

Hon. Mr. Duncan.

ORCHARD AND GARDEN PESTS.

ANALYSIS.

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A BILL INTITULED

AN ACT to prevent the Introduction into New Zealand of Diseases affecting Orchards and Gardens, and to provide for the Eradication of such Diseases and to prevent the Spread thereof. Title.

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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 Orchard and Garden Pests Act, 1902." Short Title.

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

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"Disease" means any of the diseases named in the *First* Schedule hereto, and includes any other disease which the Governor from time to time by Order in Council gazetted declares to be a disease within the meaning of this Act; and includes, but subject in every case to the provisions of the next succeeding section, any of the diseases named in the *Second* Schedule hereto:

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"Fruit" means the edible product of any plant, and includes the peel, skin, or shell of such product, and also the seeds of such plant, whether such fruit is or is not attached to the plant:

“Infected” means infected with disease :

“Infected package” includes every case or other package in which any diseased plant or fruit is or has been contained, or with which any such plant or fruit has come in contact :

“Minister” means the Minister for Agriculture, or any responsible Minister of the Crown for the time being acting for him :

“Occupier,” in the case of any orchard or land which is unoccupied or whose actual occupier is unknown or cannot be found, includes the owner :

“Orchard” means any land used for the purpose of growing or cultivating plants, and includes garden, nursery, vinery, and vineyard :

“Plant” means any tree, flower, shrub, vegetable, or other vegetation.

Second Schedule
may be suspended
in any county.

3. (1.) The Council of any county may from time to time, by special order gazetted, declare that the *Second* Schedule hereto shall (in respect of all or any one or more of the diseases mentioned therein) be suspended within its jurisdiction.

(2.) In a county wherein “The Counties Act, 1886,” is suspended or has never been in operation a like declaration shall be made by the Minister, by notice in the *Gazette*, on the petition of a majority of the Road Boards within the limits of the county.

(3.) Any such declaration may in like manner be rescinded, and thereupon the said *Second* Schedule shall again have operation within the limits of the county.

(4.) For all the purposes of this section a borough shall be deemed to be within the limits of the county within whose boundaries the borough is situate.

Powers of Governor
for preventing
introduction of
diseased plants, &c.

4. The Governor may, from time to time, by Order in Council gazetted,—

(1.) Prohibit, absolutely or except in accordance with regulations under this Act,—

(a.) The introduction into New Zealand, either generally or from any specified colony, country, port, or place, of any plant, fruit, fungus, parasite, insect, or any other thing which, in his opinion, is likely to introduce any disease into New Zealand ; or

(b.) The bringing into any specified portion of New Zealand from any other portion or specified portion of New Zealand of any specified plant, fruit, fungus, parasite, insect, or other thing which, in his opinion, is diseased or is likely to spread disease :

(2.) Appoint any specified ports to be the only ports of entry for plants or fruit or for any specified plant or fruit :

(3.) Appoint quarantine grounds where plants or fruit, and the packages containing the same, or with which the same may have come in contact, may be detained for the purpose of being inspected, disinfected, destroyed, or otherwise disposed of :

