



Western Australia.

ANNO SECUNDO

EDWARDI VII. REGIS.

No. XXXIV.

AN ACT to deal with the Rabbit Pest.

[Assented to, 20th December, 1902.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. THIS Act may be cited as the Rabbit Act, 1902. It is divided into parts, as follows:—

Short title and divisions.

PART I.—PRELIMINARY, ss. 1-5.

PART II.—OFFICERS, ss. 6-8.

PART III.—GOVERNMENT FENCES, ss. 9-12.

PART IV.—PRIVATE FENCES, ss. 13-26.

PART V.—DESTRUCTION OF RABBITS, ss. 27-34.

PART VI.—SUPPLEMENTAL, ss. 35-50.

Repeal. 2. THE Acts mentioned in the Schedule to this Act are hereby repealed.

Interpretation. 3. IN this Act, unless the context otherwise requires,—

“Barrier fence” means the fence now being erected by the Government from Starvation Boat Harbour, and any continuation thereof.

“Crown land” includes all land of the Crown not within the definition of private land ;

“Inspector” includes chief inspector ;

“Minister” means the responsible Minister of the Crown charged with the administration of this Act ;

“Occupier” means the person for the time being entitled to possession of private land, and includes the resident manager of the occupier where the occupier does not reside on the land ;

“Owner” means :

(a.) Any person entitled to an estate of freehold in possession in any land granted by the Crown ; or

(b.) Any person holding any land under any lease or license or promise of any lease or license from the Crown ; or

(c.) The person in whom is vested any land taken or appropriated under the authority of any statute authorising land to be taken or appropriated for the purpose of any private undertaking,

and includes any person deriving title from or through any such person.

“Prescribed” means prescribed by this Act or any regulation thereunder ;

“Private land” includes all land alienated from the Crown in fee simple or for any less estate, or held under any special occupation or conditional purchase lease or license, or under any other lease or license for pastoral, mining, residential, or other purposes.

Definition of
“boundary” and
“adjoining.”

4. FOR the purposes of this Act—

(a.) A fence shall be taken to be on the boundary of any land, or on the common boundary of any lands, if it follows the line which is such actual, reputed, or accepted boundary, or where the boundary is inaccessible or incapable of being fenced, if the fence follows such boundary as nearly as practicable, having regard to the

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physical features of the country, or if in any case such fence follows any line which is reasonably approximate to such boundary; and

- (b.) The intervention of a road or watercourse shall not prevent holdings or lands being taken to be adjoining, or prevent a fence along either side of any such road or watercourse being taken to be on the common boundary of the holdings or lands on either side of such road or watercourse.

5. THE council of any municipality, the board of any road district, and the trustees of any public reserve or common shall be deemed to be the owners of all lands vested in them or placed under their control.

Application of Act to local authorities.

PART II.—OFFICERS.

6. THE Governor may, from time to time, appoint and dismiss a chief inspector, inspectors, and other officers for carrying this Act into effect.

Appointment of chief inspector and other officers.

7. ANY inspector or other officer may hold his office in conjunction with any other office or employment which the Governor deems not incompatible with his duties under this Act.

Inspectors may hold office with other offices.

8. EVERY inspector and officer shall be furnished with a certificate of his appointment, and shall, if required so to do, produce such certificate to the owner or occupier of any private land he may enter.

Inspectors to have certificate of appointment.

PART III.—GOVERNMENT FENCES.

9. THE Minister may, out of any moneys voted by Parliament for the purpose, erect, maintain, and repair such fences as he may think fit on any Crown land or private land to protect any part of the State from the incursion of rabbits.

The Minister may erect fences.

For such purpose, all persons acting under the authority of the Minister may, at any time, and from time to time, enter upon any private land and make all necessary surveys and do all necessary work.

Power to enter on private land.

10. ANY such fence may be erected across roads or travelling stock routes, but gates shall be made therein for the passage of the public and their stock.

A fence may cross roads and stock routes.

11. THE Minister shall not be liable, nor shall any person acting under his authority be liable to pay compensation for anything lawfully done in exercise of the powers conferred by this Act.

No compensation payable for anything lawfully done.

