

WESTERN AUSTRALIA.

CATTLE TRESPASS—FENCING— IMPOUNDING.

46 *Victoriæ*, No. 7.

[As affected by Acts No. 29 of 1911 (a), s. 177 and No. 38 of 1919 (b), s. 192, amended by Acts 48 Vict., No. 16 (c), No. 25 of 1932 (d) and No. 60 of 1952 (e), and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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

[Assented to 21st September, 1882.]

WHEREAS it is expedient to consolidate into one Act, and to amend all the enactments and provisions respecting the Law of Trespass by Live Stock and the Poundage thereof, 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, as follows:—

1. From and after the commencement of this Act, the several enactments mentioned in the First Schedule hereto shall be repealed, save and except as to any matter or thing already done or any proceedings pending or any liabilities incurred at and up to that date under the said repealed enactments or any of them. And this Act shall commence and take effect on the First day of October now next.

First
Schedule.
Repeal.

Commence-
ment of Act.

- (a) Assented to 16th February, 1911: Came into operation on 1st July, 1911. See s. 2 of that Act. (c) Assented to 13th September, 1884.
(b) Assented to 17th December, 1919. (d) Assented to 23rd December, 1952.
(d) Assented to 15th December, 1932.

Interpreta-
tion clause.

2. In the construction and for the purposes of this Act, if not inconsistent with the context, the word "owner" shall include "occupier of land," tenant, or licensee under the Crown, and any person or corporate body who shall have the use, care, or management of any land or place. And shall also include "agent, overseer, trustee, bailiff, servant, supervisor, and manager of any land or cattle," and a police constable acting by virtue of "The Police Ordinance, 1861" and under section 16, subsection 3 hereof. The word "cattle" shall include the several animals mentioned in the Second Schedule hereto; and the word "land" shall include any land or place not being unoccupied waste lands of the Crown; and "a Resident Magistrate's District" shall mean the district of a Government Resident, Police or Resident Magistrate, as the case may be, so defined and published as such in the *Government Gazette*.

Second
Schedule.

Trespass and Damage.

Power to
seize and
impound.

3. Any owner may seize any cattle found trespassing on his land, and secure the same in the public pound nearest to the scene of trespass, or if there be no such pound within three miles of the scene of trespass, then in any private pound or place of security, until such cattle be lawfully released from such pound, or satisfaction be made for such trespass and damage done by such cattle, or order made by a Justice of the Peace in respect of such cattle in manner herein provided. And such owner of land shall, unless such cattle shall in the meantime be so released, forthwith make, or cause to be made by any person on his behalf, a complaint of such trespass, and, if he shall think fit, of any damage done by such cattle, to any Justice of the Peace; and, until order made thereon by a Justice of the Peace, and so long as such cattle shall remain impounded in a private pound or place of security,

Complaint
to J.P.

Cattle in a
private
pound to be
fed and
taken care
of by
impounder.

¹ See Police Act, 1892-1953.

treat the cattle so impounded with reasonable care, and provide them with food and water proper for their sustenance, and protect them from ill-usage.

- (1) When any impounded cattle shall not be followed to the pound or place of security, or be immediately claimed by the owner thereof, or some one on his behalf, the person lodging or causing to be lodged such cattle in such pound or place of security shall inform the poundkeeper who is the owner of such cattle if he be known to such person.

4. If any owner of land shall unlawfully and wilfully kill, wound, or maim any animal whatever so found trespassing, every such owner, being convicted thereof before a Justice of the Peace, shall forfeit and pay to the owner of such animal the value thereof.

Killing and maiming cattle trespassing.

- (1) Such owner of land may, however, kill on the scene of trespass any dog, pig, goat, rabbit, poultry, or pigeon found trespassing on his land or place.

Power to kill dog, pig, goat, rabbit, poultry, or pigeon trespassing.
See Dog Act, 1903-1948, s. 22.

- (2) He shall leave the body of such dog, pig, goat, rabbit, poultry, or pigeon exposed to view at the place where it shall be so killed for the space of at least six hours, and after the expiration of that time, if the owner thereof shall not have claimed and removed such body, such owner of land may dispose of such body in any manner he shall think fit, except by consuming the same for food.

Body of dog, etc., killed to be left exposed for six hours.

- (3) The above enactments shall be cumulative on and not be a bar to any proceedings for injuries to cattle or other animals under the 24th and 25th Victoria, c. 97, and also to any proceedings for compensation for any damage done by any such dog, pig, goat, poultry, rabbit, or pigeon.

Not a bar to proceedings under 24th and 25th Vict., c. 97, nor to proceedings for compensation for damage by dog, etc.

Entire cattle
may be
castrated.

5. If any entire horse, ass, or bull above the age of one year shall be found trespassing without a keeper on any land, the owner of such land may castrate such cattle if unbranded, and if the owner thereof be unknown.

Proceedings
before such
castration.

