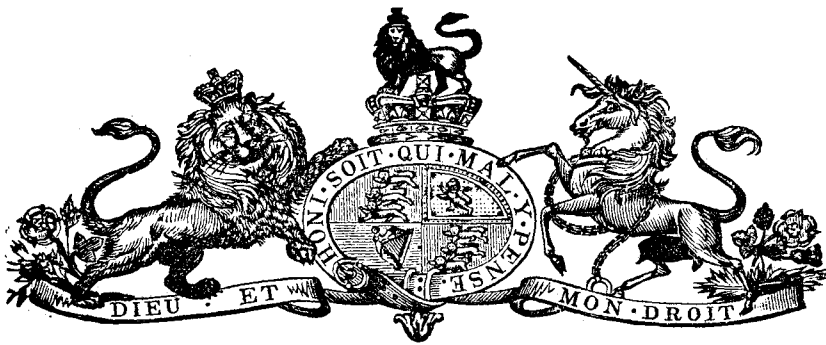


T A S M A N I A.



1889.

ANNO QUINQUAGESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 42.

*Amended by the 1882
59 . . . 16
61 . . . 7*

AN ACT to make better provision for the A.D. 1889.
Destruction of Rabbits. [5 December, 1889.]

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 may be cited as “The Rabbits Destruction Act, 1889.” Short title.
- 2 This Act shall come into force and take effect on the First day of *January*, 1890. Commencement of Act.
- 3 “The Rabbits Destruction Act, 1888,” is hereby repealed, but Repeal 52 Vict. No. 32. such repeal shall not affect—
 - I. Anything duly done before this Act comes into force and takes effect :
 - II. Any liability accruing before this Act comes into force and takes effect :
 - III. Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into force and takes effect :

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iv. The institution of any legal proceeding, or any other remedy for enforcing or recovering any such liability, penalty, forfeiture, or other punishment as aforesaid.

And, excepting so far as there is anything in this Act inconsistent therewith, this Act shall apply to all matters and things done under the said Act, and of any force or effect at the passing of this Act by virtue of the said Act, as if made or done hereunder.

Interpretation.

4 In this Act, unless the context otherwise determines—

“Infested District” means any District proclaimed under this Act, and declared by the Governor in Council to be an “Infested District”:

“Crown Land” means Waste Lands of the Crown:

“Occupier” includes the owner of any unoccupied land; and the following persons shall be deemed to be the “occupier” for the purposes of this Act:—

(a) Every person in possession of any Crown Land under any contract for the purchase thereof:

(b) Every person occupying any Crown Land for pastoral purposes:

(c) Every person in charge of any land where the occupier of such land shall be absent from *Tasmania*:

“Inspector” means the Chief Inspector or any Inspector of Sheep appointed under “The Scab Act, 1875”:

“Writing” includes printing, or partly writing and partly printing:

Where reference is made to the giving or service of notice, it shall mean service in any one of the following modes:—

(a) Personally upon the person to whom the notice is addressed:

(b) By sending the notice to such person through the post addressed to his usual or last known place of abode or business in *Tasmania*:

(c) If the whereabouts or usual or last known place of abode or business in *Tasmania* of the person to whom such notice is addressed is not known to the Inspector issuing such notice, by inserting the same once in the *Hobart Gazette*, and three times in a newspaper published either in the Cities of *Hobart* or *Launceston*, and by fixing the notice upon some conspicuous place on the land affected by such notice, or on some public road abutting thereon:

Where the name of an occupier is unknown to any Inspector issuing a notice or suing under this Act, the notice may be addressed to the occupier as such without mentioning his name, and similarly the occupier may be sued by the Inspector or person authorised, and judgment given against him as such, without specifying his name.

Application of Act.

