

His means of releasing stock when illegally pounded.

If impounded when no compensation due. (see *ante*.)

Justice of the Peace to enquire whether such be the nature of case.

If so, Justice of the Peace can order release of such stock and damages Five pounds the maximum.

J. P.'s order enforced by distress and sale &c.

Constable may break open doors &c.

12 IN all cases of trespass committed by any 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 such trespass.

The occupier of land deemed owner of the cattle.

13 FROM and after the passing of this Act the proprietor or tenant of any town or suburban allotment in any part of the Colony of Western Australia or its Dependencies shall not be entitled under this Act to recover any compensation whatever for any damage committed by any live stock trespassing on such allotment or to recover any poundage fees or other expenses incurred by reason of impounding such live stock unless the portion of such allotment

FENCING.

No compensation allowed for trespass on town or suburban allotments unless fenced.

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trespassed on shall at the time of trespass be enclosed by a sufficient external fence as hereinafter defined.

Proprietor failing to join in erection of fence not entitled to damages.

14 IN every case in which the proprietor or tenant of any town or suburban allotment shall under the provisions of an Ordinance No. 4 of 4th William IV. 1834 have required the proprietor of any adjoining land or his agent to erect the party or common boundary fences between such their respective adjoining lands and the proprietor occupier 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 lands 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.

If no fence no extra damages for trespass on cultivated land.

15 NO more damages or penalties shall be awarded in respect of trespasses committed upon any grain or other crops in any land not being a townsite unless the same shall have been at the time of such trespass inclosed by a sufficient fence as hereinafter defined than if such trespass had been upon uncultivated land.

Boundary fence to be kept clear by both parties mutually.

16 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 from rubbish brushwood fallen trees blackboys and other dangerous fuel to call upon by notice in writing the occupier of the adjacent private land to clear as aforesaid such boundary fence between the said lands to the distance of ten feet from the said fence, and if the person so called upon shall neglect to keep his side of the boundary fence so cleared as aforesaid then it shall be lawful for the said first-mentioned occupier at any time and from time to time after the expiration of three days from the date of the service of such notice to enter on the said lands and to clear such fence as aforesaid and (in case the expense of such fence shall have been mutually borne by the adjoining proprietors or occupiers) to recover all the costs and reasonable expenses or compensation for so doing from the party so neglecting as aforesaid as money paid to his use. Provided always that if such adjacent land be unoccupied then it shall be lawful for the occupier so having cleared his own side as aforesaid to make such entry and clearing as aforesaid without notice.

Ten feet.

Party using boundary fence to pay half.

17 IF any person shall heretofore have erected or shall erect a sufficient fence dividing his land from the land adjoining thereto

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and the occupier of the adjoining land shall after the passing of this Act 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 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.

18 WHENSOEVER any mutual fence erected as aforesaid shall fall into disrepair and become insufficient any occupier of adjoining lands 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. Provided always and be it enacted that no greater sum shall be recovered from any person under this Act 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 and repairing a fence of the same description as that which has fallen into disrepair and become insufficient.

Mutual fences to be mutually kept in repair.

Regulations of proportionate shares thereof.

19 ALL informations and proceedings for the recovery of damages or penalties under this Act shall be commenced within one month after the trespasses thereby respectively complained of shall have been committed and shall be heard and determined and such damages and penalties shall be awarded and imposed in a summary way before any one or more Justice or Justices of the Peace according to the provisions of an Ordinance 14th Victoria No. 5 1850.

Information within one month.

20 IF it shall appear to any Justice of the Peace on or after the hearing of any complaint for any trespass that such trespass was committed in consequence and by reason of the negligence or other culpable conduct of the shepherd herdsman or other servant of the person under whose immediate care and charge such live stock were at the time of trespass it shall be lawful for the said

Careless herdsman punishable.

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Justice irrespective of any order he may make or have made for damages or penalties to mulct the person or servant so guilty of such neglect or other culpable conduct of any portion not exceeding Five pounds of his wages whether then due or accruing or to commit such last-mentioned person or servant to any public gaol or house of correction in this Colony there to be kept to hard labor for any period not exceeding three months and the amount of any such mulct may be lawfully retained by the master or employer of the person so mulcted in or towards satisfaction of any damages or penalty which such master or employer may have been adjudged to pay by reason of the neglect or other culpable conduct of the person so mulcted.

Appeal against one Justice of the Peace.

21 IF any person shall find himself aggrieved by any order or conviction made under this Act by any single Justice of the Peace he may appeal to the Supreme Court or the next Court of General Quarter Sessions of the Peace nearest to the place where such conviction was made. Provided that notice of appeal be given in the Court at the time of such order or conviction being made and that a deposit of Ten pounds to answer costs be made at the same time; And the Supreme Court or Court of General Quarter Sessions shall hear and determine the matter of such appeal and shall make such order therein with or without costs to either party as to such Court shall seem meet; And in case of the dismissal of the appeal or affirmance of the order or conviction shall order and adjudge the offender to be punished according to the conviction or to perform such order and to pay such costs as may be awarded and shall if necessary issue process for enforcing such judgment.

