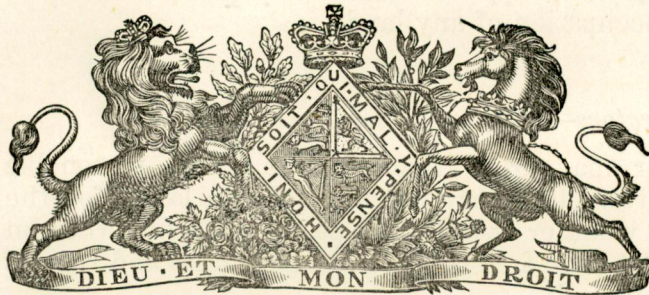


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 4 June, 1886. }*

*F. W. WEBB,
Acting Clerk of Legislative Assembly.*

New South Wales.



ANNO QUADRAGESIMO NONO

VICTORIÆ REGINÆ.

No. .

An Act to provide for the eradication of the Prickly Pear.

WHEREAS provision should be made for the eradication of the Prickly Pear Be it therefore 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:—

1. This Act shall come into operation on the first day of September one thousand eight hundred and eighty-six and may be cited as the "Prickly Pear Destruction Act of 1886."

2. In this Act if not inconsistent with the context—
10 "Crown Land" means land vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple or included under the definition of "Private Land."

15 "Eradicate" means to entirely consume by fire or to completely bury three feet at least under ground prickly pear with the roots seed and every other part thereof.

"Governor" means the Governor with the advice of the Executive Council.

20 "Inspector" means any person acting under the authority of the Minister as inspector for the purposes of this Act.

Prickly-pear Destruction.

- “Minister” means the Minister for the time being charged with the administration of this Act.
- “Prickly-pear” means the plants known by the botanical names of *Opuntia tuna* *Opuntia ficus Indica* and *Opuntia vulgaris*.
- 5 “Private Land” means land alienated from the Crown or held under lease or promise of lease from the Crown or permanently dedicated and vested in trustees whether such trustees be persons or a body corporate.
- 10 “Owner” means any person or body corporate holding land on any freehold tenure or permanently in trust or upon any lease or promise of lease from the Crown and includes the mortgagee of any such land.
- 15 “Occupier” means every person holding any lease agreement for lease or license to occupy land and every person in actual possession or occupation of any land.

1. *Inspectors—their powers and duties.*

3. Any inspector may from time to time at all reasonable hours enter upon any Crown lands or upon any private lands for the purpose of ascertaining whether any prickly-pear is growing thereon and for such purpose shall have free right of ingress egress and regress into over and across such land. Power of entry.

4. 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 prickly-pear is growing upon the land specified in such notice. Inspector on notice to ascertain if any prickly-pear is on land.

5. Any inspector or person duly authorized under this Act who shall refuse or wilfully neglect to perform any of the duties imposed upon him by this Act shall be liable to a penalty not exceeding ten pounds. Inspector neglecting his duty.

6. Any inspector or any owner or occupier hereby authorized shall not be deemed to be a trespasser or be liable for any damage occasioned by him in the reasonable exercise of any power vested in him by this Act. Inspector not deemed a trespasser.

2. *Destruction of any Prickly-pear on Crown Land or land vested in the Commissioner of Railways or in the Council of a Municipality.*

7. When any prickly-pear is found by an inspector upon Crown Land or upon any road not within the boundaries of any Municipality and adjoining or dividing Crown Land a notice in the form of Schedule A hereto shall be transmitted by such inspector to the Minister describing the situation of such land or road and it shall then be the duty of such Minister forthwith to authorize the employment of all necessary labour to eradicate such prickly-pear and all expenses incurred in such eradication shall be defrayed out of such moneys as Parliament may appropriate for that purpose. Prickly-pear growing on Crown Lands may be eradicated.

8. If any prickly-pear is found growing upon any land vested in the Commissioner for Railways or upon any lands roads or streets within the boundaries of any Municipality the Commissioner for Railways or the Council of such Municipality (as the case may be) shall be taken to be the owner or occupier of such lands roads or streets for the purpose of being served with the notice hereinafter mentioned to clear such lands and shall be liable to the penalties imposed by this Act. Prickly-pear growing on railway or lands within a Municipality.

Prickly-pear Destruction.

9. If prickly-pear shall be found growing upon any Common or upon any lands vested by the Crown in Trustees other than the Council of any Municipality and the same shall not be effectually eradicated within three months after notice as aforesaid in the form of
- 5 Schedule B shall have been served upon the trustees of such Common or land or upon any one of them or within such further period as the Minister may in any case allow or if the trustees of such Common or land shall within one month after the receipt of such notice inform the Minister that they are unable to eradicate the prickly-pear
- 10 thereon or if there shall be no trustees of such Common or land then it shall be lawful for the Minister to cause such land to be offered for lease by auction or tender and to let the same for any term not exceeding ten years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other
- 15 conditions or penalties as may be prescribed by regulations in that behalf and any rent received for such lands shall be paid to the Consolidated Revenue anything in the "Commons Regulation Act" to the contrary notwithstanding.
- 20 10. Any Commons or lands so leased shall during the currency of such lease be absolutely freed from all the rights of Commonage or the trusts as the case may be and the Minister may from time to time upon proof to his satisfaction of the nonfulfilment by the lessee of the conditions of the lease or any of them declare such lease forfeited and again lease the lands as hereinbefore provided.
- 25 *3. Destruction of Prickly-pear on private land.*
11. Any inspector may serve or cause to be served upon any owner or occupier of any private land on which any prickly-pear is growing a notice in the form of Schedule B hereto requiring such owner or occupier forthwith to eradicate the same.
- 30 12. If within one month after the service of such notice such owner or occupier does not commence to do and thereafter continue to do all such acts as the Minister may in writing direct to eradicate the prickly-pear on the land mentioned in such notice such owner or occupier shall be liable to a penalty not exceeding ten pounds for the
- 35 first offence and for every second or subsequent offence to a penalty of not less than five pounds nor more than twenty pounds and neglect to take such means to eradicate as aforesaid for a space of seven days at any time after the date of each conviction shall be deemed to be a fresh offence.
- 40 13. If any owner or occupier fails to comply with any such notice then in addition to or in lieu of proceedings for the recovery of such penalty any such inspector or other person upon being authorized by the Minister to do so may enter upon the land mentioned in such notice and do all such things as to him may appear necessary to
- 45 eradicate the prickly-pear on the land of such owner and for that purpose the inspector and any person or persons employed by him shall have free right of ingress egress and regress into over and across any lands of such owner for such period as may in his opinion be necessary for the purposes of such eradication.
- 50 14. If at any time after the expiration of one month as aforesaid such inspector shall be satisfied that the owner or occupier is doing all things necessary to eradicate such prickly-pear then such inspector may abstain from entering upon such land or having entered upon it may withdraw therefrom upon the owner or occupier paying all
- 55 costs and expenses incurred to the time of such withdrawal.
15. Any owner or occupier upon whose land any inspector or authorized person shall have entered as aforesaid for the purpose of eradicating any prickly-pear shall within thirty days from service of

Reserved Commons may be leased to cover the expenses of destroying prickly-pear.

Commons leased freed from commonage rights.

Inspector may serve notice on owners to eradicate prickly-pear.

Penalty for neglect to comply with notice.

In addition to penalty inspector may enter upon private land.

Power to withdraw from lands after entering to clear.

Owners within thirty days of service of notice to pay cost of destruction.

Prickly-pear Destruction.

a notice in the form of Schedule C hereto pay to the person or one of the persons mentioned in such notice as authorized to receive such payment the amount mentioned therein as being the cost and expenses incurred in the eradication of any prickly-pear which amount when
5 so paid shall by the person receiving the same be forthwith paid into the Consolidated Revenue.