(1) If such cattle be branded, or if the owner thereof be known, or be reasonably ascertainable, then three clear days shall elapse after notice in writing of such trespass and of an intention to castrate such animal shall have been given, or sent through the post to, or left for its owner at his usual or last known place of residence nearest to the scene of impounding by the owner of such land.

When no
compensa-
tion to
owner.

(2) In every case where any cattle shall have been castrated in accordance with the foregoing provisions, no compensation shall be given to the owner of such cattle for such castration.

Enactments
cumulative.

(3) The above enactments shall be cumulative, and not be a bar to any claim for any compensation for damage or to any penalty which may have accrued by reason of such trespass, unless such compensation shall have been claimed before a Justice of the Peace at the time of making the complaint therefor, or assessed on the hearing of such complaint.

Penalties for
trespass.

6. If any cattle shall be found trespassing on any land, whether any damage shall have been proved to have been committed or not, the owner of such cattle shall forfeit and pay to the owner of such land (subject to the provisions of this Act) the sums set forth in the Second Schedule hereto, and called "The Trespass Scale." And if such cattle, being "great cattle" as herein mentioned, be not branded with a registered brand, such sums shall be doubled.

Second
Schedule.

Limitation
of penalties.

(1) The total amount of such sums shall in no single case of trespass by cattle (not being entire horses, asses, or bulls), on unenclosed country land, exceed Five pounds.

- (2) All trespasses as aforesaid committed by the same cattle and against the same person, before the date of any complaint or information under this Act before a Justice of the Peace, shall be deemed and taken to be one offence, and shall render the owner of such cattle liable only for one such trespass.

One complaint for trespass only by same owner of land against same cattle.

7. No expenses for keep of any cattle, the owner whereof shall not have been discovered, shall be recovered for more than seven days, except by order of a Justice of the Peace, and unless such cattle 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.

Expenses for keep of cattle impounded.

8. No cattle shall be sold, nor shall any cattle other than pigs, dogs, goats, rabbits, poultry, or pigeons, be destroyed under colour of any trespass committed, unless by order of a Justice of the Peace after complaint or information made in respect of such trespass.

Cattle not to be sold or destroyed for trespass, unless by order of a Justice.

- (1) Such order shall not be made on the default of the discovery of the owner of such cattle, unless notice of the trespass, impounding, and intended sale of such cattle shall have been advertised with full description thereof, including marks, brands, colour, and height, in two newspapers published in the Colony, for three successive weeks, nor until seven days after the last of such advertisements, nor unless a written or printed placard be posted on the pound at which such sale shall be held, for seven days prior to such sale.

Order for sale on default of discovery of owner.

Liabilities of Cattle Owners.

9. It shall be lawful for any Justice of the Peace, on complaint made to him by or on the part of any owner of land sustaining damage by the trespass

On complaint for trespass.

of cattle, whether such cattle shall or shall not have been impounded, to issue his summons for the appearance of the owner of the cattle trespassing, and to adjudicate thereon; and to make an order as well in respect of the alleged trespass as for the payment of compensation for such damage, and for payment of poundage and feeding and other incidental costs and charges as to the Justice hearing such complaint shall seem fit. And in case such order shall not be complied with, to levy the several amounts ordered to be paid by public sale of the cattle so trespassing; and if needful, all such proceedings shall be had as in ordinary cases of non-compliance with an order of a Justice of the Peace requiring the payment of a sum of money or of a conviction imposing a penalty.

14 Vict. 5.

Compensation for neglect.

- (1) The Justice of the Peace making such order may make at his discretion, and shall specify therein, reasonable deduction from the amount of compensation so ordered to be paid arising from any negligence or other misconduct on the part of such owner by undue delay on the part of the owner of the land in making such complaint or by the ill-treatment of the cattle impounded in a private pound or place of security.

Sale of cattle impounded and owner not discovered.

10. In all cases where cattle shall be impounded and the owner thereof shall not be discovered within seven days after the last of the advertisements and placards hereinbefore required by section eight, a Justice of the Peace, on proof of such non-discovery, by oath of the person entrusted with the service of the summons, may order the sale of such cattle by public auction in manner hereinbefore directed by section eight.

Destruction of cattle not impounded.

- (1) In all cases when cattle trespassing shall not be impounded, and it shall be proved to the satisfaction of a Justice of the Peace that it is not possible to impound such cattle except at an undue expense, and also that the owner thereof is unknown or cannot be found: It shall be lawful for such Justice

to order the destruction of such cattle in such manner as he shall think fit, and for the production and delivery to a police constable of the hide of such cattle (being "great cattle" as referred to in the Trespass Scale attached hereto) so destroyed.

Order for such destruction and delivery of hide.

- (2) The owner of land obtaining such order for the destruction of cattle, and the person destroying the same, shall in every case of breach or non-compliance with such order be liable, upon conviction, to a fine not exceeding Five pounds for each head of cattle so destroyed, and with reference to which such non-compliance shall have occurred.

Penalty.

- (3) If such order for destruction of cattle shall have been improperly obtained, the owner of such cattle may have any remedy against the person obtaining such order as he would have had in case this Act had not been passed.