- (4.) Extend the *First* Schedule hereto by including therein any disease other than those mentioned therein.
5. (1.) The Governor may from time to time appoint such Inspectors and other officers, with such powers and functions, as he deems necessary in order to carry out the provisions of this Act.
- (2.) All Inspectors and other officers appointed under the Act hereinafter repealed shall be deemed to be appointed under this Act.
6. The occupier of every orchard shall at all times do whatever is necessary in order to eradicate disease from such orchard, and prevent the spread thereof.
7. The occupier of every orchard in which any disease appears shall, within *forty-eight* hours after first discovering or becoming aware of its presence, give written notice thereof to the Secretary for Agriculture, at Wellington.
8. (1.) Any Inspector or other authorised officer may at any time enter into any conveyance, or upon any orchard, land, or premises, or on board any ship, for the purpose of inspecting any plants, or fruit, or the packages containing the same or with which the same may have come in contact, and shall have all such powers and authorities (including power to dig up plants, open packages, and otherwise) as he deems necessary for enabling him to enforce the provisions of this Act.
- (2.) If the Inspector or other officer declares any such plants, fruit, or packages to be diseased or infected with disease he shall give notice thereof to the owner or person in charge thereof, who shall forthwith take such measures and do such acts as are necessary in order to eradicate or prevent the spread of the disease.
- (3.) If such owner or person fails so to do to the satisfaction of the Inspector or other officer, such Inspector or other officer may do the same at the expense in all things of such owner or person, who nevertheless shall not thereby be relieved from his other liabilities under this Act.
- (4.) In the exercise of the powers conferred upon him by this section the Inspector or other officer may remove, treat, disinfect, destroy, or otherwise dispose of any such plants, fruit, or packages in such manner as he thinks fit.
9. (1.) Any plant, fruit, fungus, parasite, insect, or other thing introduced or attempted to be introduced into New Zealand contrary to any Order in Council under this Act may, together with any package containing the same or with which the same may have come in contact, be seized by an Inspector or other authorised officer, or an officer of Customs, and be disinfected, destroyed, or otherwise disposed of as such Inspector or officer deems fit, at the expense of the owner or person in charge thereof.
- (2.) It shall be the duty of all officers of the Postal Department and of the Customs respectively to assist in carrying out the provisions of this section and in preventing the introduction into New Zealand of anything contrary to any such Order, and for that purpose they may, in respect to anything so introduced or attempted to be introduced, exercise all the powers conferred by "The Post Office Act, 1900," in the case of postal packets posted in breach of that Act, and by "The Customs Laws Consolidation Act, 1882," in the case of uncustomed or prohibited goods.

Other diseases may be included in First Schedule.

Appointment of officers.

Existing appointments continued.

Eradication of disease.

Occupier to give notice of any disease.

Inspector may enter and give notice to eradicate disease.

Plants, &c., unlawfully introduced may be destroyed.

Postal officers and officers of Customs to assist herein.

Inspector may
employ assistants.

10. (1.) An Inspector or other authorised officer may employ such assistants as he deems necessary in carrying out the provisions of this Act, and may pay them such remuneration as the Minister deems reasonable.

Recovery of
expenses.

(2.) The owner, occupier, or other person through whose neglect, omission, or other default, or by reason of the infection of whose orchard, plants, fruit, or packages, the expenses of such employment were incurred shall repay the same to the Inspector on demand; and, in default of payment, such expenses may be recovered as a debt due to the Crown. 5

Inspector may
employ force.

11. For the purpose of making any entry or removal, or otherwise performing his duties under this Act, any Inspector or other authorised officer or assistant may, in case of resistance, use all necessary force. 10

Person obstructing
or hindering
Inspector commits
an offence.

12. (1.) Every person commits an offence against this Act who directly or indirectly obstructs, hinders, or interrupts, or threatens, or assaults, or uses improper or abusive language to, any Inspector or other authorised officer or assistant while in the performance of his duty under this Act. 15

(2.) Proceedings for the recovery of any penalty for such offence, or the payment thereof, shall not be a bar to any action at law by any such Inspector or other authorised officer or assistant; but every such action may be commenced and proceeded with as if this Act had not been passed, any rule of law to the contrary notwithstanding. 20

Protection of
Inspectors.

13. An Inspector or other authorised officer or assistant shall not be deemed to be a trespasser by reason of any entry or removal under this Act, or be liable for any damage occasioned in carrying out the provisions of this Act. 25

How notices may be
given.

14. Any notice to be given to any person by an Inspector or other authorised officer or assistant in the performance of his duties under this Act may be given either by delivering the same to such person, or by leaving it at or posting it addressed to him at his usual or last known place of abode or business in New Zealand, or, if he is unknown or cannot be found in New Zealand, then by affixing such notice on a conspicuous place on the land to which the notice relates. 30 35

No compensation.