5 Nothing in this Act contained shall apply to *Franklin* Island.

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- 6** The Governor in Council shall proclaim Districts for the purposes of this Act, and shall, upon the report of the Chief Inspector, by notice in the *Gazette* declare any such District to be an "Infested District," and shall, upon like report, declare in manner aforesaid any other District to be a "Clear District."
- 7** Any Inspector, or any person authorised in writing by the Chief Inspector, may from time to time at all reasonable hours enter upon any Crown land for the purpose of seeing whether there are rabbits on such Crown land, and shall have free right of ingress and egress into, over, and across such Crown land for such purpose.
- 8** Any Inspector, or any person so authorised by the Chief Inspector, may from time to time enter upon any Crown land and also upon the roads bounding or intersecting such land, and use all such means and take all such measures, and do and perform all and every such acts and things as may to him appear proper or necessary to ensure the destruction of the rabbits upon such land; and all expenses incurred by the Inspector or any person authorised as aforesaid shall be defrayed out of the Consolidated Revenue Fund: Provided always, that the power hereby conferred of entering upon roads and destroying the rabbits thereon shall not be deemed to authorise the doing of any act which shall in any way permanently injure such road.
- 9** Any Inspector, or any person authorised as aforesaid by the Chief Inspector, may from time to time at all reasonable hours enter upon the lands of any person in an Infested District for the purpose of seeing whether there are rabbits on such land, and shall have free right of ingress and egress into, over, and across such land for such purpose.
- 10** Any Inspector may serve or cause to be served upon the occupier of any land in an Infested District on which he believes there are rabbits a notice in writing in the form in the Schedule (1.) or to the like effect, requiring such occupier forthwith to destroy the rabbits on such land.
- 11** If within Seven days after the service of such notice such occupier do not commence to use all such means, and take all such measures, and do and perform all and every such acts and things as may be necessary to destroy the rabbits on the land mentioned in such notice, and having so commenced do not continue such action until such rabbits are destroyed, he shall be liable to a penalty of not less than ~~Five~~^{Five} Pounds and not exceeding Twenty-five Pounds. In any prosecution under this Section the occupier shall be competent to give evidence on his own behalf.
- 12** If any occupier shall for such period of Seven days neglect or fail to comply with any notice as aforesaid to destroy rabbits, then in addition to or in lieu of proceedings for the recovery of a penalty as aforesaid, any Inspector may make complaint to any Justice in respect of such neglect or failure, and upon the hearing of such complaint any Two Justices in Petty Sessions assembled may by an order in writing empower such Inspector or any person authorised by the Chief Inspector, to enter upon the land mentioned in such notice, and use all such means, and take all such measures, and do and perform all and every such acts or things as to him may appear proper or necessary to

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—
Districts shall be declared "Infested" or "Clear."

Power of entry on Crown lands.

Power to destroy rabbits on Crown lands.

Power of entry on private land.

Inspector may serve notice on occupier to destroy rabbits.

Penalty for neglect to comply with notice.

In addition to penalty, Inspector may enter upon private land and destroy rabbits.

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be done to ensure the destruction of the rabbits upon the land mentioned in such notice; and such Inspector or person shall have free right of ingress and egress into, over, and across such land for such period as may in his opinion be necessary for destroying such rabbits.

Power to withdraw from lands after entering to clear.

13 If after the expiration of Seven days as aforesaid such Inspector or duly authorised person shall be satisfied that such occupier is doing all such acts, deeds, matters, and things as may be necessary to destroy the rabbits on the land mentioned in such notice, and is continuing such action, then such Inspector or duly authorised person may from time to time postpone entering upon such land, or, in the event of his having entered upon such land for the purpose of clearing the same of rabbits, he may withdraw from such land upon the occupier paying all costs, charges, and expenses incurred by such Inspector or duly authorised person up to the time of such withdrawal.

Recovery of expenses incurred by Inspector.

14 Where any Inspector or duly authorised person shall have incurred any costs, charges, and expenses in taking or destroying the rabbits found upon the lands of any person, the amount of all such costs, charges, and expenses shall be recoverable from such person, with costs, by such Inspector or duly authorised person, in his own name, by action or plaint in any Court of competent jurisdiction, or the same may be recovered as a debt due to the Crown.

The amount of all such costs, charges, and expenses shall be ascertained by any Two Justices, who shall sign the same in token of their allowance thereof; and in any proceeding to recover the amount thereof it shall be sufficient to produce the allowance of the same, purporting to be signed by Two or more Justices, and such allowance shall be *prima facie* evidence that the costs, charges, and expenses so allowed were actually and lawfully incurred by such Inspector as aforesaid, and the onus of proving the contrary shall be upon the defendant.