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Fences to continue the property of Crown.

12. ANY fence erected under this Part on Crown land or private land shall be and continue the property of the Crown.

PART IV.—PRIVATE FENCES.

Description of rabbit-proof fence.

N.S.W. Act, No. 6 of 1902, s. 28.

13. FOR the purpose of this Part, a rabbit-proof fence shall be, either—

(a.) A substantial fence hung with galvanised wire netting, at least forty-two inches in width, of a maximum mesh of one and a-half inches, and of seventeen minimum gauge, furnished with suitable rabbit-proof gates or other rabbit-proof appliances at every necessary break in the fence, and of such other dimensions, including the height above ground and the depth below ground, and in all other details in accordance with the regulations; or

(b.) A fence reasonably sufficient in the opinion of the chief inspector for the purpose of excluding rabbits.

Certificate that fence is rabbit-proof.

Ibid., s. 29.

14. (1.) THE chief inspector shall, if so required in writing by the owner of the fence, inspect the fence or cause it to be inspected, and when satisfied that it is rabbit-proof grant a certificate to that effect.

Certificate *prima facie* evidence.

(2.) In any proceeding in any Court to recover money by way of contribution in respect of any fence, such certificate shall be *prima facie* evidence of the facts stated therein; and evidence in contradiction shall not be adduced, unless the prescribed notice has been given.

Private fence may cross road.

Ibid., s. 30.

15. WHERE any land is divided or bounded by a road, travelling stock route, reserve, or Crown land, the Minister may grant to the owner or occupier of such land permission to carry a rabbit-proof fence across such road, route, reserve, or Crown land; but rabbit-proof gates shall be erected where the fence crosses such road or route.

Adjoining lands to contribute half value of rabbit-proof fence.

See *ibid.*, s. 33.

16. WHERE a boundary, or any part thereof, of any private land is fenced with a rabbit-proof fence, or a fence on such boundary, or part thereof, has been made rabbit-proof at the expense of the owner or occupier of such land, a contribution towards the cost of the work shall, subject as hereinafter provided, be payable by the owner or occupier of any land outside such land and adjoining the rabbit-proof fence to the owner or occupier who has incurred such expense.

But a contribution shall not be payable where the Court as hereinafter constituted is of opinion that the rabbit-proof fence has been erected, or the fence has been made rabbit-proof, otherwise than *bonâ fide* for the purpose of excluding or destroying rabbits.

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The right to receive such contribution shall vest, and the liability to pay the same shall arise, when the prescribed notice of demand is given.

The amount payable by way of contribution shall be a charge upon the land.

17. THE following provisions as to contributions shall apply:—

- (1.) A contribution shall be payable only in respect of so much of the fence as is on the common boundary.
- (2.) The amount of the contribution shall in every case be assessed according to the benefit derived, and to be derived, from the fence, and shall in no case exceed half the value of the fence, or in the case of a fence which does not belong or does not wholly belong to the person who makes the same rabbit-proof, shall not exceed half the value of the work of making such fence rabbit-proof.
- (3.) Such value shall be the value at the date when the notice of demand was given.
- (4.) The amount of contribution may be apportioned in accordance with the regulations between the occupier and the owner of the adjoining land.
- (5.) It shall be immaterial whether the rabbit-proof fence was erected or the fence was made rabbit-proof before or after the commencement of this Act.

Provisions as to contributions.
See *ibid.*, subsec. (2).

18. (1.) IN any case where a contribution towards the cost of a rabbit-proof fence is payable, an annual contribution towards the expenses incurred in the maintenance and repair of the fence shall also be paid.

Adjoining holding to contribute half cost of maintenance.

The right to receive such annual contribution, and a corresponding duty to maintain and repair the rabbit-proof fence, shall run with the land whereof the owner or occupier was entitled to receive payment of the contribution towards the cost of the fence; and the liability to pay such annual contribution shall run with the land whereof the owner or occupier was liable to pay the contribution towards the cost of the fence.

The amount of such annual contribution shall be one-half the expenses of, or incidental to, the maintenance and repair of the fence.

