

No. II.

PRICKLY-PEAR
DESTRUCTION.

An Act to provide for the eradication of the Prickly-pear. [30th July, 1886.]

Preamble.

WHEREAS provision should be made for the eradication of the Prickly-pear Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Commencement and
title of Act.

1. This Act shall come into operation on the first day of September one thousand eight hundred and eighty-six and may be cited as the "Prickly-pear Destruction Act of 1886."

Interpretation of
terms.

2. In this Act if not inconsistent with the context—

"Crown Land" means land vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple or included under the definition of "Private Land."

"Eradicate" means to entirely consume by fire or to completely bury three feet at least under ground prickly-pear with the roots seed and every other part thereof.

"Governor" means the Governor with the advice of the Executive Council.

"Inspector" means any person acting under the authority of the Minister as inspector for the purposes of this Act.

"Minister" means the Minister for the time being charged with the administration of this Act.

"Prickly-pear" means the plant known by the botanical name of *Copuntia vulgaris* or the common prickly-pear and any other variety of the cactus tribe which the Governor may declare to be prickly-pear for the purpose of this Act.

"Private Land" means land alienated from the Crown or held under lease or promise of lease from the Crown for any period exceeding one year or permanently dedicated and vested in trustees whether such trustees be persons or a body corporate.

"Owner"

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“Owner” means any person or body corporate holding land on any freehold tenure or permanently in trust or upon any lease or promise of lease from the Crown and includes the mortgagee of any such land.

“Occupier” means every person holding any lease agreement for lease or license to occupy land and every person in actual possession or occupation of any land.

1. *Inspectors—their powers and duties.*

3. Any inspector may at all reasonable hours enter upon any Crown land or private land for the purpose of ascertaining whether any prickly-pear is growing thereon and for such purpose shall have free right of ingress egress and regress into over and across such land. Power of entry.

4. Every inspector upon being required by notice in writing delivered to him personally or left at his usual abode by any owner or occupier shall attend at any place therein appointed within a reasonable time after the service thereof for the purpose of ascertaining whether any prickly-pear is growing upon the land specified in such notice. Inspector on notice to ascertain if any prickly-pear is on land.

5. Any inspector or person duly authorized under this Act who shall refuse or wilfully neglect to perform any of the duties imposed upon him by this Act shall be liable to a penalty not exceeding ten pounds. Inspector neglecting his duty.

2. *Destruction of any Prickly-pear on Crown Land or land vested in the Commissioner of Railways or in the Council of a Municipality.*

6. When any prickly-pear is found by an inspector upon Crown Land or upon any road not within the boundaries of any Municipality and adjoining or dividing Crown Land a notice in the form of Schedule A hereto shall be transmitted by such inspector to the Minister describing the situation of such land or road and it shall then be the duty of such Minister forthwith to authorize the employment of all necessary labour to eradicate such prickly-pear and all expenses incurred in such eradication shall be defrayed out of such moneys as Parliament may appropriate for that purpose Provided that it shall be lawful for the Minister to cause such Crown land to be offered for lease by auction or tender and to let the same in areas not exceeding six hundred and forty acres and for any term not exceeding twenty-one years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other conditions and penalties as may be prescribed by regulations in that behalf anything in the “Land Act of 1884” to the contrary notwithstanding. Prickly-pear growing on Crown Lands may be eradicated.

7. If any prickly-pear is found upon any land vested in the Commissioner for Railways or upon any land roads or streets within the boundaries of any Municipality the Commissioner for Railways or the Council of such Municipality (as the case may be) shall be taken to be the owner or occupier of such land roads or streets for the purpose of being served with the notice hereinafter mentioned to clear such land and shall be liable to the penalties imposed by this Act. Prickly-pear growing on railway or lands within a Municipality.

8. If prickly-pear shall be found upon any Common or upon any land vested by the Crown in Trustees other than the Council of any Municipality and the same shall not be effectually eradicated within three months after notice as aforesaid in the form of Schedule B shall have been served upon the trustees of such Common or land or upon any one of them or within such further period as the Minister Reserved Commons may be leased to cover the expenses of destroying prickly-pear.

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Minister may in any case allow or if the trustees of such Common or land shall within three months after the receipt of such notice inform the Minister that they are unable to eradicate the prickly-pear thereon or if there shall be no trustees of such Common or land then it shall be lawful for the Minister to cause such land to be offered for lease by auction or tender and to let the same for any term not exceeding twenty-one years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other conditions or penalties as may be prescribed by regulations in that behalf and any rent received for such land shall be paid to the Consolidated Revenue anything in the "Commons Regulation Act" to the contrary notwithstanding.