Recovery of expenses where owner or occupier unknown.

15 Where any Inspector or duly authorised person shall have incurred any costs, charges, and expenses in taking or destroying rabbits upon any land (not being Crown land) the owner or occupier whereof is unknown or cannot be found, such Inspector or duly authorised person shall proceed *ex parte*, in manner hereinbefore directed, to recover the amount of such costs, charges, and expenses, and the amount so recovered shall be and remain a charge upon the property in respect of which such amount has been recovered, and payment of such amount may be enforced at any future time as if the then occupier had himself been liable to pay such amount in the first instance; and the production of the receipt for such amount paid by or recovered from any such occupier for any amount due before the commencement of his occupancy shall be a discharge for the amount so paid or recovered in payment of rent to the owner, and such owner shall be entitled to recover from the person who was occupier when such amount became payable the proportion of the amount to which such occupier was liable as money paid to his use.

Where expenses not recoverable same to be defrayed out of Stock Act Fund.

16 All costs, charges, and expenses incurred by any Inspector or duly authorised person under this Act which are not recoverable or which cannot be recovered from any other person, or which are not made chargeable upon the Consolidated Revenue Fund, shall be defrayed out of the Stock Act Fund.

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17 Where the occupier of any land being the tenant thereof—

Shall have incurred any expenses in destroying the rabbits on such land ; or

Shall have paid under this Act any sum of money on account of any costs, charges, and expenses incurred by an Inspector under this Act, or any sum of money on account of any costs, charges, and expenses incurred as aforesaid shall have been recovered from such tenant,

he shall be entitled to recover from his landlord the proportion of such costs, charges, and expenses or sum of money hereinafter specified ; that is to say,—

In the case of a tenancy from year to year, or where the unexpired term of lease shall not exceed One year, Four-fifths of any such costs, charges, and expenses or sum of money :

Where such unexpired term exceeds One year but shall not exceed Three years, Three-fifths of any such costs, charges, and expenses or sum of money :

And where such unexpired term exceeds Three years, Two-fifths of any such costs, charges, and expenses or sum of money :

And such occupier shall be entitled to recover from his landlord an amount not exceeding the proportion hereinbefore mentioned of the sum paid by or recovered from him as money paid to the use of the landlord, or the same may be deducted from or set off against the rent then due or thereafter to become due ; and if any dispute shall arise as to the amount which such occupier shall be entitled to recover, such amount shall be ascertained by Two Justices in the mode hereinbefore prescribed in respect of costs, charges, and expenses incurred by an Inspector : Provided that nothing herein contained shall affect the liability of a tenant to his landlord under any agreement for the payment of any sum of money under this Act by the tenant.

18 Where any person in the lawful occupation of any pastoral Crown land shall expend any sum or sums of money in taking or destroying the rabbits being in or upon such land, or such person shall pay to an Inspector any costs, charges, and expenses incurred by such Inspector for the like purpose, or such Inspector shall recover such costs, charges, and expenses from such person, it shall be lawful for the Treasurer, out of the Consolidated Revenue Fund, upon the production to him of such proof of such payment or recovery as the Treasurer may require, to pay to such person one-half of all sums of money expended or paid or recovered from such person as hereinbefore mentioned : Provided that no such occupier shall be entitled to receive or recover any larger sum than he has already paid for rent of such Crown land during the current year.

19 It shall not be lawful for the Treasurer to pay any moneys under the last preceding Section of this Act unless the accounts furnished by the person applying for the same shall be verified by a statutory declaration made before a Justice of the Peace by such person in the form in the Schedule (2.).

20 The description of any land required to be inserted in any notice hereunder need not define the land referred to therein, but shall be sufficient if it make such reference to the land either by name or by boundaries or otherwise as to allow of no reasonable doubt as to what land is referred to.

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Occupier, if tenant, may recover proportion of expenses from owner.

Half expenses incurred by pastoral Crown tenant to be defrayed out of Consolidated Revenue Fund.

Accounts to be verified.

As to description of lands in notices.

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References to land to include bounding and intersecting roads.

