



ANNO DECIMO QUINTO

# VICTORIÆ REGINÆ.

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## No. 15.

*An Act for preventing the further spread of the Scotch Thistle.*

[Assented to 2nd January, 1852.]

**W**HEREAS great injury and loss have been and are occasioned to the cultivated and waste lands of this Province, by the spread of the plants known as the Scotch Thistle, and it is desirable that measures be taken to prevent their further diffusion; And, whereas, no such measures can be effectual unless some provision is made for securing its destruction upon land which has become private property: Preamble.

Be it therefore Enacted by the Lieutenant-Governor of the Province of South Australia, with the advice and consent of the Legislative Council thereof, That if at any time after the passing of this Act any owner or occupier of land within the said Province, upon which land, or upon the half of any road adjacent thereto, any of the plants commonly known in this Province as the Scotch Thistle shall be growing, shall not within seven days after any notice in writing that such Scotch Thistles are growing upon such land, or upon such adjacent half of any road, signed by any Chairman of any District Board of Roads, or of any District Council, or by any Clerk of such District Board or District Council, or by any Justice of the Peace, shall have been served upon such owner or occupier, or left for him at his usual or last known place of abode, effectually destroy all of

Penalty for not destroying Thistles after notice.

the said plants so known as the Scotch Thistle then growing and being upon such land, or upon such adjacent half of the road, every such owner or occupier, being convicted thereof, shall be liable to a penalty not exceeding Ten Pounds and not less than Two Pounds, and such penalty may be recovered, and the matter thereof heard and determined, by two or more Justices of the Peace in a summary way: Provided that it shall be lawful for any such Justices to suspend any conviction, upon being satisfied that the person so receiving such notice has used, and is using, reasonable exertions to destroy such plants.

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

2. And be it Enacted, That if there shall be no occupier of any land, then such notice as aforesaid may be affixed in some conspicuous place upon such land, and every notice so affixed shall be deemed and taken to be sufficient notice to the owner of such land from the time of its being so affixed: Provided that it shall not be necessary for any such last mentioned notice to specify the name of any person as owner of the land therein referred to, and provided also that no owner of any land shall be liable to any payment beyond the expense of, and occasioned by, the destruction and eradication of the Thistles growing and being upon such land and upon such adjacent half of the road as hereinafter provided, together with costs of suit, by reason merely of any notice having been so affixed as last aforesaid.

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

3. And be it Enacted, That if any such owner or occupier shall, for such space of seven days, refuse or neglect to destroy the Thistles specified in any such notice, it shall and may be lawful for any person authorized in that behalf by any District Board of Roads, or District Council, or by an order of any Justice of the Peace, to destroy and eradicate 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 or occupier the expense of and attending such destruction and eradication, such expenses to be assessed and allowed by two or more Justices of the Peace, together with costs of suit by action or plaint in any Court of competent Jurisdiction, or by proceedings in a summary manner before two or more Justices, and which action, plaint, or proceedings may be commenced, instituted, had and taken in the name of such person, or of the District Board, or District Council, or Justice of the Peace, by whom such person was authorized.

Persons authorized may enter upon land to search for Thistles.

4. And be it Enacted, That it shall be lawful for any person authorized in that behalf by any District Board of Roads, or by any District Council, or by an order of any Justice of the Peace, without notice, to enter upon any lands, whether enclosed or not, for the purpose of ascertaining if any such Thistles are growing and being thereupon, and that no such person shall be deemed a trespasser by reason of such entry, or be liable for any

any damage thereby occasioned, unless the same was occasioned by such person wilfully and without necessity.

5. And be it Enacted, That upon complaint duly made to any Justice of the Peace residing within the district where any land is situate, that any such Thistles are suspected to be growing, or are growing upon any land, such Justice shall make an order for the party complaining, or for some other person to enter upon such land to search and ascertain if there are any such Thistles growing and being thereupon, or as the case may be, shall sign such notice to the owner or occupier of any land as hereinbefore provided, and also upon being satisfied that such notice has been served, or left or affixed as herein provided, shall make order for the destruction and eradication of any such Thistles as aforesaid, growing and being upon any land by some person to be named in such order.