16. If any owner or occupier upon whom a notice as mentioned in the last preceding section has been served shall fail to pay the amount mentioned therein within the said period of thirty days the
10 inspector issuing such notice or any person authorized in that behalf by the Minister may sue either the owner or the occupier for and recover the same as a debt due to the Crown either in the Supreme Court or in any Court having jurisdiction nearest to the place where the land in respect of which the claim shall have been made is situated
15 whether the defendant shall reside within the limit of such Court's jurisdiction or not.

If cost not so paid
inspector to sue for
same.

17. If a notice is served upon any owner who is not entitled to the occupation for the time being of the lands mentioned in such notice then unless the person in actual occupation or entitled to
20 actual occupation of such land shall within fourteen days from the service of such notice arrange with such owner and to his satisfaction for the eradication of prickly-pear on the said land the said owner shall be deemed as regards such lands to have all the powers of an inspector under this Act.

If notice to destroy
served upon owner
not entitled to occu-
pation he may enter
and eradicate.

18. Wherever there are more owners or occupiers than one of any private land and one of such owners or occupiers is under this Act in any way compelled to pay more than his proportionate share of the cost of eradicating the prickly-pear on such land he may in any Court of competent jurisdiction sue for and recover from the other
30 owners or occupiers of such private land such proportion of the costs charges and expenses incurred by him in or about such eradication as is in the opinion of the Court fairly proportionate to the respective interests of the owners in such land. If the owner or occupier of any such land as aforesaid shall be unknown or absent from the Colony
35 and the cost of eradicating the prickly-pear on his land or any penalty incurred in respect of such land cannot be recovered from him and shall remain unpaid for twelve months after the right to recover the same has first accrued it shall be lawful for the Minister to let such land for any term not exceeding ten years upon such terms and conditions
40 as shall be prescribed by regulations for that purpose and to receive the rents and profits thereof and apply the same in payment of such amount or penalty as aforesaid with interest thereon at the rate of ten per cent. per annum so long as the same shall be unpaid and the surplus (if any) shall be paid to the Colonial Treasurer to be held by
45 him upon trust for the persons entitled to the same.

Apportionment of
cost between owners.

19. In every case where on this Act coming in force a lease is held of any land (the same not being Crown Lands) for an unexpired period and there is no provision in such lease with respect to the cost of the eradication of prickly-pear on such land the landlord and tenant
50 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 eradication then either party shall and may apply to the Court of Petty Sessions nearest to the place where such
55 eradication shall have been done to issue a summons to such other party requiring him to appear before such or some other such Court to show cause why such other party should not pay to the first-mentioned party such a proportion of the cost of such eradication as shall be just and equitable having regard to the circumstances and
duration

Apportionment of
cost between
landlord and tenant.

Prickly-pear Destruction.

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 eradication of prickly-pear made between a landlord and tenant previous to the passing of this Act.

5 20. At the time and place appointed by such summons the Court as aforesaid shall inquire into the matter therein referred to and shall hear and examine on oath all persons who shall appear to give evidence concerning the same and shall thereupon make such order as to the amounts to be contributed respectively by such landlord and
10 tenant as shall appear to be just and equitable having regard to all the circumstances and the duration of the lease and the presiding Magistrate shall give a certificate under his hand and seal certifying what amounts shall be so payable and such sums shall thereupon be recoverable as hereinafter provided.

15 21. The description of any private land required to be inserted in any notice under this Act need not particularly define the land referred to therein but shall be sufficient if it make such reference to the land either by name number of section or allotment or by boundaries or otherwise so as to allow of no reasonable doubt as to what land is
20 referred to And all references to private land in any such notice shall be deemed to extend to the roads bounding or intersecting the same and any owner or occupier or inspector or other person having power hereunder to enter upon private land and eradicate the prickly-pear thereon shall be deemed to have power to enter upon the roads
25 bounding or intersecting such land and eradicate such prickly-pear growing on such roads.

4. General Provisions Regulations &c.

22. It shall be lawful for any person who is authorized by this Act to enter upon any land and to destroy prickly-pear thereon to
30 take such indigenous timber growing on the lands of the owner or occupier of such land as may be required by him for the purpose of burning or destroying such prickly-pear or to dig pits and bury such noxious plants therein.

35 23. All costs charges and expenses incurred by an inspector or any person authorized in clearing any private land of prickly-pear under the provisions of this Act shall be a first charge upon such land and shall take precedence of all mortgages or other charges whatsoever upon such land Provided always that a certificate under the hand of the Minister shall be a full discharge of all such costs charges and
40 expenses up to the date of such certificate.

45 24. The Governor may make regulations for declaring how and in what manner prickly-pear may or shall be destroyed otherwise than provided for in this Act and also with respect to all other matters of detail necessary for carrying out the objects of this Act and may impose penalties for the breach of any such regulation not exceeding five pounds and every such regulation shall have the force of law upon publication in the *Gazette*.

5. Penalties.

50 25. Any person who shall falsely represent himself to be or shall personate an inspector or a person authorized under this Act or who not being an inspector or a person authorized in writing by the Minister or a person lawfully acting under the provisions hereof shall trespass upon any private land for the apparent purpose of eradicating prickly-pear or who shall destroy injure alter or remove any notice
55 signed by an inspector or person authorized under this Act and placed or exhibited upon any land by the owner thereof or by any inspector or person authorized under this Act as aforesaid shall be liable to a penalty not exceeding twenty pounds.

Prickly-pear Destruction.

26. Any person who shall wilfully assault obstruct hinder interrupt or mislead or cause to be assaulted obstructed hindered interrupted or misled any inspector or any person authorized in writing by the Minister or any owner or person in the exercise of any power or authority vested in him by this Act whilst in the performance or execution of his duty under this Act shall for every such offence if not otherwise specially provided for be liable to a penalty not exceeding twenty pounds And no proceeding for the recovery of 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.
27. It shall not be lawful for any person to grow or cultivate upon any land or premises any prickly-pear nor shall it be lawful for any person to scatter the seed thereof upon any lands or to throw or place or cause to be thrown or placed the same into any river stream creek or watercourse whether the same shall contain water or not nor shall it be lawful for any person to cut and leave any prickly-pear in such a position on the banks of any river stream creek or watercourse so that by reason of floods or otherwise they would be liable to be swept or floated into such river stream creek or watercourse and every person offending against the provisions of this section shall be liable to a penalty not exceeding twenty pounds.
28. Every owner or occupier upon whose land there shall be any prickly-pear shall within one month from the passing hereof give the inspector nearest to such land notice thereof in writing and any person failing to do so shall be liable to a penalty not exceeding twenty pounds.
29. Any person who shall commit a breach of this Act or of any Regulations hereunder for which a penalty is not specially provided shall on conviction for every such offence incur a penalty not exceeding ten pounds.

For wilfully obstructing forest ranger.

Not lawful to cultivate noxious plant.

Owners to give notice of prickly pear being on land.

General penalty.

6. Legal Procedure &c.

30. All proceedings for the recovery of penalties or money payable under this Act shall be heard and determined in a summary way before any two Justices unless hereinbefore otherwise specially provided in accordance with the law regulating summary proceedings before Justices and payment of any such penalty or money may be enforced by distress and sale of the offenders or defendants goods and chattels and in any proceedings for the recovery of money under the provisions hereof or for the recovery of any penalty hereunder the jurisdiction of the Court or Justices before whom the proceedings are pending shall not be ousted on the ground that the defence raises any question of title to land or that the defendant does not reside within the boundaries of the jurisdiction of the Court where the action may be commenced if the land in respect of which the claims arose is situated within the boundaries of the jurisdiction of such Court.
31. In all proceedings for the recovery of penalties or moneys payable under this Act the onus of proof that he has eradicated the prickly-pear on his land or has otherwise complied with the provisions of this Act or the regulations hereunder shall rest upon the defendant.
32. Any person may appeal from any adjudication of Justices under this Act to the Court of Quarter Sessions pursuant to the provisions of the Acts regulating appeals to Quarter Sessions.

