



ANNO QUADRAGESIMO SECUNDO ET QUADRAGESIMO
TERTIO

VICTORIÆ REGINÆ.

A.D. 1879.

No. 139.

An Act to provide for the Suppression of Rabbits, and to consolidate, alter, and amend the laws relating thereto.

[Assented to, 2nd September, 1879.]

WHEREAS it is expedient to consolidate, alter, and amend the laws at present in force relating to the destruction and suppression of rabbits within the Province of South Australia, and to make other and more stringent provisions relating thereto—Be it therefore Enacted by the Governor of the said province, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Preamble.

PRELIMINARY.

PRELIMINARY.

1. This Act may be cited for all purposes as "The Rabbit Suppression Act, 1879."

Short title.

2. This Act shall be divided into four Parts, relating to the following subject matters:—

Division of Act.

PART I.—Repeal and Interpretation, sections 3 to 5:

PART II.—Provisions for the Suppression of Rabbits, sections 6 to 13:

PART III.—Provisions for Payment of Cost and Expense of Destruction, sections 14 to 23:

PART IV.—Penalties and Miscellaneous Provisions, sections 24 to 35.

PART

PART I.

PART I.

REPEAL AND INTERPRETATION.

Repeal.

3. The several Acts mentioned in the Schedule hereto marked A are hereby repealed.

Saving clause.

4. Such repeal shall not affect any right or liability created or existing under or by virtue of the repealed Acts, or either of them, and shall not prejudice or affect anything already lawfully done or commenced or contracted to be done under either of such Acts, and all proceedings, matters and things lawfully had or done before the passing of this Act, by, under, or in pursuance of the said repealed Acts, or either of them, shall be of the same force and effect to all intents and purposes as if the said Acts were still in force; and no proceeding which may at the time of the passing of this Act be depending, or which may hereafter be instituted in respect of anything done or omitted to be done under the said repealed Acts, or either of them, shall be prejudiced or affected, but shall be determined as if the said Acts were still in force.

Interpretation clause.

5. In the construction of this Act, except where the subject or context or other provisions hereof require a different construction, the following terms in inverted commas shall bear or include (in addition to their ordinary meaning) the meaning set against them respectively—

“Any land” shall include all lands in the province alienated from the Crown in fee simple or for any less estate, and all land held under agreement for purchase from the Crown, and all land leased for pastoral, mineral, or other purposes:

“Authorised person” shall mean and include the Commissioner, and every inspector, sub-inspector, and other officer appointed under this Act, and all persons authorised in writing by them or any of them for carrying into effect the provisions of this Act:

“Commissioner” shall mean the Commissioner of Crown Lands and Immigration:

“Crown lands” shall mean all lands within the province belonging to Her Majesty not coming within the definition of “any land:”

“Owner or occupier” shall include the authorised agent of any owner or occupier and every person in receipt of the rents or profits of any land:

“Unoccupied land” shall include all lands in the province alienated from the Crown, upon which no occupant shall be actually residing.

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PROVISIONS FOR THE SUPPRESSION OF RABBITS.

6. The Commissioner may from time to time appoint such inspectors, sub-inspectors, and other officers for carrying into effect the provisions of this Act as he may think fit, and may from time to time remove every person so appointed, and the Commissioner and every inspector, sub-inspector, and every other officer holding office under this Act, may, by writing under his hand, authorise such other person or persons as he may deem necessary to carry or assist to carry into effect the said provisions.

Commissioner may appoint officers.

7. The Commissioner shall forthwith, after the coming into operation of this Act, destroy all rabbits and fill up their burrows on Crown lands, and the cost and expense of such destruction shall be paid by the Treasurer out of the General Revenue of the said province.

Commissioner to destroy rabbits on Crown lands.

8. All Boards, Corporations, and corporate bodies in whom any land in the province is vested, or who shall have the control of any land, shall, at their own expense, forthwith, after the coming into operation of this Act, destroy the rabbits and fill up their burrows on the land vested in them, respectively, or under their control.

Boards and Corporations to destroy rabbits on their land.

9. Every authorised person may with or without assistants, enter any land in the province at any time, and from time to time, and search whether any rabbits are to be found upon such land, and may remain upon such land for such time as may be reasonably necessary to ascertain whether any rabbits are thereon.

