

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and having this day passed as now printed is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,  
29th May, 1888.

Hon. Mr. Fisher.

CODLIN-MOTH.

ANALYSIS.

<p>Title. Preamble. 1. Short Title. 2. Interpretation. 3. Owner of unoccupied orchard to be deemed occupier. 4. Fruit districts may be constituted. 5. Codlin-moth Fund. 6. Contributions to Codlin-moth Fund in clean and unclean districts. 7. Borough or County Council may levy further contribution. 8. Recovery of contributions. 9. Return of trees for contribution. 10. Penalty for failing to give notice of infection. 11. Inspector may serve notice to destroy moth. Second Schedule. Cost of advertisements and amount of contributions to be a charge on land. 12. Fine on non-payment of contribution within two months.</p>	<p>13. Occupier paying contributions may recover half the amount from his landlord. 14. Payments out of Codlin-moth Fund. 15. Appointment of Inspectors. 16. Powers of Inspectors. 17. Penalty for obstructing Inspector. 18. Regulations. 19. Penalty on Inspector for breach of regulations. 20. Infected fruit, cases, &amp;c., not to be removed out of district. 21. Penalty for selling, offering, or exposing for sale infected fruit. 22. Onus of proof in proceedings. 23. Recovery of fines and penalties. 24. Governor may prohibit importation of fruit, &amp;c. 25. Limitation of actions. 26. Repeal. Schedules.</p>
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A BILL INTITULED

AN ACT to provide for the Destruction of the Insect known as *Carpocapsa pomonella*, or "the Codlin-moth."

WHEREAS it is expedient to provide measures for the destruction of the insect known as *Carpocapsa pomonella*, or "the codlin-moth :"

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. The Short Title of this Act is "The Codlin-moth Act, 1888."  
 2. In this Act, if not inconsistent with the context,—  
 "Orchard" means and includes every garden and piece of land in which apple, pear, quince, medlar, or stone-fruit trees of any description may be growing :  
 "Infected" means actually infected with the moth, or where the moth is or has been present :  
 "The moth" means the insect known as *Carpocapsa pomonella*, or "the codlin-moth," in any form :  
 "Inspector" means an Inspector of Orchards appointed under this Act :  
 "Fruit" means and includes apples, pears, quinces, medlars, and stone-fruit of all descriptions :  
 "Trees" mean and include apple, pear, quince, medlar, and stone-fruit trees of four years old and upwards :  
 "Prescribed" means prescribed by regulations under this Act :  
 "Clean district" and "unclean district" mean respectively districts notified under this Act as such by an Inspector :

“Fruit district” means a district proclaimed as such under this Act :

“Publicly notified” means advertised in a newspaper generally circulating in the district :

“Public notification” means a notice publicly notified : 5

“County Council” means any Council constituted under “The Counties Act, 1886,” and, where “The Counties Act, 1886,” is not in force, any Road Board constituted under “The Road Boards Act, 1882 :”

“Borough Council” means any Council constituted under “The Municipal Corporations Act, 1886,” and includes any town district constituted under “The Town Districts Act, 1881.” 10

Owner of un-occupied orchard to be deemed occupier.

3. The owner of any unoccupied orchard shall, for the purposes of this Act, be deemed to be the occupier thereof; and all the provisions of this Act shall be applicable to such owner in the same manner in all respects as if such owner were the actual occupier of such land. 15

Fruit districts may be constituted.

4. As soon as conveniently may be after the passing of this Act, the Governor in Council may, for the purposes of this Act, divide the colony into fruit districts, and from time to time alter and amend such districts. Such districts shall be coterminous with the boundaries of boroughs, town districts, counties, or ridings of counties as defined by “The Counties Act, 1886,” unless otherwise specially provided for by the Order in Council; and, in the case of harbours and rivers, the districts to which they shall be attached shall be specified in the Order in Council. Every such Order in Council shall be published in the *New Zealand Gazette*. 20 25

Codlin-moth Fund.

5. All contributions and sums of money payable, and all fines and penalties recoverable, under the provisions of this Act shall when received be paid by the Borough Council or County Council into a separate account, to be called “The Codlin-moth Fund.” 30

Contributions to Codlin-moth Fund in clean and unclean districts.

6. There shall be payable to the Codlin-moth Fund by the occupier of every orchard in a clean district a contribution of a sum not exceeding one farthing, and by the occupier of every orchard in every unclean district a contribution of a sum not exceeding one halfpenny, for every tree exceeding in age four years growing in the orchard occupied by him, the aforesaid rates to be fixed by the Borough Council or County Council by public notification in the month of September in each year; and every occupier shall, on the first day of November in every year, pay to the Inspector, or such other person as may be authorised by the Borough Council or County Council to receive the same, the amount of such contribution. 35 40

Borough or County Council may levy further contribution.