Proceedings for recovery of penalties.

Jurisdiction of Court or Justices not ousted on ground that defence raises question of title.

The onus of proof to lie on the defendant.

Appeal.

Prickly-pear Destruction.

33. Any notice or order required by this Act to be in the form given in any of the Schedules hereto shall be sufficient if in a form substantially similar thereto and such notices or any other required to be given by this Act or by the regulations to be made hereunder unless otherwise prescribed shall be deemed to be sufficiently given or served if left with the person to whom it is addressed or left with some person at his usual or last known place of residence or if sent to him by a registered letter through the general post or if inserted twice a week for two consecutive weeks in some newspaper published in Sydney and once a week for two consecutive weeks in some newspaper published in or near to (as the case may be) the district in which such land is situated the production of the newspaper containing such insertions shall be proof of the due service of such notice and in all other cases an affidavit of such service shall be sufficient proof.

34. For the purposes of this Act in any proceeding to recover from the owner of any land the expenses of and attending the eradication of prickly-pear and in any appeal relating to or concerning such expenses it shall be sufficient to produce a certificate of the allowance of such expenses purporting to be under the hand and seal of the Magistrate presiding at the Court of Petty Sessions nearest to the place where such work was done and such allowance and certificate shall be *prima facie* evidence that the expenses so allowed were actually incurred in such eradication and that such eradication was duly authorized and that such notice was given and proceedings taken pursuant to the requirements of this Act and for the purpose of giving such certificate such Magistrate shall upon request and *ex parte* inquire into such expenditure and examine the vouchers of the same and shall take evidence of the same upon oath if he deems it necessary.

Notice how to be given.

Allowance of Police Magistrate to be sufficient evidence of the expenses incurred.

Prickly-pear Destruction.

SCHEDULES.

SCHEDULE A.

*Report by Inspector of existence of Prickly-pear on land.**(Place and date.)*5 To the Minister for
Sir

I hereby give you notice that Prickly-pears are growing upon the land or road situated as hereunder described.

(Signed) A.B.
Inspector.

10

Description of land.

SCHEDULE B.

Notice to Owner to destroy Prickly-pear.

To owner (or owners) of the land hereunder described.

15 TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" you are hereby required forthwith to eradicate the Prickly-pear growing on the land situated as hereunder described.

(Signed) A.B.
Inspector.

20

Description of land.

NOTE.—When the notice is given by the Council of a Municipality the notice must be signed by the Council Clerk.

SCHEDULE C.

Notice to Defaulter to pay cost of eradication.

25 To owner of the land hereunder described.

TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" costs and expenses to the amount of have been incurred in the eradication of Prickly-pear under my direction on the land situated as hereunder described which amount you are hereby required to pay to

(Signed) A.B.
Inspector.

30

Description of land.

PRICKLY-PEAR DESTRUCTION BILL.

SCHEDULE of Amendments referred to in Message of 7th July, 1886.

- Page 2, clause 2, line 3. *Omit "s" from "plants"*
 Page 2, clause 2, line 3. *Omit "s" from "names"*
 Page 2, clause 2, line 4. *Omit "of Opuntia tuna opuntia ficas Indica and"*
 Page 2, clause 2, line 4. *After "vulgaris" insert "or the common prickly-pear and
 "any other variety of the cactus tribe which the Governor may declare
 "to be prickly-pear for the purpose of this Act"*
 Page 2, clause 2, line 9. *After "Crown" insert "for any period exceeding one year"*
 Page 2, clause 3, line 20. *Omit "from time to time"*
 Page 2, clause 3, line 21. *Omit "s" from "lands"*
 Page 2, clause 3, line 21. *Omit "upon any"*
 Page 2, clause 3, line 21. *Omit "s" from "lands"*
 Page 2, clause 6. *Omit clause 6.*
 Page 2, clause 7. 6. At end of clause *add "Provided that it shall be lawful for the
 "Minister to cause such Crown Land to be offered for lease by auction
 "or tender and to let the same in areas not exceeding six hundred and
 "forty acres and for any term not exceeding twenty-one years upon
 "condition that the lessee shall destroy and eradicate such prickly-pear
 "and at such rent and subject to such other conditions and penalties as
 "may be prescribed by regulations in that behalf anything in the
 "'Land Act of 1884' to the contrary notwithstanding."*
 Page 3, clause 8. 7, line 1. *Omit "growing"*
 Page 3, clause 8. 7, line 2. *Omit "s" from "lands"*
 Page 3, clause 8. 7, line 5. *Omit "s" from "lands"*
 Page 3, clause 8. 7, line 7. *Omit "s" from "lands"*
 Page 3, clause 9. 8, line 9. *Omit "growing"*
 Page 3, clause 9. 8, line 10. *Omit "s" from "lands"*
 Page 3, clause 9. 8, line 16. *Omit "one" insert "three"*
 Page 3, clause 9. 8, line 16. *Add "s" to "month"*
 Page 3, clause 9. 8, line 21. *Omit "ten" insert "twenty-one"*
 Page 3, clause 9. 8, line 24. *Omit "s" from "lands"*
 Page 3, clause 10. 9, line 27. *Omit "s" from "lands"*
 Page 3, clause 10. 9, line 32. *Omit "s" from "lands"*
 Page 3, clause 11. 10, line 36. *Omit "growing" insert "found"*
 Page 3, clause 12. 11, line 45. *Omit "seven" insert "twenty-eight"*
 Page 3, clause 13. 12, line 53. *After "owner" insert "or occupier"*
 Page 3, clause 13. 12, line 54. *After "inspector" insert "or authorized person"*
 Page 3, clause 13. 12, line 55. *Omit "him" insert "either of them"*
 Page 3, clause 13. 12, line 56. *Omit "s" from "lands"*
 Page 4, clause 17. 16, line 27. *Omit "s" from "lands"*
 Page 4, clause 17. 16, line 32. *Omit "s" from "lands"*
 Page 4, clause 18. 17, line 48. *Omit "ten" insert "twenty-one"*
 Page 4, clause 19. 18, line 56. *Omit "s" from "lands"*
 Page 5, clause 20. 19, line 16. *Omit "on oath"*
 Page 5, clause 22. 21, line 41. *Omit "s" from "lands"*
 Page 5, clause 22. 21, lines 43 and 44. *Omit "such noxious plants" insert "the same"*
 Page 6, clause 27. 26, lines 26 and 27. *Omit "nor shall it be lawful for any person"
 insert "or"*
 Page 6, clause 27. 26, line 27. *Omit "s" from "lands"*
 Page 6, clause 27. 26, line 30. *Omit "nor shall it be lawful for any person" insert "or"*
 Page 6, clause 27. 26, line 32. *Omit "they" insert "it"*
 Page 6, clause 30. 29, lines 50 to 52. *Omit "and payment of any such penalty or money
 "may be enforced by distress and sale of the offender's or defendant's goods and
 "chattels"*
 Page 6, clause 30. 29, line 57. *After "Court" insert "or Justices"*
 Page 7, clause 30. 29. At end of clause *add "or Justices"*
 Page 7, clause 31. *Omit clause 31.*
 Page 7, clause 33. 31, line 24. *Omit "an affidavit" insert "a statutory declaration"*
 Page 7, clause 34. 32, line 39. *Omit "upon oath"*
 Page 8, Schedule A, line 7. *Omit "s" from "prickly-pears"*
 Page 8, Schedule A, line 7. *Omit "are growing" insert "is"*
 Page 8, Schedule B, line 16. *Omit "growing"*

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, 4 June, 1886.* }

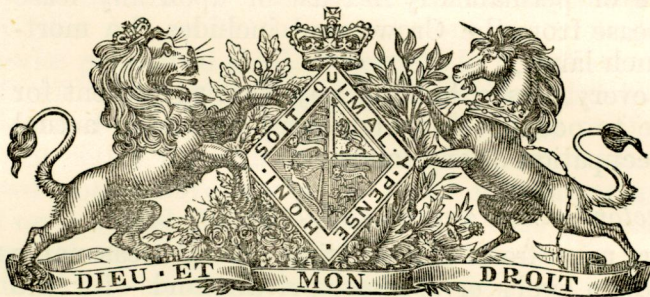
F. W. WEBB,
Acting Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

*Legislative Council Chamber,
Sydney, 7th July, 1886.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. .

