

No. XXXI.

An Act to enable Trustees of Commons in New South Wales to have perpetual succession and to empower them to regulate the use of such lands as may be granted as Commons within the said Colony and for other purposes relating thereto. [2nd October, 1847.]

COMMONS
REGULATION.

WHEREAS by various instruments respectively under the hand of the Governor for the time being of the Colony of New South Wales certain portions of land were allotted as common lands for the use of the settlers and cultivators in the respective districts in or next to which such lands are severally situated but such instruments are deemed insufficient in law for the purposes of securing and regulating the rights of common intended to be thereby granted And whereas it is expedient that bodies of Trustees with perpetual succession should be created for the purpose of holding such common lands under grants from the Crown for the use aforesaid and of making such regulations in relation to common lands heretofore allotted or which may at any time hereafter be granted by the Crown as may be necessary for the more effectual and equal enjoyment of the same Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That when and so often as any grant from the Crown shall be made unto and to the use of Trustees and their successors of any lands as commons for the use of

Preamble.

Trustees and their successors to be a body corporate and as such may sue and be sued.

the

Commons Regulation.

the settlers and cultivators and other inhabitants of any parish or district within the said Colony such Trustees and their successors to be appointed as hereinafter is provided shall be a body corporate under the name of the Trustees of the district in such grant specified and under that name shall have perpetual succession and shall be sued and sue in relation to the said common and shall be capable of holding such common lands in perpetuity upon the trusts and for the uses declared in such grant.

Vacancies occurring
by death or otherwise
how to be supplied.

2. And be it enacted That when any Trustee of any such common shall die or be absent from the Colony for more than twelve months or refuse or become incapable to act in the trusts or powers reposed in him in relation to the said common then and so often as the same shall happen a meeting of the persons entitled to the use of such common shall be convened by the surviving or continuing Trustees or one of them by a notice to be affixed in the office of the nearest Court of Petty Sessions and also in two or more conspicuous places on the said common at which meeting the senior Trustee present thereat shall preside and at such meeting a new Trustee shall be elected by the majority of persons present who in the opinion of the Trustees or Trustee so presiding then are and shall for six months previously have been entitled to use the said common and every such election shall be forthwith communicated by the presiding Trustees or Trustee to the Colonial Secretary for the time being of the said Colony Provided always that if no such election shall have taken place within twelve months after any vacancy shall have occurred it shall and may be lawful for the said Governor for the time being to appoint a new Trustee to fill every such vacancy.

Trustees to regulate
rights of settlers &c.
as to grazing

3. And be it enacted That the Trustees for the time being of any such common or the majority of them shall have power to ascertain determine and declare by writing under their hands and seals from time to time the number and description of cattle and other stock which the respective settlers cultivators and other inhabitants for whose use the common shall have been granted shall having reference to the grant thereof be entitled to depasture upon the said common in right of their respective farms lands and houses Provided however that such writing be forthwith deposited in the office of the nearest Court of Petty Sessions and that if any person shall feel himself aggrieved by the decision of the Trustees in this behalf he shall be at liberty to appeal at any time within two months from the time of depositing such writing in the said office to the said Court which said Court shall have full power to hear and determine the said appeal in a summary manner and to confirm or alter the decision of the said Trustees in relation to the party so appealing.

subject to appeal to
nearest Court of
Petty Sessions

and may make regu-
lations and enforce
the same by fines

4. And be it enacted That it shall and may be lawful for the Trustees for the time being of any such common to make such rules and regulations for the better and more convenient and equal use and enjoyment of the said common and of the timber growing or being thereon and of all other rights privileges and easements incident thereto by the persons having right of common thereon under the grant thereof as to them shall seem necessary or expedient and for the enforcement of such rules and regulations to impose fines not exceeding in any one case the sum of ten pounds for breaches thereof respectively and also for raising assessing levying and appropriating such moneys as shall be required for the purpose of defraying any costs charges and expenses which the said Trustees shall or may at any time be put or exposed to in or about the maintaining or improving of the said common or in the protection of the rights of the said common and a copy of such rules and regulations shall within fourteen days from the making thereof be transmitted to the office of the nearest Court of

Petty

Commons Regulation.