(2.) Any owner or occupier in receipt of contribution towards the expense of maintenance and repair of a fence, who neglects to keep the fence in thorough repair, shall be liable to a penalty not exceeding Five pounds a day for every day such neglect continues.

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Constitution of Court for the determination of claims.

19. (1.) EVERY claim to contribution shall be determined, and the amount of contribution (if any) assessed by a Court consisting of the Magistrate of the nearest Local Court and two assessors, one to be appointed in the prescribed manner by the owner or occupier claiming contribution, and one by owner or occupier of the adjoining land against whom contribution is claimed.

(2.) The decision of the majority shall be the decision of the Court.

(3.) If either party refuses or neglects to appoint an assessor, the Court shall be deemed duly constituted by the Magistrate and the one assessor appointed.

(4.) By agreement between the parties, or if neither party appoints an assessor, the Magistrate sitting alone may constitute the Court.

(5.) The decision of the Court shall be final, and may be entered and enforced as a judgment of the Local Court.

Encouragement of Rabbit-proof Fencing.

Application for wire netting, etc. See Queensland Act, 60 Vict., No. 34, s. 46.

20. (1.) ANY occupier or owner of land desirous of enclosing his land with a rabbit-proof fence may apply, in the prescribed manner, to the Minister for wire netting and other appliances.

Minister may provide wire netting, etc. See *ibid.*, s. 47.

(2.) On such application being made, the Minister may, in his discretion, provide such wire netting and other appliances, and, out of moneys provided by Parliament for the purpose, defray the cost thereof delivered at the railway station or port nearest to the land of the applicant.

Applicant to secure repayment of cost by mortgage. See *ibid.*, s. 48.

21. BEFORE any wire netting or other appliances are supplied, the applicant shall execute a mortgage of the land, to secure the repayment of the cost with interest at the rate of Four pounds per centum per annum, by equal annual instalments of the prescribed amount, extending over a period not exceeding twenty years.

Such mortgage shall be a first charge upon the land, in priority to every other then existing or future charge and encumbrance affecting the same.

Every covenant and agreement in the mortgage shall run with the land, and shall be observed and performed by and may be enforced against the owner and occupier of the land for the time being.

Duty to repair and maintain fence.

22. THE fence shall at all times be repaired, maintained, and kept rabbit-proof by the occupier or owner for the time being of the land on which the fence is erected.

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Any occupier or owner who fails to fully and continuously perform such duty shall be liable to a penalty not exceeding Five pounds a day for every day such default continues.

Penalty for default.

A certificate in writing, purporting to be signed by an inspector, shall be *prima facie* evidence in any proceeding to recover penalties of the facts stated in such certificate.

Evidence.

23. THE Minister may cause the fence to be repaired, and any person acting with the authority of the Minister may enter on the land for that purpose and cut and remove any timber required.

Minister may enter and repair.

Any expense incurred by the Minister under this section shall be a charge upon the land, and may be recovered from the occupier or owner in any Court of competent jurisdiction.

May recover expense from occupier or owner.

Payment thereof shall not relieve the occupier or owner from any penalty incurred under section twenty-two.

24. (1.) IN default of punctual payment of any instalment of principal or interest within the time provided in the mortgage; or

Proceedings in case of default by mortgagor.

(2.) If on the report of an inspector, or otherwise, the Minister is of opinion—

- (a.) That the wire netting or appliances are not properly applied and maintained for the purposes of this Act; or
- (b.) That the fence is not kept in repair; or
- (c.) That any covenant in the mortgage or regulation under this Act has not been observed or performed by the mortgagor,

the Minister may require the immediate payment of the principal and interest secured by the mortgage and then remaining unpaid, and may exercise the powers conferred by the mortgage for the recovery of the same.

25. (1.) WHEN the applicant is the occupier of the land, the owner may be required to join in the mortgage.

Owner may be required to join in mortgage on application by occupier.

The applicant shall give notice of the application to the owner, who may show cause to the Minister against the application.

If the Minister is of opinion that the owner should join in the mortgage, he may direct him to do so, and in case of the neglect or refusal by the owner to execute the mortgage, it may be executed by the Minister on behalf of the owner, and shall be deemed to have been executed by the Minister as the duly appointed attorney of the owner.