An Act to provide for the eradication of the Prickly-pear.

WHEREAS provision should be made for the eradication of the Prickly-pear Preamble.

Be it therefore 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:—

1. This Act shall come into operation on the first day of September one thousand eight hundred and eighty-six and may be cited as the "Prickly Pear Destruction Act of 1886." Commencement and title of Act.

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

10 "Crown Land" means land vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple or included under the definition of "Private Land." Interpretation of terms.

15 "Eradicate" means to entirely consume by fire or to completely bury three feet at least under ground prickly pear with the roots seed and every other part thereof.

"Governor" means the Governor with the advice of the Executive Council.

20 "Inspector" means any person acting under the authority of the Minister as inspector for the purposes of this Act.

272—

"Minister"

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter

Prickly-pear Destruction.

“Minister” means the Minister for the time being charged with the administration of this Act.

5 “Prickly-pear” means the plants known by the botanical names of ~~Opuntia tuna~~ ~~Opuntia ficus Indica~~ and *Opuntia vulgaris* or the common prickly-pear and any other variety of the cactus tribe which the Governor may declare to be prickly-pear for the purpose of this Act.

10 “Private Land” means land alienated from the Crown or held under lease or promise of lease from the Crown for any period exceeding one year or permanently dedicated and vested in trustees whether such trustees be persons or a body corporate.

15 “Owner” means any person or body corporate holding land on any freehold tenure or permanently in trust or upon any lease or promise of lease from the Crown and includes the mortgagee of any such land.

“Occupier” means every person holding any lease agreement for lease or license to occupy land and every person in actual possession or occupation of any land.

1. *Inspectors—their powers and duties.*

20 3. Any inspector may ~~from time to time~~ at all reasonable hours enter upon any Crown lands or upon any private lands for the purpose of ascertaining whether any prickly-pear is growing thereon and for such purpose shall have free right of ingress egress and regress into over and across such land. Power of entry.

25 4. 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 prickly-pear is growing upon the land specified in such notice. Inspector on notice to ascertain if any prickly-pear is on land.

30 5. Any inspector or person duly authorized under this Act who shall refuse or wilfully neglect to perform any of the duties imposed upon him by this Act shall be liable to a penalty not exceeding ten pounds. Inspector neglecting his duty.

35 6. Any inspector or any owner or occupier hereby authorized shall not be deemed to be a trespasser or be liable for any damage occasioned by him in the reasonable exercise of any power vested in him by this Act. Inspector not deemed a trespasser.

2. *Destruction of any Prickly-pear on Crown Land or land vested in the Commissioner of Railways or in the Council of a Municipality.*

40 7. 6. When any prickly-pear is found by an inspector upon Crown Land or upon any road not within the boundaries of any Municipality and adjoining or dividing Crown Land a notice in the form of Schedule A hereto shall be transmitted by such inspector to the Minister describing the situation of such land or road and it shall then be the duty of such Minister forthwith to authorize the employment of all necessary labour to eradicate such prickly-pear and all expenses incurred in such eradication shall be defrayed out of such moneys as Parliament may appropriate for that purpose **Provided** that it shall be lawful for the Minister to cause such Crown land to be offered for lease by auction or tender and to let the same in areas not exceeding six hundred and forty acres and for any term not exceeding twenty-one years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other conditions and penalties as may be prescribed by regulations in that behalf anything in the “Land Act of 1884” to the contrary notwithstanding. Prickly-pear growing on Crown Lands may be eradicated.

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55

Prickly-pear Destruction.

8. 7. If any prickly-pear is found growing upon any land vested in the Commissioner for Railways or upon any lands- roads or streets within the boundaries of any Municipality the Commissioner for Railways or the Council of such Municipality (as the case may be) shall be taken to be the owner or occupier of such lands- roads or streets for the purpose of being served with the notice hereinafter mentioned to clear such lands- and shall be liable to the penalties imposed by this Act. Prickly-pear growing on railway or lands within a Municipality.
9. 8. If prickly-pear shall be found growing upon any Common or upon any lands- vested by the Crown in Trustees other than the Council of any Municipality and the same shall not be effectually eradicated within three months after notice as aforesaid in the form of Schedule B shall have been served upon the trustees of such Common or land or upon any one of them or within such further period as the Minister may in any case allow or if the trustees of such Common or land shall within ~~one~~ **three** months after the receipt of such notice inform the Minister that they are unable to eradicate the prickly-pear thereon or if there shall be no trustees of such Common or land then it shall be lawful for the Minister to cause such land to be offered for lease by auction or tender and to let the same for any term not exceeding ~~ten~~ **twenty-one** years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other conditions or penalties as may be prescribed by regulations in that behalf and any rent received for such lands- shall be paid to the Consolidated Revenue anything in the "Commons Regulation Act" to the contrary notwithstanding. Reserved Commons may be leased to cover the expenses of destroying prickly-pear.
9. 9. Any Commons or lands- so leased shall during the currency of such lease be absolutely freed from all the rights of Commonage or the trusts as the case may be and the Minister may from time to time upon proof to his satisfaction of the nonfulfilment by the lessee of the conditions of the lease or any of them declare such lease forfeited and again lease the lands- as hereinbefore provided. Commons leased freed from commonage rights.

3. Destruction of Prickly-pear on private land.

10. 10. Any inspector may serve or cause to be served upon any owner or occupier of any private land on which any prickly-pear is growing found a notice in the form of Schedule B hereto requiring such owner or occupier forthwith to eradicate the same. Inspector may serve notice on owners to eradicate prickly-pear.
11. 11. If within one month after the service of such notice such owner or occupier does not commence to do and thereafter continue to do all such acts as the Minister may in writing direct to eradicate the prickly-pear on the land mentioned in such notice such owner or occupier shall be liable to a penalty not exceeding ten pounds for the first offence and for every second or subsequent offence to a penalty of not less than five pounds nor more than twenty pounds and neglect to take such means to eradicate as aforesaid for a space of ~~seven~~ **twenty-eight** days at any time after the date of each conviction shall be deemed to be a fresh offence. Penalty for neglect to comply with notice.
12. 12. If any owner or occupier fails to comply with any such notice then in addition to or in lieu of proceedings for the recovery of such penalty any such inspector or other person upon being authorized by the Minister to do so may enter upon the land mentioned in such notice and do all such things as to him may appear necessary to eradicate the prickly-pear on the land of such owner or occupier and for that purpose the inspector or authorized person and any person or persons employed by him either of them shall have free right of ingress egress and regress into over and across any lands- of such owner for such period as may in his opinion be necessary for the purposes of such eradication. In addition to penalty inspector may enter upon private land.

Prickly-pear Destruction.