Remedy of cattle owner: if order for destruction is improperly obtained.

11. If any owner of land, or other person impounding any cattle under this Act (other than a police constable acting under the provisions of "The Police Ordinance, 1861"), shall neglect to proceed in manner herein provided in cases of alleged trespass or damage committed by such cattle, the owner of such cattle may make or cause to be made to the nearest Justice of the Peace in the Resident Magistrate's district where such impounding shall have been made, complaint of such impounding and neglect, and thereon proceed in the like manner to all intents and purposes as in case of proceedings taken on the complaint of an owner of land when the owner of the cattle shall have been known or discovered.

Proceedings against owner of land impounding cattle and neglecting to proceed.

Proceedings.

- (1) Any such Justice of the Peace may in such case, if he think fit, order the owner of such land or person impounding such cattle (except as aforesaid) to deliver such cattle

Delivery of cattle and payment of damages.

to the owner thereof and to pay to such owner damages not exceeding Five pounds, in addition to all costs and charges attending and consequent on such impounding.

Power to enforce release from pound.

- (2) He may also, if need be, direct the release from a pound, and direct any police constable to enforce such release and the delivery to the owner thereof of any cattle impounded, and for that purpose, if necessary, to enter on any land and break open any doors, or fences, or gates.

In such proceedings Justice may make order against owner of cattle.

- (3) In case such proceedings as aforesaid shall have been taken by any owner of cattle impounded, the Justices of the Peace hearing the complaint may make such order against the owner of such cattle in respect of trespass or damage on or to any land as if the owner of such land had made complaint thereof in manner herein provided.

If excessive claim made by poundkeeper or person impounding, cattle may remain impounded till question settled by Justice.

- (4) If a sum larger than shall be deemed justifiable shall be claimed by the poundkeeper, or by the person impounding, or any question (not herein provided for) shall arise with reference to such cattle, or the impounding thereof or consequent thereon, the owner of such land or cattle may allow such cattle to remain so impounded until such question shall be decided, on the complaint by the party aggrieved, whether poundkeeper or owner, to a Justice of the Peace.

Amount of claim may be paid and cattle released, subject to order of Justice.

- (5) The person impounding such cattle, or the owner thereof, may in the first instance pay to such poundkeeper the sum so claimed; and thereupon such poundkeeper shall release such cattle and retain such sum, to abide the written order of the Justice of the Peace adjudicating on such claim.

12. In all cases of trespass or damage committed by any cattle the occupier of land or other person in whose charge such cattle shall be at the time of such trespass shall be deemed to be the owner of such cattle so as to render him liable in all proceedings for such trespass or damage.

Who to be deemed owner of cattle.

Minor Trespasses and Damage.

13. In all cases of trespass on land committed by any person, with or without any cattle, the owner of such land may complain thereof in manner aforesaid to a Justice of the Peace, who, when no *bona fide* question of title shall arise in the course of the proceedings, may adjudicate thereon and award to such complainant, in respect of any damage on any country land, in addition to or inclusive of any penalty for trespass herein provided, a sum not exceeding Ten pounds; or if such Justice of the Peace shall find the trespass or damage so complained of to have been justified, or so trifling as not to merit any punishment, he may dismiss the complaint.

Penalties for damage.

14. [*Repealed by 48 Vict., No. 16, s. 1¹.*]

Reservation of public rights.

15. This Act shall not affect the provisions of the Wild Cattle Nuisance Act, 1871 (34 Vic., No. 24), and its amendment (42 Vic., No. 14), the Cattle Diseases Ordinance, 1865 (29 Vic., No. 3), the Imported Stock Act, 1876 (40 Vic., No. 14), and its amendments (41 Vic., No. 4, and 43 Vic., No. 23), the Scab Act, 1882, the Brands Act, 1881 (45 Vic., No. 7), nor the Police Ordinance, 1861 (25 Vic., No. 15, s. 38 and s. 59, subsec. 17), or any by-laws made or to be made under the provisions of the Railway Acts.

Operation of Act not to be affected.

¹ Section 2 of 48 Vict., No. 16, enacts as follows:—

2. Nothing in the principal Act contained shall in any way affect the rights, powers or privileges given, granted, or reserved to Her Majesty or Her subjects in and by any ordinance, law or deed.

Council of municipality may publish scale of penalties less than those hereby enacted.
As affected by No. 29 of 1911, s. 177 (6) and No. 38 of 1919, s. 192 (6).¹

16.¹ If after this Act shall come into operation the council of a municipality or a Road Board shall make and publish in the *Government Gazette* a scale of fines not exceeding the sums prescribed by this Act, and approved by the Governor, to be imposed on owners of cattle for trespass upon and damage to land whereof such municipality or Board shall be the owner, or upon land within its limits, which shall not be enclosed by a sufficient fence, such fines both for trespass and damage shall alone be levied in proceedings under this Act. And such fines shall be payable to such municipality or Board.

Cattle trespassing in towns.