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(2.) As between an occupier and the owner, the annual instalments shall be payable by the occupier while his interest in the land continues, and if the owner is required to pay any moneys under the mortgage which should have been paid by the occupier, the owner may recover the same by action against the occupier, or by distress, as arrears of rent may be recovered by law.

Contributions by adjoining owner where advance obtained.

26. WHERE contribution towards the cost of a rabbit-proof fence is payable by an adjoining owner or occupier, and the owner or occupier entitled to receive payment of contribution is a mortgagor to the Minister in respect of the wire netting or appliances, the contributions towards the moneys payable to the Minister under such mortgage shall be payable by such adjoining owner or occupier to, and may be claimed and recovered by, the Minister, and applied in reduction of the debt due by the mortgagor.

PART V.—DESTRUCTION OF RABBITS.

Duty of owners and occupiers to destroy rabbits.

See N.S.W. Act, No. 6, of 1902, s. 40.

27. IT shall at all times be the duty of the owner and of the occupier of any land to suppress and destroy, to the satisfaction of the chief inspector, all rabbits which may from time to time be upon such land, or upon any roads bounding or intersecting the same, or any part thereof.

Every occupier upon whose land there are rabbits, or signs or marks of rabbits, shall immediately give notice thereof to the inspector whose residence shall be nearest to the land.

Penalty for default.

Any owner or occupier who fails to fully and continuously perform such duty, and any occupier who fails to give such notice, shall be liable to a penalty on the first conviction of not more than Ten pounds, and on the second or any subsequent conviction of not more than Fifty pounds.

Proof of existence of rabbits on land.

28. PROOF that there are on any land burrows showing signs of having recently been used by rabbits, or other signs of the presence of rabbits, shall be *prima facie* evidence of the existence of rabbits on the land;

Inspectors and authorised persons may enter holding.

29. ANY inspector or other officer or authorised person may, on the production of his authority (if such production is demanded by any owner or occupier), from time to time enter any land with or without assistants, dogs, horses, and vehicles in order to search whether any rabbits are on such land, or to examine and inspect land, or for any purpose whatsoever under this Act, and may remain thereon so long and do all such things as may be necessary or reasonable.

Meaning of "authorised person."

"Authorised person" means a person having authority from the Minister or from an inspector, and such authority may be a general authority.

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30. WHENEVER an inspector finds evidence of the existence of rabbits on any land, he may give to the owner or occupier of the land notice in writing to take such steps and adopt such means to suppress and destroy rabbits as may be specified in the notice.

Inspector may require rabbits to be destroyed.

31. IF any owner or occupier neglects or fails to comply with any such notice, he may be summoned to appear before the Minister, and unless he explains his neglect or failure to the satisfaction of the Minister, or receives an extension of time to comply with the notice, an inspector and any authorised person may enter upon the land and use such means and take such measures and do and perform such acts or things as to him may appear proper or necessary to be done to ensure the destruction of rabbits upon such land.

Powers of Inspector if owner or occupier makes default.

Where a municipal council or roads board is such owner or occupier, the town clerk or secretary to the board shall be the person to be summoned on behalf of such council or board:

Provided that—

- (a.) Poison shall not be used unless notice has been given to the occupier of the land of the intention to use poison; and
- (b.) Nothing contained in this section shall prejudice any proceedings under this Act for the recovery of any penalty incurred by an owner or occupier of any land.

32. ALL costs, charges, and expenses incurred by an inspector or authorised person in destroying rabbits upon any land shall be determined by the Minister, and shall be repaid with interest at the rate of Five pounds per centum per annum by the owner or occupier of the land, who shall be jointly and severally liable, and may be recovered by action at the suit of the Minister in any Court of competent jurisdiction, and shall be a charge upon the land.

Owner or occupier to pay expenses incurred.

33. WHERE money has been voted by Parliament for the purpose of rabbit destruction, the Minister may apply such money for that purpose, in such manner and on such terms and conditions as he may think fit.

Expenditure by Minister of public money in rabbit destruction.