21 All references to land herein or in any notice hereunder shall be deemed to extend to the roads bounding or intersecting such land, and any Inspector or other person having power hereunder to enter upon private land and destroy rabbits thereon shall be deemed to have power to enter upon the roads bounding or intersecting such land, and destroy the rabbits thereon; Provided always, that the powers hereby conferred of entering upon roads and destroying the rabbits thereon shall not be deemed to authorise the doing of any act which shall in any way permanently injure such road.

Inspector may require occupier to destroy rabbits on land.

22 Where the occupier of any land in an Infested District has failed to destroy the rabbits on such land any Inspector may at any time, and from time to time, with the approval of the Chief Inspector, by notice in writing in the form in the Schedule (3.) or to the like effect, require such occupier to take effective measures for the destruction of rabbits on such land; and if such occupier shall not comply with such notice to the satisfaction of such Inspector, such occupier shall be liable to a penalty of not less than Five Pounds and not exceeding Twenty Pounds, unless he shall prove to the satisfaction of the adjudicating Justices that he has complied with the said notice: Provided, that nothing herein contained shall render it compulsory upon any owner or occupier of land to lay poison for the destruction of rabbits.

Inspector, &c. not deemed a trespasser.

23 No Inspector or person authorised by the Chief Inspector shall be deemed a trespasser or be liable for any damage occasioned by him in the exercise of the authorities, powers, and discretion vested in him by this Act or any of them, unless such damage shall have been occasioned by or under the authority of such person otherwise than in the reasonable exercise of the powers conferred upon him by or under this Act: Provided always, that before any poison is laid on the land of any occupier by an Inspector or person authorised, such Inspector or person shall give to the occupier of such land Seven days' notice in writing stating where such poison is to be laid.

Governor in Council may declare any animal to be natural enemy of rabbit.

24 The Governor in Council may from time to time, by Proclamation published in the *Gazette*, declare any animal to be a natural enemy of the rabbit, and prohibit, within certain proclaimed Infested Districts, the killing or capturing of any such animal without a special permit in that behalf, and may from time to time alter and revoke any such proclamation.

Penalty for killing, &c. any such animal.

25 Any person who shall capture, or sell, or dispose of, or kill any native cat (*Dasyurus viverrimus*), tiger cat (*Dasyurus maculatus*), domestic cat, or the progeny thereof, or any animal proclaimed as aforesaid to be a natural enemy of the rabbit, without a permit signed by an Inspector so to do, or in whose possession or on whose premises any such animal shall be found by any Inspector or by any constable, unless such person shall prove that the animal so killed, sold, or in his possession was lawfully in his possession, or that the same was on his premises without his knowledge or consent, shall be liable to a penalty of not less than Two and not exceeding Ten Pounds. Nothing hereinbefore contained shall apply to any person who kills any wild or domestic cat then being in or upon any building or premises occupied by such person, but proof thereof shall lie upon him.

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26 No person shall be liable to any penalty if such person shall set at large, or attempt to set at large, or be concerned in setting at large in any such proclaimed district as aforesaid, any domestic cat, anything contained in the Twenty-fourth Section of "The Game Protection Act, 1879," to the contrary notwithstanding.

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No penalty for setting domestic cats at large in proclaimed districts.

42 Vict. No. 24.

Penalties for personating Inspector, &c.

27 Any person who shall falsely represent himself to be or shall personate an Inspector, or a person authorised by an Inspector under this Act, in any manner whatsoever, shall be guilty of a Misdemeanor, and shall on conviction be liable to be imprisoned for any term not exceeding Twelve months, and shall, in addition to such imprisonment, be liable to forfeit and pay a penalty of not less than Twenty Pounds and not exceeding One hundred Pounds.

28 If any person wilfully obstructs, hinders, or interrupts, or causes or procures to be obstructed, hindered, or interrupted, any Inspector, or any person duly employed or authorised by an Inspector under this Act in the exercise of any power or authority vested in an Inspector or any of the persons aforesaid by this Act, or threatens, or assaults, or uses improper or abusive language to any Inspector or any of the persons aforesaid, every person so offending shall for any such offence, if not otherwise specially provided for, forfeit and pay a penalty not less than Five Pounds nor exceeding Twenty Pounds: Provided, that no proceeding for the recovery of any such penalty, nor the payment thereof, shall be a bar to any action at Law by any Inspector or any of the persons aforesaid for 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.