14. 13. If at any time after the expiration of one month as aforesaid such inspector shall be satisfied that the owner or occupier is doing all things necessary to eradicate such prickly-pear then such inspector may abstain from entering upon such land or having entered upon
5 it may withdraw therefrom upon the owner or occupier paying all costs and expenses incurred to the time of such withdrawal.

Power to withdraw from lands after entering to clear.

15. 14. Any owner or occupier upon whose land any inspector or authorized person shall have entered as aforesaid for the purpose of eradicating any prickly-pear shall within thirty days from service of
10 a notice in the form of Schedule C hereto pay to the person or one of the persons mentioned in such notice as authorized to receive such payment the amount mentioned therein as being the cost and expenses incurred in the eradication of any prickly-pear which amount when
15 so paid shall by the person receiving the same be forthwith paid into the Consolidated Revenue.

Owners within thirty days of service of notice to pay cost of destruction.

16. 15. If any owner or occupier upon whom a notice as mentioned in the last preceding section has been served shall fail to pay the amount mentioned therein within the said period of thirty days the
20 inspector issuing such notice or any person authorized in that behalf by the Minister may sue either the owner or the occupier for and recover the same as a debt due to the Crown either in the Supreme Court or in any Court having jurisdiction nearest to the place where
25 the land in respect of which the claim shall have been made is situated whether the defendant shall reside within the limit of such Court's jurisdiction or not.

If cost not so paid inspector to sue for same.

17. 16. If a notice is served upon any owner who is not entitled to the occupation for the time being of the lands- mentioned in such
30 notice then unless the person in actual occupation or entitled to actual occupation of such land shall within fourteen days from the service of such notice arrange with such owner and to his satisfaction for the eradication of prickly-pear on the said land the said owner shall be deemed as regards such lands- to have all the powers of an
inspector under this Act.

If notice to destroy served upon owner not entitled to occupation he may enter and eradicate.

18. 17. Wherever there are more owners or occupiers than one of
35 any private land and one of such owners or occupiers is under this Act in any way compelled to pay more than his proportionate share of the cost of eradicating the prickly-pear on such land he may in any Court of competent jurisdiction sue for and recover from the other
40 owners or occupiers of such private land such proportion of the costs charges and expenses incurred by him in or about such eradication as is in the opinion of the Court fairly proportionate to the respective interests of the owners in such land. If the owner or occupier of any
45 such land as aforesaid shall be unknown or absent from the Colony and the cost of eradicating the prickly-pear on his land or any penalty incurred in respect of such land cannot be recovered from him and shall remain unpaid for twelve months after the right to recover the same
50 has first accrued it shall be lawful for the Minister to let such land for any term not exceeding ~~ten~~ twenty-one years upon such terms and conditions as shall be prescribed by regulations for that purpose and to receive the rents and profits thereof and apply the same in payment of
such amount or penalty as aforesaid with interest thereon at the rate of
ten per cent. per annum so long as the same shall be unpaid and the
surplus (if any) shall be paid to the Colonial Treasurer to be held by
him upon trust for the persons entitled to the same.

Apportionment of cost between owners.

19. 18. In every case where on this Act coming in force a lease is
55 held of any land (the same not being Crown Lands-) for an unexpired period and there is no provision in such lease with respect to the cost of the eradication of prickly-pear on such land the landlord and tenant shall each contribute an equitable share of such cost. And if the
tenant

Apportionment of cost between landlord and tenant.

Prickly-pear Destruction.

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 eradication then either party shall and may apply to the Court of Petty Sessions nearest to the place where such
 5 eradication shall have been done to issue a summons to such other party requiring him to appear before such or some other such Court to show cause why such other party should not pay to the first-mentioned party such a proportion of the cost of such eradication as shall be just and equitable having regard to the circumstances and
 10 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 eradication of prickly-pear made between a landlord and tenant previous to the passing of this Act.

20. 19. At the time and place appointed by such summons the
 15 Court as aforesaid shall inquire into the matter therein referred to and shall hear and examine ~~on oath~~ all persons who shall appear to give evidence concerning the same and shall thereupon make such order as to the amounts to be contributed respectively by such landlord and tenant as shall appear to be just and equitable having regard to all the
 20 circumstances and the duration of the lease and the presiding Magistrate shall give a certificate under his hand and seal certifying what amounts shall be so payable and such sums shall thereupon be recoverable as hereinafter provided.

Contribution by
landlord and tenant.

24. 20. The description of any private land required to be inserted
 25 in any notice under this Act need not particularly define the land referred to therein but shall be sufficient if it make such reference to the land either by name number of section or allotment or by boundaries or otherwise so as to allow of no reasonable doubt as to what land is referred to And all references to private land in any such notice
 30 shall be deemed to extend to the roads bounding or intersecting the same and any owner or occupier or inspector or other person having power hereunder to enter upon private land and eradicate the prickly-pear thereon shall be deemed to have power to enter upon the roads bounding or intersecting such land and eradicate such prickly-pear
 35 growing on such roads.

As to description of
private lands in
notices &c.

4. General Provisions Regulations &c.

22. 21. It shall be lawful for any person who is authorized by this
 Act to enter upon any land and to destroy prickly-pear thereon to
 take such indigenous timber growing on the lands of the owner or
 40 occupier of such land as may be required by him for the purpose of burning or destroying such prickly-pear or to dig pits and bury such
 noxious plants the same therein.

Authorized persons
may take timber
for purposes of Act.

23. 22. All costs charges and expenses incurred by an inspector
 or any person authorized in clearing any private land of prickly-pear
 45 under the provisions of this Act shall be a first charge upon such land and shall take precedence of all mortgages or other charges whatsoever upon such land Provided always that a certificate under the hand of the Minister shall be a full discharge of all such costs charges and expenses up to the date of such certificate.

Expense of eradica-
tion to be a first
charge upon land.

50 24. 23. The Governor may make regulations for declaring how and
 in what manner prickly-pear may or shall be destroyed otherwise than
 provided for in this Act and also with respect to all other matters of
 detail necessary for carrying out the objects of this Act and may
 impose penalties for the breach of any such regulation not exceeding
 55 five pounds and every such regulation shall have the force of law upon
 publication in the *Gazette*.

Regulations.

*Prickly-pear Destruction.*5. *Penalties.*

25. 24. Any person who shall falsely represent himself to be or shall personate an inspector or a person authorized under this Act or who not being an inspector or a person authorized in writing by the Minister or a person lawfully acting under the provisions hereof shall trespass upon any private land for the apparent purpose of eradicating prickly-pear or who shall destroy injure alter or remove any notice signed by an inspector or person authorized under this Act and placed or exhibited upon any land by the owner thereof or by any inspector or person authorized under this Act as aforesaid shall be liable to a penalty not exceeding twenty pounds.

Penalties for person-ating inspector.

Penalty for trespassing upon private lands.

For interfering with notices.

26. 25. Any person who shall wilfully assault obstruct hinder interrupt or mislead or cause to be assaulted obstructed hindered interrupted or misled any inspector or any person authorized in writing by the Minister or any owner or person in the exercise of any power or authority vested in him by this Act whilst in the performance or execution of his duty under this Act shall for every such offence if not otherwise specially provided for be liable to a penalty not exceeding twenty pounds And no proceeding for the recovery of 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.

For wilfully obstructing forest ranger.

27. 26. It shall not be lawful for any person to grow or cultivate upon any land or premises any prickly-pear ~~nor shall it be lawful for any person~~ or to scatter the seed thereof upon any lands- or to throw or place or cause to be thrown or placed the same into any river stream creek or watercourse whether the same shall contain water or not ~~nor shall it be lawful for any person~~ or to cut and leave any prickly-pear in such a position on the banks of any river stream creek or watercourse so that by reason of floods or otherwise ~~they~~ it would be liable to be swept or floated into such river stream creek or watercourse and every person offending against the provisions of this section shall be liable to a penalty not exceeding twenty pounds.