Power to enter land and search for rabbits.

10. Every authorised person may, by notice in writing in the form of Schedule B hereto, require the owner or occupier of any land on which rabbits shall be found forthwith to destroy the rabbits and fill up their burrows upon such land, and upon the half width of all sectional or main roads adjoining the same; and, as regards unoccupied land, may, without notice, exercise similar powers to ensure the destruction of the rabbits upon such unoccupied land, and the half width of the adjoining roads, as are given to him by section 12 of this Act, with regard to occupied land, on neglect or failure by the owner or occupier of such last mentioned lands to destroy the rabbits thereon pursuant to notice.

Notice to owner or occupier to destroy rabbits.

No notice where land unoccupied.

11. Every owner or occupier upon whom any notice to destroy rabbits under this Act shall be served, shall forthwith destroy the rabbits and fill up their burrows on the land and roads mentioned in such notice.

Owner or occupier to destroy rabbits.

12. If the owner or occupier of any land shall neglect or fail to comply with any such notice as aforesaid to destroy rabbits and fill up their burrows, any authorised person may enter the land of such owner or occupier and use all such means, and take all such measures, and do and perform all and every such acts or things as

Powers of officers on failure or neglect of owner or occupier.

to

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to him may appear proper or necessary to be done to ensure the destruction of the rabbits upon the land and roads or parts of roads mentioned in such notice, and may remain upon, and shall have free right of ingress, egress, and regress into, over, and across such land for such period as may be necessary for carrying into effect the purposes of this Act.

Owner or occupier not commencing and continuing to destroy to be in default.

13. Any owner or occupier of land who shall not forthwith after the service of such notice upon him commence to comply with such notice, or if after having so commenced shall not continue such compliance to the satisfaction of an authorised person, shall be deemed to have neglected or failed to comply with such notice within the meaning of the last preceding section.

PART III.

PART III.

PROVISIONS FOR PAYMENT OF COST AND EXPENSE OF DESTRUCTION.

Cost and expenses recoverable from owner.

14. The cost and expense incurred by every authorised person in entering upon any land and doing and performing all such acts and things as are provided by section 12 of this Act, for the purpose of destroying any rabbits on such land and on the half width of the adjoining roads, shall be paid on demand (except as is provided in the next following section), by the owner or occupier of such land to the Commissioner, or to any person or persons authorised by him to receive the same, and such cost and expense shall be a debt due to the Commissioner, and may be recovered by him as money paid under this Act for the owner or occupier at his request. Until such cost and expense shall be paid by the owner or occupier liable to pay the same, the amount thereof shall be paid out of the general revenue of the said province.

Pastoral lessees to pay within five years.

15. Where the owner or occupier liable under the last preceding section to pay the cost and expense of the destruction of the rabbits upon any land, shall, in respect of such land, be a lessee from the Crown for pastoral purposes, such owner or occupier shall have five years within which to pay the cost and expense payable by him in respect of the destruction of rabbits in any one year during which his tenancy shall continue. Such payments shall be made in the following manner, that is to say—One-fifth at the expiration of the first year, one-fifth at the expiration of the second year, one-fifth at the expiration of the third year, one-fifth at the expiration of the fourth year, and one-fifth at the expiration of the fifth year, such years to be computed from the date of the entry, under section 12 of this Act, by any authorised person upon the land of such owner or occupier: Provided that the lessee shall be liable to pay such annual proportion of the cost and expense only so long as he remains in occupation of the land.

Proviso.

Other lessees or tenants under five years to recover pro-

16. Every occupier of land alienated from the Crown who shall have paid to the Commissioner, or any person authorised by him to receive

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receive the same, the cost and expense of the destruction of rabbits upon any land held by such occupier as lessee or tenant for any term having less than five years to run from the date of the entry upon such land, under section 12 of this Act, by any authorised person, shall be entitled to be repaid by his lessor or landlord so much of the cost and expense so paid by him as would be payable for the difference between the term of five years and the time to run of his lease or tenancy upon the computation that the total sum paid was payable in respect of a five years' term or tenancy.

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portionate part from lessor or landlord.