Petty Sessions and also to the Governor for the time being of the said Colony who shall have power at any time within two months from the receipt of such copy to disallow the said rules and regulations or any of them and shall signify such disallowance to the Court of Petty Sessions nearest to the said common and in the meantime no such rules or regulations shall be in force.

subject to the approval of the Governor-

5. And be it enacted That the Trustees for the time being of any such common or the major part of them with the consent of the majority of the commoners assembled at a meeting convened for that purpose as hereinbefore mentioned shall have power to grant leases of portions of such common not exceeding in the whole one-fourth part thereof at any one time for terms not exceeding seven years for the purpose and on condition that the lands so let shall be cleared of timber or otherwise improved by the tenants thereof so as to be of increased value as common at the expiration of certain leases.

and with the approval of the commoners may grant leases

6. And be it enacted That any one or more of the Trustees of any such common shall have power to distrain or cause to be distrained and impounded any cattle or other stock found depasturing upon the said common which shall belong to any person not entitled to the use thereof or to any commoner who shall at the time of such distress have surcharged thereon and also to claim demand and recover such damages in respect of such cattle or other stock so distrained as could or might be claimed by the owner of any private lands in respect of animals found trespassing and doing damage upon the same.

and may distrain stock trespassing.

7. And be it enacted That all and every the persons entitled for the time being to the use of the said common as commoners thereon shall have all the same rights and remedies between themselves and against strangers as by the law of England are possessed and enjoyed by commoners on the waste lands of any manor in England and that all persons whatsoever shall be subject to the same liabilities in relation to commons in the said Colony as if the same respectively were commons in England aforesaid.

Rights of commoners.

8. And be it enacted That all sums of money recovered and received by the Trustees of any common for trespasses or otherwise under this Act shall be expended by the said Trustees in or about the improving of the said common or otherwise in relation thereto and a just and true account of such receipts and expenditure shall be exhibited by the said Trustees at the Court of Petty Sessions nearest to the said common and shall be published in the *New South Wales Government Gazette* at some time during the month of January in every year.

As to moneys received or recovered by Trustees.

9. And be it enacted That all fines and penalties inflicted or imposed under the provisions of this Act or by or under any rule order or bye-law made in pursuance thereof may in case of non-payment be recovered in a summary way by the order and adjudication of any one Justice of the Peace presiding at Petty Sessions on complaint made to him on the oath or affirmation of any of the said Trustees or of any person having a right of commonage or on the confession of the party or parties offending (which oath affirmation or confession such Justice is hereby required and empowered to administer and receive) and in default of immediate payment of any such fine or penalty the same shall be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal of such Justice and the same shall be paid over to the Colonial Treasurer for and on behalf of Her Majesty Her Heirs and Successors for the public uses of the said Colony rendering the overplus (if any) on demand to the party or parties whose goods and chattels shall be so distrained and sold the reasonable charge of such distress and sale being first deducted and in case any such fines or penalties be not forthwith paid it shall

Or Recovery and appropriation of fines and penalties.

Distress and sale.

be

Fatal Accidents Compensation.

Inprisonment when
not sufficient distress.

be lawful for such Justice and he is hereby required and empowered to order such offender or offenders to be kept in safe custody until return can conveniently be made to such warrant of distress unless such offender or offenders shall give sufficient security to the satisfaction of such Justice for his or her appearance before such Justice or before some other Justice on such day as shall be appointed for the return of such warrant of distress but if it shall appear on return of said warrant that no sufficient distress can be had whereupon to levy the said fine or penalty and such costs as aforesaid and the same shall not be forthwith paid or in case it shall appear to the satisfaction of said Justice upon confession of the offender or otherwise that he or she hath not sufficient goods and chattels whereupon such fines or penalties can be levied if a warrant of distress were issued such Justice shall not be required to issue such warrant of distress and thereupon it shall be lawful for such Justice by warrant under his hand and seal to commit such offender to any common gaol or house of correction there to remain for any time not exceeding three calendar months unless such fine or penalty be sooner paid or satisfied together with all the costs and charges attending such prosecution to be ascertained by such Justice.
