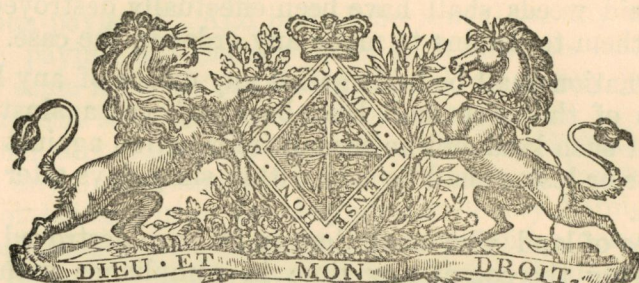


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
Sydney, 18 November, 1870. }

STEPHEN W. JONES,
Clerk of Legislative Assembly.

New South Wales.



ANNO TRICESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act to provide for the Destruction of the Bathurst-burr and certain Thistle and other Plants in the Counties of Cumberland and Camden.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

- 5 1. In the construction of this Act the term noxious weed shall include the plants known by the following botanical terms "Carduus Marianus" "Carduus Benedictus" "Carduus Lanceolatus" "Onopordum Acanthium" (four varieties of thorny thistle) "Xanthium Spin-
10 nosum" or Bathurst-burr and "Rosa Rubiginosa" or Sweet-brier and the term "half of a road" shall mean the half of such road lying within an imaginary median longitudinal line.
- 15 2. It shall be lawful for any Justice of the Peace upon the information and complaint of any person to serve or cause to be served on any owner lessee or occupier of any land not included in any Municipality in the Counties of Cumberland and Camden upon which land or upon the half of any public road adjacent thereto any of the noxious weeds enumerated in section one of this Act shall be growing a notice in the form or substantially so of Schedule A requiring such
- Interpretation clause.
Notice to be given to destroy weeds.

Cumberland and Camden Bathurst-burr and Thistle.

- owner lessee or occupier effectually to destroy such plants as aforesaid
 Provided that the above shall not apply in any instance in which the
 "Rosa Rubiginosa" (Sweet-brier) is cultivated for the purpose of
 enclosing land.
- 5 3. Every such owner lessee or occupier who shall not destroy
 the said noxious weeds then growing upon such land or upon the
 half of such public road as aforesaid within thirty days after such
 notice shall have been given shall incur a penalty not exceeding *ten*
pounds recoverable in a summary way before any two Justices. Penalty for not
 destroying in pur-
 suance of notice.
- 10 4. On the hearing of any matter under the last foregoing
 section it shall be lawful for the Justices hearing the same if they
 shall be of opinion that due diligence has been or is being used in the
 destruction of such weeds as aforesaid to adjourn the hearing of the
 case to such day as they may see fit and if previous to such day of
 15 adjournment the said weeds shall have been effectually destroyed it
 shall be lawful for them to decline to make any order in the case. Power to Justices to
 give time to parties
 summoned.
- 20 5. No information shall be laid against any owner of any land
 until the provisions of this Act shall have been enforced against the
 occupier or lessee of such land and no second information against any
 25 such owner occupier or lessee shall be laid within sixty days after any
 previous conviction. First process to be
 against lessee or
 occupier and no
 second information
 within sixty days.
- 30 6. Any lessee of land who shall destroy or have destroyed any
 noxious weeds growing thereon at any time in compliance with the
 terms of any notice to that effect directed to him in pursuance of this
 25 Act shall be entitled to deduct if at the time his lease shall have not
 more than five years to run one half and if not more than two years to
 run two-thirds of the expenses *bonâ fide* incurred by him in such
 destruction from the next accruing rent to become due to his lessor or
 landlord or to recover the like proportion from such lessor or landlord
 30 as for money paid to his use Provided that nothing in this section
 contained shall prejudice or affect any agreement regarding such
 expenses or weeds made between such lessee and lessor or landlord. Lessee may deduct
 portion of expenses
 incurred in destruc-
 tion of weeds from
 rent or recover same.
- 35 7. It shall be lawful upon the hearing of any such matter as
 aforesaid for the Justices hearing the same instead of inflicting the
 35 penalty provided by section three of this Act to make an order in the
 form or to the effect of the form in Schedule B empowering any person
 or persons to be named in such order to destroy the weeds as aforesaid
 or any of them on any such land as aforesaid or the half of the road
 adjacent thereto and such order shall operate as a license to such
 40 person or persons to enter on such land or road under the authority
 of this Act and destroy such weeds as aforesaid And every such person
 may recover from the owner lessee or occupier of such land as afore-
 said reasonable compensation for such destruction in a summary
 manner before any two Justices who are hereby authorized to assess
 45 the amount of such compensation. Power to Justices
 to grant order for
 destruction—the
 expense to be
 recovered from
 defendant.
- 50 8. If there should be no occupier or lessee of any such land as
 aforesaid or such occupier or lessee or the owner of such land shall be
 unknown or being absent from the Colony shall have no known agent
 residing in the Colony then such notice as aforesaid may be fixed in
 50 some conspicuous place upon such land and such notice together with
 a reasonable description of the land shall also be published twice in
 some daily Sydney newspaper and twice in some newspaper (if any)
 circulating in the neighbourhood thereof and every notice so affixed
 and published shall be deemed and taken to be sufficient notice to
 55 the occupier lessee or owner of such land from the time of its being
 so affixed and published Provided that it shall not be necessary for
 any such last-mentioned notice to specify the name of any person as
 occupier lessee or owner of the land therein referred to. Notice in case of no
 occupant and absent
 or unknown owner.

