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Hon. Mr. Anderson.

SCAFFOLDING AND EXCAVATION.

ANALYSIS.

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A BILL INTITULED

AN ACT to make Better Provision for the Prevention of Accidents in connection with the Erection and Use of Scaffolding and the Making of Excavations. Title.

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

1. (1.) This Act may be cited as the Scaffolding and Excavation Act, 1922, and shall come into force on the first day of April, nineteen hundred and *twenty-three*. Short Title and commencement.

10 (2.) This Act shall not apply to mines, or coal-mines, or to quarries as defined by the Stone-quarries Act, 1910, or to any ship, boat, or other vessel, or to excavations made by any local authority or public body, or to any work in connection with a tramway.

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

Interpretation.

15 “Building” includes any erection, edifice, structure, bridge, viaduct, wall, fence, or chimney, but does not include scaffolding as hereinafter defined:

“Building-work” means any work in connection with the construction, alteration, repair, painting, renewal, or demolition of any building:

20 “Inspector” means an Inspector appointed under this Act:

“Scaffolding” means any structure or framework used or intended to be used for the support or protection of workmen engaged in any building-work, and includes any swinging-stage used or intended to be used for any of the purposes aforesaid:

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“Excavation” means any work in connection with preparing or excavating foundations for buildings, or for sewerage, drainage, gas, water, or electric supply where such work is more than ~~four~~ five feet in depth from the ground level top of the excavation :

“Gear” includes ladder, plank, rope, fastening, hoist, block, pulley, hanger, sling, brace, bracket, chain, waling, shores, struts, and props used in connection with scaffolding or the timbering of excavations and any appliances used or intended to be used for any purpose instead of scaffolding :

“Crane” includes any engine, hoist, lift, derrick, apparatus, or contrivance of a like kind used on any building for the hoisting, lowering, carrying, or removing from place to place of material, goods, or workmen, and worked by steam, electric, or hand power, or in any other manner, but does not include any machine or boiler by which the motive power of a crane is generated if a certificate for such machine or boiler is required under the Inspection of Machinery Act, 1908.

Appointment of
Inspectors.

3. (1.) There may from time to time be appointed fit persons to be Inspectors under this Act :

Provided that no person shall be appointed an Inspector unless he has had at least four years' experience in the erection of scaffolding and passes such examination by a representative Board to be set up under regulations as may be prescribed to test his knowledge of the erection and use of scaffolding and building-appliances.

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(1A.) Notwithstanding anything to the contrary in the last preceding subsection, any person may be appointed temporarily as an Inspector for any period not exceeding two months without having passed the prescribed examination, and, if necessary for the more effective carrying-out of the objects of this Act, he may be reappointed for any further period not exceeding two months; but no such appointment and subsequent reappointments of any person shall be for more than three periods of two months each successively.

(2.) Every Inspector shall be furnished with a certificate of his appointment in the prescribed form, and on entering any place or premises for the purposes of this Act he shall, if required, produce such certificate to the owner or person in charge.

(3.) Every person who forges or counterfeits any such certificate or makes use of any forged, counterfeited, or false certificate, or who falsely pretends to be an Inspector under this Act, commits an offence, and is liable to imprisonment with or without hard labour for any period not exceeding six months.

Powers of Inspectors.

4. (1.) An Inspector may—

(a.) At any reasonable hour by day or by night enter any building or place wherein is kept or erected any scaffolding, crane, or gear, or any place wherein he has reasonable cause to believe that any scaffolding, crane, or gear is kept or erected, and may then and there inspect such scaffolding, crane, or gear, in order to ascertain whether the provisions of this Act or the regulations thereunder have been or are being complied with ;

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(b.) In making such inspection call to his aid any constable or any person that he may think competent to assist him in the execution of his duty :

(c.) Exercise such other power and authority as may be necessary for carrying this Act into effect.

(2.) If any person wilfully impedes the Inspector in the exercise of any duty under this Act, such person and all persons aiding and assisting him shall be liable to a fine not exceeding *twenty* pounds.

5. (1.) No person shall—

10 (a.) In any case involving the risk of a fall of ~~ten~~ *twelve* feet or more to any person begin the erection of any scaffolding or do any building work ; or

(b.) Set up or erect any crane ; or

(c.) Make any excavation,

15 without having first notified the Inspector of the time when he intends to begin such work.

(2.) Such notification shall be in the prescribed form, and shall be delivered at the office of the Inspector at least twenty-four hours before the time fixed for beginning such work.

20 (3.) Every person who begins such work as aforesaid without having first given such notification, or until such period of twenty-four hours has elapsed, is liable to a fine not exceeding *twenty* pounds.

25 (4.) In any case of emergency arising from damage caused by lightning, explosion, fire, rain, storm, or earthquake, *or from blockage or breakdown of any sewer, or any gas, water, or electric supply*, it shall not be necessary to allow any period to elapse after giving the notice required by this section.

30 6. No scaffolding exceeding twenty-five feet in height, or any crane, shall be erected or altered, except under the supervision of a person whom an Inspector certifies in the prescribed form to be competent to exercise such supervision.

