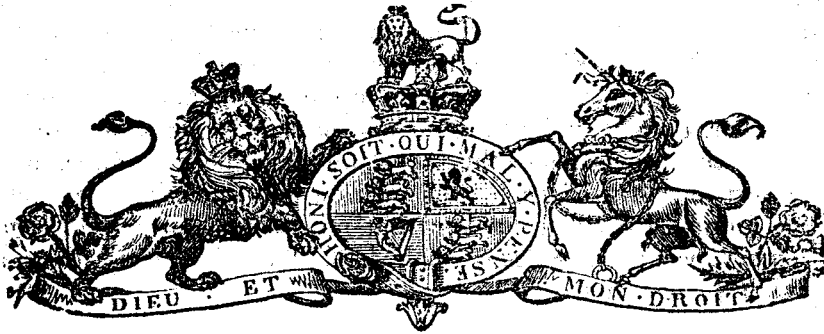


T A S M A N I A.

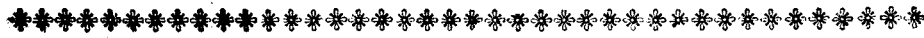


1870.

ANNO TRICESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 5.



AN ACT to prevent the Spread of the *Californian* Thistle. [18 October, 1870.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act shall commence and take effect on the First day of *November* One thousand eight hundred and seventy. Commencement of Act.

2 This Act may be cited as "The *Californian* Thistle Prevention Act." Short title.

3 In the construction of this Act the word "Thistle" shall be held to mean the plant known by the botanical name of "*Cnicus arvensis*," and commonly called or known as "The *Californian* Thistle." Interpretation of "Thistle."

4 If any owner, lessee, or occupier of land within *Tasmania* upon which land Thistles shall be growing shall not within Fourteen days after any notice in writing signed by any Justice, and containing a description of the land intended to be affected thereby, that such Thistles are growing upon such land, has been served upon such owner, lessee, or occupier, or left for him at his usual or last known place of abode, effectually cut down all such Thistles then growing and being upon such land so as to prevent the same from seeding, every such owner, lessee, or occupier, being convicted thereof, shall be liable to a penalty Penalty for not destroying Thistles after notice.

Californian Thistle Prevention.

not exceeding Twenty Pounds: Provided that it shall be lawful for any such Justices to abstain from any adjudication upon its being proved to their satisfaction that the person so receiving such notice has used and is using reasonable exertions to cut down such Thistles: Provided further, that no information shall be laid against any owner of lands until the provisions of this Act shall have been enforced against the occupier or lessee of such land upon which such Thistles may or shall be found: Provided further, that no second information against such owner, occupier, or lessee shall be laid within Thirty days after any previous conviction.

Where no occupier of land, notice may be affixed in some conspicuous place on land.

5 If there is no occupier or lessee of any land, or such occupier or lessee or the owner of such land is unknown or absent from *Tasmania*, and such occupier, lessee, or owner has no known agent resident in *Tasmania*, then such notice as aforesaid may be affixed in some conspicuous place upon such land, and shall also be published in some newspaper published in *Tasmania*; and every notice so affixed and published shall be deemed and taken to be sufficient notice to 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 lessee or owner of the land therein referred to; and no owner of any land shall be liable to any payment beyond the expense of and occasioned by cutting down the Thistles growing and being upon such land as hereinafter provided, together with costs, by reason merely of any notice having been so affixed as aforesaid.

If Thistles not destroyed within Seven days, parties may enter for the purpose of destroying them.

6 If the owner, lessee, or occupier shall for the space of Seven days refuse or neglect to cut down the Thistles referred to in any such notice, it shall be lawful for any person authorised in writing in that behalf by any Justice to cut down the same, and for that purpose, with sufficient assistants, to enter upon any lands in respect whereof any such notice shall have been given as aforesaid; and every such person shall be entitled to recover from such owner, lessee, or occupier the expense of and attending such cutting down (such expenses to be assessed and allowed by two or more Justices), together with costs, by action or plaint in any Court of competent jurisdiction, or by proceedings in a summary manner as if such amount had been a pecuniary penalty awarded by two Justices, and which action, plaint, or proceedings may be commenced, instituted, had, and taken in the name of such person, or in the name of the Justice by whom such person was authorised as hereinbefore mentioned.

Persons authorised may enter upon lands to search for Thistles.

7 It shall be lawful for any person authorised in writing in that behalf by any Justice, without notice, to enter upon any lands at any reasonable hour in the day-time, whether enclosed or not, for the purpose of ascertaining if any Thistles are growing thereupon; and no such person shall be deemed a trespasser by reason of such entry, or be liable for any damage thereby occasioned, unless the same was occasioned by such person wilfully and without necessity.

Justices to act upon complaint duly made.