- (1) The sums specified in the Trespass Scale for trespass on any street or public thoroughfare forming part of a townsite or upon any town or suburban land (whether alienated from the Crown or not) not enclosed with a sufficient fence shall be paid—

- (a) to the council of the municipality or the Road Board within whose limits such trespass shall have been committed;

- (b) where no such council or a Road Board exists to the local board of the district, as constituted by the 34th Vic., No. 26, within which such trespass shall have been committed.

Compensation for damage on such land.

- (2) Such sums shall be in addition to the compensation for damage done by such cattle to any pathway, fence, or gate, or to any tree planted or growing in a townsite.

Police constable may impound in towns.

- (3) Any police constable may impound in a public pound any cattle which he shall find trespassing, whether tethered, depasturing, feeding, or roaming about in any townsite or municipality, and proceed thereon as if he were an owner of land as mentioned in this Act.

¹ Subsection (6) of No. 38 of 1919, s. 192 (re-numbered as s. 197 in reprint of Road Districts Act contained in the Reprinted Acts of the Parliament of W.A., Vol. 4 (1951)) enacts as follows:—

(6) Section sixteen of the Cattle Trespass, Fencing, and Impounding Act, 1882-1932, shall no longer be in force in any district.

17. In addition to the sum specified in the Trespass Scale for trespass by cattle only, a Justice of the Peace may, on the complaint of an owner of land with reference to each distinct act of trespass, assess damages by reason of such trespass (in all cases where such damage shall not be otherwise herein provided for) on the following scale—

Damage on enclosed country, town, and suburban land.

On enclosed country land, a sum not exceeding Thirty pounds.

On enclosed town or suburban land, a sum not exceeding Fifty pounds.

Such sums may be recovered by the owner of land in respect of any trespass, whether such trespass was committed by cattle only or by any person whether with or without cattle.

18. Nothing in this Act contained shall be construed to apply to any town herd which shall be *bona fide* driven or led by any person straight into, through, or out of any city or town, and not depasturing, feeding, or roaming about therein and not doing damage.

As to town herds.

19. If a Justice of the Peace hearing any case herein provided for shall, upon the merits, deem the offence not to have been proved, or that the trespass and all consequent damage was justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred or whom it shall affect.

Trifling complaints.

Certificate of dismissal.

- (1) If any such party shall have obtained such certificate; or shall have paid the whole amount adjudged to be paid; or shall have suffered the imprisonment consequent in default of payment of such amount; in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

Certificate a bar to other proceedings.

No compensation for damage on land, etc., not enclosed.

20. The owner of any town or suburban land, not being a street or public thoroughfare in a city or town, shall not be entitled to recover under this Act any compensation for damage committed by trespass of cattle unless the land within which such trespass shall have been committed shall at the time of trespass be enclosed by a sufficient fence.

Fencing.

Proprietor of any town or suburban land failing to join in erection of fences, not entitled to damage.

21. In every case in which the proprietor or tenant of any town or suburban allotment shall under the provisions of the Ordinance No. 4 of 4th William IV., 1834, have required the proprietor of any adjoining land or his agent to erect or repair 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 damage for trespass on cultivated land not being a townsite.

22. No more damages 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 enclosed by a sufficient fence as hereinafter defined, than if such trespass had been upon uncultivated land. Provided, nevertheless, that such trespass shall not be wilful or malicious.

Boundary fence to be kept clear by both parties mutually.

23. It shall be lawful for any owner of 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 owner of the adjacent land (not being Crown lands occupied by the Crown) 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 owner 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 owners) 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 owner so having cleared his own side as aforesaid, to make such entry and clearing as aforesaid without notice.

Ten feet.

24. If any dividing fence or any portion thereof which may be made use of by adjoining occupiers for the ordinary purposes of a fence shall be destroyed by accident, the occupier of land on either side may immediately repair the same without any notice, and shall be entitled to recover half the expenses of so doing from the occupier of the adjoining land; providing always, that in case such dividing fence shall have been destroyed by fire or by the falling of any tree or trees, the occupier, through whose neglect (if any) such fire shall have originated, or have caused injury to the fence, or such tree or trees shall have fallen, shall be the party bound to repair the entire of the fence so damaged as aforesaid.

Fence destroyed by accident.

25. (1) If any person shall heretofore have erected or shall erect a sufficient fence dividing the land held or occupied by him from the land adjoining thereto, and the owner of the adjoining land shall after the passing of this Act, in enclosing the

Party using boundary fence to pay half.
Amended by No. 60 of 1952, s. 2.

same, avail himself of the dividing fence so erected, or any part thereof, then if the said first-mentioned land has been alienated from the Crown, such owner of the adjoining land shall be liable to pay to the person or persons having for the time being an estate for life or other greater estate in such first-mentioned land, or if the said first-mentioned land has not been alienated from the Crown, such owner of the adjoining land shall be liable to pay to the lessee or licensee of such first-mentioned land 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.

Subs. (2)
added by
No. 60 of
1952, s. 2.

