

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1921.

A BILL

To make better provision for the eradication of prickly-pear; to repeal the Prickly-pear Destruction Act, 1901; to amend the Crown Lands Acts and certain other Acts; and for purposes connected therewith.

BE it enacted by the King'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:—

1. This Act may be cited as the "Prickly-pear Act, 1921," and shall come into operation on a date to be notified by the Governor in the Gazette.

Short title
and com-
mencement.

2. The Prickly-pear Destruction Act, 1901, is re-pealed.

3. In this Act, unless the context otherwise requires,— Definitions.

“ Authorised person ” means any person acting under the authority of the Minister for the purposes of this Act.

“ Council ” means council of a municipality or shire.

“ Crown land ” means land vested in His Majesty, and not included in definition of “ private land.”

“ Eradicate ” means entirely destroy by fire, or in the manner prescribed.

“ Local land board ” and “ land district ” have the same meanings as in the Crown Lands Acts.

“ Minister ” means Secretary for Lands.

“ Occupier ” includes any person holding any lease, agreement for or promise of a lease, or a license to occupy land, or any person in actual possession or occupation of land, and includes the resident manager of land upon which the occupier does not reside.

“ Owner ” means person holding land on any freehold tenure, or the mortgagee of any land so held, and includes the trustees of any land permanently dedicated for any public purpose.

“ Prescribed ” means prescribed by this Act or by any regulation made thereunder.

“ Prickly-pear ” or “ pear ” means the plant known by the botanical name of “ *Opuntia*,” and any varieties of the cactus tribe which the Governor may declare to be prickly-pear; and includes all varieties of the cactus tribe declared by the Governor to be prickly-pear for the purposes of the Act hereby repealed.

“ Private land ” means land alienated by the Crown or held under lease or promise of lease from the Crown for any period exceeding one year; or permanently dedicated for any public purpose and vested in trustees.

4. (1) The owner or occupier of private land on which there is growing any prickly-pear shall furnish or cause to be furnished to the Minister a return in the prescribed form stating—

Return to be furnished by owner or occupier.

- (a) particulars of the area on which the prickly-pear is growing; and
- (b) what steps he has taken, is taking, or intends taking to destroy the prickly-pear; and
- (c) any other particulars prescribed.

(2) Such return shall be furnished within such time as may be fixed by the Minister by notification published in the Gazette and in a local newspaper.

(3) If a return is not furnished in pursuance of this section in respect of any land, the owner or occupier of such land shall be liable to a penalty not exceeding *fifty* pounds.

5. Where land is badly infested with pear, the Colonial Treasurer may, on the recommendation of the Minister, make advances from the Consolidated Revenue Fund, by way of loan to such owner or occupier, to be expended exclusively in the eradication of the pear on such land.

Advances for eradication.

Such advance shall be repaid, with interest at the rate of four and one-half per centum per annum, by fifteen equal annual instalments: Provided that the Minister may extend the time for the payment of any such instalment.

6. A council shall within the time specified in a notice in that behalf served on it by the Minister, or within such further time as the Minister may allow, eradicate prickly-pear on any road, street, or land under its control, and shall keep the same free from prickly-pear.

Eradication by a council.

If any council fails to carry out the provisions of this section, it shall be liable to a penalty not exceeding *fifty* pounds.

An authorised person may also enter the land and destroy any prickly-pear thereon, and the Minister may recover the cost of such work from the council.

7. The Minister may afford assistance to any council towards the eradication of prickly-pear in such manner and by such means as may be prescribed.

Assistance to a council.

8.

8. Where prickly-pear is growing on Crown land, Crown lands. the Minister may authorise the employment of all necessary labour to eradicate such prickly-pear; and the expenses incurred may be defrayed out of such moneys as Parliament appropriates for that purpose.

9. The Minister may enter into an agreement with Agreement with council. any council for the eradication of prickly-pear on any Crown land within its area, upon such terms as may be agreed upon, and such agreement shall be binding upon and enforceable by the Crown.

10. The Minister may expend such moneys as Government reserves. may be appropriated by Parliament for that purpose in eradicating prickly-pear growing on any State forest, travelling stock, camping, mining, or forest reserve, or on any reservation specially notified in the Gazette as coming within the scope of this section, or on any land dedicated for public purposes and not under the control of a council.

11. If there is prickly-pear on any land which is a Leasing of commons and reserves. common, or which has been reserved or dedicated by the Crown for public purposes; and if—

- (a) the prickly-pear on such land is not eradicated within three months after service on the trustees of such land of a notice by the Minister requiring them to eradicate such prickly-pear, or within such further time as the Minister may allow; or
 - (b) the trustees of such land, within the time aforesaid, inform the Minister that they are unable to eradicate such prickly-pear; or
 - (c) there are no trustees of such land,
- the Minister may lease such land by auction or tender, or upon application made as prescribed, for any term not exceeding fifty years, at such rent and upon such terms as he may determine. Any rent received in respect of any such lease shall be paid into the Consolidated Revenue Fund.