Not lawful to cultivate noxious plant.

28. 27. Every owner or occupier upon whose land there shall be any prickly-pear shall within one month from the passing hereof give the inspector nearest to such land notice thereof in writing and any person failing to do so shall be liable to a penalty not exceeding twenty pounds.

Owners to give notice of prickly pear being on land.

29. 28. Any person who shall commit a breach of this Act or of any Regulations hereunder for which a penalty is not specially provided shall on conviction for every such offence incur a penalty not exceeding ten pounds.

General penalty.

45 *6. Legal Procedure &c.*

30. 29. All proceedings for the recovery of penalties or money payable under this Act shall be heard and determined in a summary way before any two Justices unless hereinbefore otherwise specially provided in accordance with the law regulating summary proceedings before Justices and ~~payment of any such penalty or money may be enforced by distress and sale of the offenders or defendants goods and chattels~~ and in any proceedings for the recovery of money under the provisions hereof or for the recovery of any penalty hereunder the jurisdiction of the Court or Justices before whom the proceedings are pending shall not be ousted on the ground that the defence raises any question of title to land or that the defendant does not reside within the boundaries of the jurisdiction of the Court or Justices

Proceedings for recovery of penalties.

Jurisdiction of Court or Justices not ousted on ground that defence raises question of title.

Prickly-pear Destruction.

Justices where the action may be commenced if the land in respect of which the claims arose is situated within the boundaries of the jurisdiction of such Court or **Justices**.

31. In all proceedings for the recovery of penalties or moneys payable under this Act the onus of proof that he has eradicated the prickly-pear on his land or has otherwise complied with the provisions of this Act or the regulations hereunder shall rest upon the defendant. The onus of proof to lie on the defendant.

32. 30. Any person may appeal from any adjudication of Justices under this Act to the Court of Quarter Sessions pursuant to the provisions of the Acts regulating appeals to Quarter Sessions. Appeal.

33. 31. Any notice or order required by this Act to be in the form given in any of the Schedules hereto shall be sufficient if in a form substantially similar thereto and such notices or any other required to be given by this Act or by the regulations to be made hereunder unless otherwise prescribed shall be deemed to be sufficiently given or served if left with the person to whom it is addressed or left with some person at his usual or last known place of residence or if sent to him by a registered letter through the general post or if inserted twice a week for two consecutive weeks in some newspaper published in Sydney and once a week for two consecutive weeks in some newspaper published in or near to (as the case may be) the district in which such land is situated the production of the newspaper containing such insertions shall be proof of the due service of such notice and in all other cases ~~an affidavit~~ a **statutory declaration** of such service shall be sufficient proof. Notice how to be given.

34. 32. For the purposes of this Act in any proceeding to recover from the owner of any land the expenses of and attending the eradication of prickly-pear and in any appeal relating to or concerning such expenses it shall be sufficient to produce a certificate of the allowance of such expenses purporting to be under the hand and seal of the Magistrate presiding at the Court of Petty Sessions nearest to the place where such work was done and such allowance and certificate shall be *prima facie* evidence that the expenses so allowed were actually incurred in such eradication and that such eradication was duly authorized and that such notice was given and proceedings taken pursuant to the requirements of this Act and for the purpose of giving such certificate such Magistrate shall upon request and *ex parte* inquire into such expenditure and examine the vouchers of the same and shall take evidence of the same ~~upon oath~~ if he deems it necessary. Allowance of Police Magistrate to be sufficient evidence of the expenses incurred.

Prickly-pear Destruction.

SCHEDULES.

SCHEDULE A.

*Report by Inspector of existence of Prickly-pear on land.**(Place and date.)*5 To the Minister for
SirI hereby give you notice that Prickly-pears ~~are growing~~ **is** upon the land or road situated as hereunder described.(Signed) A.B.
Inspector.

10

Description of land.

SCHEDULE B.

Notice to Owner to destroy Prickly-pear.

To owner (or owners) of the land hereunder described.

15 TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" you are hereby required forthwith to eradicate the Prickly-pear ~~growing~~ on the land situated as hereunder described.(Signed) A.B.
Inspector.

20

Description of land.

NOTE.—When the notice is given by the Council of a Municipality the notice must be signed by the Council Clerk.

SCHEDULE C.

Notice to Defaulter to pay cost of eradication.

25 To owner of the land hereunder described.

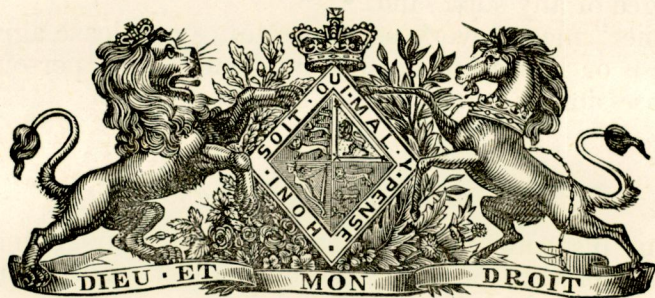
TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" costs and expenses to the amount of have been incurred in the eradication of Prickly-pear under my direction on the land situated as hereunder described which amount you are hereby required to pay to

30

(Signed) A.B.
Inspector.

Description of land.

New South Wales.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. II.

An Act to provide for the eradication of the Prickly-pear.
[Assented to, 30th July, 1886.]

WHEREAS provision should be made for the eradication of the Prickly-pear Be it therefore 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:—

1. This Act shall come into operation on the first day of September one thousand eight hundred and eighty-six and may be cited as the "Prickly-pear Destruction Act of 1886."

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

"Crown Land" means land vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple or included under the definition of "Private Land."

"Eradicate" means to entirely consume by fire or to completely bury three feet at least under ground prickly-pear with the roots seed and every other part thereof.

"Governor" means the Governor with the advice of the Executive Council.

"Inspector" means any person acting under the authority of the Minister as inspector for the purposes of this Act.

"Minister"

Preamble.

Commencement and title of Act.

Interpretation of terms.

Prickly-pear Destruction.

“Minister” means the Minister for the time being charged with the administration of this Act.

“Prickly-pear” means the plant known by the botanical name of *Opuntia vulgaris* or the common prickly-pear and any other variety of the cactus tribe which the Governor may declare to be prickly-pear for the purpose of this Act.

“Private Land” means land alienated from the Crown or held under lease or promise of lease from the Crown for any period exceeding one year or permanently dedicated and vested in trustees whether such trustees be persons or a body corporate.

“Owner” means any person or body corporate holding land on any freehold tenure or permanently in trust or upon any lease or promise of lease from the Crown and includes the mortgagee of any such land.

“Occupier” means every person holding any lease agreement for lease or license to occupy land and every person in actual possession or occupation of any land.

1. *Inspectors—their powers and duties.*

Power of entry.

3. Any inspector may at all reasonable hours enter upon any Crown land or private land for the purpose of ascertaining whether any prickly-pear is growing thereon and for such purpose shall have free right of ingress egress and regress into over and across such land.

Inspector on notice to ascertain if any prickly-pear is on land.

4. 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 prickly-pear is growing upon the land specified in such notice.

Inspector neglecting his duty.

5. Any inspector or person duly authorized under this Act who shall refuse or wilfully neglect to perform any of the duties imposed upon him by this Act shall be liable to a penalty not exceeding ten pounds.

2. *Destruction of any Prickly-pear on Crown Land or land vested in the Commissioner of Railways or in the Council of a Municipality.*

Prickly-pear growing on Crown Lands may be eradicated.