(2) For the purposes of this section the owner of adjoining land of an area of less than one acre is deemed to have enclosed the same when, either before or after the coming into operation of the Cattle Trespass, Fencing, and Impounding Act Amendment Act, 1952, he

- (a) has completed or completes, or has caused or causes to be completed, the erection of any substantial building or structure thereon; or
- (b) has occupied or occupies any building or other structure erected thereon; or
- (c) has permitted or permits the lawful occupation by any person of any building or other structure erected thereon.

Mutual
fences to be
mutually
kept in
repair.

26. Whenever any mutual fence erected as aforesaid shall fall into disrepair and become insufficient, any owner of adjoining lands, having given notice to the other owners 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 owners 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.

Regulations
of proportionate
shares
thereof.

27. 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 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.

Careless
herdsmen
punished.

28. No owner of land situate wholly or partially within the boundaries of land held under a pastoral lease or license from the Crown shall be entitled to recover in any Court any damages, penalty, poundage fees, or expenses for or on account of any trespass on such first-mentioned land by cattle from or against the owner of any surrounding or adjacent

No owner of
land within
limits of a
pastoral
lease or
license
entitled to
trespass or
damage
against
owner of
surrounding
or adjacent
land unless
his land
fenced.

land held under such lease or license; nor shall he impound such cattle 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.

Where trespass unavoidable justice may refrain from awarding damage.

29. 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 neighbouring road or customary thoroughfare could not have been accomplished without such trespass save by a wide circuit and a considerable loss of time and labour, 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.

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

Sufficient fence.

30. 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. And in every case where any dispute on the hearing of a complaint or

information or on the trial of an action shall arise as to the sufficiency of any fence, the question shall be settled by the Justice, or Court, or Court and Jury hearing the same.

If sufficiency disputed, Justice may settle question.

31. Every person who shall suffer any goat or swine in his apparent ownership or in his charge to run loose without a keeper in constant attendance on such goat or swine, within one mile of any enclosed land not being occupied by the owner of such goat or swine, or the person in whose charge such goat or swine shall be at the time, shall be liable to a penalty, for each head so running loose, of any sum not exceeding Five shillings, irrespective of and in addition to any other fine or damages for trespass to which the defendant shall be subject.

Goats and swine running loose without a keeper 5s. per head fine.

Pounds and Poundkeepers.

32. The Justices of the Peace acting in and for any Resident Magistrate's district in special session assembled, or the major part of them, of whom the Resident or Police Magistrate shall be one, may from time to time when sitting in such special session appoint one or more convenient place or places for establishing, erecting, and maintaining a public pound or pounds for such district, and also proper persons to be the keepers thereof from time to time.

*Pound and pound-keepers to be appointed. As affected by No. 38 of 1919, s. 192 (8).**

- (1) Such pounds shall (if practicable) adjoin some public highway, and also (if practicable) one such pound shall be at or near to the place where Petty Sessions of Justices are held.

*Position of pounds. See No. 38 of 1919, s. 192 (8).**

* Section 192 of No. 38 of 1919 was re-numbered as s. 197 in reprint of Road Districts Act, 1919-1948, contained in Vol. 4 of the Reprinted Acts of the Parliament of W.A. (1951). Subsection (8) of that section enacts as follows:—

(8) In relation to the pound of any board all the words after "highway" in paragraph one of section thirty-two of the Cattle Trespass, Fencing, and Impounding Act, 1882-1932, shall be deemed to be repealed, and the words "chairman of the board" shall be substituted for "resident or police magistrate" in paragraph four of section thirty-five and in section thirty-seven of such Act.

Removal of pound.

Displacement of pound-keeper.

Notification of appointment.

Evidence of appointment.

Powers and authorities to be exercised by Justices or council of municipality.

Governor may advance money for erection of pounds.

Public pound to be kept in good repair by keeper.

- (2) Such Justices may from time to time cause any such pound to be removed and erected in any other place; and displace any such keeper upon a reasonable cause appearing to them; and also accept the resignation of such keeper.
- (3) With reference both to pounds and pound-keepers, notification of every appointment, removal, resignation, or displacement shall be inserted forthwith in the *Government Gazette* by order of such Justices.
- (4) Such notification shall be taken in all Courts for all intents and purposes as evidence that such pound or poundkeeper has been legally appointed, removed, or resigned, as in such notification mentioned.
- (5) All powers and authorities and all things by this Act required to be exercised or done by such Justices, other than the hearing of complaints and informations, shall, within the limits of any municipality, be exercised and done by the council of such municipality.

33. The Governor may advance and issue, if required, any sum, whether as a loan or otherwise, not exceeding Ten pounds, for the erection of one such pound in such district in which Petty Sessions shall be so held or in any Resident Magistrate's district where no public pound exists.

- (1) Every public pound shall be kept in good repair by the keeper thereof at his own proper cost and charge; and on his removal or resignation shall be delivered up by him in such repair to such person as shall be appointed in that behalf by such Justices of the Peace.
- (2) Every such public pound shall be kept by the keeper thereof properly fenced and enclosed and in good order to the satisfaction of a Justice of the Peace; and

adapted as far as may be to the like satisfaction for keeping cattle infected with any contagious disease separate and apart from those in health.