Any land so leased shall, during the currency of the lease, be free from all trusts and all rights of common.

If in pursuance of the terms of any such lease the lease is forfeited, it may be re-leased for the residue of the term of the original lease, at such rent and upon such terms and conditions as the Minister may determine.

12. (1) Any Crown land badly infested with pear Leasing of badly-infested land. may be leased by the Minister by auction or tender, or upon application made as prescribed, for any period not exceeding fifty years, in such areas and at such rental (nominal or otherwise) as he deems expedient.

(2) The Minister may grant a perpetual lease of any Crown land which is badly infested with pear, by auction or tender, or upon application made as prescribed, in such areas and at such rental (nominal or otherwise) as he deems expedient: Provided that on the expiration of the first fifty years of such lease, and every twenty years thereafter, the annual rental value shall be determined by the local land board, and shall be paid by the lessee.

(3) Any lease under this section shall contain such provisions as may be deemed advisable by the Minister for the eradication of pear, and for keeping the land free from pear.

(4) The Colonial Treasurer, with the approval of the Minister, may grant to any such lessee, by way of bonus, an amount of money per acre during the first five years of his lease; but no part of such bonus shall be paid until the Minister is satisfied that a sum at least equal to the amount of the bonus has been expended by the lessee on the eradication of pear on the land leased.

13. The boundaries of leases under this Act shall be sufficiently defined by survey. Survey, and cost thereof. The cost of survey, not to exceed two pounds per mile, shall be paid by the lessee in instalments extending over a period of ten years, with interest at four and one-half per centum per annum; the instalments to be paid at the same time as the rent, but two or more instalments may be paid at any time.

It shall be a condition of any such lease that the Minister may without paying any compensation withdraw from the lease any land required for any public purpose.

14. The Minister may forfeit, for non-payment of Forfeiture of lease. rent or survey fee or for breach of conditions, any lease granted under this Act, or any Act hereby repealed, and all improvements thereon shall become the property of the Crown. Such forfeiture shall take effect on the expiry

expiry of thirty days after the publication in the Gazette of a notice of forfeiture, and thereupon the land shall be reserved from sale or lease under any Act until otherwise notified by the Minister in the Gazette.

15. The Minister may accept a surrender of any such lease as to the whole or any part of the land leased, and thereupon the land shall be freed from all obligations of such lease as to the land included in the surrender. Surrender of lease.

16. Any such lease may be transferred, or the land included therein or any part thereof may be sublet only with the consent of the Minister and in the prescribed manner and on payment of the prescribed fee. Transfer and subletting.

17. The Minister may extend the term of any prickly-pear lease granted under the Act hereby repealed on such conditions as he may determine: Provided that the term of the lease including any such extension shall not exceed fifty years from the commencement of the lease. Extension of term of lease.

18. (1) It shall be lawful for the Minister to enter into an agreement with any person providing for the grant to such person of any portion of Crown land specified in the agreement, in consideration of the freeing of Crown land from pear. Agreement for grant of Crown land when freed from pear.

(2) The area of land to be included in any such grant under any one agreement shall not exceed five thousand acres, which need not be in one block. But more than one agreement may be made with the same person.

(3) Every such agreement shall be in writing, and shall be signed by the Minister and the other party to the agreement, and shall contain such provisions as, in the opinion of the Minister, are necessary and proper for effectively securing the eradication of pear, and shall provide, inter alia,—

(a) that during each year of the period mentioned in the agreement a specified portion of land shall be freed from pear; and

(b) that land which has been freed from pear, and land which, at the date of the agreement, is not infested with pear, shall be kept free from pear; and

(c)

(c) that the whole of the land required to be freed from pear under the agreement shall be so freed within a specified period, and kept free from pear during a period of not less than two years thereafter.

(4) Any such agreement shall be binding upon, and may be enforced by, the Crown.

(5) When the land agreed to be freed from pear has been kept free from pear for a period of two years, the person who made the agreement with the Minister, or his successor in title, shall be entitled, if the terms of the agreement have been complied with, upon payment of the survey fee, deed fee and stamp duty, to a grant in fee simple of the land, and the Governor shall issue such grant in the form prescribed.

19. The Minister may, from time to time, by notice in the Gazette, declare specified areas of land to be—

- (a) free from pear; or
- (b) infested with pear, but reasonably capable of being freed from pear; or
- (c) so badly infested with pear that the provisions of this Act requiring pear to be eradicated should not be enforced.

Land may be declared to be free from pear or infested.

20. Where a specified area is declared by notice in the Gazette to be free from pear, it shall thereupon be the duty of every owner and occupier of land within the area, without any further or other notice in that behalf, to keep and maintain any land in the area of which he is the owner or occupier entirely free from pear, and if he fails to do so without reasonable excuse such owner or occupier shall be liable to a penalty not exceeding *fifty* pounds.

Duty of owner and occupier where land declared to be free from pear.