Commons leased freed from commonage rights.

9. Any Commons or land so leased shall during the currency of such lease be absolutely freed from all the rights of Commonage or the trusts as the case may be and the Minister may from time to time upon proof to his satisfaction of the nonfulfilment by the lessee of the conditions of the lease or any of them declare such lease forfeited and again lease the land as hereinbefore provided.

3. Destruction of Prickly-pear on private land.

Inspector may serve notice on owners to eradicate prickly-pear.

10. Any inspector may serve or cause to be served upon any owner or occupier of any private land on which any prickly-pear is found a notice in the form of Schedule B hereto requiring such owner or occupier forthwith to eradicate the same.

Penalty for neglect to comply with notice.

11. If within one month after the service of such notice such owner or occupier does not commence to do and thereafter continue to do all such acts as the Minister may in writing direct to eradicate the prickly-pear on the land mentioned in such notice such owner or occupier shall be liable to a penalty not exceeding ten pounds for the first offence and for every second or subsequent offence to a penalty of not less than five pounds nor more than twenty pounds and neglect to take such means to eradicate as aforesaid for a space of twenty-eight days at any time after the date of each conviction shall be deemed to be a fresh offence.

In addition to penalty inspector may enter upon private land.

12. If any owner or occupier fails to comply with any such notice then in addition to or in lieu of proceedings for the recovery of such penalty any such inspector or other person upon being authorized by the Minister to do so may enter upon the land mentioned in such notice and do all such things as to him may appear necessary to eradicate the prickly-pear on the land of such owner or occupier and for that purpose the inspector or authorized person and any person or persons employed by either of them shall have free right of ingress egress and regress into over and across any land of such owner for such period as may in his opinion be necessary for the purposes of such eradication.

Power to withdraw from lands after entering to clear.

13. If at any time after the expiration of one month as aforesaid such inspector shall be satisfied that the owner or occupier is doing all things necessary to eradicate such prickly-pear then such inspector may abstain from entering upon such land or having entered upon it may withdraw therefrom upon the owner or occupier paying all costs and expenses incurred to the time of such withdrawal.

Owners within thirty days of service of notice to pay cost of destruction.

14. Any owner or occupier upon whose land any inspector or authorized person shall have entered as aforesaid for the purpose of eradicating any prickly-pear shall within thirty days from service of a notice in the form of Schedule C hereto pay to the person or one of the persons mentioned in such notice as authorized to receive such payment the amount mentioned therein as being the cost and expenses incurred

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incurred in the eradication of any prickly-pear which amount when so paid shall by the person receiving the same be forthwith paid into the Consolidated Revenue.

15. If any owner or occupier upon whom a notice as mentioned in the last preceding section has been served shall fail to pay the amount mentioned therein within the said period of thirty days the inspector issuing such notice or any person authorized in that behalf by the Minister may sue either the owner or the occupier for and recover the same as a debt due to the Crown either in the Supreme Court or in any Court having jurisdiction nearest to the place where the land in respect of which the claim shall have been made is situated whether the defendant shall reside within the limit of such Court's jurisdiction or not.

If cost not so paid
inspector to sue for
same.

16. If a notice is served upon any owner who is not entitled to the occupation for the time being of the land mentioned in such notice then unless the person in actual occupation or entitled to actual occupation of such land shall within fourteen days from the service of such notice arrange with such owner and to his satisfaction for the eradication of prickly-pear on the said land the said owner shall be deemed as regards such land to have all the powers of an inspector under this Act.

If notice to destroy
served upon owner
not entitled to occu-
pation he may enter
and eradicate.

17. Wherever there are more owners or occupiers than one of any private land and one of such owners or occupiers is under this Act in any way compelled to pay more than his proportionate share of the cost of eradicating the prickly-pear on such land he may in any Court of competent jurisdiction sue for and recover from the other owners or occupiers of such private land such proportion of the costs charges and expenses incurred by him in or about such eradication as is in the opinion of the Court fairly proportionate to the respective interests of the owners in such land. If the owner or occupier of any such land as aforesaid shall be unknown or absent from the Colony and the cost of eradicating the prickly-pear on his land or any penalty incurred in respect of such land cannot be recovered from him and shall remain unpaid for twelve months after the right to recover the same has first accrued it shall be lawful for the Minister to let such land for any term not exceeding twenty-one years upon such terms and conditions as shall be prescribed by regulations for that purpose and to receive the rents and profits thereof and apply the same in payment of such amount or penalty as aforesaid with interest thereon at the rate of ten per cent. per annum so long as the same shall be unpaid and the surplus (if any) shall be paid to the Colonial Treasurer to be held by him upon trust for the persons entitled to the same.