7. If at any time the said Fund is insufficient to defray all lawful charges thereon, it shall be lawful for the Borough or County Council to levy a further contribution not exceeding one-half penny for every tree in every orchard within every unclean district, for the purpose of making good the amount of such deficiency. 45

Recovery of contributions.

8. All contributions due, and every sum of money payable under the provisions of this Act, by the occupier of any orchard, other than by way of fine or penalty, shall be a debt owing by him to the Borough Council or County Council, and may be sued for and recovered in the name of any Inspector as such, in any Court of competent jurisdiction. 50

9. The occupier of every orchard shall on the *first* day of *October* next, and on the same day in each succeeding year, deliver, at such place as the Borough Council or County Council may appoint by public notification, a return in the form of the *First* Schedule to this Act, 5 stating the number and description of trees growing in his orchard. And every occupier who refuses or neglects to make such return, or who wilfully makes a false return, shall forfeit and pay a penalty not exceeding *five* pounds for each offence.

Return of trees for contribution.

10. Any occupier in a clean district whose orchard is infected in any degree with the moth, and who shall not within twenty-four hours after becoming aware of such infection give notice thereof to the Inspector of such district, shall be liable to a penalty not exceeding *five* pounds for each offence.

Penalty for failing to give notice of infection.

11. Any Inspector may serve or cause to be served upon any occupier of any orchard in which he is satisfied the moth exists, 15 notice in writing in the form or to the effect set forth in the *Second* Schedule hereto, requiring the destruction of the moth in such orchard forthwith. Any notice shall be deemed to have been served if delivered personally to such occupier, or posted to or left at his last- 20 known place of business or abode.

Inspector may serve notice to destroy moth.  
Second Schedule.

If any person, upon whom such notice should be served, is unknown, or, after due inquiry, cannot be found, or is absent from the colony, then a service upon his known agent or attorney shall be deemed a sufficient service; and, if such person has no known agent 25 or attorney in the colony, or such agent or attorney is unknown, or cannot after due inquiry be found, then a publication of such notice in a newspaper circulating in the district in which such notice is issued, and posting a copy of the notice upon a conspicuous part of the orchard referred to in such notice, or upon some public road 30 adjacent to such orchard, shall be sufficient service.

The cost of publishing such notification, and the amount of all contributions or payments due under this Act, shall be a charge upon the section or allotment of land in which such orchard or any part thereof is situated, and, in addition to any other mode of recovery 35 hereby provided, may, at the option of the Borough Council or County Council, be recovered in the same manner as rates are recoverable under "The Rating Act, 1882;" and all procedure for the recovery of rates under the last-mentioned Act shall in such case apply, *mutatis mutandis*, to the recovery of contributions and payments under this 40 Act; and this Act shall be deemed to be a sufficient authority for the Public Trustee and the District Land Registrar of the district to proceed in the same manner as upon a certificate given under the provisions of section thirty-seven of such last-named Act.

Cost of advertisements and amount of contributions to be a charge on land.

12. Every occupier who omits to pay the contribution due from 45 him within two months after the same becomes due in any year shall pay an additional amount equal to one-fourth part of such contribution; and, if any occupier after the expiration of the said two months omits or refuses to pay the contribution payable by him, then it shall be lawful for any Inspector to sue for and recover such contribution, 50 together with such additional amount, at any time not being more than one year after the time when such contribution should have been paid.

Fine on non-payment of contribution within two months.

Occupier paying contributions may recover half the amount from his landlord.

13. The contributions imposed or made payable under this Act shall be payable in the first instance by the occupier of the orchard at the date at which the contributions become due or are recoverable as the case may be; but every occupier, if tenant, shall be entitled to recover from his landlord one-half of the amount of such contributions paid by or recovered from him, as money paid to the use of the landlord, or the same may be deducted from or set off against the rent then due or thereafter to become due; and such landlord, if tenant to another person of the same orchard, may in like manner recover or deduct from his landlord a sum equal to that recovered or deducted from him as aforesaid, and so on between successive landlords and tenants.

Payments out of Codlin-moth Fund.

14. There shall be applied out of the Codlin-moth Fund such sums of money as may be required for payment of the salaries and allowances of the Inspectors appointed under this Act, and the Borough or County Council for the time being is hereby authorised and empowered to appropriate and issue such sums accordingly, but subject, nevertheless, to the provisions of any Act in force for the time being with reference to the audit of public accounts.

Appointment of Inspectors.

15. The Borough or County Council may from time to time appoint such Inspectors of Orchards as it deems necessary, and may from time to time dismiss or remove such Inspectors.

Powers of Inspectors.