6. When any prickly-pear is found by an inspector upon Crown Land or upon any road not within the boundaries of any Municipality and adjoining or dividing Crown Land a notice in the form of Schedule A hereto shall be transmitted by such inspector to the Minister describing the situation of such land or road and it shall then be the duty of such Minister forthwith to authorize the employment of all necessary labour to eradicate such prickly-pear and all expenses incurred in such eradication shall be defrayed out of such moneys as Parliament may appropriate for that purpose Provided that it shall be lawful for the Minister to cause such Crown land to be offered for lease by auction or tender and to let the same in areas not exceeding six hundred and forty acres and for any term not exceeding twenty-one years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other conditions and penalties as may be prescribed by regulations in that behalf anything in the “Land Act of 1884” to the contrary notwithstanding.

Prickly-pear growing on railway or lands within a Municipality.

7. If any prickly-pear is found upon any land vested in the Commissioner for Railways or upon any land roads or streets within the boundaries of any Municipality the Commissioner for
Railways

Prickly-pear Destruction.

Railways or the Council of such Municipality (as the case may be) shall be taken to be the owner or occupier of such land roads or streets for the purpose of being served with the notice hereinafter mentioned to clear such land and shall be liable to the penalties imposed by this Act.

8. If prickly-pear shall be found upon any Common or upon any land vested by the Crown in Trustees other than the Council of any Municipality and the same shall not be effectually eradicated within three months after notice as aforesaid in the form of Schedule B shall have been served upon the trustees of such Common or land or upon any one of them or within such further period as the Minister may in any case allow or if the trustees of such Common or land shall within three months after the receipt of such notice inform the Minister that they are unable to eradicate the prickly-pear thereon or if there shall be no trustees of such Common or land then it shall be lawful for the Minister to cause such land to be offered for lease by auction or tender and to let the same for any term not exceeding twenty-one years upon condition that the lessee shall destroy and eradicate such prickly-pear and at such rent and subject to such other conditions or penalties as may be prescribed by regulations in that behalf and any rent received for such land shall be paid to the Consolidated Revenue anything in the "Commons Regulation Act" to the contrary notwithstanding.

Reserved Commons may be leased to cover the expenses of destroying prickly-pear.

9. Any Commons or land so leased shall during the currency of such lease be absolutely freed from all the rights of Commonage or the trusts as the case may be and the Minister may from time to time upon proof to his satisfaction of the nonfulfilment by the lessee of the conditions of the lease or any of them declare such lease forfeited and again lease the land as hereinbefore provided.

Commons leased freed from commonage rights.

3. Destruction of Prickly-pear on private land.

10. Any inspector may serve or cause to be served upon any owner or occupier of any private land on which any prickly-pear is found a notice in the form of Schedule B hereto requiring such owner or occupier forthwith to eradicate the same.

Inspector may serve notice on owners to eradicate prickly-pear.

11. If within one month after the service of such notice such owner or occupier does not commence to do and thereafter continue to do all such acts as the Minister may in writing direct to eradicate the prickly-pear on the land mentioned in such notice such owner or occupier shall be liable to a penalty not exceeding ten pounds for the first offence and for every second or subsequent offence to a penalty of not less than five pounds nor more than twenty pounds and neglect to take such means to eradicate as aforesaid for a space of twenty-eight days at any time after the date of each conviction shall be deemed to be a fresh offence.

Penalty for neglect to comply with notice.

12. If any owner or occupier fails to comply with any such notice then in addition to or in lieu of proceedings for the recovery of such penalty any such inspector or other person upon being authorized by the Minister to do so may enter upon the land mentioned in such notice and do all such things as to him may appear necessary to eradicate the prickly-pear on the land of such owner or occupier and for that purpose the inspector or authorized person and any person or persons employed by either of them shall have free right of ingress and regress over and across any land of such owner for such period as may in his opinion be necessary for the purposes of such eradication.

In addition to penalty inspector may enter upon private land.

Prickly-pear Destruction.

Power to withdraw
from lands after
entering to clear.

13. If at any time after the expiration of one month as aforesaid such inspector shall be satisfied that the owner or occupier is doing all things necessary to eradicate such prickly-pear then such inspector may abstain from entering upon such land or having entered upon it may withdraw therefrom upon the owner or occupier paying all costs and expenses incurred to the time of such withdrawal.

Owners within thirty
days of service of
notice to pay cost of
destruction.

14. Any owner or occupier upon whose land any inspector or authorized person shall have entered as aforesaid for the purpose of eradicating any prickly-pear shall within thirty days from service of a notice in the form of Schedule C hereto pay to the person or one of the persons mentioned in such notice as authorized to receive such payment the amount mentioned therein as being the cost and expenses incurred in the eradication of any prickly-pear which amount when so paid shall by the person receiving the same be forthwith paid into the Consolidated Revenue.

If cost not so paid
inspector to sue for
same.

15. If any owner or occupier upon whom a notice as mentioned in the last preceding section has been served shall fail to pay the amount mentioned therein within the said period of thirty days the inspector issuing such notice or any person authorized in that behalf by the Minister may sue either the owner or the occupier for and recover the same as a debt due to the Crown either in the Supreme Court or in any Court having jurisdiction nearest to the place where the land in respect of which the claim shall have been made is situated whether the defendant shall reside within the limit of such Court's jurisdiction or not.

If notice to destroy
served upon owner
not entitled to occu-
pation he may enter
and eradicate.

16. If a notice is served upon any owner who is not entitled to the occupation for the time being of the land mentioned in such notice then unless the person in actual occupation or entitled to actual occupation of such land shall within fourteen days from the service of such notice arrange with such owner and to his satisfaction for the eradication of prickly-pear on the said land the said owner shall be deemed as regards such land to have all the powers of an inspector under this Act.

Apportionment of
cost between owners.

17. Wherever there are more owners or occupiers than one of any private land and one of such owners or occupiers is under this Act in any way compelled to pay more than his proportionate share of the cost of eradicating the prickly-pear on such land he may in any Court of competent jurisdiction sue for and recover from the other owners or occupiers of such private land such proportion of the costs charges and expenses incurred by him in or about such eradication as is in the opinion of the Court fairly proportionate to the respective interests of the owners in such land. If the owner or occupier of any such land as aforesaid shall be unknown or absent from the Colony and the cost of eradicating the prickly-pear on his land or any penalty incurred in respect of such land cannot be recovered from him and shall remain unpaid for twelve months after the right to recover the same has first accrued it shall be lawful for the Minister to let such land for any term not exceeding twenty-one years upon such terms and conditions as shall be prescribed by regulations for that purpose and to receive the rents and profits thereof and apply the same in payment of such amount or penalty as aforesaid with interest thereon at the rate of ten per cent. per annum so long as the same shall be unpaid and the surplus (if any) shall be paid to the Colonial Treasurer to be held by him upon trust for the persons entitled to the same.

Apportionment of
cost between
land'ord and tenant.

18. 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 the eradication of prickly-pear on such land the landlord and tenant shall each contribute an equitable share of such cost. And if the
tenant

Prickly-pear Destruction.

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 eradication then either party shall and may apply to the Court of Petty Sessions nearest to the place where such eradication shall have been done to issue a summons to such other party requiring him to appear before such or some other such Court to show cause why such other party should not pay to the first-mentioned party such a proportion of the cost of such eradication as shall be just and equitable having regard to the circumstances 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 eradication of prickly-pear made between a landlord and tenant previous to the passing of this Act.