17. No distress shall be levied by the lessor or landlord of any occupier for any rent due to him by such occupier, whilst any money shall remain payable by such lessor or landlord to such occupier as aforesaid, unless the rent due by such occupier shall exceed the money payable by such lessor or landlord as aforesaid, and then only for the amount by which such rent due by such occupier shall exceed the money so payable to him by his lessor or landlord as aforesaid; and no assignment by any lessor or landlord whilst any such money shall remain payable by him to such occupier, shall defeat the right of the occupier to the payment of such money out of the rent of the land in respect of the destruction of the rabbits upon which the same shall be payable.

Distress not to be levied by lessor whilst indebted under this Act to lessee.

18. In any case in which the amount due and payable to the Commissioner for the cost and expense of the destruction of rabbits on any land shall be unpaid for the period of three months, the Commissioner may at any time after the expiration of such period of three months, cause to be sent to the registered owner of such land a notice in the form in Schedule C hereto, or in a form to the like effect, and that such notice be published three times in the *Government Gazette*.

Commissioner may insert notice in *Gazette* when cost of destruction unpaid for three months.

19. All such notices shall be sent by post to the registered owner of the land, or to his agent or attorney, in case there shall be any such attorney or agent resident in the province known to the Commissioner; and whenever any letter containing such notice shall be returned to the Commissioner by the Postmaster-General, the Commissioner shall take such further action to give notice to the owner of the land as to him shall seem expedient.

Notices how sent.

20. If after one month from the publication of the last of the said notices the amount mentioned therein, or any portion thereof, as being due and payable to the Commissioner by any owner or occupier shall remain unpaid, the Commissioner may let the property mentioned in such notice, or any part thereof, for a year, and so on from year to year, until all claims made payable under the provisions of this Act are paid and discharged, and may receive and retain the rents, and apply the same in reimbursing the general revenue of the said province all costs of and attending such notices, advertisements, and letting, and in the next place, in and towards the payment of the cost and expense of the destruction and sup-
pression

Commissioner may let land for payment of cost of destruction.

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pression of rabbits on the land mentioned in such notices and advertisements, including as well the cost and expense incurred at the time of the first publication of the said notices and advertisements, as any cost and expense incurred either in the destruction and suppression of rabbits on the said land up to the time of such letting, or in any way whatsoever connected with nonpayment of the amount at any time recoverable by the Commissioner, or for any act done or performed by him or by his authority, under the provisions hereof, until the owner or occupier shall pay and discharge the same, and shall hold any surplus of rent for the owner of the land.

Land may be sold for payment of cost of destruction.

21. Instead of letting such property as aforesaid, the Commissioner may, where the owner or occupier is unknown, after one month from the publication of the last of such notices and advertisements as aforesaid, if the cost and expense of the destruction of rabbits on the land due at the time of the first publication thereof, or any part thereof, shall be still unpaid; and where the owner or occupier is known, after the expiration of six months from the publication of the last of such notices or advertisements as aforesaid, and the service of a copy thereof or to the like effect upon such owner or occupier, or his authorised or generally recognised agent in South Australia, by delivering the same at or posting it directed to such owner, occupier, or agent, at his last known place of abode in the said province, apply by petition to the Supreme Court for a sale of all or any part of the land comprised in such notice; and the said Court, on being satisfied by affidavit or otherwise that the cost and expense mentioned in such notice are lawfully due, and were owing at the time of the first publication of such notice, and that all things required by this Act to be done have been done, may make an absolute order in the first instance, or may grant a rule, calling upon the owner or occupier, if known, or to all whom it may concern, if the owner or occupier is unknown, to show cause why an order should not be made for the sale by public auction of the land comprised in such petition, or so much thereof as may be sufficient to pay the cost and expense of the destruction of rabbits on the land mentioned in such notice, including as well the cost and expense incurred at the time of the first publication of the notice, as any cost and expense incurred in the destruction of rabbits on the land up to the time of the application for sale, together with all costs and expenses of and attending the notice, the application, and the sale, and all other costs, charges, and expenses for any act done or performed by the Commissioner, or by his authority for carrying out the provisions of this Act, and that the proceeds be paid into Court; and, unless good cause is shown to the contrary within the time fixed by such rule, the said Court shall order the sale of the land in manner aforesaid, and the payment out of such proceeds of the said costs, charges, and expenses in preference to any mortgage or other security on such land, and that a conveyance, or if the property be under the provisions of "The Real Property Act of 1861," or any Act amend-
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ing the same, a memorandum of transfer (which the Registrar-General is hereby directed to register), be executed by the Master or other officer of the Court in such form as shall be approved by the Court or a Judge; and such conveyance, or the registration of such memorandum of transfer, as the case may be, shall vest an indefeasible legal estate in fee simple in the said land in the purchaser, his heirs, and assigns, free from all encumbrances, and the balance arising from the proceeds of such sale shall remain and be subject to any future or other order of the Court for the behoof of the party or parties interested therein.