Apportionment of
cost between owners.

18. In every case where on this Act coming in force a lease is held of any land (the same not being Crown Land) for an unexpired period and there is no provision in such lease with respect to the cost of the eradication of prickly-pear on such land the landlord and tenant shall each contribute an equitable share of such cost. And if the tenant shall not when called upon by the landlord or as the case may be the landlord when called upon by the tenant agree to pay an equitable share of such eradication then either party shall and may apply to the Court of Petty Sessions nearest to the place where such eradication shall have been done to issue a summons to such other party requiring him to appear before such or some other such Court to show cause why such other party should not pay to the first-mentioned party such a proportion of the cost of such eradication as shall be just and equitable having regard to the circumstances and duration of the lease of such tenant. Provided however that nothing in this Act shall in any way affect any agreement with respect to the eradication of prickly-pear made between a landlord and tenant previous to the passing of this Act.

Apportionment of
cost between
landlord and tenant.

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Contribution by
landlord and tenant.

19. At the time and place appointed by such summons the Court as aforesaid shall inquire into the matter therein referred to and shall hear and examine all persons who shall appear to give evidence concerning the same and shall thereupon make such order as to the amounts to be contributed respectively by such landlord and tenant as shall appear to be just and equitable having regard to all the circumstances and the duration of the lease and the presiding Magistrate shall give a certificate under his hand and seal certifying what amounts shall be so payable and such sums shall thereupon be recoverable as hereinafter provided.

As to description of
private lands in
notices &c.

20. The description of any private land required to be inserted in any notice under this Act need not particularly define the land referred to therein but shall be sufficient if it make such reference to the land either by name number of section or allotment or by boundaries or otherwise so as to allow of no reasonable doubt as to what land is referred to. And all references to private land in any such notice shall be deemed to extend to the roads bounding or intersecting the same and any owner or occupier or inspector or other person having power hereunder to enter upon private land and eradicate the prickly-pear thereon shall be deemed to have power to enter upon the roads bounding or intersecting such land and eradicate such prickly-pear growing on such roads.

4. General Provisions Regulations &c.

Authorized persons
may take timber
for purposes of Act.

21. It shall be lawful for any person who is authorized by this Act to enter upon any land and to destroy prickly-pear thereon to take such indigenous timber growing on the land of the owner or occupier of such land as may be required by him for the purpose of burning or destroying such prickly-pear or to dig pits and bury the same therein.

Expense of eradica-
tion to be a first
charge upon land.

22. All costs charges and expenses incurred by an inspector or any person authorized in clearing any private land of prickly-pear under the provisions of this Act shall be a first charge upon such land and shall take precedence of all mortgages or other charges whatsoever upon such land. Provided always that a certificate under the hand of the Minister shall be a full discharge of all such costs charges and expenses up to the date of such certificate.

Regulations.

23. The Governor may make regulations for declaring how and in what manner prickly-pear may or shall be destroyed otherwise than provided for in this Act and also with respect to all other matters of detail necessary for carrying out the objects of this Act and may impose penalties for the breach of any such regulation not exceeding five pounds and every such regulation shall have the force of law upon publication in the *Gazette*.

5. Penalties.

Penalties for person-
ating inspector.

Penalty for trespass-
ing upon private
lands.

For interfering
with notices.

24. Any person who shall falsely represent himself to be or shall personate an inspector or a person authorized under this Act or who not being an inspector or a person authorized in writing by the Minister or a person lawfully acting under the provisions hereof shall trespass upon any private land for the apparent purpose of eradicating prickly-pear or who shall destroy injure alter or remove any notice signed by an inspector or person authorized under this Act and placed or exhibited upon any land by the owner thereof or by any inspector or person authorized under this Act as aforesaid shall be liable to a penalty not exceeding twenty pounds,

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25. Any person who shall wilfully assault obstruct hinder interrupt or mislead or cause to be assaulted obstructed hindered interrupted or misled any inspector or any person authorized in writing by the Minister or any owner or person in the exercise of any power or authority vested in him by this Act whilst in the performance or execution of his duty under this Act shall for every such offence if not otherwise specially provided for be liable to a penalty not exceeding twenty pounds. And no proceeding for the recovery of such penalty nor the payment thereof shall be a bar to any action at law by any of the persons aforesaid for or in respect of any such assault as aforesaid but every such action may be commenced and proceeded with as if this Act had not been passed any law or usage to the contrary notwithstanding.