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9. After any notice shall have been affixed and published as aforesaid it shall be lawful for any person to obtain such order *ex parte* from the said Justices (varied to suit the circumstances) as is mentioned in section seven hereof and specified in the said Schedule B and also for any such person who shall have obtained any such order and procured the effectual destruction of noxious weeds growing on the land mentioned in such order to obtain an order from such Justices assessing the amount of compensation therefor which shall be in the form or to the effect of the form in Schedule C and such person may at any time within six years from the date of such order recover the amounts of compensation therein mentioned from the occupier or lessee of the land referred to in such order in a summary way before any two Justices of the Peace Provided always that in default of such payment the said Justices shall order the same to be levied by distress but in no case shall such occupier or lessee be liable to imprisonment by reason of non-payment And it shall be lawful for any such occupier or lessee paying any money under such order as last aforesaid to recover the same from his landlord (if any) as money paid to his use or to deduct the same from his next accruing rent.

Proceedings when owner absent or unknown and land unoccupied.

10. When any such noxious weeds as aforesaid shall be found growing upon any Crown land not held under lease or license from the Crown and not being within the boundaries of any Municipality or upon any public road passing through any such land a notice shall be served on the office of the Surveyor General and shall describe and set forth the situation of such land and it shall be lawful for the Surveyor General to employ the necessary laborers for the purpose of destroying the said weeds and to defray the expenses of the same out of any sum that may have been voted by the Legislature for such purpose And in the event of the neglect or refusal of such Surveyor General to destroy such weeds within thirty days it shall be lawful for any person to obtain an order under section nine hereof and upon proof of such order and of assessment of compensation as therein provided it shall be lawful for the Governor by warrant under his hand to direct the Colonial Treasurer out of any amount voted and appropriated as aforesaid to pay to the party having obtained such order the expenses incurred in such destruction as aforesaid.

As to waste lands of the Crown.

11. When any noxious weeds shall be found growing on any lands other than unoccupied Crown Lands as aforesaid roads or streets lying within the boundaries of any Municipality the Council of such Municipality shall be taken to be the owner or occupier of such lands roads or streets for the purpose of being served with notice as hereinbefore described and shall be liable to the penalties by this Act imposed And any such Council which shall after such notice destroy any noxious weeds on the land of any private owner may recover compensation from such owner under the seventh section hereof and any such Council which shall pay any penalty in respect of the land of any private owner may recover the amount of such penalty in a summary way before any two Justices of the Peace.

Municipalities to be liable to notice and penalties.

12. If the owner of any such land as last aforesaid shall be unknown or absent from the Colony and such compensation or penalty cannot therefore be recovered from him and shall remain unpaid for three years after the right to recover the same first accrued it shall be lawful for such Council to let such land for any term not exceeding fourteen years and may receive the rents and profits thereof and apply the same in payment of such penalty or compensation and shall pay the surplus if any to the Colonial Treasurer to be held by him upon trust for the person or persons entitled thereto.

Mode of recovering compensation if owner unknown or absent.

13. Unless otherwise prescribed any notice or order required by this Act to be given or served shall be in writing and shall be

Notice what sufficient.

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be deemed to have been sufficiently given or served in the case of the Surveyor General if sent to him by post addressed to the Survey Office or left there for him with some competent officer or person in the case of a Municipality if sent to the Mayor by post addressed to the Municipal Council Chambers or left there for him with some competent person and in other cases if left with the person to whom it is addressed or left with some person at his last known place of residence.

14. The Governor in Council may by Proclamation to be published in the *Government Gazette* direct that the provisions of this Act shall be extended to any county police or electoral districts within the Colony and upon the publication of such Proclamation as aforesaid such county or district shall be within the operation of this Act accordingly.

Provisions of this Act may be extended to other counties by Proclamation.

15. All proceedings under this Act shall be heard and determined in a summary way before a Police Magistrate or any two Justices of the Peace and no proceedings under this Act shall be removed by *certiorari* into the Supreme Court and unless otherwise hereinbefore directed any information summons warrant order or conviction under this Act may be prepared according to the form and in the manner directed by the Act of the Imperial Parliament eleventh and twelfth Victoria chapter forty-three as adopted by the Act fourteenth Victoria number forty-three and by any Act amending the same.

Proceedings to be summary and no *certiorari*.

16. All penalties recoverable under this Act shall be paid into the Treasury and form part of the Consolidated Revenue Fund.

Penalties to go to Revenue.

17. This Act shall come into operation on the first day of March one thousand eight hundred and seventy-one and shall be styled and may be cited as the "Cumberland and Camden Bathurst-burr and Thistle Act of 1870."

Short title.

SCHEDULE A.

30 To
You are required to destroy the [] on land situate and
on the half of the road adjacent to such land

Section 2.

If you do not effectually destroy the same within thirty days from the date hereof or use reasonable diligence in that behalf you will be proceeded against under the "Cumberland and Camden Bathurst-burr and Thistle Act of 1870."

35

[Signature of Justice.]

Dated

SCHEDULE B.

40 To
On the hearing of a case brought against you under the "Cumberland and Camden Bathurst-burr and Thistle Act of 1870" on the information of this day heard we order that the said with such assistants as he may require shall be at liberty to enter on the land situate &c. and to destroy all [] there growing for which this order will be his authority.

Sections 7 & 9.

45

[Signature of Justice.]

Dated

[If the above order is made under section nine of this Act the commencement should be]—On the *ex parte* application of we order &c.

50

SCHEDULE C.

It having appeared to us that has obtained the order required by section nine of the "Cumberland and Camden Bathurst-burr and Thistle Act of 1870" and has destroyed the [] growing on the lands situate &c. now unoccupied and of which the owner is unknown [or is absent from the Colony as the case may be] we assess the compensation to which the said is entitled in respect thereof at £ in order that the same shall be recovered under section nine of the "Cumberland and Camden Bathurst-burr and Thistle Act of 1870."

Section 9.

60 Dated

[Signature of Justices.]