



# WESTERN AUSTRALIA.

ANNO DECIMO SEXTO

VICTORIÆ REGINÆ.

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No. IV.

## An Ordinance to regulate the Branding of Live Stock.

**W**HEREAS the neglect to brand young stock has of late become Preamble.  
very general, and not only is a source of great annoyance  
to the public, but is also conducive to many dishonest practices;  
Be it therefore enacted, by His Excellency the Governor of Western  
Australia and its Dependencies, by and with the advice and consent

Every proprietor of cattle and horses to have brand, and register the same. of the Legislative Council thereof, that every proprietor of cattle or horses not bearing a brand registered under this Ordinance, shall have one brand for both cattle and for horses, or a separate and distinct brand for cattle, and a separate and distinct brand for horses; and shall register such brand or brands, together with the particular position thereof, respectively, with the Surveyor-General of the said colony, in books to be kept by him for that purpose: and it shall and may be lawful for the said Surveyor-General to make order for any proprietor of cattle or horses, making application to have his brand or brands so registered as aforesaid, and whose proper brand or brands may be similar to any brand or brands before registered, to make such a difference in his brand or brands as may be necessary to prevent mistake or confusion therefrom; the particular change or alteration in such brand or brands, however, to be determined on by the said proprietor: Provided always that it shall in the opinion of the said Surveyor-General meet the object required; and if any proprietor of cattle or horses shall refuse or neglect to provide himself with such brand or brands, or to make such difference, or to register the same, as aforesaid, within three months after receiving notice requiring him so to do from the said Surveyor-General, or from any Justice of the Peace, unless further time be given by the said Surveyor-General or such Justices of the Peace, upon reasonable cause shown, he shall forfeit and pay a sum not exceeding Twenty Pounds.

Registered brands to be published in Government Gazette. II. AND be it enacted, that the said Surveyor-General shall from time to time publish in the Government Gazette, as soon as conveniently may be, the brand or brands registered by each proprietor of cattle or horses, respectively, and the name of the person registering the same; and any other person making use of a similar brand after such registration and publication thereof, shall forfeit and pay a penalty not exceeding One Hundred Pounds.

Register of brands to be open to inspection. III. AND be it enacted, that during the usual office hours of the said Surveyor-General's Office, the books in which brands shall be so registered shall be open to inspection, and that during those hours all persons shall be at liberty, without fee, to inspect and make extracts from the same.

Justice may, one year after passing of act, authorize owner or person acting under the authority of any two or more Justices of the Peace in petty Sessions (and which authority such Justices

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are hereby empowered from time to time to give to such persons as may think proper), at and after the expiration of one year from the passing of this Ordinance, and within a certain time and district, to be specified in such written authority as aforesaid, to collect and impound all or any unbranded cattle above one year old, and all or any unbranded horses above two years old, found within the district so specified as aforesaid, and for that purpose, with his horses and attendants, to enter upon, and pass over, any uninclosed land whatever, doing, however, as little damage as possible; and it shall be lawful for any Justice of the Peace, or for any person acting under the written authority of any Justice of the Peace, to sell the same in manner hereinafter mentioned; and the proceeds thereof, after deducting the expences of the keep and sale of such beasts, shall go and be paid, one moiety thereof, or such greater part thereof as the Governor, with the advice of the Executive Council, shall direct, to or for the use of the person having under such written authority as aforesaid collected and impounded such beasts; and the residue of such proceeds shall be paid to the use of Her Majesty, Her Heirs and Successors, as part of the general revenue of the Colony: Provided however, that if, at any time prior to the sale of such beasts, any person shall prove, upon oath, if required, (and which oath any Justice of the Peace is hereby empowered to receive and administer), to the satisfaction of the Justice of the Peace under whose written authority such beasts were so collected and impounded, or of other the Justices of the Peace about to sell such beasts, or order the sale thereof, his right of property in the said beasts, such beasts shall (but without prejudice to the rights of any person possessing an interest therein) be given up, upon payment of one pound per head, and of the expenses of keep and impounding; and which sum of one pound per head shall, in that case, go and be applied and paid, to the use of the person having, under such written authority as aforesaid, collected and impounded such beasts. And it is declared that all cattle above the age of one year, and all horses above the age of two years, and not branded on the hide with a registered brand, shall, for the purposes of this Ordinance, be considered as unbranded, after the expiration of two years from the passing of this Ordinance.

V. AND whereas serious inconvenience and loss have been occasioned by reason of persons whose beasts have strayed upon the land and into the herds of others, driving off the beasts of other persons together with their own; and whereas serious loss and inconvenience may be occasioned by reason of persons, authorised under this Ordinance to collect unbranded beasts, driving off beasts other than

lessee of 100 acres, to drive in unbranded cattle and horses in his neighbourhood.