- (3) No keeper of a public pound nor any person who shall impound or keep cattle in a private pound or place of security shall knowingly keep or permit to be kept any cattle affected with any contagious or infectious disease in the same enclosure with cattle not so affected.
- (4) Every keeper of a public pound shall keep all cattle impounded therein supplied with sufficient wholesome food and water.

34. The Justices of the Peace mentioned in the 32nd section hereof may, with the consent of the Governor, specify and frame a table of all such fees as shall be taken and charged by any keeper of a public pound or by any person who shall impound or have in a place of security any cattle for any matter or thing authorised or required to be done by him by this Act and not herein prescribed or provided for, but the maximum distance for which persons driving cattle to a public pound shall be allowed mileage payment shall be ten miles.

Justices to frame table of fees.
Amended by No. 25 of 1932, s. 2.
Affected by No. 29 of 1911, s. 177 (7); No. 38 of 1919, s. 192 (7).^{*}

- (1) They may also with the like consent from time to time appoint, fix, and vary the prices which it shall be lawful for the keeper of every pound to charge and receive for the sustenance of cattle impounded or kept in a place of security, and the description and quantity of such sustenance. And also with the like consent fix and vary a table of fees and prices for such impounding and sustenance. And such fees and prices, when notified in the *Government Gazette*, may be lawfully taken and charged.

Charges for sustenance.

Fees and prices to be notified in *Government Gazette*.

^{*} Section 192 of No. 38 of 1919 was re-numbered as section 197 in the reprint of the Road Districts Act contained in Vol. 4 of the Reprinted Acts of the Parliament of W.A. (1951).

(2) Such table of fees and prices shall be exposed to public view in some conspicuous part of the Court House of each Resident Magistrate's district.

Mode of recovery of fees and prices.

(3) Such fees and prices may be recovered from time to time summarily in the same manner as any fines and penalties may be recoverable under this Act.

Cases in which Justice may order a speedy sale of cattle impounded.

(4) In case it shall appear to the Justice of the Peace to whom complaint of any trespass by cattle shall be made that delay in advertising the sale of cattle impounded by any person under the provisions of this Act will involve greater expense than the value of the cattle impounded, or that by reason of the condition or health of such cattle a speedy sale is requisite, such Justice of the Peace may, on proof thereof, order the sale of such cattle at such time and in such manner and under such conditions as he shall think fit:

Amended by No. 25 of 1932, s. 2.

Inserted by No. 17 of 1932, s. 2.

Provided that nothing in this section contained shall be a bar to the enforcement of liability against the owner of such cattle in respect of any penalty and of all lawful fees, charges and damages under this Act, and the same may be recovered by the person aggrieved in a summary way on complaint before any two justices of the peace.

Inserted by No. 25 of 1932, s. 2.

(4A) Where it appears to any two justices of the peace, after inspection of any impounded cattle, that—

(i) if such cattle were held for the period and notice of sale advertised in manner hereinbefore prescribed they would not be likely to realise on sale sufficient to pay the poundage fees, expenses of sale, and other lawful charges payable under this Act in connection with such impounding; and

- (ii) that an immediate sale under subsection four of this section would not be likely to realise such fees and charges,

and the owner does not appear and pay such fees and charges incurred in respect of such impounded cattle, and give security to the satisfaction of the justices for the payment of all such further fees, charges, and expenses as may be awarded in any subsequent proceedings under this Act, the justices may make an order authorising the immediate destruction or disposal of such cattle and the disposal of the carcase thereof in such manner as the justices may think fit; provided that any one justice may exercise the jurisdiction of two justices under this Act whenever no other justice usually residing in the district can be found at the time within a distance of ten miles; provided that the justice certifies, in writing, that no other justice can be found within ten miles:

Provided that such destruction shall not be a bar to the enforcement of liability against the owner of such cattle in respect of all lawful fees, charges, and damages under this Act, and the same may be recovered in a summary way on complaint before any two justices of the peace.

- (5) All sales of cattle made by virtue of this Act shall be made by the poundkeeper, and delivery thereof taken, at the pound where such cattle shall be impounded, by public auction, unless the Justice ordering such sale shall otherwise direct as to the place of sale.

Sales of cattle to be made and delivery taken at a public pound, unless Justice ordering sale shall otherwise order.

- (6) Such poundkeeper or any other person selling under the direction of a Justice of the Peace may sell such cattle without having taken out a license as an auctioneer: and all such sales shall be free of auction duty.

Poundkeeper not to need auctioneer's license.

Application of proceeds of sale.

Affected by No. 29 of 1911, s. 177 (7); No. 38 of 1919, s. 192 (7).*

Balances to form part of public revenue after one year.

Affected by No. 29 of 1911, s. 177 (7); No. 38 of 1919, s. 192 (7).*

Who may not purchase cattle impounded.