Scale of Fees &c. to be posted up.

22 THE Justices of the Peace for the said Colony in Special Session assembled shall as soon as conveniently may be after the passing of this Act and annually thereafter draw up and settle a list of fees to be paid and allowed in all proceedings to be had under this Act and shall cause the same to be exposed to public view in some conspicuous part of the Court Houses for their respective districts and that until any such special session be held the list of fees hitherto allowed shall be and continue in force.

Purchaser tillage or mining lessee of lands within lease not entitled to damages &c. unless his land is fenced.

23 NO purchaser tillage or mining lessee from the Crown of land situate within the boundaries of a block or section of leased or licensed Crown land held under a pastoral lease or license his heirs executors administrators or assigns shall be entitled to recover any damages penalty poundage fees and expenses for or on account of

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any trespass on such first-mentioned land by live stock from or against the lessee or other occupier of the surrounding lands held under such pastoral lease or license nor shall he or they impound such live stock so trespassing unless such first-mentioned land or the part thereof trespassed on shall at the time of such trespass be enclosed by a sufficient fence. Provided nevertheless that such trespass shall not be wilful nor malicious.

24 ANY person or persons who shall knowingly or carelessly suffer any horse mare gelding foal bull cow heifer calf or any pony mule or ass swine sheep or goat belonging to him or in his apparent ownership or in his charge to be tethered or to depasture feed or roam about whether attended by a keeper or not in or upon any street or public thoroughfare forming portion of a townsite and being the property of any town trust municipal or city council shall on conviction forfeit and pay for every such offence a sum not exceeding Two pounds. Provided that nothing in this section contained shall be construed to apply to any town herd draught oxen or cattle which shall be *bona fide* driven by a keeper stockman or other person straight into through or out of any city or town.

Horse &c. roaming about in any street &c. Penalty of five pounds.

25 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 neighboring road or customary thoroughfare could not have been accomplished without such trespass save by a wide circuit and a considerable loss of time and labor 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.

Where trespass unavoidable Justice may refrain from awarding damage.

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

Definition of term "sufficient fence."

26 THE term "sufficient fence" used in this Act shall be construed to mean any substantial fence reasonably deemed sufficient to resist the trespass of great and small stock including sheep but not including goats and pigs.

Repeal of certain Ordinances.

27 THE Ordinances and part of an Ordinance mentioned in the Schedule to this Act are hereby repealed except as to any proceeding under the said Ordinances or any of them and all offences committed before the passing of this Act shall be prosecuted as if this Act had not passed. And whenever the words "Cattle Trespass Ordinance, 1857," occur in "The Public Pound Ordinance, 1861," and in the 34th Victoria Number 25 the words "The Trespass Act, 1872," shall be read instead thereof.

Short Title.

28 THIS Act may be cited for all purposes as "The Trespass Act, 1872."

In the name and on behalf of the Queen I hereby assent to this Act.

FRED. A. WELD, Governor.

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SCHEDULE.

Date of Ordinance or Act.	Title of Ordinance or Act.	Extent of Repeal.
3 Vic. No. 2.	<i>"An Act to provide a remedy against Horses "and other Live Stock straying in Towns, "and to prevent Entire Horses and Bulls "straying in any part of the Colony."</i>	The whole.
6 Vic. No. 2.	<i>"An Act to make perpetual an Act entitled "An Act to provide a remedy against "Horses and other Live Stock straying in "Towns, and to prevent Entire Horses and "Bulls straying in any part of the Colony."</i>	The whole.
14 Vic. No. 24.	<i>"An Ordinance to prevent vexatious proceed- "ings in certain cases of unavoidable "Trespass."</i>	The whole.
21 Vic. No. 7.	<i>"An Ordinance to consolidate and amend the "Laws relating to Trespasses by Live Stock, "and to promote the construction of Fences."</i>	The whole.
24 Vic. No. 8.	<i>"An Ordinance to amend an Ordinance to "consolidate and amend the Laws relating "to Trespasses by Live Stock, and to promote "the construction of Fences."</i>	The whole.
25 Vic. No. 15.	<i>"An Ordinance for consolidating and amend- "ing the Laws relating to the Police in "Western Australia, and for removing and "preventing nuisances and obstructions "therein."</i>	Section 22.
28 Vic. No. 14.	<i>"An Ordinance to amend 'The Cattle Trespass "Ordinance, 1857.'"</i>	The whole.
30 Vic. No. 6.	<i>"An Ordinance to amend the Ordinances re- "lating to Trespasses by Live Stock."</i>	The whole.
32 Vic. No. 2.	<i>"An Ordinance to amend the Laws relating to "Trespasses by Live Stock."</i>	The whole.