Justice may sell impounded cattle and horses.

At the expiration of two years from passing of act, all cattle, &c., not branded with register brand to be considered unbranded

Persons driving any stock beyond 20 miles off run, or out of herd, except their own or unbranded stock, liable to a penalty of £10.

those they may be authorised to drive off under the provisions of this Ordinance;—Be it therefore further enacted, that any person who shall drive from the land and out of the herd of any other person, to a greater distance than twenty miles, any beast other than his own on his master's or his employer's, or such unbranded beasts as he may be authorised to drive away under the provisions of this Ordinance, shall, on conviction of any such offence, forfeit and pay a sum not exceeding Ten Pounds; and any person who shall drive from the lands and out of the herds of any other person, any beasts other than his own, or his master's or his employer's, or such unbranded beasts as he may be authorised to drive away under the provisions of this Ordinance, and who shall fail to return the same with all possible despatch to the lands and into the herds from which they may have been so driven as aforesaid, shall, on conviction of any such offence, forfeit and pay any sum not exceeding Ten Pounds.

Any person not returning stock so driven off with all despatch liable to a penalty of £10.

VI. AND be it enacted, that every person who shall burn or otherwise destroy or deface any brand which shall have been upon any beast, shall, upon conviction of every such offence, forfeit and pay a fine not exceeding Twenty Pounds; Provided always that nothing in this Ordinance contained shall prevent the proprietor of any beasts from superinducing a cancelling mark in the form of a bar six inches long and a quarter of an inch broad, horizontally across the brand of previous proprietors, in such manner always as that such previous brand shall not be more than necessarily defaced or rendered unintelligible.

Persons defacing brands on beasts, fineable £20.

Cancelling mark may be used.

VI. AND be it enacted, that it shall and may be lawful for any such authorised person as aforesaid, having collected any unbranded beasts as aforesaid, to drive and lodge, or cause to be driven and lodged, such beasts in any public pound, or if there be none such within three miles of the place where such beasts have been collected as aforesaid, then in any private stock-yard or other enclosure, with the consent of the owner thereof, and there to detain them until they shall be disposed of under the provisions of this Ordinance. Provided that the person so impounding such cattle or horses, shall, within forty-eight hours after such impounding, furnish the nearest Justice of the Peace with a written and accurate statement of the number and description of the beasts so impounded, and of the date on which they were impounded, and of the locality in which they were found; and shall, during such detention, treat the said beasts with all reasonable food and care, and for which food and care he shall be enti-

Authorised persons driving in unbranded cattle may lodge them in public pound or in private enclosure.

Persons impounding to furnish nearest Justice with list of stock impounded.

tled to demand and receive out of the proceeds of the sale of such beasts, if sold, or from any person proving his right of property therein as aforesaid, such fee or charge per head as the Justice of the Peace selling, or ordering the sale of the said beasts, shall deem reasonable and allow, such fee or charge however in no case to exceed the amount which shall be by law chargeable by the keeper of the nearest public pound, for feeding and maintaining beasts impounded therein. Provided always, that the person so impounding any such beasts as aforesaid in any private stock-yard or other enclosure, shall afford access thereto at all reasonable hours to all persons wishing to inspect such beasts therein, and shall also post a written notice on the gate, or on some other conspicuous part of the said stock-yard or other enclosure, setting forth an accurate description of the beasts so impounded, or in his possession, and stating the day on which the same were impounded, and the locality from which they were driven; and such notice shall remain so posted until such beasts shall have been disposed of as aforesaid; and every person who shall neglect to furnish such Justice of the Peace with such written statement as aforesaid, or to post, or to keep posted, such notice as aforesaid, shall, for every neglect, forfeit and pay a fine not exceeding Ten Pounds.

And also to post notice when stock are impounded.

VIII. AND be it enacted, that all sales of impounded beasts under and by virtue of this Ordinance, shall take place on the twelfth day after the day on which notice of impounding shall have been given to a Justice of the Peace as aforesaid, and to which impounding, and intended sale, the Justice of the Peace receiving such notice shall immediately give all the publicity in his power, by directing notices thereof to be posted in such places as he may think best calculated to attain the object in view, (unless the said twelfth day shall happen to be Sunday, or Christmas day, or Good Friday, and then, on the following day); and unless the sale be suspended by the order of the Justice of the Peace about to sell the said beasts, and which order he is hereby empowered to make, in which case, the sale shall take place upon the day appointed anew by the said Justice of the Peace. Provided, however, that when any such delay or suspension of sale shall be made necessary in consequence of the neglect or omission of the person impounding, the costs of all further proceedings, as well as of the future feeding and care of the beasts impounded, until sale, shall be borne by the person impounding the same. And all such sales shall take place at the public pound, stock-yard, or other enclosure, where the said beasts shall have been impounded, and shall commence at the hour of noon, and the said beasts shall be offered in lots to suit purchasers, and neither the person who impounded the said beasts,

Impounded stock to be sold by Justice, at noon, on the 12th day.