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22. In case there shall be included in any such notice as aforesaid different lands belonging to different owners, the same may be included in one petition for sale, and the Court may make such orders as to the apportionment of the costs and expenses in respect of the sale of such lands, or any part thereof, as such Court may deem just.

Different lands may be included in one petition.

23. If any sum of money payable under this Act by any owner or occupier to the Commissioner shall remain due and unpaid for the space of one calendar month after notice in writing to pay the same shall have been given to such owner or occupier, the Commissioner or any person by him thereunto authorised may at any time, and from time to time thereafter, so long as any money shall remain so unpaid, without any warrant, enter upon any land of such owner or occupier, and distrain the goods, chattels, and effects found thereon for the amount remaining due and unpaid, and if the amount for which such distraint shall have been levied, together with all reasonable costs of such notice, entry, and distraint, be not paid within five days after such levy, then the said distress or so much thereof as shall be sufficient to pay the amount remaining unpaid and costs may be sold, and any surplus which may remain after payment of such amount and costs, and the costs of and incidental to the sale, shall be returned to the owner of the goods, chattels, and effects distrained.

Distress may be levied.

PART IV.

PART IV.

PENALTIES AND MISCELLANEOUS PROVISIONS.

24. Any person who shall falsely represent himself to be an authorised person, either by giving a notice to any owner or occupier purporting to be a notice under this Act, or in any other manner whatsoever, personating an authorised person shall be guilty of a misdemeanor, and shall, on conviction, be liable to be imprisoned, with or without hard labor, for any period not exceeding twelve calendar months; and shall, in addition to such imprisonment, be liable to forfeit and pay a penalty of not less than Twenty Pounds nor more than One Hundred Pounds.

Penalty for personating officers.

25. Any person who shall wilfully obstruct, hinder, or interrupt any authorised person in the exercise of any power or authority vested

Penalting for obstructing persons authorised under this Act.

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vested in any such authorised person by this Act, or shall threaten assault, or use improper language to any such authorised person whilst in the performance of his duty under this Act, shall, for every such offence, forfeit and pay a penalty not 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 such authorised person for or in respect of any such assault.

Rabbits not to be set loose.

26. Any person who shall wilfully set loose any rabbits, or knowingly and wilfully permit any rabbits to be set loose in any part of the said province shall, on conviction, forfeit and pay for each offence a penalty not exceeding One Hundred Pounds.

Owner or occupier not bound to clear travelling stock or forest reserve.

27. Nothing in this Act contained shall be construed to render it the duty of any owner or occupier to destroy the rabbits upon any travelling stock or forest reserve which shall be within the boundaries of or adjoining the land of any such owner or occupier, nor to destroy any rabbits kept by any owner or occupier in cages or similar enclosures.

No person acting *bona fide* liable for damage.

28. No authorised person shall be deemed a trespasser, or be liable for any damage occasioned by him in the exercise of the powers, discretions, and authorities, or any of them, by this Act conferred upon him, unless such damage shall have been occasioned by or under the authority of such person wilfully and without necessity.

Notices, how served.

29. Every notice by this Act required to be given to an owner or occupier shall be deemed to have been properly given if served upon the owner or occupier of the land mentioned in such notice, or left at his usual or last known place of abode in the said province, or upon such land; and where there shall be more than one owner or occupier of the same land, service upon any one of them in manner aforesaid shall be deemed service upon all.

Certificate of Commissioner *prima facie* evidence of cost of destruction.

30. In every action for the recovery of the cost and expense of the destruction of any rabbits under this Act, any certificate purporting to be signed by the Commissioner, and specifying the amount of such cost and expense, shall be received as *prima facie* evidence of the amount of the cost and expense of such destruction.

Penalties may be recovered in a summary manner.