Duties of poundkeeper. Affected by No. 38 of 1919, s. 192 (8).†

Responsibility for loss or damage to cattle arising from neglect.

- (7) In case of such sales of cattle the poundkeeper shall, after deducting all fines and penalties, fees, charges, and expenses, including the expenses of such sale, from the proceeds thereof, pay over the balance to the owner of such cattle or his agent forthwith. Or if such owner cannot be found, or shall be unknown, then he shall pay such fines and penalties and balance to the Resident or Police Magistrate of the district: in trust as to such balance for such owner; and the receipt of such Magistrate shall be a discharge to such poundkeeper.
- (8) In case no claim for such balance shall be made within one year from such sale, such balance shall merge in and form part of the public revenue of the Colony.
- (9) No poundkeeper selling such cattle nor any person selling under the direction of a Justice of the Peace nor the husband nor wife nor child of any person so selling, nor any person impounding such cattle shall purchase at such sale any cattle impounded or ordered under the direction of a Justice to be sold.

35. The keeper of every public pound shall receive and detain in his custody any cattle which may be brought to him for an alleged trespass.

- (1) He shall be responsible to the owner thereof for every loss or damage sustained by the breach or non-observance by him or his

* Section 192 of No. 38 of 1919 was re-numbered as section 197 in the reprint of the Road Districts Act contained in Vol. 4 of the Reprinted Acts of the Parliament of W.A. (1951). Subsection (7) of that section enacts as follows:—

(7) In paragraph seven of section thirty-four of the said Act (i.e., the Cattle Trespass, Fencing, and Impounding Act) the word "Board" shall, in connection with sales of cattle from a pound of any board, be read in place of the words "resident or police magistrate" and "magistrate" respectively; and in subsection eight thereof the words "ordinary revenue of the board" shall be read in place of "public revenue of the colony."

† See footnote* to marginal note of s. 32 ante.

servants of the provisions of this Act with reference to impounded cattle, but not otherwise.

- (2) He shall detain in his custody all impounded cattle until the same shall be replevied or otherwise disposed of or released in due course of law, or until he shall receive the written order of a Justice of the Peace, or of the person impounding such cattle, to deliver the same. Period of detention of cattle.

- (3) In either of such cases he shall forthwith, upon payment of all his fees and charges, deliver at his pound such cattle to the owner thereof or his agent or any other person duly authorised to receive the same. On replevy, etc., of such cattle, same to be delivered.

- (4)* He shall whenever any cattle shall be impounded in his pound, within forty-eight hours of such impounding, notify such impounding (in case the person impounding shall not have given such notification, or in case such cattle shall not in the meantime have been claimed or otherwise disposed of by due course of law) by advertisement and in manner prescribed by section eight, and also give notice in writing of such impounding to the Resident or Police Magistrate of the district in which such impounding shall have been made. On impounding to give notice of impounding.

- (5) He shall also within twenty-four hours in the like case affix a notice on some conspicuous part of such pound, with a full description of such impounded cattle, as prescribed by section eight; and such notice shall remain so affixed until such cattle shall have been claimed or disposed of by due course of law. And affix notice on pound.

- (6) No person shall obliterate, deface, or damage any table of fees, placard, or other notice mentioned in this Act. Obliteration, defacement, or damage.

* See footnote* to marginal note of s. 32 ante.

Poundkeeper
to send to
owner of
cattle notice
of
impounding.

36. The keeper of every pound shall (in default of the impounder to inform such poundkeeper as to the ownership of impounded cattle, as prescribed by section three, subsection one hereof) within twenty-four hours send to the owner of such cattle, if he be known, notice in writing of such impounding.

Notices to be
sent by post.

- (1) Every notice by this Act directed to be given, and not otherwise provided for, may be sent by the general post to the usual or last known place of abode of the person to whom it shall be directed to be sent.

Poundkeeper
to keep
books.

37.* The keeper of every pound shall keep all such books as may be furnished to him by the Resident or Police Magistrate of the district where such pound may be; and shall make and insert therein, directly any cattle may be impounded, full and true particulars with reference to such impounded cattle, as the Governor may prescribe by notice to be published in the *Government Gazette*.

Pound Breach or Rescue.

Release or
rescue of
cattle in or
on the way
to a pound.

38. No person shall release or attempt to release any cattle which shall be lawfully seized for the purpose of being impounded according to the provisions of this Act from the pound or place where the same shall be so impounded, or on the way to or from any such pound or place; or shall pull down, damage, or destroy such pound or place, or any part thereof, or fixture or fitting thereto belonging.

Justice not
to interfere
in questions
as to title to
land or
when cattle
seized.

- (1) Nothing herein contained shall authorise a Justice of the Peace to hear and determine any case of rescue or pound breach in which any question shall arise as to the title to any land or any interest therein, or as to any bankruptcy or any execution under the process of any Court of Justice or (except as is otherwise provided by this Act) as to

Nor except
as provided
by this Act
as to liability
to maintain
fence.