Obstructing Inspector, &c.

29 If any person knowingly sets at large, or attempts to set at large, or is concerned in setting at large any live rabbits, every person so offending shall, for every rabbit so set at large or attempted to be set at large, forfeit and pay a penalty of not less than Five Pounds and not exceeding Twenty Pounds.

Penalty for setting rabbits at large.

30 Any person who shall destroy, injure, alter, or remove any notice signed by an Inspector or person authorised, and placed or exhibited upon any land, or who shall destroy, injure, remove, or interfere with any trap, snare, poison, matter, or thing used or required for the taking or destruction of rabbits which shall be placed upon any such lands by the occupier thereof or by any Inspector or person authorised as aforesaid, shall be liable to a penalty of not less than Five and not exceeding Twenty Pounds.

Penalty for interfering with notices, &c.

31 Proof that there are on any land burrows showing signs of having been recently used by rabbits, or other signs of the presence of rabbits, shall be deemed to be proof of the existence of rabbits on such land, and proof that such signs are not being diminished on any land shall be *prima facie* evidence that the occupier thereof is neglecting to do all such acts, deeds, matters, and things as are necessary to destroy the rabbits on such land.

Proof of existence of rabbits, and of occupier's default.

32 Every occupier of lands in an Infested District shall, in the months of *April* and *October* in every year, furnish full and accurate information in writing under the hand of such occupier,

Occupier to furnish information. Schedule.

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in the form in the Schedule (4.) or to the like effect; and any Inspector may require such occupier to furnish any other information which such Inspector may deem necessary to enable him to ascertain if the provisions of this Act have been complied with by the occupier; and any such information furnished to the Inspector, purporting to be signed by any such occupier, shall be *prima facie* evidence of the facts therein set forth; and if any occupier fails, neglects, or refuses to comply with the provisions of this Section he shall be liable to a penalty of not less than One and not exceeding Five Pounds.

Every such occupier who wilfully makes any false report under this Section shall be liable to a penalty of not less than Ten and not exceeding Fifty Pounds.

Regulations.

33 The Governor in Council shall from time to time make, and from time to time rescind and alter, Regulations for defining the duties of Inspectors under this Act, and for carrying out the provisions of this Act relating to the destruction of rabbits on Crown lands, and for controlling the expenses of such destruction; and the Governor in Council may by any Regulation prescribe a penalty not exceeding Five Pounds for breach of or non-compliance with any such Regulation.

All Regulations shall be published in the *Gazette*, and in one newspaper published in *Hobart* and in one newspaper published in *Launceston*, and thereupon shall have the force of Law; and copies thereof shall be laid before both Houses of Parliament forthwith if sitting, and if not sitting then within Fourteen days after the commencement of the next Session.

Valuation Roll evidence of occupation or ownership.

34 In any proceedings under this Act for any breach of or non-compliance with the provisions thereof, a copy of the *Hobart Gazette* containing any Valuation or Assessment Roll then in force, in which the name of the defendant shall appear as occupier or owner of any land in respect of which such proceedings may be taken, shall, on production only and without any proof, be deemed sufficient *prima facie* evidence that such person was at the time alleged in the information the occupier or owner of such land; and the onus of proving that he was not at the time alleged such occupier or owner shall in all cases rest on the defendant, who shall be competent and compellable to give evidence in any such proceedings, any Statute or Rule of Law to the contrary notwithstanding.

Offences to be dealt with summarily.

35 All offences against this Act, and all penalties and sums of money imposed or made payable by this Act, shall, where no other mode of proceeding is by law provided, be heard, determined, and recovered, and all orders shall be made, in a summary way in the mode prescribed by *The Magistrates Summary Procedure Act*.

19 Vict. No. 8.

Any information for an offence against this Act may be laid before any Justice of the Peace, and may be heard and determined, and any order may be made, in any place, whether such place shall be situate within or without the district in which the offence is alleged to have been committed.