Justices to act upon complaint duly made

6. And be it Enacted, That if the owner of any land, of which there shall be no occupier as aforesaid, shall be unknown, or shall not reside within the said Province, it shall be lawful for the Supreme Court, or any Judge thereof, upon petition addressed to such Court by any District Board, District Council, Justice, or person so as aforesaid entitled to recover the expense of, and attending the destruction and eradication of such Thistles, and which petition shall state that such destruction and eradication was effected under the authority of a District Board of Roads, or District Council, or by an order of a Justice of the Peace, after due notice as aforesaid, and that the expenses of, and attending such destruction and eradication have been assessed and allowed by two or more Justices of the Peace, and which petition shall be verified by affidavit, and shall be supported by the production of such vouchers also certified by affidavit, as such Court or any Judge thereof 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, and which costs shall be ascertained and mentioned in such order, and in default of such payment, for the sale by the Sheriff of the said Province, or of any District thereof, 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 *South Australian Government 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 party 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 or purchasers thereof, and every such conveyance shall operate to vest the land described therein absolutely in such purchaser or purchasers; and the said Sheriff, out of the proceeds of any such sale, shall, in the first place,

If owner of land unknown or absent from the Province, land may be sold to defray expenses, upon order of Supreme Court, after eighteen months' notice in *South Australian Government Gazette*.

place, retain to and reimburse himself all the like per centage, expenses, and charges to which he would be entitled upon the execution of a writ of *fiery facias* for the amount mentioned in any such order, and in the second place shall pay to such District Board, or District Council, or 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 appeal against any such assessment and allowance of expenses in the same manner as is by law provided in the case of conviction upon summary proceedings.

Power of appeal against order of Justices, upon bringing money into Court.

7. And be it Enacted, That 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 District Board, District Council, Justice, or person as aforesaid, unless at the time of bringing in the same the party on whose account the same is brought in, shall produce, or cause to be produced, to the master or other officer receiving such money, a certificate of the Clerk of the Local Court of full jurisdiction nearest to the land in respect of which such order has been made, that such party hath caused such appeal to be lodged and recognizances to be entered into as are required in cases of appeal from any order of Justices, under any summary proceeding; and if such certificate shall be produced, then no order shall be made for the payment of the said money until such appeal shall be determined, either by failure of prosecution, or by judgment upon hearing; and in such case the said Supreme Court, or any Judge thereof, shall order the said money to be paid, in accordance with the determination of such appeal.

Thistles growing upon waste lands of the Crown may be eradicated by Surveyor-General, or expenses of eradication be repaid by Governor.

8. And be it Enacted, That when any such Thistles shall be growing upon any waste and unoccupied Lands of the Crown, such notice as aforesaid shall be left at the office of the Surveyor-General for the said Province, and shall describe and set forth the situation of such land; and it shall be lawful for such Surveyor-General with the assent of the Governor, to employ the necessary laborers, and continue to destroy and eradicate the said Thistles; and in the event of the neglect or refusal of such Surveyor-General to destroy and eradicate such Thistles, and of the destruction and eradication thereof by any person authorised in that behalf as hereinbefore provided, it shall be lawful for the Governor, by warrant under his hand, to direct the Colonial Treasurer, out of the Ordinary Revenue, to pay to the party entitled to receive the same, the expenses of and attending such destruction and eradication as aforesaid.

Allowance of expenses by two Justices to be sufficient evidence.

9. And be it Enacted, That in any proceeding to recover from the owner or occupier of any land the expenses of and attending the

the destruction and eradication of any such thistles as aforesaid, 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 of the Peace, and such allowance shall be conclusive evidence until the contrary be shewn, that the expenses so allowed were actually incurred in such destruction and eradication, and that the same destruction and eradication were duly authorised, and that such notice was given and proceedings taken as are herein required.

10. And be it Enacted, That all penalties recoverable under this Act shall be payable one half to the person laying the information or complaint, and one half to Her Majesty, Her Heirs and Successors, for the public uses of the said Province, excepting in cases where any such information or complaint shall be laid at the instance of any District Board of Roads, or of any District Council, when the whole of such penalty shall be paid to such District Board of Roads, or District Council, in aid of the funds of such District Board, or District Council. Appropriation of penalties.

11. And be it Enacted, That in the construction of this Act the words "Plants, commonly known in this Province as the Scotch Thistle," shall be held to mean, and include (in addition to all other plants so commonly known), the variegated thistle, and the plants commonly known by the botanical names of "Carduus Marianus," and of "Carduus Benedictus." Interpretation clause.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this Nineteenth }  
day of December, One Thousand }  
Eight Hundred and Fifty-one.*

WM. B. GILBERT,  
*Pro Clerk of Council.*

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,  
Lieutenant-Governor.

Government House, Adelaide,  
2nd January, 1852.