* See footnote* to marginal note of s. 32 ante.

the obligation of maintaining, repairing, or keeping in repair any wall, hedge, ditch, paling, or fence whatsoever.

39. Every owner of land and every person lodging or causing to be lodged for alleged trespass any cattle, or delivering the same to any poundkeeper to be impounded, shall be jointly and severally responsible to such poundkeeper for all fees, charges, and expenses of keeping, feeding, and impounding such cattle, as provided by this Act, to be recovered summarily in the same manner as any fee or penalty may be recovered or enforced under this Act.

Owner of cattle and person impounding to be jointly and severally liable.

40. If any person, other than a Justice of the Peace acting as such, shall omit to do anything by this Act directed to be done, or do anything hereby forbidden, and for which a penalty is not hereby provided, he shall, on summary conviction thereof by a Justice of the Peace, be liable to a penalty not exceeding Five pounds.

Penalty for offences not otherwise prescribed.

Procedure.

41. All information and proceedings hereby directed shall be had and taken before any one or more Justices of the Peace, and all fines, penalties, damages, and fees may be recovered and enforced in a summary manner before such Justice or Justices in manner prescribed by the 14th Victoria, No. 5¹.

Summary proceedings before a Justice of the Peace.

42. Any person aggrieved by any order or conviction made by a Justice or Justices of the Peace under this Act may appeal to the Supreme Court

Appeal.

¹ See Act 2 Edw. VII., No. 11 (Justices Act, 1902) as amended.

or the next Court of General Sessions of the Peace nearest to the place where such order or conviction was made.

Notice of
appeal.

- (1) Notice of appeal shall be given in writing, signed by the appellant or some person on his behalf, and the grounds of appeal shall be specified in such notice.

To whom to
be given.

- (2) Such notice shall be given to the Justice of the Peace making such order or conviction within seven days after the making thereof and be accompanied by a deposit of Ten pounds to answer costs.

Power of
Court of
Appeal.

- (3) The Court hearing such appeal shall hear and determine the matter of such appeal, and shall make such order thereon with or without costs to either party as to such Court may seem meet, and shall, if necessary, issue process for enforcing such order.

Reference
to repealed
Acts to be
made to this
Act.

43. In all cases where reference shall be made in any Act or Ordinance to the Acts or Ordinances mentioned to be hereby repealed, such reference shall be deemed to be made to this Act.

Shortening
Ordinance.

44. Sections A, C, F, G, and H of "The Shortening Ordinance, 1853," shall be incorporated with and form part of this Act to all intents and purposes as if the said sections had been introduced and fully set forth in this Act.

Short title.
Cf. No. 60 of
1952, s. 1 (3).

45. The Short Title of this Act shall be the Cattle Trespass, Fencing, and Impounding Act, 1882-1952.

SCHEDULE.

The First Schedule referred to.

The "Ordinance to regulate the keeping of Public Pounds, and the appointment of Poundkeepers" (25 Vict., No. 13).

The "Ordinance to provide Summary Redress in cases of Minor Trespasses" (28 Vict., No. 15).

The "Act to amend the Public Pound Ordinance, 1861" (34 Vict., No. 25).

The "Act to consolidate and amend the Laws relating to Trespass by Live Stock and to promote the Construction of Fences" (36 Vict., No. 9).

The "Act to amend the Trespass Act, 1872" (39 Vict., No. 19).

The "Act to amend the Trespass Act, 1872" (42 Vict., No. 11), and so much of the "Ordinance for adopting certain Acts of Parliament" (12 Vict., No. 21), as adopts the "Act to amend the Laws relating to Pound breach and rescue in certain cases" (6 and 7 Vict., c. 30).

The Second Schedule referred to.

THE TRESPASS SCALE.

Description of Cattle.

Horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, camel, deer, and foal.—"Great cattle."

Ram, ewe, sheep, wether and lamb, goat, kid, and pig.—"Small cattle."

Trespass on unenclosed Country Land.

For every entire horse, ass, or
bull, in the day time Not less than £2 nor more
than £4

For every such horse, ass, or
bull, in the night time Not less than £3 nor more
than £5

For every other head of
"Great Cattle," by night
or day Threepence

For every head of "Small
Cattle," by night or day One penny

Cattle Trespass—Fencing—Impounding.

Trespass on enclosed land, whether town, country, or suburban, not being a public street or thoroughfare in a City or Town, or Public Cemetery.

For every entire horse, ass, or bull in the day time	Not less than £2 nor more than £4
For every such horse, ass, or bull, in the night time	Not less than £3 nor more than £5
For every other head of cattle by night or day	A sum not exceeding 20 shil- lings

Trespass on a public street or thoroughfare in a Town or City, or in an enclosed Public Cemetery.

For every entire horse, ass, or bull	Not less than £3 nor more than £5
For every other head of cattle	A sum not exceeding 40 shil- lings

Note.—As to Great Cattle trespassing, not branded with a Registered Brand, see Sec. 6.