31. Every proceeding for the recovery of any penalty, or sum of money, by this Act imposed or made payable, may be had before any Special Magistrate, or two or more Justices of the Peace for the said province, in a summary way, by or in the name of any authorised person under this Act.

Application of No. 6 of 1850.

32. The proceedings before Justices shall be conducted as appointed by and shall be regulated under the Ordinance No. 6 of 1850, intituled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to summary convictions and orders."

33. In

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33. In every case of the adjudication of a fine or pecuniary penalty under this Act, and of the non-payment of such fine or pecuniary penalty, any Justice of the Peace may commit the offender or person making default in payment to any gaol in the said province for any time not exceeding three calendar months, the imprisonment to cease on payment of the sum and costs due ; but this section shall not affect any remedy for the recovery of any fine or pecuniary penalty or amounts under the said Ordinance No. 6 of 1850, or any other Ordinance or Act.

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Non-payment of penalty.

34. There shall be an appeal from any order of Justices of the Peace, made under the provisions hereinbefore contained, or from any order of Justices of the Peace dismissing any information laid under this Act, or from any conviction by Justices for any offence against this Act, which appeal shall be to the Local Court of Adelaide of full jurisdiction only, and the proceedings in such appeal shall be conducted in manner appointed by the said Ordinance No. 6 of 1850, for appeals to Local Courts, but the Local Court of Adelaide aforesaid, may make such order as to payment of costs of appeal as such Court shall think fit, although such costs may exceed Ten Pounds.

Appeal.

35. It shall be lawful for the Local Court of Adelaide, upon the hearing of any appeal under the last preceding section, to state one or more special case or cases for the opinion of the Supreme Court, and the Supreme Court shall hear and decide such special case or cases, according to the practice of the Supreme Court on special cases ; and the Supreme Court shall make such order as to the costs of any such special case as to the said Court shall appear just ; and any two or more Justices, or the Local Court of Adelaide, shall make an order in respect of the matters referred to the Supreme Court, in conformity with the certificate of the said Supreme Court, or of any Judge thereof, which order of the Justices of the Peace or Local Court shall be enforced in manner provided by this Act, for the enforcement of orders of Justices of the Peace, and save as herein provided, no order or proceeding of Justices, or of any Local Court made under the authority of this Act, shall be appealed against or removed by *certiorari* or otherwise into the Supreme Court of the said province.

Local Court of Adelaide may state a case for opinion of Supreme Court.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.

SCHEDULES

SCHEDULES REFERRED TO.

SCHEDULE A.

Acts Repealed.

Number of Act.	Title of Act.
16 of 1875	The Rabbit Destruction Act, 1875.
94 of 1878	The Rabbit Destruction Amendment Act, 1878.

SCHEDULE B.

The Rabbit Suppression Act, 1879.

Notice to Destroy Rabbits.

To Mr. [name of owner or occupier] of [his address and occupation].
 Take notice that I, the undersigned, being [an inspector, or sub-inspector, or an officer, or an authorised person] under the above Act, pursuant to the provisions of the said Act, require you forthwith to destroy the rabbits upon the land occupied by you in [hundred or other locality of land] being [numbers of sections or other description of land] containing [area in acres or square miles] and (if so) also upon the half width of all roads bounding or adjoining the said land or any part thereof.

Dated this day of 18 .

(Signature)

Every notice under this Act is deemed to have been duly served upon the owner or occupier if left at his usual or last known place of abode in the province or upon the land mentioned in the notice.

On neglect or failure to comply with this notice, the destruction of the rabbits upon the land and roads (if any) therein mentioned will be effected by the Government, at the expense of the owner or occupier.

SCHEDULE C.

The Rabbit Suppression Act, 1879.

Notice of moneys payable for destruction of rabbits for publication in the Gazette.

Notice is hereby given, that there is now due and payable in respect of the cost and expense of the destruction of rabbits upon the land or lands (as the case may be) mentioned in the schedule hereto, the sum set opposite to the description of such land or lands; and the owner or owners of such land or lands are required to take notice that unless the amount or amounts so due, together with the cost of and attending this notice be paid to the Commissioner, on or before the day of 18 [one month from the last publication of this notice], the Commissioner will let such of the said land or lands in respect of which any money shall be then unpaid, from year to year, in manner provided by the Rabbit Suppression