47 Vict. No. 7.
48 Vict. No. 1.

The term "District" used in this Section means a District under and for the purposes of "The District Justices Act."

Appropriation of penalties.

36 All expenses recovered by any Inspector, and all penalties imposed under this Act, shall be paid into the Treasury, and shall form part of the Stock Act Fund.

Rabbits Destruction.

37 No fee or fees shall be payable under *The Magistrates Summary Procedure Act* or otherwise by any person in respect of any proceedings instituted by such person against any other person for costs, charges, and expenses or penalties under this Act, or for any breach of or non-compliance with the provisions of this Act.

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No fees payable by persons instituting proceedings.

38 No action shall lie against any person for anything done in pursuance of this Act unless notice in writing of such action, and of the cause thereof, is given to the defendant One month at least before the commencement of the action, and such action is commenced within Three months after the cause of action has accrued; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence; and no plaintiff shall recover in any such action if tender of sufficient amends has been made before such action brought, or if a sufficient sum of money has been paid into Court by or on behalf of the defendant after such action brought, together with the costs incurred up to that time; and if a verdict passes for the defendant, or if the plaintiff becomes nonsuit or discontinues such action, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for recovering the same as any defendant has by Law in other cases; and though a verdict is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the case is tried certifies his approbation of the action, and the verdict obtained thereupon.

Persons acting under Act entitled to notice of action, &c.

39 All moneys in any Bank to the credit of any Rabbit Board elected under the Act hereby repealed, and all moneys in the hands of the Treasurer or any Collector of any such Board, or thereafter collected or recovered by such Treasurer or Collector as hereinafter mentioned, shall, upon this Act coming into operation, be available by such Board for the discharge of any liabilities previously incurred by such Board, and the balance, if any, shall be paid into the Treasury and form part of the Stock Act Fund; and any unpaid Taxes imposed by such Board under the Act hereby repealed may be collected and recovered by the Treasurer or Collector of such Board notwithstanding such repeal.

Appropriation of moneys collected under repealed Act.

SCHEDULE.

(I.)

"THE RABBITS DESTRUCTION ACT, 1889."

Notice to destroy Rabbits.

To [name of occupier to whom addressed] of [address].

Take notice that I, the undersigned, an Inspector under the above Act, hereby require you forthwith to destroy the rabbits upon the following lands [here describe lands].

Dated at this day of 18

[Signature.]
[Designation.]
[Postal address.]

N.B.—Your attention is directed to the Eleventh and Twelfth Sections of the said Act printed on the back hereof.

On neglect or failure to comply with this notice, in addition to the penalties prescribed by these Sections, the destruction of the rabbits upon your land may be effected by the Government at your expense.

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(2.)

I, _____ of _____ do hereby solemnly and sincerely declare that the sums above-mentioned have been actually expended by me for the purposes hereinbefore set forth, all which matters I conscientiously believe to be true; and I make this declaration under the provisions of "The Statutory Declarations Act, 1837."

Taken before me this _____ day of _____ 18 _____

*Occupier.**J.P.*

(3.)

NOTICE.

To _____ of _____
I, *A.B.*, an Inspector under "The Rabbits Destruction Act, 1889," hereby require you forthwith to take effective steps for the destruction of rabbits upon the following lands:—*[here describe lands.]*

Dated at _____ this _____ day of _____ 18 _____

A.B., Inspector.

Approved.

C.D., Chief Inspector.

On neglect or failure to comply with this notice you will be liable to a penalty not less than Five Pounds and not exceeding Twenty-five Pounds.

(4.)

REPORT BY OCCUPIER.

REPORT of the persons employed and means used for the destruction of rabbits by _____ of _____ during the Six months ending 30th day of _____ April *[or, as the case may be]*, 18 _____

1. The number of persons either wholly or partly employed destroying rabbits.
2. How each person carried out work of destroying—
 1. Hunting.
 2. Trapping.
 3. Shooting.
 4. Poisoning.
 5. Fumigating.
 6. Digging out.
3. The time each person has been actually employed destroying rabbits.
4. Number of rabbits known or believed to be destroyed.
5. The poison used.
6. Any other information which it would be advantageous to give or to publish.

Witness—*C.D.**A.B.*