34. (1.) THE Governor, by notice in the *Government Gazette*, may declare any animal, bird, or reptile to be a natural enemy of the rabbit, and prohibit, within any area to be specified in such notice, the wounding, killing, or capturing, selling, or disposing of any such animal, bird, or reptile, without a special permit in that behalf, and may alter or revoke any such notice.

Natural enemies of rabbits protected.

(2.) Any person who, within an area mentioned in any such notice, without lawful authority (the proof of which shall be on

Penalty for killing, etc., natural enemy of rabbit.

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such person), wounds, kills, captures, or sells or disposes of any animal, bird, or reptile so declared to be a natural enemy of the rabbit, shall be liable to a penalty not exceeding Five pounds.

PART VI.—SUPPLEMENTAL.

35. IN any case where—

(a.) Money payable under this Act is expressed to be a charge upon land; and

(b.) Notice of such charge is registered in the Office of Land Titles and Registry of Deeds, or in the Department of Lands, or of Mines, as the case may be,

any person thereafter becoming the occupier or owner of such land shall be taken to have notice of such charge, and shall be liable to pay the sum so charged or so much thereof as may, for the time being, be unpaid, as if he were the person originally liable; but nothing herein contained shall operate to discharge the liability of any person originally or previously liable.

36. (1.) ANY person in whom any land is vested as mortgagee may add to his mortgage debt any sums expended or contributed by, or recovered from him for or towards the erection of a rabbit-proof fence, or the converting of a fence into a rabbit-proof fence upon, near, or for the benefit of such land, or for or towards the maintenance or repair of any such fence; and

(2.) Any person in whom any land is vested as a trustee may raise the sums required or recovered for any such purpose by mortgage of such land, in the same way as if a power to mortgage for such purpose were contained in the instrument creating or declaring the trust.

37. ANY inspector or other officer appointed under this Act may at all times enter upon any private land to patrol and inspect any fence thereon.

38. ANY person who falsely represents himself to be, or personates an inspector or officer or authorised person under this Act, shall be guilty of an offence, and shall, on conviction, be liable to be imprisoned, with or without hard labour, for any period not exceeding six months, or to pay a penalty not exceeding One hundred pounds.

39. ANY person who assaults, obstructs, hinders, or interrupts, or causes to be assaulted, obstructed, hindered, or interrupted, any inspector or other officer or authorised person in the exercise of any power or authority vested in him by this Act, shall, for every such offence, be liable to a penalty not exceeding Twenty pounds;

Effect of moneys being charged on land.

See N.S.W. Act, No. 6 of 1902, s. 62.

Expenditure by mortgagees.

See *ibid.*, s. 63.

Or trustees.

Inspectors may enter private land to patrol fences.

Penalty for personating or obstructing inspector or authorised person.

Penalty for assaulting or obstructing inspector.

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No proceeding for recovery of such penalty nor the payment thereof shall be a bar to any action at law for or in respect of any such assault.

40. ANY person who—

- (a.) Carries, drives, or passes any live rabbit through, under, or over any rabbit-proof fence or gate; or
- (b.) Leaves open any gate in a rabbit-proof fence; or
- (c.) Without lawful authority (the proof of which shall be on the person claiming to have the same) destroys, injures, tears-up, depresses, or removes any portion of a rabbit-proof fence or gate, or excavates under, or in any way tampers with, any portion of such fence or gate, so as thereby to endanger its effectiveness as a rabbit-proof fence or gate; or
- (d.) Attempts to do any such act as is hereinbefore mentioned, or procures the same to be done,

Penalty for miscellaneous offences.

shall be liable to imprisonment, with or without hard labour, for any term not exceeding six months, or to a penalty not exceeding One hundred pounds, or to both imprisonment and penalty.

A rabbit-proof fence or gate, for the purposes of this section, shall mean a fence or gate apparently intended to protect any land from rabbits, and it shall be immaterial whether or not such fence or gate is in accordance with the requirements of this Act.

41. ANY person who, without lawful authority (the proof of which shall be on the person claiming to have the same), liberates, or attempts to liberate, or has in his possession any live rabbit, shall be liable to a penalty not exceeding One hundred pounds for every such offence; but nothing herein contained shall be construed to prohibit any person from keeping live rabbits in any safe enclosure with the written permission of the Minister first had and obtained.