8 Upon complaint duly made to any Justice that any Thistles are suspected to be growing, or are growing, upon any land, such Justice shall make an order in writing for the person complaining, or for some other person, to enter upon such land to search and ascertain if there are any Thistles growing thereupon, or (as the case may be) shall sign such notice to the owner, lessee, or occupier of any land as hereinbefore

Californian Thistle Prevention.

provided; and also, upon being satisfied that Thistles are growing upon such land, and that such notice has been served or left, or affixed and advertised as herein provided, shall make an order for the cutting down such Thistles as aforesaid growing upon any land, by some person to be named in such order, the expense of which shall be recoverable as hereinbefore provided.

9 If the owner of any land of which there is no occupier as aforesaid is unknown, or shall not reside within *Tasmania*, it shall be lawful for a Judge of the Supreme Court in its Common Law Jurisdiction, upon petition addressed to such Court by any Justice or person so as aforesaid entitled to recover the expense of and attending the cutting down such Thistles, (which petition shall state that such cutting down was effected under the authority of a Justice, after due notice as aforesaid, and that the expenses of and attending such cutting down have been assessed and allowed by two or more Justices of the Peace, and shall contain a description of the particular portion of such land intended to be affected thereby, and shall be verified by affidavit, and supported by the production of such vouchers, also certified by affidavit, as such Judge may require) to make an order for the payment of the said expenses, and of the costs of and attending the said petition and order, which costs shall be ascertained and mentioned in such order; and, in default of such payment, for the sale by the Sheriff of the land in respect whereof such notice as aforesaid was given, or of so much thereof as may be necessary to satisfy the said expenses and costs, and the costs of and attending such sale; and such order shall be published by advertisement in four consecutive numbers of the *Gazette*; and if, within eighteen months from the last publication of such notice, the said expenses, and all the costs of and attending the said petition and order, shall not be paid to the person entitled to receive the same or brought into the said Supreme Court, the Sheriff named in the said order, or his successor, shall sell the said land, or so much thereof as is requisite for the purposes aforesaid, and shall execute a conveyance thereof by deed to the purchaser thereof; and every such conveyance shall operate to vest the land described therein absolutely in such purchaser; and the said Sheriff, out of the proceeds of any such sale, shall in the first place retain to and reimburse himself all the like percentage, expenses, and charges to which he would be entitled upon the execution of a writ of *feri facias* for the amount mentioned in any such order, and in the second place shall pay to such Justice, or person mentioned in such order, the sum therein directed to be paid, and shall bring any surplus into Court to the credit of the owner of such land: Provided that, at any time within the said period of eighteen months, the owner of any land in respect of which any order of sale is made as aforesaid may apply to the full Court to vary or discharge such order, and such Court shall deal with the same as the justice of the case may require: Provided further, that no purchaser of such land, or any part thereof, for valuable consideration, without notice of the liability thereof for such cutting down subsequent thereto, shall be liable in relation thereto.

If owner of land unknown or absent from *Tasmania*, land may be sold to defray expenses upon order of the Supreme Court after 18 months notice in *Gazette*.

10 If within such period of Eighteen months as last aforesaid the sum of money mentioned in any such order as last aforesaid shall be brought into the said Supreme Court, it shall be lawful for the said Supreme Court, or any Judge thereof, to order such sum of money to be paid out of Court to any such Justice or person as aforesaid.

Power of appeal against Order of Justices upon bringing money into Court.

Californian Thistle Prevention.

Thistles growing upon lands of the Crown may be cut down.

11 When any Thistles shall be growing upon any lands of the Crown not held or occupied under lease or licence from the Crown, such notice as aforesaid shall be left at the Office in Hobart Town of the Minister of Lands and Works, and shall describe and set forth the situation of such land; and the said Minister shall employ the necessary laborers to cut down the said Thistles, and to defray the expenses of the same out of any vote of the Legislature for such purpose.

As to cutting down Thistles on roads.

12 The Trustees of every Road District shall be liable and compellable under this Act to cut down all Thistles which may be growing upon any roads in such Road District; and in all towns and districts where the streets and roads are under the control of a Municipal Council, such Council shall be in like manner liable and compellable to cut down all Thistles which may be growing upon any such streets or roads.

Allowance of expenses by two Justices to be sufficient evidence.

13 In any proceeding to recover from the owner, lessee, or occupier of any land the expenses of and attending the cutting down any Thistles, and in any appeal relating to or concerning such expenses, it shall be sufficient to produce the allowance of such expenses purporting to be signed by two or more Justices; and such allowance shall be *prima facie* evidence that the expenses so allowed were actually incurred in such cutting down, and that the same was duly authorised, and that such notice was given and proceedings taken as herein required.

Appropriation of penalties.

14 All fines and penalties imposed or made payable by this Act when recovered shall be paid to the Colonial Treasurer and form part of the General Revenue, if the offence for which such fines or penalty is imposed is not committed within the area of any Municipality; but if the offence is committed within the area of any Municipality, then such fine or penalty shall be paid over to the Treasurer of such Municipality and shall form part of the Municipal Fund.

Recovery of penalties.

15 All penalties and sums of money imposed or made payable by this Act shall, where no other mode is provided, be recovered in the mode prescribed by *The Magistrates Summary Procedure Act*.