21. (1) Where a specified area is declared, by notice in the Gazette, to be infested with pear, but reasonably capable of being freed from pear, the Minister may, by a further notice in the Gazette, state a time within which any specified portion of such area shall be freed from pear.

Duty of owner and occupier where land declared to be infested.

(2) Upon publication of such further notice in the Gazette, it shall thereupon be the duty of every owner and occupier of land within the portion of the area

area

area specified in such notice, and without any further or other notice in that behalf, to free from pear any land of which he is such owner or occupier within the time stated in such notice ; and if he fails to do so, such owner or occupier shall be liable to a penalty not exceeding *fifty* pounds.

(3) If prior to the expiration of the time stated in the Gazette, or subsequently thereto, the Minister is satisfied that any owner or occupier is not exercising reasonable diligence in freeing his land from pear, the Minister may thereupon summon such owner or occupier to show cause, before a stipendiary magistrate or any justices sitting as a court of petty sessions, why an order should not be made against him under this section, and if such owner or occupier, upon being so summoned to show cause, fails to satisfy such magistrate or justices that he has exercised reasonable diligence in freeing his land from pear, such magistrate or justices may order such owner or occupier to eradicate the pear upon his land or upon specified portions thereof within a time or times stated in the order. Any owner or occupier who is guilty of any default in complying with the requirements of such an order shall be liable to a penalty not exceeding *five* pounds for every day during which such default continues.

22. The last two preceding sections shall apply, *mutatis mutandis*, to a council, and to roads and other land under the control of a council.

Last two preceding sections to apply to a council.

23. Where any default has been made in complying with the requirements of any notice with regard to any land under this Act, without prejudice to the liability of any person for payment of any penalty, an authorised person may enter upon the land and do all such things as he may deem necessary to comply with the requirements of the notice, and any expense thereby incurred may be recovered by the Minister in any court of competent jurisdiction, from the person guilty of such default, as a debt due to the Crown by such person.

Expenses recoverable from person guilty of default.

24. An authorised person may at any reasonable time enter any Crown land or private land in the discharge of his duties under this Act, and may take such indigenous

Powers of persons authorised to enter land to destroy prickly-pear.

indigenous timber growing on the land as is required by him for the purpose of burning or destroying prickly-pear thereon, and may dig pits and bury prickly-pear therein.

25. For defraying the expenses incurred by it in the eradication of prickly-pear, a council may, under the Local Government Act, 1919, and any Act amending it, make and levy a special or a local rate on the unimproved or on the improved capital value of ratable land in its area or in a portion of its area :

Rate to defray council's expenses.

Provided that no poll shall be taken on the question whether the rate shall be made :

Provided also that such rate may be made and levied notwithstanding that the amount of rates levied in the area would exceed or exceeds that prescribed by the said Acts :

Provided further that where the expenses to be defrayed do not exceed two hundred and fifty pounds in any one year the council may, in its discretion, defray such expenses from the general fund.

26. The description in a notice under this Act of any private land need not particularly define the land, but shall be sufficient if it allows no reasonable doubt as to what land is referred to.

Description of land in notices.

27. Any person who scatters or causes to be scattered the seed of prickly-pear upon any land, or throws or places or causes to be thrown or placed the same into any river, stream, creek, or watercourse, whether containing water or not, or cuts and leaves any prickly-pear in such a position on the banks of any river, stream, creek, or watercourse, that by reason of floods or otherwise it is liable to be swept or floated into such river, stream, creek, or watercourse, shall be liable to a penalty not exceeding *fifty* pounds.

Penalty for scattering seed, &c.

28. Any person who hinders or obstructs the person acting under the authority of the Minister, in the discharge of any duty or the doing of any work imposed or authorised by this Act, or causes him to be so hindered or obstructed, shall be liable to a penalty not exceeding *twenty* pounds.

Penalty for hindering work, &c.

29. Any person who commits a breach of this Act, or of any regulation for which a penalty is not specially provided, shall for every such offence be liable to a penalty not exceeding *ten* pounds.

Penalty where not otherwise provided.

30. Any penalties imposed by this Act or by any regulation thereunder may be recovered before any stipendiary magistrate or two justices sitting as a court of petty sessions.

Proceedings for recovery.

31. In any proceedings under this Act for the recovery of money or for the recovery of any penalty, 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 or proceeding was instituted if the land in respect of which the claim arose is situated within the boundaries of the jurisdiction of such court or justices.

Jurisdiction.

32. (1) The Governor may make regulations prescribing the forms to be used under this Act, and providing for payment of fees, and generally as to all matters necessary or convenient for giving effect to the objects and provisions of this Act.

Regulations.

(2) Such regulations may impose a penalty, not exceeding *ten* pounds, for any breach thereof.

(3) Such regulations shall—

- (i) be published in the *Gazette*;
- (ii) take effect from the date of publication, or from a later date to be specified in such regulations; and
- (iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall therefrom cease to have effect.