7. No person shall use any swinging-stage in connection with building-work until a certificate in the prescribed form authorizing the use of such stage has been issued by an Inspector.

35 8. (1.) Wherever it appears to an Inspector—

(a.) That with regard to any scaffolding, excavation, crane, or any gear used in connection therewith, erected, or used, or in course of being erected, the requirements of this Act or any regulations thereunder are not being complied with ; or

40 (b.) That the safety of any person would be better ensured by altering the construction of the scaffolding, excavation, crane, or gear ; or

45 (c.) That any building-work or work in connection with any scaffolding, crane, or excavation is being carried on in such a manner as to be dangerous to the workers employed thereon or any other persons,—

he may give such directions in writing to the owner or person in charge of the scaffolding, building, excavation, crane, gear, or work as he deems necessary to prevent accidents or ensure compliance with this Act or the regulations thereunder, and such owner or person shall forthwith carry out such directions.

50 (2.) Whenever any Inspector gives any directions as aforesaid he may also, at the same time or subsequently, order any persons forth-

Notice to be given before scaffolding erected or building-work or excavation begun.

Restriction on erection of scaffolding exceeding 25 ft. in height.

Swinging-stages not to be used until authorized by Inspector.

Inspector may give directions to ensure safety in certain cases.

with to cease to use any such scaffolding, crane, or gear, or to cease any such work as aforesaid until such directions have been complied with, and for this purpose may post up such notices as he thinks fit.

(3.) In any case in which the Inspector considers that the use of any scaffolding or crane would endanger the life of any person, or that any gear is unsuitable for use, he may, after making or causing to be made such tests as he thinks fit,— 5

(a.) Condemn such scaffolding or crane and direct it to be dismantled ; or

(b.) Condemn such gear, either for all purposes under this Act or for such particular purposes as he may indicate ; 10

(c.) Brand such gear and, in such manner as he thinks fit, cause it to be rendered incapable of being used for any purpose for which it has been condemned ;

and shall give notice thereof to the owner or person in charge of such scaffolding, crane, or gear, and to such other persons as he thinks fit : 15

Provided that no gear shall be so rendered incapable of being used until, in the case of an appeal as hereinafter provided, a Magistrate has made an order condemning such gear, or until the period for appeal has expired without an appeal being lodged. 20

(4.) No person shall deface or destroy any Inspector's notice or any mark branded upon any gear.

(5.) The owner or person in charge of any building-work, scaffolding, excavation, crane, or gear in respect of which an Inspector has given any direction or served any notice as aforesaid, may within ~~twenty-~~ ~~four~~ *forty-eight* hours of receiving such direction or notice appeal to a Magistrate. Such appeal shall be in the prescribed form, and a copy thereof shall be lodged at the office of the Inspector within the time aforesaid : 25

Provided that nothing in this section shall authorize any person to continue, pending the hearing of an appeal, any work the cessation of which has been ordered by an Inspector. 30

(6.) The Magistrate shall hear such appeal at such time and place as he causes to be notified to the appellant and the Inspector, and may make such order as he thinks fit. Every such order shall be final. 35

(7.) Every person commits an offence, and is liable on conviction to a fine not exceeding *twenty* pounds, who, without lawful excuse—

(a.) Fails to comply with any direction or order given to him by an Inspector or Magistrate in pursuance of this section ; or

(b.) Uses any scaffolding, crane, or gear for any purpose for which such scaffolding, crane, or gear has been condemned by the Inspector ; or, 40

(c.) Being a worker, and having knowledge in any manner of any direction or order of an Inspector or Magistrate under this section, does any act or thing that if done by the person to whom such direction or order was given would constitute an offence. 45

9. (1.) In every case where there occurs in connection with building-work or work in connection with any scaffolding, crane, or excavation any accident causing death or serious injury to any person, the person having control or management of such work shall deliver at the office of the Inspector in the prescribed form written notice of such accident. 50

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(2.) If the said notice is not duly delivered within forty-eight hours after the occurrence of the accident, the person whose duty it was to serve such notice shall be liable to a penalty not exceeding *twenty* pounds.

(3.) For the purposes of this section the expression "serious injury" means any injury that is likely to incapacitate the sufferer from work for at least forty-eight hours.

(4.) When an accident in connection with any ~~scaffolding or gear building-work or excavation~~ occurs it shall not be lawful for any person to ~~move or disturb any such scaffolding or gear or do any other act likely~~ to prevent the discovery of the cause of the accident until an Inspector has visited the scene of the accident and authorized work to be resumed.

10. Every person who commits an offence against this Act for which no specific penalty is elsewhere provided is liable to a fine not exceeding *twenty* pounds for each such offence, and if the offence is a continuing one, then to a further fine not exceeding *five* pounds for each day on which the offence is continued after the first day.

General penalty.

11. All proceedings in respect of offences under this Act shall be taken in a summary way on the information of an Inspector, who shall not be called upon to prove that he holds that office, and all such proceedings may be continued and conducted by the same or any other Inspector, or any person permitted by the Magistrate to conduct the same, and shall be heard before a Magistrate alone.