Neither person im- nor the Justice of the Peace who made the order for sale, nor the  
 pounding or Justice person actually making such sale, shall either personally or by other  
 ordering sale to pur- purchase the said beasts, or any of them, upon pain that every such  
 chase any such stock. person so offending therein shall forfeit and pay for every head of  
 stock so purchased contrary to the true intent and meaning hereof, any  
 sum not exceeding Fifty Pounds.

No auction duty to be IX. AND be it enacted, that all impounded cattle and horses direct-  
 chargeable on such ed to be sold under the provisions of this Ordinance, shall and may  
 sales. be sold by any Justice of the Peace, or by any person authorised in  
 writing by any Justice of the Peace, by public auction, to the highest  
 bidder, notwithstanding that he should not have taken out a license  
 as Auctioneer; and all such sales shall be free of auction duty; anything  
 contained in a certain Act, passed in the third year of the Reign of Her  
 present Majesty, intituled, "An Act to regulate the licensing of Aucti-  
 oneers, and the collection of Duties on Property sold by Auction," to  
 the contrary notwithstanding.

Protecting persons X. AND for the protection of persons acting in execution of this  
 acting in execution of Ordinance, be it enacted that all actions for anything done under this  
 Ordinance. Ordinance, shall be commenced within six calendar months after the  
 fact was committed, and not otherwise: and notice in writing of such  
 action, and the cause thereof, shall be given to the defendant one  
 calendar month, at least, before the commencement of the action,  
 and in every such action, the defendant may plead the general issue,  
 and give this Ordinance, and the special matter, in evidence, at any  
 trial to be had thereupon: and no plaintiff shall recover in any such  
 action, if tender of sufficient amends shall have been made before  
 such action brought, or if a sufficient sum of money shall have been  
 paid into Court after such action brought, by or on behalf of the  
 defendant, together with costs incurred up to that time; and if a  
 verdict shall pass for the defendant, or the plaintiff become nonsuited,  
 or discontinue such action, or if, upon demurrer, or otherwise, judg-  
 ment shall be given against the plaintiff, the defendant shall recover  
 his full costs as between attorney and client, and have the like remedy  
 for the same as any defendant hath by law in other cases: and al-  
 though a verdict shall be given for the plaintiff in such action, such  
 plaintiff shall not have costs against the defendant, unless the Judge  
 before whom the trial shall be, shall certify his approbation of the action  
 and of the verdict obtained thereupon.

XI. AND be it enacted, that no order, judgment, or proceeding  
 made touching or concerning any of the matters aforesaid, or touch-

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ing or concerning the conviction of any offender or offenders against this Ordinance, shall be quashed or vacated for want of form only, or be removed or removeable by certiorari, or any other process whatsoever, into any Superior Court of this Colony. No order to be quashed for want of form, or to be removeable by certiorari.

XII. AND be it enacted, that all informations and proceedings for offences against this Ordinance, shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed, and shall be heard and determined, and the forfeitures and penalties in respect of the same shall be awarded, enforced and appropriated in a summary manner before any two or more Justices of the Peace, according to the provisions of an Ordinance passed in the 14th year of the reign of Her present Majesty, entitled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions, within the Colony of Western Australia, with respect to summary convictions and orders." Limitation of proceedings.

XIII. AND be it enacted, that all fines, forfeitures and penalties payable under this Ordinance, may be remitted in whole, or in part, by the Governor in Executive Council, and that the entire amount thereof respectively shall be retained by the Justice or other person by or to whom they shall be levied or paid, until the expiration of two calendar months after the same shall be so levied or paid, in order that any person considering himself aggrieved, may have an opportunity of representing his case to the Governor. Governor in Executive Council may remit fines.

XIV. AND be it enacted, that in the construction of this Ordinance, the word "cattle" shall in all cases be deemed and taken to mean bulls, cows, oxen, heifers, steers, and calves; and the words "horse" and "horses" respectively, shall in all cases be deemed and taken to mean and to include horses, mares, geldings, colts, fillies, asses, mules, and ponies; and the word "beasts" shall in all cases be deemed and taken to mean and to include bulls, cows, oxen, heifers, steers, calves, horses, mares, geldings, colts, fillies, asses, mules, and ponies. Interpretation clause.

CHARLES FITZGERALD,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council the 20th }  
day of Dec., 1852. }*

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