

Mr. T. Mackenzie.

CALIFORNIAN THISTLE.

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A BILL INTITULED

AN ACT to prevent the Spread of the Californian Thistle.

Title.

BE IT 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 Californian Thistle Act, 1889." Short Title.

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

Interpretation.

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"Clerk of a local authority" includes the Town Clerk of a borough or city:

"Cut down" means cutting down and keeping cut down the stem or root of a thistle so as to prevent its throwing out any leaf or offshoot:

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"District Fund" means the fund of a district under the jurisdiction of a local authority, and when the Minister of Lands is such local authority it means the Consolidated Fund:

"Inspector" means any Inspector of Sheep appointed under "The Sheep Act, 1878."

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"Local authority" means a Borough Council, Town Board, or Road Board within the limits of their respective jurisdictions, and in all parts of counties outside of town

districts and road districts means the County Council, and in all counties outside as aforesaid where "The Counties Act, 1886," is not in operation means the Minister of Lands :

"Occupier" includes the owner of any unoccupied land : 5

"Thistle" means the plant known by the botanical name of *Cnicus arvensis* or *Carduus arvensis*, and commonly called or known as the Californian thistle :

"Treasurer of a local authority" includes the Colonial Treasurer when the Minister of Lands is the local authority. 10

Penalty for not
stroying thistles.

3. If any occupier of land 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 of not less than *twenty* shillings and not exceeding *twenty* pounds. 15

Thistles growing
upon Crown lands
to be cut down.

4. When any thistles shall be growing upon any unoccupied Crown lands the Minister of Lands 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 Fund. 20

As to cutting down
thistles on roads.

5. Every local authority shall cause to be cut down all thistles which may be growing upon any roads within the district under their jurisdiction, and in all towns such authority shall cause to be cut down before blossoming all thistles which may be growing upon any streets therein; and if any such local authority 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 local authority out of the District Fund, and shall be recoverable as herein- after provided. 25 30

Hay, straw, or grain
containing thistle-
seed not to be
removed or sold.

6. If any person shall remove or cause to be removed from any land, or shall knowingly sell or offer for sale, any hay, or straw, or grass-seed, in or amongst which there shall be contained the seed of thistles, every such person, being convicted thereof, shall be liable to a penalty of not less than *forty* shillings nor more than *twenty-five* pounds. 35

Onus of proof.

In all legal proceedings taken against any person for any breach of this section of this Act, the onus of proving that such person did not know that such hay, or straw, or grass-seed contained the seed of thistles shall rest upon the defendant, who shall in all such proceedings be competent but not compellable to give evidence, anything contained in any law or practice to the contrary notwithstanding. 40

Occupier to make
return of infected
land.

7. The occupier of any land infected with thistles shall, on or before the first day of November in each year, furnish a return thereof to the Chief Inspector of Sheep, stating the estimated area of such infected land; and every such occupier who refuses or neglects to make such return shall be liable to a penalty not exceeding *five* pounds. 45

Penalty.

Inspectors and per-
sons authorised may
enter upon lands to
search for thistles.

8. 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 50

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

5 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.

10 9. 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.

Inspectors may give notice requiring thistles to be cut down.

15 If any person shall fail to cut down any thistles within the time limited in that behalf by any notice as aforesaid he shall be liable to the same penalties as are provided in section *three* of this Act.

Penalty.

20 10. If within the time limited in that behalf respectively in any notice as aforesaid, the occupier of any land shall fail to take steps and neglect to continue in his efforts 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; but nothing herein contained shall exempt said occupier

25 from any penalty he may have incurred by reason of his failure or neglect as aforesaid.

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

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

30 hereinafore 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

35 served upon the Clerk of any local authority on behalf thereof.

40 11. 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 the colony of the person to whom the same is addressed.

Delivery of notice.

45 12. 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 thistles are growing upon the land specified in such notice.

Inspector to inspect land when required.

50 13. Any Inspector or person duly authorised under this Act who shall refuse or wilfully neglect to perform any of the duties imposed upon him by this Act shall, for every such offence, be liable to a penalty not exceeding *ten* pounds.

Penalty on Inspector for wilful neglect of duty.

14. Where an Inspector shall have incurred any expenses in cutting down the thistles found upon the lands of any person or

Recovery of expenses incurred by Inspector.

upon any roads or streets, the amount of all such expenses shall be recoverable from such person or such local authority, as the case may be, by such Inspector, with costs, by action or plaint in any Court of competent jurisdiction, or by complaint under "The Justices of the Peace Act, 1882."

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.

Recovery of expenses where owner or occupier unknown.

15. 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.

Obstructing Inspector, &c.

16. 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.

Offences to be dealt with summarily.

17. 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 Justices of the Peace Act, 1882."

Appropriation of penalties.

18. All expenses recovered by any Inspector, and all penalties imposed under this Act, shall be paid into the Public Account and shall form part of the Consolidated Fund.

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19. 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
 5 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
 10 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 otherwise judgment is given against the plaintiff, the defendant shall recover his full costs as
 15 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
 20 the verdict obtained thereupon.

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

20. 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 cutting down the thistles on such land, the landlord and
 25 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 cutting down, then either party shall or may apply to the Resident Magistrate's Court nearest to the place
 30 where such cutting down shall have been done to issue a summons to such other party requiring him to appear before such Court, or some other Court, to show cause why such other party shall not pay to the first-mentioned party such a proportion of the cost of such cutting-down as shall be just and equitable, having regard to the circumstances
 35 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 cutting-down the thistles made between a landlord and tenant previous to the passing of this Act.

Landlord and tenant to be liable equally for cost of cutting down thistles.

21. All the provisions of this Act shall apply to the plant known
 40 by the botanical name of *Xanthium spinosum*, and commonly called or known as the Bathurst burr, and to the cutting-down thereof to prevent its spread, in the same manner as they apply in respect of the Californian thistle; and for the purposes of this section the said Bathurst burr shall be deemed to be included in the definition of the
 45 word "thistle" throughout this Act.

Act to apply to Bathurst burr as if it were a thistle.

Schedule.

SCHEDULE.

NOTICE TO OCCUPIER TO DESTROY THISTLES.

To _____, 18 ____
TAKE notice that you are hereby required, under "The Californian Thistle Act, 1889,"
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.

By Authority: GEORGE DRISBURY, Government Printer, Wellington.—1889.