Offences to be tried summarily.

12. Where any person is charged with an offence the following provisions shall apply:—

Defendant may have actual offender charged.

(a.) On the information of the defendant, made before the charge against himself is disposed of, any other person whom he alleges to be the actual offender may be brought before the Magistrate on the same charge, and, to enable both charges to be heard together, the charges against the defendant may be adjourned for such time as the Magistrate thinks reasonable.

(b.) If the charges are heard together and the offence is proved, but the Magistrate finds that it was committed in fact by the said other person without the knowledge, consent, or connivance of the defendant, and, further, that the defendant had done all that could reasonably be expected of him to prevent the offence, then the said other person shall be deemed liable, and shall be convicted, and not the defendant.

(c.) If, before proceeding against the defendant, the Inspector is satisfied of such other person's liability, he shall proceed first against him instead of against the defendant, whereupon the provisions of the *last preceding* paragraph shall, with the necessary modifications, apply, and if such other person is convicted (but not otherwise) the defendant shall cease to be liable.

13. In any proceedings against the owner or person in charge of building-work or work in connection with any scaffolding, crane, or excavation, in respect of the non-observance of any of the provisions of this Act or of any regulations thereunder, the following provisions shall apply:—

Provision for preventing continued non-observance of Act or regulations.

(a.) The Magistrate, in addition to or in lieu of imposing a fine, may by order require the defendant to do any specified work

or to adopt any specified means for the purpose of preventing further such non-observance, and may specify a time within which the order shall be obeyed.

(b.) The time so specified may be extended by the Magistrate on the application of the defendant. 5

(c.) If the order is made in lieu of imposing a fine, then the Magistrate shall adjourn the proceedings until the expiry of the time specified in the order ; and if the order is duly obeyed he may, if he thinks fit to do so, impose no penalty in respect of the offence. 10

(d.) If default is made in duly obeying the order within the time or extended time specified in that behalf, the defendant commits an offence, and is liable to a fine not exceeding *five* pounds for every day during which such default continues. 15

(e.) Such last-mentioned fine shall be irrespective of the fine in respect of the original offence. 15

Procedure in respect of proceedings.

14. (1.) With respect to proceedings by an Inspector against any person for any offence arising under this Act (which expression includes every regulation made hereunder) the following provisions shall apply :—

(a.) The proceedings shall be commenced within six months after the offence was committed : 20

Provided that if the offence consists of non-compliance with the Inspector's requisition, and notice of appeal has been given, then the proceedings shall not be commenced, nor shall the aforesaid limit of time begin to run, until the appeal has been disposed of or has lapsed. 25

(b.) The proceedings shall be deemed to be commenced when the information is laid by the Inspector.

(c.) For the purposes of the aforesaid limit of time a continuing offence shall be deemed to be committed on the latest day on which it is continued next preceding the commencement of the proceedings. 30

(d.) It shall be sufficient to state the name of the responsible person in charge of the work or the style or title under which such person is usually known or carries on business, and the information may be from time to time amended as to the actual name of the defendant at the instance of the Inspector. 35

(e.) It shall lie on the defendant to bring himself under exemption, proviso, excuse, or qualifications, and it shall not be necessary to negative the same in the information or complaint. 40

(2.) Except as otherwise provided in this Act, the Inspector or the defendant who may be dissatisfied with the judgment of the Court on any summary proceedings under this Act may, whether the case is dismissed or not, appeal to the Supreme Court in the manner provided by the Justices of the Peace Act, 1908. 45

Disposal of fees and fines.

15. All fees and fines received and recovered under this Act shall be paid into the Public Account and form part of the Consolidated Fund. 45

Salaries of Inspectors and expenses to be appropriated.

16. The salaries or remuneration of Inspectors, and all the other expenses of carrying out the provisions of this Act shall be paid out of moneys from time to time appropriated for that purpose by Parliament. 50

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17. The Governor-General may from time to time, by Order in Council, make regulations for any of the following purposes :—

Regulations.

- 5 (a.) Regulating the erection, use, and maintenance of scaffolding and cranes, and prohibiting the use of any particular kind of crane :
- (b.) Regulating the use of gear, and prohibiting the use of any particular kind of gear :
- (c.) Prescribing examinations for Inspectors :
- 10 (d.) Prescribing forms of certificates and notices and such other forms as may be necessary for the purposes of this Act :
- (e.) Fixing the fines payable in respect of the breach of any such regulations :
- (f.) Generally for the purpose of carrying into effect the provisions of this Act.

15 18. (1.) The Scaffolding Inspection Act, 1908, is hereby repealed. Repeal and savings.

(2.) All districts, appointments, regulations, Orders in Council, orders, directions, notices, instruments, and generally all acts of authority which originated under the said enactment, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

25 (3.) All matters and proceedings commenced under such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under the corresponding provisions of this Act (if any), and if there are no such corresponding provisions, then under the Act under which they originated in the same manner as if that Act remained in force.