16. Every Inspector and police constable shall have, exercise, and discharge the several powers, authorities, and duties prescribed, and may at any reasonable time enter upon any orchard in any district for the purpose of inspecting the trees in such orchard, and the fruit thereon and all other fruit, and may at any reasonable time also enter any ship, boat, shop, store, or other building or place in any district in which he may have reason to believe trees, fruit, cases, boxes, barrels, or other receptacles are deposited, for the purpose of inspecting the state and condition thereof.

Penalty for obstructing Inspector.

17. If any person refuses to allow any Inspector or police constable to enter at any reasonable time on his orchard, ship, boat, shop, store, or other building or place, or to examine any trees, fruit, cases, boxes, barrels, or other receptacles being therein or thereon, or impedes, hinders, or attempts to impede or hinder, any Inspector or police constable from examining any such trees, fruit, cases, boxes, barrels, or other receptacles, such person shall forfeit and pay a penalty not less than *two* pounds nor exceeding *five* pounds for each offence.

Regulations.

18. The Borough or County Council may, with the approval of the Governor in Council, from time to time make, rescind, and alter regulations—

For the guidance of Inspectors, and prescribing their duties :

For prescribing—

(1.) The manner in which and the times at which the occupier of every orchard in every unclean district shall—

Give notice of his orchard being infected ;

Bandage, dress, or otherwise treat infected trees in his orchard :

(2.) The manner in which infected fruit shall be destroyed, or rendered fit for the food of any animal :

(3.) The manner in which bandages used upon infected trees shall be destroyed, or cleansed, or otherwise rendered fit to be again used for such purpose :

(4.) The means by which houses, rooms, cases, boxes, barrels, and other receptacles which, in the opinion of any Inspector, have contained infected fruit shall be destroyed, cleansed, or otherwise rendered fit to be used again ; and

Generally for the destruction of the moth, and as to all other matters of detail for carrying this Act into full effect :

10 and may prescribe a penalty not exceeding *five* pounds for breach of or non-compliance with any such regulation.

19. If any Inspector wilfully violates, or omits to comply with, or neglects or refuses to enforce any regulation, he shall be liable to a penalty not exceeding *ten* pounds.

Penalty on Inspector for breach of regulations.

15 20. No person shall remove out of any unclean district, or convey into any clean district, any fruit infected with the moth, or any case, box, barrel, or other receptacle which has at any time contained any fruit so infected, and remains uncleansed in the opinion of any Inspector ; and if any person offends against this provision  
20 he shall be liable to a penalty not exceeding *five* pounds.

Infected fruit, cases, &c., not to be removed out of district.

21. Every person who, in any manner, sells or offers or exposes for sale any fruit infected with the moth shall be liable to a penalty not exceeding *ten* pounds.

Penalty for selling, offering, or exposing for sale infected fruit.

22. In any legal proceedings against any person for any breach  
25 of or non-compliance with any provision of this Act or any regulation made hereunder the onus of proving compliance with such Act or regulation shall rest upon the defendant.

Onus of proof in proceedings.

23. All fines and penalties imposed or made payable by this Act or any regulation made under this Act shall be recovered in the mode  
30 prescribed by "The Justices of the Peace Act, 1882."

Recovery of fines and penalties.

24. The Governor may, from time to time, by Proclamation, prohibit the importation into the colony of any fruit whatever or fruit trees where he may deem the importation thereof likely to cause the spread of any infection in the orchards of the colony ; and if any fruit  
35 or fruit trees so prohibited are imported they shall be forfeited to Her Majesty, together with the boxes, cases, barrels, or other receptacles in which they are contained, and may be disposed of as the Commissioner of Trade and Customs may direct.

Governor may prohibit importation of fruit, &c.

25. No action shall lie against any person for anything done in  
40 pursuance of this Act unless such action is commenced within three months after the cause of action has arisen ; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence.

Limitation of actions.

26. "The Codlin-moth Act, 1884," is hereby repealed.

Repeal.

Schedules.

## SCHEDULES.

## FIRST SCHEDULE.

"THE CODLIN-MOTH ACT, 1888."

RETURN of the Number of Trees in the Orchard occupied by the undersigned on  
the                    day of                    , 18                    .

Name and Address.	Description of Tree.	Number of each Description.	Remarks.

(Signature of person making return.)

## SECOND SCHEDULE.

"THE CODLIN-MOTH ACT, 1888."

TAKE notice that your orchard, situated on Section [*or* part of Section] No.                    ,  
in the Borough [*or* County] of                    , is infected with the codlin-moth, and you are  
hereby required forthwith to destroy such moth in manner prescribed by the regula-  
tions made under this Act, or otherwise as I may lawfully in writing direct.

Dated this                    day of                    , 18                    .

C.D. [signature of Inspector],  
Fruit District.

Postal Address :

To E.F.,  
of                    ,  
(Farmer).