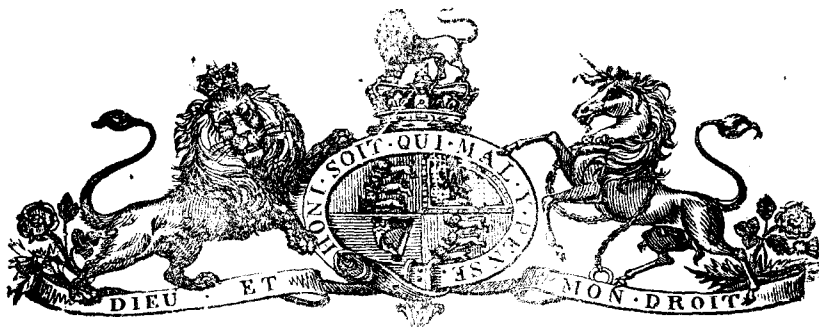


TASMANIA.



1883.

ANNO QUADRAGESIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 17.



AN ACT to prevent the Spread of the *California* Thistle. A.D. 1883.
[29 October, 1883.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

- 1 This Act may be cited as “The *California* Thistle Act, 1883.” Short title.

- 2 In the construction of this Act— Interpretation.
 - “Thistle” means the plant known by the botanical name of *Cnicus arvensis*, and commonly called or known as “The *California* Thistle :”
 - “Occupier” shall include the owner of any unoccupied land :
 - “Inspector” means the Chief Inspector or any Inspector of Sheep appointed under “The Scab Act, 1875.” 39 Vict. No. 20.

- 3 If any occupier of land within *Tasmania* upon which land thistles shall be growing at any time, shall not effectually cut down all such thistles then growing and being upon such land so as to prevent the same from blossoming, every such occupier being convicted thereof shall be liable to a penalty not exceeding Twenty Pounds. Penalty for not destroying thistles.

- 4 When any thistles shall be growing upon any unoccupied Waste Lands of the Crown, the Minister of Lands and Works shall cause such thistles to be cut down before blossoming; and the cost of cutting down the said thistles shall be defrayed out of the Consolidated Revenue Fund. Thistles growing upon Crown lands to be cut down.

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As to cutting
down thistles on
roads.

5 The Trustees of every Road District shall cause to be cut down all thistles which may be growing upon any roads in such Road District ; and in all towns and districts where the streets and roads are under the control of a Municipal Council, such Council shall cause to be cut down before blossoming all thistles which may be growing upon any such streets or roads ; and if such Trustees or Municipal Council shall not cause to be cut down the thistles as aforesaid, then any Inspector may cut down or cause the same to be cut down ; and the expenses incurred by such Inspector shall be payable and paid by the Treasurer of such Trustees out of the funds at the disposal of such Trustees, or by the Treasurer of such Municipality out of the Municipal Fund, as the case may be, and shall be recoverable as hereinafter provided.

Inspectors and
persons authorised
may enter upon
lands to search
for thistles.

6 It shall be lawful for an Inspector or any person authorised by an Inspector by writing under his hand in that behalf, without notice, to enter upon any lands, whether enclosed or not, at any reasonable hour in the day-time, for the purpose of ascertaining if any thistles are growing thereon ; and no such Inspector or person shall be deemed a trespasser by reason of such entry, or be liable for any damage thereby occasioned, unless the same was occasioned by such Inspector or person wilfully and without necessity : Provided that any person so authorised shall exhibit such written authority if required to do so by the occupier of such land, or his servant or agent ; and, if being so required, he shall fail to exhibit such authority, then he shall be liable to be deemed and dealt with as a trespasser.

If thistles found
on land and
occupier fail to
take steps to
cut down same,
Inspector may
employ persons
for that purpose.

7 If any thistles shall be found growing upon any land, an Inspector shall cause a notice signed by him, in the form in the Schedule or to the like effect, to be served upon the occupier thereof requiring him within a certain time to be specified in such notice, not exceeding Fourteen days, to cut down all thistles upon such land ; and if within such time such occupier shall fail to take steps to the satisfaction of the Inspector for cutting down such thistles, such Inspector may authorise any person in writing to enter upon the said land and to use all such lawful means as he may deem necessary for cutting down such thistles.

Where in any case any thistles shall be found upon any land the owner or occupier whereof is unknown or cannot be found, an Inspector shall, without serving any notice, forthwith take the steps hereinbefore mentioned for cutting down the thistles found upon such land.

The provisions hereinbefore contained shall be applicable when any Inspector shall find any thistles growing upon any streets or roads ; and any such notice as is hereinbefore mentioned shall be served upon the Council Clerk on behalf of any Municipal Council, and upon the Chairman of any Trustees on behalf of such Trustees.