19. At the time and place appointed by such summons the Court as aforesaid shall inquire into the matter therein referred to and shall hear and examine all persons who shall appear to give evidence concerning the same and shall thereupon make such order as to the amounts to be contributed respectively by such landlord and tenant as shall appear to be just and equitable having regard to all the circumstances and the duration of the lease and the presiding Magistrate shall give a certificate under his hand and seal certifying what amounts shall be so payable and such sums shall thereupon be recoverable as hereinafter provided.

Contribution by
landlord and tenant.

20. The description of any private land required to be inserted in any notice under this Act need not particularly define the land referred to therein but shall be sufficient if it make such reference to the land either by name number of section or allotment or by boundaries or otherwise so as to allow of no reasonable doubt as to what land is referred to. And all references to private land in any such notice shall be deemed to extend to the roads bounding or intersecting the same and any owner or occupier or inspector or other person having power hereunder to enter upon private land and eradicate the prickly-pear thereon shall be deemed to have power to enter upon the roads bounding or intersecting such land and eradicate such prickly-pear growing on such roads.

As to description of
private lands in
notices &c.

4. *General Provisions Regulations &c.*

21. It shall be lawful for any person who is authorized by this Act to enter upon any land and to destroy prickly-pear thereon to take such indigenous timber growing on the land of the owner or occupier of such land as may be required by him for the purpose of burning or destroying such prickly-pear or to dig pits and bury the same therein.

Authorized persons
may take timber
for purposes of Act.

22. All costs charges and expenses incurred by an inspector or any person authorized in clearing any private land of prickly-pear under the provisions of this Act shall be a first charge upon such land and shall take precedence of all mortgages or other charges whatsoever upon such land. Provided always that a certificate under the hand of the Minister shall be a full discharge of all such costs charges and expenses up to the date of such certificate.

Expense of eradica-
tion to be a first
charge upon land.

23. The Governor may make regulations for declaring how and in what manner prickly-pear may or shall be destroyed otherwise than provided for in this Act and also with respect to all other matters of detail necessary for carrying out the objects of this Act and may impose penalties for the breach of any such regulation not exceeding five pounds and every such regulation shall have the force of law upon publication in the *Gazette*.

Regulations.

*Prickly-pear Destruction.*5. *Penalties.*

Penalties for person-
ating inspector.

Penalty for trespass-
ing upon private
lands.

For interfering
with notices.

For wilfully
obstructing forest
ranger.

Not lawful to
cultivate noxious
plant.

Owners to give notices
of prickly pear
being on land.

General penalty.

Proceedings for
recovery of penalties.

Jurisdiction of Court
or Justices not ousted
on ground that de-
fence raises question
of title.

24. Any person who shall falsely represent himself to be or shall personate an inspector or a person authorized under this Act or who not being an inspector or a person authorized in writing by the Minister or a person lawfully acting under the provisions hereof shall trespass upon any private land for the apparent purpose of eradicating prickly-pear or who shall destroy injure alter or remove any notice signed by an inspector or person authorized under this Act and placed or exhibited upon any land by the owner thereof or by any inspector or person authorized under this Act as aforesaid shall be liable to a penalty not exceeding twenty pounds.

25. Any person who shall wilfully assault obstruct hinder interrupt or mislead or cause to be assaulted obstructed hindered interrupted or misled any inspector or any person authorized in writing by the Minister or any owner or person in the exercise of any power or authority vested in him by this Act whilst in the performance or execution of his duty under this Act shall for every such offence if not otherwise specially provided for be liable to a penalty not exceeding twenty pounds And no proceeding for the recovery of 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.

26. It shall not be lawful for any person to grow or cultivate upon any land or premises any prickly-pear or to scatter the seed thereof upon any land or to throw or place or cause to be thrown or placed the same into any river stream creek or watercourse whether the same shall contain water or not or to cut and leave any prickly-pear in such a position on the banks of any river stream creek or watercourse so that by reason of floods or otherwise it would be liable to be swept or floated into such river stream creek or watercourse and every person offending against the provisions of this section shall be liable to a penalty not exceeding twenty pounds.

27. Every owner or occupier upon whose land there shall be any prickly-pear shall within one month from the passing hereof give the inspector nearest to such land notice thereof in writing and any person failing to do so shall be liable to a penalty not exceeding twenty pounds.

28. Any person who shall commit a breach of this Act or of any Regulations hereunder for which a penalty is not specially provided shall on conviction for every such offence incur a penalty not exceeding ten pounds.

6. *Legal Procedure &c.*

29. All proceedings for the recovery of penalties or money payable under this Act shall be heard and determined in a summary way before any two Justices unless hereinbefore otherwise specially provided in accordance with the law regulating summary proceedings before Justices and in any proceedings for the recovery of money under the provisions hereof or for the recovery of any penalty hereunder the jurisdiction of the Court or Justices before whom the proceedings are pending shall not be ousted on the ground that the defence raises any question of title to land or that the defendant does not reside within the boundaries of the jurisdiction of the Court or Justices where the action may be commenced if the land in respect of which the claims arose is situated within the boundaries of the jurisdiction of such Court or Justices.

Prickly-pear Destruction.

30. Any person may appeal from any adjudication of Justices **Appeal.** under this Act to the Court of Quarter Sessions pursuant to the provisions of the Acts regulating appeals to Quarter Sessions.

31. Any notice or order required by this Act to be in the form **Notice how to be given.** given in any of the Schedules hereto shall be sufficient if in a form substantially similar thereto and such notices or any other required to be given by this Act or by the regulations to be made hereunder unless otherwise prescribed shall be deemed to be sufficiently given or served if left with the person to whom it is addressed or left with some person at his usual or last known place of residence or if sent to him by a registered letter through the general post or if inserted twice a week for two consecutive weeks in some newspaper published in Sydney and once a week for two consecutive weeks in some newspaper published in or near to (as the case may be) the district in which such land is situated the production of the newspaper containing such insertions shall be proof of the due service of such notice and in all other cases a statutory declaration of such service shall be sufficient proof.

32. For the purposes of this Act in any proceeding to recover **Allowance of Police Magistrate to be sufficient evidence of the expenses incurred** from the owner of any land the expenses of and attending the eradication of prickly-pear and in any appeal relating to or concerning such expenses it shall be sufficient to produce a certificate of the allowance of such expenses purporting to be under the hand and seal of the Magistrate presiding at the Court of Petty Sessions nearest to the place where such work was done and such allowance and certificate shall be *prima facie* evidence that the expenses so allowed were actually incurred in such eradication and that such eradication was duly authorized and that such notice was given and proceedings taken pursuant to the requirements of this Act and for the purpose of giving such certificate such Magistrate shall upon request and *ex parte* inquire into such expenditure and examine the vouchers of the same and shall take evidence of the same if he deems it necessary.

Prickly-pear Destruction.

SCHEDULES.

SCHEDULE A.

*Report by Inspector of existence of Prickly-pear on land.**(Place and date.)*To the Minister for
SirI hereby give you notice that Prickly-pear is upon the land or road situated
as hereunder described.(Signed) A.B.
Inspector.

Description of land.

SCHEDULE B.

Notice to Owner to destroy Prickly-pear.

To owner (or owners) of the land hereunder described.

TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" you are
hereby required forthwith to eradicate the Prickly-pear on the land situated as here-
under described.(Signed) A.B.
Inspector.

Description of land.

NOTE.—When the notice is given by the Council of a Municipality the notice must be signed by
the Council Clerk.

SCHEDULE C.

Notice to Defaulter to pay cost of eradication.

To owner of the land hereunder described.

TAKE notice that pursuant to the "Prickly-pear Destruction Act of 1886" costs and
expenses to the amount of _____ have been incurred in the eradication of Prickly-pear
under my direction on the land situated as hereunder described which amount you are
hereby required to pay to _____(Signed) A.B.
Inspector.

Description of land.