Penalty for keeping, liberating, etc., rabbits.

Permission to keep rabbits.

42. ANY person who, without the license in writing of the Minister, pays or offers to pay any bonus or scalp money as a reward for the destruction of rabbits shall be liable for every offence to a penalty not exceeding Fifty pounds.

Reward for destruction of rabbits prohibited. See 60 Vict., No. 34, s. 58 (Queensland).

43. ANY person who, in any part of the State West of the barrier fence, without the license in writing of the Minister,—

Sale of rabbits prohibited.

- (a.) Sells, or offers to sell, or exposes for sale any dead rabbit; or

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(b.) Has in his possession any rabbit skins,
shall be liable to a penalty not exceeding Fifty pounds.

It is a defence to a charge under this section to prove that the rabbit or rabbit's skin was imported from beyond the State.

Penalty for interfering with traps, etc.

44. ANY person who, without lawful authority (the proof of which shall be on the person claiming to have the same), destroys, injures, removes, or interferes with any trap, snare, poison, matter, or thing which is used or required for the purpose of capturing or destroying rabbits, and which is lawfully placed upon any land for such purpose, shall be liable to a penalty not exceeding Twenty pounds.

Penalty for misuse of wire netting provided by Government. 60 Vict., No. 34 (Queensland), sec. 59.

45. IF any person uses any wire netting or other appliances in respect of which a mortgage has been executed, under section twenty-one of this Act, for any purpose or in any manner other than that for which it was provided, he shall be guilty of an offence and liable, on conviction, to a penalty not exceeding Five hundred pounds or to be imprisoned for any period not exceeding six months.

Petty sessions to adjudicate summarily on offences.

46. (1.) ANY proceedings for the punishment of offences or the recovery of penalties under this Act, or any regulation made thereunder, shall be heard and determined in a summary way before a Court of petty sessions in accordance with the provisions of the Acts in force for the time being regulating summary proceedings before Justices of the Peace.

(2.) Any person may take proceedings for the punishment of any offence under this Act.

Service of notices.

47. (1.) ANY notice given under or for the purposes of this Act, or any regulation made thereunder, may be given in any one of the following ways:—

- (a.) Personally to the person to whom the notice is addressed; or
- (b.) By registered letter sent through the post and directed to the last known place of abode in Western Australia of the person to whom the notice is addressed; or
- (c.) By advertising the same twice at least in some newspaper published or circulating in the district in which the lands the subject of such notice are situate, an interval of a week or more being allowed to lapse between such advertisements: Provided that notice shall only be given as last aforesaid when the whereabouts, or the last place of abode in

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Western Australia, of the person to whom such notice is addressed cannot be discovered by the person issuing such notice.

(2.) Any notice required by this Act to be given to the occupier or the owner (as the case may be) of any land shall, in cases where several persons are the occupiers or the owners thereof, be duly given if given to one of such occupiers or owners.

48. WHERE the name of the occupier or owner of any land is unknown to any person giving notice or taking proceedings under this Act, any such notice may be addressed to the occupier or owner as such, and any such proceedings may be taken, and any order or decision therein may be made or given, against the aforesaid occupier or owner as such. Proceedings when occupier or owners unknown.

49. THE chief inspector shall make quarterly reports to the Minister, and an annual report of the working of the Act, and of all moneys expended thereon, during the preceding year shall be laid before both Houses of Parliament. Reports.

50. THE Governor may make regulations for carrying this Act into effect, and for any purpose required by this Act, and may provide for the enforcement thereof by penalties not exceeding in any case Ten pounds. Regulations.

In the name and on behalf of the King I hereby assent to this Act.

E. A. STONE, Administrator.

Rabbits.

THE SCHEDULE.

Date of Act.	Short Title.	Extent of Repeal.
47 Vict., No. 15 ...	The Destruction of Rabbits Act, 1883	The whole.
49 Vict., No. 15 ...	The Destruction of Rabbits Amendment Act, 1885	The whole.