15. Compensation shall not be payable in respect of anything done by an Inspector or other authorised officer or assistant in the discharge of his duties under this Act, or in respect of any measure taken to eradicate or prevent the spread of disease or carry out the provisions of this Act, or in respect of any loss or injury directly or indirectly resulting therefrom. 40

Definition of
offences.

16. Every person commits an offence against this Act who, directly or indirectly, by himself, his servant or agent,—

- (1.) Sells or offers or exposes for sale or distributes in any manner 45
any plant, fruit, or package which to his knowledge is diseased or infected, or (except under the direction of an Inspector or other authorised officer) brings or suffers the same to be brought upon or removes or suffers the same to be removed from his premises; or
- (2.) Sells or offers or exposes for sale or distributes in any manner 50
any plant, fruit, or thing which to his knowledge has

been introduced into New Zealand contrary to any Order in Council under this Act, or (except under the direction of an Inspector or other authorised officer) brings or suffers the same to be brought upon or removes or suffers the same to be removed from his premises; or

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(3.) Does or attempts to do any other act in breach of this Act, or of any regulation or Order in Council thereunder; or

(4.) Fails to faithfully observe and perform any duty or obligation imposed on him by this Act or by any Order in Council or regulation thereunder.

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17. Every person who commits any offence against this Act is liable to a penalty not exceeding *twenty* pounds. Penalty for offences.

18. (1.) All penalties under this Act shall be recovered in a summary way before a Stipendiary Magistrate alone, and upon prosecution by an Inspector or some person authorised by him or by the Minister in that behalf. Recovery of penalties.

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(2.) Where in any such prosecution knowledge must be shown, such knowledge shall be presumed unless and until the contrary is proved and the defendant satisfies the Court that the want of knowledge was reasonable and was in no way imputable to negligence on the part of himself, his servant, or agent. Knowledge presumed against defendant.

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19. All penalties and other moneys recovered or received under this Act shall be paid into the Public Account and form part of the Consolidated Fund. Penalties to be paid into Public Account.

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20. All expenses incurred in the administration of this Act shall be paid out of moneys to be appropriated by Parliament for that purpose. Expenses of administration.

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21. (1.) An action shall not be brought against any Inspector, or other authorised officer or assistant acting in execution of this Act, for anything done in pursuance hereof or under the authority hereof, unless such action is commenced within two months after the cause of action arose. Limitations of actions against Inspectors.

(2.) The defendant in any such action may give this Act and any special matter in evidence.

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22. The Governor may from time to time, by Order in Council gazetted, make regulations,— Regulations.

(1.) Prescribing the manner in which diseased plants or fruit and infected packages shall be treated, cleansed, destroyed, or otherwise disposed of:

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(2.) Prescribing the conditions under which any package or case may be used more than once for the carriage of fruit or plants:

(3.) Providing for the registration of such orchards as are nurseries, and the terms and conditions of such registration:

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(4.) Prescribing the matters in respect whereof fees shall be payable under this Act, fixing the amount of such fees, and the mode of the payment and recovery thereof: and

(5.) Generally for any other purpose for which regulation are contemplated by this Act, or which he deems necessary in order to give full effect to this Act.

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Repeal.

23. "The Orchard and Garden Pests Act, 1896," is hereby repealed:

Provided that all Proclamations and Orders in Council thereunder in force at the time of the coming into operation of this Act shall be deemed to be Orders in Council made under this Act, and shall continue in force until revoked under this Act. 5

Schedules

SCHEDULES.

FIRST SCHEDULE.

MEDITERRANEAN or West Australian fruit-fly (*Halterophora capitata*).
 San José scale (*Aspidiosus perniciosus*).
 Queensland fruit-fly (*Tephrytes tryoni*).
 Vine-louse, or phylloxera (*Phylloxera vastatrix*).

SECOND SCHEDULE.

AMERICAN blight (*Schizoneura lanigera*).
 Apple-scab (*Fusicladium dendriticum*).
 Codlin-moth (*Carpocapsa pomonella*).
 Mussel or oyster scale (*Mytilaspis pomorum*).