



## WESTERN AUSTRALIA.

ANNO VICESIMO-PRIMO VICTORIÆ REGINÆ.

No. VII.

### An Ordinance to consolidate and amend the Laws relating to Trespasses by Live Stock, and to promote the construction of Fences.

**W**HEREAS it is expedient to consolidate into one Ordinance 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 enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof:—

I. THAT from and after the passing of this Ordinance, the following Ordinances, 2nd William IV, No. 2, 1832; 4th William IV, No. 5, 1834; 10th Victoria, No. 13, 1847; and 12th Victoria, No. 6, 1849; shall be and the same hereby are repealed, save and

Repeal 2, 1832; 5, 1834; 13, 1847; 6, 1849.

except as to any proceedings pending, and any liabilities incurred, at the time of the passing hereof, under any of the said Ordinances.

LANDOWNER'S POWERS AND DUTIES.

*What he may do.*  
He may pound any animal, dogs, &c.  
Private place of security if no pound.

II. THAT it shall be lawful for any person sustaining damage in his house or land, or in any crop, fixture, or chattel therein respectively growing or being, by trespass of any Live Stock of whatever description, or by dogs or other domesticated animals, to seize and secure the animals so trespassing in any Public Pound, or, if there be none such within three miles of the scene of trespass, then in any private pound or place of security, until satisfaction be made for such damage in manner hereinafter provided: Provided, always, that it shall be incumbent on the party so distraining and impounding in any private pound to make forthwith a complaint of such trespass to some Justice of the Peace, and, until order made by such Justice, to treat the animal so distrained with reasonable care, to supply it with food proper for its sustenance, and to protect it from ill-usage: Provided, also, that the party sustaining any such damage as aforesaid shall be equally entitled to the compensation herein provided, on complaint to a Justice of the Peace, whether the animal committing the damage shall have been impounded or not.

And may claim compensation whether he have pounded or not.

*What he may not do.*  
But not kill or maim.

If he do either, then compensation and fine.

Value of animal.

Costs, &c.

Fine £10 maximum.

In default, gaol 3 months.

III. THAT in order to prevent a practice so injurious to the public interests of this colony as the wilful destruction of Live Stock and domesticated animals, on account of trespasses, for which a lawful mode of summary compensation is hereby provided, if any person shall, after the passing of this Ordinance, unlawfully and wilfully kill, wound, or maim any animal whatever committing damage in his house or lands, (not being any pig, goat, poultry, rabbit, or pigeon), 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 labour, as to the convicting Justice may seem meet.

IV. THAT 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 any wise affect, any claim for compensation or any penalty (as hereinafter provided) which may have accrued by reason of the trespass.

He may geld bulls, stallions, rams, and liable to no charge. But the claims of either party to compensation not affected thereby. Nor penalty. And notice must be given.

V. THAT if any 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 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 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 that may be made by 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 two 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 Ordinance 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 damage. 3d per head large, 1d per head small stock.

And over and above.

Double penalties on unbranded stock.

But in any case £2 maximum.

One adjudication of penalties clears all of prior date.

VI. THAT 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

No expense for keep beyond one week unless advertised.

description thereof as hereinafter provided, as soon as possible after the same shall have been found so trespassing as aforesaid.

No stock to be sold by J. P., unless advertised.

VII. THAT no Live Stock shall be sold by any Justice of the Peace for the default of discovery of the owner thereof unless the same shall have been advertised, with full description thereof, including marks, brand, colour, 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 within 24 hours.  
May be summoned to answer alleged damage.

J.P. has jurisdiction to enter into plaint.

The examination of the real sufferer, who may be distant, is immaterial.  
Costs and court fees.

Distress.

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

VIII. THAT 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 (when known) of the animal so trespassing; and on the appearance of the owner, 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, 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 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, witnessess, 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 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.

IX. THAT 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, to make such examination, order, and sale as are hereinbefore directed to be made, in case such owner shall be known.

7 days after third advertisement.

May proceed in absence.

X. THAT if any person who shall impound any Live Stock under this Ordinance, as hereinbefore provided, shall not within twenty-four hours after make complaint to some Justice of the Peace of the damage committed 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 on his person 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 Ordinance 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.

*Remedies.*

Cattle owner may complain to J. P. after 24 hours' delay of impounder.

Who can be summoned by J. P.

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

XI. THAT on complaint made to any Justice of the Peace that any Live Stock have been impounded for a trespass for which no compensation or penalty is recoverable under the provisions of this Ordinance, 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 thereof, and to pay to the said owner 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.)

J.P. to enquire whether such be the nature of case.

If so, J. P. can order release of such stock, and damages £5 the maximum.

J. P.'s order enforced by distress and sale, &c. Constable may break open doors, &c.

XII. THAT 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.

XIII. THAT from and after the passing of this Ordinance, 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 Ordinance to recover any compensation whatever for any damage committed by any live stock whatever 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 trespassed on shall, at the time of trespass, be inclosed by a sufficient external fence, as hereinafter defined.

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

XIV. THAT in every case in which the proprietor or tenant of any town or suburban allotment shall, under the provisions of an Ordinance, No. 4, 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.

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

XV. THAT 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.

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

XVI. 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 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 clear 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.

Boundary fence to be kept clear by both parties mutually.

Ten feet.

XVII. THAT if any person shall heretofore have erected or shall 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 inclosing 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.

Party using boundary fence to pay half.

XVIII. THAT 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

Mutual fences to be mutually kept in repair.

Regulation of proportionate shares thereof.

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 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 and repairing an ordinary three-railed fence of split posts and rails.

Definition of sufficient fence.

XIX. THAT the term "sufficient fence" as used in this Ordinance shall be construed to mean, when applied to land beyond the limits of a townsite or of suburban allotments, any fence deemed reasonably sufficient to resist the trespass of great cattle; and when applied to suburban allotments or to land within the limits of a townsite, such fence as may be reasonably deemed sufficient to resist the trespass of great and small stock, including sheep, but not including goats or pigs.

Informations within 7 days.

XX. THAT all informations and proceedings for the recovery of damages or penalties under this Ordinance shall be commenced within seven days 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.

Careless herdsmen punishable.

XXI. THAT 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 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 labour for any period not exceeding three months; and



1857.

21st Vict., No. 7.

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.

XXII. THAT nothing in this Ordinance shall be construed to interfere with or in any wise affect the Ordinance 14th Victoria, No. 24, 1851. Surveyors not affected thereby.

XXIII. THAT if any person shall find himself aggrieved by any order or conviction made under this Ordinance by any single Justice of the Peace, he may appeal to the next Court of General Quarter Sessions of the Peace, 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 Court at such 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 them 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 their judgment. Appeal against one J. P.

XXIV. THAT 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 Ordinance, draw up and settle a list of fees to be paid and allowed in all proceedings to be had under this Ordinance, 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. Scale of Fees, &c., to be posted up.

XXV. THAT this Ordinance may be cited as "The Cattle Trespass Ordinance, 1857." Short Title.

A. E. KENNEDY,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council this  
22nd day of June, 1857.* }

HENRY WARFORD,

Clerk of the Council.

Printed by STIRLING, SHOLE, & Co., Perth.