For wilfully obstructing forest ranger.

26. It shall not be lawful for any person to grow or cultivate upon any land or premises any prickly-pear or to scatter the seed thereof upon any land or to throw or place or cause to be thrown or placed the same into any river stream creek or watercourse whether the same shall contain water or not or to cut and leave any prickly-pear in such a position on the banks of any river stream creek or watercourse so that by reason of floods or otherwise it would be liable to be swept or floated into such river stream creek or watercourse and every person offending against the provisions of this section shall be liable to a penalty not exceeding twenty pounds.

Not lawful to cultivate noxious plant.

27. Every owner or occupier upon whose land there shall be any prickly-pear shall within one month from the passing hereof give the inspector nearest to such land notice thereof in writing and any person failing to do so shall be liable to a penalty not exceeding twenty pounds.

Owners to give notice of prickly-pear being on land.

28. Any person who shall commit a breach of this Act or of any Regulations hereunder for which a penalty is not specially provided shall on conviction for every such offence incur a penalty not exceeding ten pounds.

General penalty.

6. Legal Procedure &c.

29. All proceedings for the recovery of penalties or money payable under this Act shall be heard and determined in a summary way before any two Justices unless hereinbefore otherwise specially provided in accordance with the law regulating summary proceedings before Justices and in any proceedings for the recovery of money under the provisions hereof or for the recovery of any penalty hereunder the jurisdiction of the Court or Justices before whom the proceedings are pending shall not be ousted on the ground that the defence raises any question of title to land or that the defendant does not reside within the boundaries of the jurisdiction of the Court or Justices where the action may be commenced if the land in respect of which the claims arose is situated within the boundaries of the jurisdiction of such Court or Justices.

Proceedings for recovery of penalties.

Jurisdiction of Court or Justices not ousted on ground that defence raises question of title.

30. Any person may appeal from any adjudication of Justices under this Act to the Court of Quarter Sessions pursuant to the provisions of the Acts regulating appeals to Quarter Sessions.

Appeal.

31. Any notice or order required by this Act to be in the form given in any of the Schedules hereto shall be sufficient if in a form substantially similar thereto and such notices or any other required to be given by this Act or by the regulations to be made hereunder unless otherwise prescribed shall be deemed to be sufficiently given or served if left with the person to whom it is addressed or left with some person at his usual or last known place of residence or if sent to him by a registered letter through the general post or if inserted twice a week for two consecutive weeks in some newspaper published in Sydney

Notice how to be given.

Sydney

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Sydney and once a week for two consecutive weeks in some newspaper published in or near to (as the case may be) the district in which such land is situated the production of the newspaper containing such insertions shall be proof of the due service of such notice and in all other cases a statutory declaration of such service shall be sufficient proof.

Allowance of Police
Magistrate to be
sufficient evidence of
the expenses
incurred.

32. For the purposes of this Act in any proceeding to recover from the owner of any land the expenses of and attending the eradication of prickly-pear and in any appeal relating to or concerning such expenses it shall be sufficient to produce a certificate of the allowance of such expenses purporting to be under the hand and seal of the Magistrate presiding at the Court of Petty Sessions nearest to the place where such work was done and such allowance and certificate shall be *prima facie* evidence that the expenses so allowed were actually incurred in such eradication and that such eradication was duly authorized and that such notice was given and proceedings taken pursuant to the requirements of this Act and for the purpose of giving such certificate such Magistrate shall upon request and *ex parte* inquire into such expenditure and examine the vouchers of the same and shall take evidence of the same if he deems it necessary.

SCHEDULES.

SCHEDULE A.

Report by Inspector of existence of Prickly-pear on land.
(Place and date.)

To the Minister for
Sir

I hereby give you notice that Prickly-pear is upon the land or road situated as hereunder described.

(Signed) A.B.
Inspector.

Description of land.

SCHEDULE B.

Notice to Owner to destroy Prickly-pear.

To owner (or owners) of the land hereunder described.
TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" you are hereby required forthwith to eradicate the Prickly-pear on the land situated as hereunder described.

(Signed) A.B.
Inspector.

Description of land.

NOTE.—When the notice is given by the Council of a Municipality the notice must be signed by the Council Clerk.

SCHEDULE C.

Notice to Defaulter to pay cost of eradication.

To owner of the land hereunder described.
TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" costs and expenses to the amount of _____ have been incurred in the eradication of Prickly-pear under my direction on the land situated as hereunder described which amount you are hereby required to pay to

(Signed) A.B.
Inspector.

Description of land.