Delivery of
notices.

8 Where by this Act any notice is authorised or required to be given by any Inspector or other person, the same may be given either by delivering the same personally, or by leaving the same at, or posting the same addressed to the usual or last known place of abode in *Tasmania* of the person to whom the same is addressed.

Recovery of
expenses
incurred by
Inspector.

9 Where an Inspector shall have incurred any expenses in cutting down the thistles found upon the lands of any person or upon any roads or streets, the amount of all such expenses shall be recoverable from such person or such Trustees or Municipal Council, as the case

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may be, by such Inspector, with costs, by action or plaint in any Court of competent jurisdiction, or by complaint under *The Magistrates Summary Procedure Act*. A.D. 1883.
19 Vict. No. 8.

The amount of all such expenses shall be ascertained by any Two Justices, who shall sign the same in token of their allowance thereof; and in any proceeding to recover the amount of such expenses it shall be sufficient to produce the allowance of such expenses purporting to be signed by Two or more Justices, and such allowance shall be *prima facie* evidence that the expenses so allowed were actually and lawfully incurred by such Inspector as aforesaid, and the onus of proving the contrary shall be upon the defendant.

10 Where an Inspector shall have incurred any expenses in cutting down the thistles upon any land (not being Crown Land) the owner or occupier whereof is unknown or cannot be found, such Inspector shall proceed *ex parte*, in manner hereinbefore directed, to recover the amount of such expenses, and the amount so recovered shall be and remain a charge upon the property in respect of which such amount has been recovered, and payment of such amount may be enforced at any future time as if the then occupier had himself been liable to pay such amount in the first instance; and the production of the receipt for such amount paid by or recovered from any such occupier for any amount due before the commencement of his occupancy shall be a discharge for the amount so paid or recovered in payment of rent to the owner, and such owner shall be entitled to recover from the person who was occupier when such amount became payable the proportion of the amount to which such occupier was liable as money paid to his use. Recovery of expenses where owner or occupier unknown.

11 If any person wilfully obstructs, hinders, or interrupts, or causes or procures to be obstructed, hindered, or interrupted, any Inspector, or any person duly employed or authorised by an Inspector, or in the exercise of any power or authority vested in an Inspector or any of the persons aforesaid by this Act, or threatens, or assaults, or uses improper or abusive language to any of the persons aforesaid whilst in the performance or execution of his duty under this Act, every such person shall for any such offence, if not otherwise specially provided for, be liable to a penalty not exceeding Twenty Pounds: Provided, that no proceeding for the recovery of any 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. Obstructing Inspector, &c.

12 All offences against this Act, and all penalties and sums of money imposed or made payable by this Act, shall, where no other mode of proceeding is by law provided, be heard, determined, and recovered in a summary way by and before Two or more Justices of the Peace, in the mode prescribed by *The Magistrates Summary Procedure Act*. Offences to be dealt with summarily.
19 Vict. No. 8.

13 All expenses recovered by any Inspector, and all penalties imposed under this Act, shall be paid into the Treasury and shall form part of the Scab Act Fund. Appropriation of penalties.

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Persons acting
under Act entitled
to notice of action,
&c.

14 No action shall lie against any person for anything done in pursuance of this Act unless notice in writing of such action, and of the cause thereof, is given to the defendant One month at least before the commencement of the action, and such action is commenced within Three months after the cause of action has accrued ; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence ; and no plaintiff shall recover in any such action if tender of sufficient amend has been made before such action brought, or if a sufficient sum of money has been paid into Court by or on behalf of the defendant after such action brought, together with the costs incurred up to that time ; and if a verdict passes for the defendant, or if the plaintiff becomes nonsuit or discontinues such action, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for recovering the same as any defendant has by Law in other cases ; and though a verdict is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the case is tried certifies his approbation of the action, and the verdict obtained thereupon.

Repeal.
42 Vict. No. 2.

15 "The *Californian Thistle Act, 1878*" is hereby repealed ; but such repeal shall not affect any offence committed before this Act commences or takes effect, and such offence may be prosecuted as if this Act had not been passed.

SCHEDULE.

NOTICE TO OCCUPIER TO DESTROY THISTLES.

18

To

TAKE notice that you are hereby required, under "The *Californian Thistle Act, 1883,*" within _____ days from the date of the service of this notice upon you, to cut down the thistles on the land of which you are the occupier ; and that if you do not within such time comply with the same, I shall authorise some person in that behalf to enter upon the said land and cut down such thistles at your expense.

A.B.,

An Inspector under the said Act.